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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 DONOR NETWORK WEST, a non-profit
 corporation,

16 Plaintiff,

17 vs.

18 NEVADA DONOR NETWORK, INC., a
 19 non-profit corporation,

20 Defendant.

Case No.: 3:23-cv-00632-ART-CSD

**FIRST AMENDED CIVIL
 COMPLAINT**

DEMAND FOR JURY TRIAL

21

22 Plaintiff DONOR NETWORK WEST (“DNW”), a California-based non-profit
 23 corporation, by and through its undersigned counsel, hereby brings this action against Defendant
 24 NEVADA DONOR NETWORK, INC. (“NDN”), which is a Nevada non-profit corporation.
 25 DNW is informed and believes, and based thereon alleges, as follows:

1 **INTRODUCTION**

2 1. This case involves Defendant NDN using illegal and deceptive practices to push
3 Plaintiff DNW out of its federally designated organ-donation service area in northern Nevada (the
4 “Northern Nevada DSA”), and to prevent DNW from performing its federally mandated organ
5 donation services.

6 2. NDN has employed its illicit scheme so it can take over the organ recovery and
7 donation space in Nevada and become *the only* organ procurement organization (“OPO”) in
8 Nevada.

9 3. NDN’s unlawful conduct must be stopped.

10 4. The organ donation, recovery, and transplant space is not akin to other healthcare
11 business models, nor is it like any other standard commercial endeavor.

12 5. Decades of public policy and a rigid network of governing federal law and
13 regulations control the means and methods of organ donation, recovery, and transplantation in the
14 United States.

15 6. The National Transplant Act (42 U.S.C. §§ 273 *et seq.*), Social Security Act of
16 1935 (42 U.S.C. §§ 1138 *et seq.*), and accompanying federal regulations were established to guide
17 the national organ donation and transplant apparatus, and to promote longstanding and exclusive
18 relationships between an OPO and its partnering hospitals, to ensure an efficient organ donation,
19 recovery, and transplant process.

20 7. Plaintiff DNW is a non-profit OPO federally designated and required to serve
21 Reno, Nevada and the surrounding Northern Nevada DSA. In short, DNW works to recover,
22 preserve, transport, and facilitate the donation of organs for life-saving transplant.

23 8. Defendant NDN is an OPO based in Las Vegas, Nevada and is designated under
24 federal law to serve only those hospitals located in the southern Nevada designated service area
25 (the “Southern Nevada DSA”).

1 9. Yet, NDN’s self-admitted goal is to become the only OPO in Nevada, even though
2 most states are served by two or more OPOs. *See* ECF No. 19-2 (Ferreira Decl.) at ¶ 5.

3 10. Because of this ambition, NDN does not view DNW as a fellow OPO with which
4 it can collaborate to increase organ recovery and transplants.

5 11. NDN instead sees DNW as a competitor to the north that must be eliminated to
6 ensure its dominance in Nevada, a concept contrary to the organized system of federally
7 determined OPO assignment to a specific DSA.

8 12. Recognizing it consistently fails to surpass DNW in organ-donation recovery
9 efficiency and competency, NDN has resorted to unfair and illegal tactics to unsettle DNW’s
10 relationships with stakeholders in the Northern Nevada DSA that are critical to managing organ
11 donation and recovery successfully.

12 13. For the last ten years, NDN has taken steps to break into the Northern Nevada
13 DSA and disrupt DNW’s ability to recover organs, but its efforts have redoubled in recent months.

14 14. In this respect, NDN has made misrepresentations and engaged in misconduct to
15 create confusion and unrest among DNW staff and affiliated hospital employees and physicians,
16 and to disrupt the flow of organ donations throughout the Northern Nevada DSA to patients,
17 including many Nevadans, in need of healing and life-saving transplant procedures.

18 15. DNW has provided first-rate organ donation and recovery services in northern
19 Nevada for close to 40 years and has longstanding relationships with area hospitals, medical
20 providers, and the community at-large.

21 16. DNW accordingly has a longstanding relationship with Renown Health
22 (“Renown”), and has worked closely with its flagship hospital, the Renown Health Regional
23 Medical Center, and with two of its other facilities, Renown South Meadows Medical Center
24 d/b/a Renown Rehabilitation Hospital and Renown South Meadows Medical Center, in the Reno
25 metropolitan area.

1 17. DNW and Renown memorialized this relationship in an Affiliation Agreement,
2 which conforms to the federal requirement mandating an operating/service agreement between a
3 hospital and its designated OPO.

4 18. Strangely, despite never complaining of any material shortcomings or quality and
5 competency issues, late last year Renown sent DNW two separate letters indicating that it was
6 unilaterally cancelling, without cause, its federally mandated Affiliation Agreement with DNW.

7 19. Renown noticed termination of the Affiliation Agreement only after NDN offered
8 Renown \$6 million in initial funding support for a new organ transplant program, an offer which,
9 upon information and belief, is predicated on Renown terminating the Affiliation Agreement with
10 DNW and naming NDN its new OPO.

11 20. The \$6 million NDN offered Renown came through an award NDN obtained via
12 federal American Rescue Plan Act (“ARPA”) funds that were distributed through the State of
13 Nevada.

14 21. There is no practical or lawful reason why NDN predicated its disbursement of
15 ARPA funds to Renown upon NDN obtaining a federally based organ procurement agreement
16 from Renown.

17 22. NDN’s offer and demand to Renown violates the federal and Nevada anti-
18 kickback statutes (42 U.S.C. § 1320a-7b; NRS §§ 422.560) and Nevada deceptive and unfair trade
19 practices laws and upends the longstanding public policy fostering the orderly recovery,
20 preservation, and transport of donated organs by a DSA’s designated OPO under federal law and
21 regulations.

22 23. As a result of NDN’s unlawful conduct, Renown applied for a waiver from the
23 U.S. Centers for Medicare & Medicaid Services (“CMS”) to request that NDN be designated as
24 Renown’s new OPO.

25 24. NDN has thus attempted to push DNW out of Nevada through illegal means.

1 25. NDN's unlawful inducement of Renown improperly interfered with and disrupted
2 DNW's Affiliation Agreement.

3 26. NDN's other misconduct described herein has further sown disruption and
4 confusion among DNW's ongoing and prospective relationships with hospitals, community
5 members, and other stakeholders in the Northern Nevada DSA.

6 27. NDN's continued unfair and illegal interference with DNW's organ donation,
7 recovery, and transplant relationships has caused significant confusion and disruption in the
8 Northern Nevada DSA and must be stopped for the sake of donors and recipients who so
9 desperately depend on an efficient organ donation and transplant network.

10 28. NDN's actions have damaged DNW, threaten to damage DNW by making it
11 difficult and burdensome to carry out its OPO responsibilities, and threaten the health and well-
12 being of Nevadans on the organ-transplant waiting list, as well as waiting recipients across the
13 country, by harming the process surrounding the donation and recovery of organs in northern
14 Nevada.

15 29. DNW thus brings this Amended Complaint to remedy and protect itself from
16 further harm at the hands of NDN.

17 30. DNW accordingly seeks injunctive and monetary relief against NDN.

18 **PARTIES**

19 **Plaintiff**

20 31. Plaintiff Donor Network West is a non-profit 501(c)(3) organization formed under
21 the laws of California with its registered office address at 12667 Alcosta Blvd., Suite 500, San
22 Ramon, CA 94583.

23 32. DNW is also a registered non-profit corporation in Nevada and maintains an office
24 at 5440 Reno Corporate Drive, Reno, NV 89511.

25 //

1 33. DNW is a designated OPO by federal law and is committed to help save and heal
2 lives by supporting donor families and to engage in education and community outreach to
3 advocate organ donation as a fundamental human responsibility.

4 34. As an OPO, DNW is responsible for recovering or “procuring” donated organs
5 from donors at the time of death.

6 35. DNW, moreover, connects organ, eye, and tissue donors with people in need of
7 life-saving transplant.

8 36. DNW also provides education to hospital staff and community partners on the
9 organ referral and donation process and offers a strong network of support for the courageous
10 donor families whose loved ones save lives through organ donation.

11 37. DNW is the federally designated OPO for the Northern Nevada DSA.

12 38. In that respect, DNW is legally obligated to serve hospitals in the Nevada counties
13 of Washoe, Carson City, Douglas, Mineral, Churchill, and Humboldt as the designated OPO. *See*
14 42 U.S.C. § 273(a)-(b)(1), (3).

15 39. The counties of Washoe and Carson City were originally designated to the DSA
16 that DNW serves, but DNW is also responsible for serving the counties of Douglas, Mineral,
17 Churchill, and Humboldt Counties as the hospitals in those counties sought, and were granted,
18 waivers from CMS to work with DNW in lieu of remaining with the Southern Nevada DSA OPO,
19 Defendant NDN.

20 40. The hospitals sought these CMS waivers without any coercion or request by DNW.

21 41. Defendant NDN, the Southern Nevada DSA designated OPO, does not have
22 authorization to recover organ donors in those four counties where the CMS hospital waivers
23 were granted.

24 42. DNW is the nation’s third largest OPO serving more than 13 million people by
25 connecting organ, eye, and tissue donors to transplant recipients not only in the forty-five counties

1 geographically interconnected throughout Northern Nevada and Northern California, but also on
2 the national transplant wait list.

3 **Defendant**

4 43. Defendant Nevada Donor Network, Inc., is a non-profit 501(c)(3) organization
5 formed under the laws of Nevada with a principal address at 2055 E. Sahara Avenue, Las Vegas,
6 NV 89104.

7 44. As noted, NDN is the federally designated OPO for the Southern Nevada DSA and
8 serves donor hospitals specific to that geographic area, except for certain hospitals that work with
9 DNW per the noted CMS hospital waiver process.

10 45. Upon information and belief, NDN serves no more than 3 million people in its
11 Southern Nevada DSA.

12 46. Despite many counties falling within NDN's assigned DSA, on information and
13 belief, NDN recovers the vast majority of its organ donations from a single county, Clark County.

14 **JURISDICTION AND VENUE**

15 47. This Court also has original subject matter jurisdiction over this action and these
16 parties pursuant to 28 U.S.C. § 1332, because complete diversity of citizenship exists between
17 the parties in this action and the amount in controversy exceeds \$75,000.00, exclusive of interest
18 and costs.

19 48. This Court has personal jurisdiction over NDN because NDN is incorporated
20 and/or has its principal place of business in Nevada, and because NDN's alleged misconduct that
21 harmed DNW occurred in Nevada.

22 49. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because NDN is
23 subject to personal jurisdiction in this district and/or a substantial part of the events or omissions
24 giving rise to this action occurred in this district.

25 //

1 **FACTUAL ALLEGATIONS**

2 **A. The Applicable Federal Statutory and Regulatory Framework**

3 50. “In the United States, organ transplants are a public-private affair.” *Callahan v.*
4 *U.S. Dep’t of Health and Human Servs.*, 939 F.3d 1251, 1254 (11th Cir. 2019).

5 51. Congress established a national organ transplant infrastructure in 1984 by enacting
6 the National Organ Transplant Act of 1984, Pub. L. 98-507, 98 Stat. 2339 (Oct. 19, 1984)
7 (codified as amended at 42 U.S.C. §§ 273 *et seq.*) (“NOTA”).

8 52. NOTA directs the Secretary of Health and Human Services (“HHS”) to register
9 qualified OPOs and to designate only one registered and qualified OPO for each DSA throughout
10 the country. 42 U.S.C. § 273(a)-(b)(1).

11 53. Under NOTA, a qualified OPO is required to, among other things, recover,
12 preserve, allocate equitably, transport, and distribute donated organs from its respective DSA in
13 facilitation of organ transplant procedures. *Id.* at § 273(b)(1), (3).

14 54. Toward this end, NOTA requires each OPO to have effective agreements with a
15 substantial majority of the hospitals in its designated DSA that have organ donation facilities
16 and/or programs. *Id.* at § 273(b)(3)(A).

17 55. An OPO accordingly develops relationships and collaborative protocols with the
18 hospitals operating within its respective designated DSA coverage area. *Id.*

19 56. Correspondingly, the Social Security Act of 1935 (the “SSA”) requires Medicare
20 and Medicaid participating hospitals that conduct organ recovery or transplants to have an
21 exclusive agreement with the OPO in their DSA. 42 U.S.C. § 1320b-8(a)(1)(C).

22 57. Regulations further require that, “[u]nless CMS has granted a hospital a waiver . .
23 . the hospital *must* enter into an agreement *only* with the OPO *designated* to serve the area in
24 which the *hospital is located.*” 42 CFR § 486.308(a) (emphasis added).

25 //

1 58. Thus, only one OPO operates in a DSA and a hospital in a DSA may contract with
2 only one OPO—the CMS designated OPO to serve that hospital, absent the existence of a waiver
3 that has been granted to a hospital by CMS. *Id.*

4 59. This above-described organ donation federal regulatory regime has been in place
5 for decades and ensures that the OPO working with an organ donor’s family in a DSA is free from
6 profit or competitive motivation, and that its service fees are tied to actual cost.

7 60. Although the OPO-DSA framework is based on metropolitan service areas, and
8 not political boundaries, the SSA does permit a hospital to work with an OPO outside its DSA,
9 but only under limited circumstances and upon receiving a waiver from CMS. *Id.* at § 1320b-
10 8(a)(2)(A), (B); *see also* 42 CFR § 486.308(e).

11 61. To obtain an OPO waiver, the requesting hospital must demonstrate to CMS that:
12 (i) the waiver is expected to increase organ donation; and (ii) the waiver will assure equitable
13 treatment of patients referred for transplants within the service area served by such hospital’s
14 designated organ procurement agency, and within the service area served by the organ
15 procurement agency with which the hospital seeks to enter into an agreement under the waiver.
16 *Id.*

17 62. CMS may consider other factors such as cost effectiveness and quality
18 improvements in granting an OPO waiver request. *Id.*

19 **B. Defendant NDN Illegally Sabotaged and Disrupted Plaintiff DNW’s Organ**
20 **Recovery and Donation Relationships and Operations in the Northern**
21 **Nevada DSA**

22 **1. DNW Is the Federally Designated OPO in the Northern Nevada DSA**
23 **and Is Accordingly Renown Health’s Designated OPO**

24 63. DNW is the designated qualified OPO for the Northern Nevada DSA under federal
25 law.

//

1 64. This designation is memorialized in an agreement between DNW and CMS. *See*
2 Exhibit 1 (the “CMS Agreement”).

3 65. DNW has been the OPO in the Northern Nevada DSA for over forty years.

4 66. CMS and DNW most recently renewed the CMS Agreement on May 9, 2022. *Id.*

5 67. The CMS Agreement provides DNW with the exclusive right to conduct organ
6 recovery, preservation, allocation, and transportation activities in the Northern Nevada DSA. *Id.*

7 68. The CMS Agreement, and the federal regulatory regime described above, requires
8 DNW to contract with any Medicare and Medicaid participating hospital engaged in organ
9 recovery or transplant procedures in its Northern Nevada DSA. *Id.*; *see also* 42 U.S.C. § 1320b-
10 8(a)(1)(C).

11 69. The CMS Agreement thus entirely governs organ donation services for Medicare
12 and Medicaid participating entities in the Northern Nevada DSA.

13 70. DNW therefore works with every hospital in its Northern Nevada DSA, as well as
14 with other Nevada-based institutions such as the University of Nevada (Reno School of Public
15 Health), the Nevada Hospital Association, Donate Life Nevada, and other Nevada health and
16 community-based organizations.

17 71. DNW also recently established the Northern Nevada Advisory Council, which is
18 comprised of Northern Nevada community leaders and stakeholders in its mission.

19 72. In the past five years, DNW, which is the third largest OPO in the nation, increased
20 organ donations overall by 30%, an increase that has been sustained.

21 73. At Renown *alone*, organ donation was increased through the efforts of DNW and
22 Renown collaboration by 46% from the previous decade.

23 74. In 2022, DNW had the highest donation rate in Nevada of any OPO operating in
24 Nevada.

25 //

1 75. Also in 2022, CMS completed its 2018-2021 recertification survey of DNW
2 finding DNW compliant with all Medicare requirements and identified *zero* deficiencies. *See*
3 Exhibit 2 (May 4, 2022 CMS Ltr. to Whaley).

4 76. Upon information and belief, DNW is the only OPO in the country to achieve zero
5 deficiencies during the 2018-2021 CMS recertification cycle.

6 77. DNW, accordingly, has invested considerable infrastructure costs and other
7 resources to enhance organ donation accessibility in the Northern Nevada DSA, including but not
8 limited to, an ongoing expansion of highly trained and educated staff in the Northern Nevada
9 DSA and a substantial increase in office space in Reno.

10 78. The Northern Nevada DSA includes Renown Health, a Nevada non-profit
11 organization with a principal address at 1155 Mill Street N-11, Reno, NV 89502.

12 79. Renown operates one of Nevada's largest health systems with more than 13,000
13 health care providers statewide.

14 80. Renown offers a Level II Trauma Center at Renown Regional Medical Center.

15 81. Renown Regional Medical Center is Renown's flagship hospital and is located in
16 Reno.

17 82. Renown operates other health care provider locations in Reno, including South
18 Meadows Medical Center d/b/a Renown Rehabilitation Hospital and Renown South Meadows
19 Medical Center.

20 83. These three Renown facilities fall within DNW's Northern Nevada DSA, and
21 DNW is currently their designated OPO under federal law.

22 84. On this background, DNW and Renown have been parties to an Affiliation
23 Agreement for over forty years. *See* Exhibit 3 (the "Affiliation Agreement").

24 //

25 //

1 85. This Agreement states DNW and Renown will work together to recover, preserve,
2 and transport donated organs and tissue for transplantation, or research when transplantation is
3 not possible. *Id.*

4 **2. NDN Intends and Attempts to Infiltrate the Northern Nevada DSA**

5 86. Defendant NDN is the federally designated OPO for the Southern Nevada DSA
6 and is headquartered in Las Vegas, Nevada, about 435 miles from the Northern Nevada DSA,
7 DNW’s Reno Office, and Renown Regional Medical Center.

8 87. DNW’s California office, along with the numerous transplant centers that serve
9 Nevada residents, are approximately 217 miles away from Renown Regional Medical Center—
10 i.e., half the distance from NDN’s Las Vegas headquarters.

11 88. Although the above-described federal OPO-DSA organ donation framework
12 intends to curb unnecessary, disruptive, and unfair competition between OPOs, NDN has
13 announced its intention to take over as the OPO in the Northern Nevada DSA.

14 89. NDN’s CEO, Joseph Ferreira, revealed that for the last decade NDN’s main
15 objective is to become the *only* OPO in Nevada, even though most states are served by two or
16 more OPOs. *See* ECF No. 19-2 (Ferreira Decl.) at ¶ 5.

17 90. NDN has developed and instituted a campaign called “Take the North,” with a
18 focus on pushing DNW out of the Northern Nevada DSA and becoming the only OPO in the
19 Northern Nevada DSA. Upon information and belief, NDN even printed t-shirts with this slogan
20 and distributed them to its staff.

21 91. To achieve its objectives, NDN has sabotaged and disrupted DNW’s relationship
22 with Renown and other hospitals in the Northern Nevada DSA.

23 92. Key to NDN’s attempted intrusion into the Northern Nevada DSA is NDN’s illegal
24 *quid pro quo* arrangement with Renown.

25 //

1 93. NDN promised Renown it will fund Renown’s transplant program to include the
2 creation and construction of the Nevada Transplant Institute (“NTI”), an organ transplant center,
3 and upon information and belief did so to induce Renown to terminate its Affiliation Agreement
4 with DNW and designate NDN as its new OPO.

5 94. However, neither NDN nor any OPO in the United States is qualified or permitted
6 to open or operate a transplant center. Transplant services are hospital functions requiring specific
7 approval from CMS, in accordance with federal law, regulations, and membership in the Organ
8 Procurement Transplantation Network (“OPTN”).

9 95. Simply put, OPOs recover organs; they do not transplant them. Federal and state
10 law and policy create strict separation between the organizations that recover organs and those
11 that receive organs for transplant.

12 96. Upon information and belief, in 2019 NDN’s CEO, Joseph Ferreira, represented
13 to Renown’s then CEO, Dr. Tony Slonim, that NDN would fund a transplant center in the Reno
14 metropolitan area and would work together with Renown on both organ donation recovery and
15 transplant operations at the transplant center.

16 97. Upon information and belief, NDN’s CEO, Joseph Ferreira made similar
17 representations to Renown’s interim CEO, Dr. Thomas Graff, who was Dr. Slonim’s successor.

18 98. Yet NDN was not then, and is not now, permitted to recover donated organs in the
19 Northern Nevada DSA. Nor is it permitted to participate in operating a transplant center. No OPO
20 in the United States functions as both an OPO and an organ transplant center.

21 99. Upon information and belief, NDN was motivated to infiltrate the Reno
22 metropolitan area and DNW’s Northern Nevada DSA for potential financial gain, predicated on
23 its belief that doing so will increase NDN’s margins/revenue by 40%.

24 100. Upon information and belief, Chris Bosse, Renown’s Chief Government Relations
25 Officer *and* a NDN board member, fostered the NDN-Renown relationship.

1 101. Upon information and belief, Ms. Bosse has served on the NDN board of directors
2 since 2010, despite her employer, Renown, not working with NDN due to both the Affiliation
3 Agreement between DNW and Renown, and federal law prohibiting NDN from providing organ
4 donation services to Renown.

5 102. Upon information and belief, Renown had great interest in working with NDN on
6 this transplant center project, but the COVID-19 pandemic outbreak in early 2020 interrupted
7 further developments.

8 103. Renown aside, NDN plans on using the NTI to fully integrate organ recovery and
9 transplants in Nevada under its control, contrary to federal law and its structured OPO-hospital
10 framework.

11 104. NDN intends on accomplishing this by developing “non-competitive” partnerships
12 with Nevada organ donor, recovery, and transplant stakeholders in support of the NTI, yet NDN’s
13 scheme ignores DNW’s role as the federally designated OPO in the Northern Nevada DSA. *See*
14 *generally* ECF No. 19-5 (NTI Information Video) (“The NTI will use an innovative approach
15 through partnerships rather than competition emphasizing cooperation among the stakeholders.”)

16 **3. NDN Illegally Induced Renown Health to Terminate the Affiliation**
17 **Agreement with DNW**

18 **a. NDN Receives \$15 Million in ARPA Funding to Open the**
19 **Nevada Transplant Institute in DNW’s Northern Nevada DSA**

20 105. On October 22, 2022, NDN announced it received \$15 million in ARPA funds
21 from the State of Nevada, one of the largest amounts awarded to a single non-profit organization
22 by the Interim Finance Committee to date.¹

23
24 ¹ Press Release, *Amount is one of the largest ARPA allocations awarded to a single*
25 *nonprofit in the state to date*, Las Vegas Heals (Oct. 22, 2022), available at
<https://www.lasvegasheals.org/nevada-donor-network-awarded-15-million-in-american-rescue->

1 106. These funds granted to NDN were earmarked specifically to support the creation
2 of the NTI, which stated an intent to collaborate with NDN, academic institutions, hospitals,
3 payers, transplant centers, and community health care providers in a singular, dedicated network
4 to expand donation and transplantation programs and services throughout Nevada.

5 107. This is a laudable goal but has nothing to do with an OPO's fundamental function
6 of recovering donated organs, except that without a stable source of organs effectively and
7 lawfully recovered by an authorized OPO, there will be fewer organs to transplant.

8 108. Yet success of any future transplant services in Nevada does not depend on, and
9 is not tied to, NDN providing OPO donation services in the Northern Nevada DSA.

10 109. It was reported that NDN intends to build the NTI in Reno within DNW's Northern
11 Nevada DSA.²

12 110. If NDN builds the NTI in the Northern Nevada DSA, DNW is still required under
13 federal law to serve as NTI's designated OPO in the Northern Nevada DSA.

14 111. Further, given DNW's superior donation and recovery rates compared to NDN's,
15 it is safe to say that DNW will best serve any new transplant program developed in the Northern
16 Nevada DSA.

17 112. Despite the plan to build the NTI in the Northern Nevada DSA, neither NDN nor
18 NTI has ever contacted DNW about providing OPO services to NTI, although it currently serves
19 as the designated OPO in the region where NTI is supposed to run its transplant center.

21
22
23 plan-act-funds-from-state-of-nevada-to-establish-nevada-transplant-institute/; *see also* Green
24 and DeSilva, *Nevada Donor Network closer to opening statewide transplant institute*, KNPR
(Oct. 31, 2022), *available at* <https://knpr.org/show/knprs-state-of-nevada/2022-10-31/nevada-donor-network-closer-to-opening-statewide-transplant-institute>.

25 ² Bond, *Transplant Center coming to Northern Nevada*, KOLO ABC 8 (May 11, 2023),
available at <https://www.kolotv.com/2023/05/11/transplant-center-coming-northern-nevada/>.

1 113. A press release from NDN stated its transplant centers—one in Reno and one in
2 Las Vegas—would be open and operational by October 2023. This representation was so wildly
3 optimistic as to be unfounded, given that a transplant program must also receive CMS and OPTN
4 approval, neither of which, on information and belief, NDN has applied for. *See* 42 CFR §§
5 488.20, 488.61.

6 **b. NDN Used ARPA Funds to Illegally Induce Renown Health to**
7 **Terminate the Affiliation Agreement with DNW and Apply to**
8 **CMS to Request NDN Be Renown Health’s New OPO**

8 114. Upon information and belief, around December 2022, NDN again approached
9 Renown about its participation in opening and operating the NTI to be built in Reno.

10 115. NDN offered Renown more than \$3 million in initial funding to open and operate
11 the NTI.

12 116. In May 2023, NDN CEO, Joseph Ferreira, incorporated the NTI and is listed as its
13 President, Secretary, Treasurer, and Director.

14 117. Around this time, DNW, in its usual course of business, made numerous attempts
15 without success to meet with Renown’s new CEO, Dr. Brian Erling.

16 118. DNW wanted to meet with Dr. Erling to introduce and educate Dr. Erling on
17 DNW’s operations and relationship with Renown as Renown’s designated OPO in the Northern
18 Nevada DSA.

19 119. Upon information and belief, Dr. Erling refused to meet DNW’s CEO, Janice
20 Whaley, until the Mayor of Reno intervened to convene a meeting.

21 **The May 9, 2023 Renown-DNW Meeting**

22 120. On or about May 9, 2023, DNW CEO, Janice Whaley, and others, finally met with
23 Dr. Erling and discussed DNW’s role as the federally designated OPO in the Northern Nevada
24 DSA.

25 //

1 **The NDN-Renown Memorandum of Understanding and NDN’s Monetary Offer**

2 130. On June 21, 2023, NDN and Renown executed a Memorandum of Understanding
3 (“MOU”) to memorialize their collaborative arrangement premised upon funding by NDN to
4 establish a transplant program, in essence, the NTI. *See* Exhibit 4.

5 131. NDN and Renown entered into this MOU even though by that time NTI, the
6 intended transplant institute, was a separately formed Nevada non-profit corporation; yet, NTI
7 was not a party to the MOU.

8 132. In this MOU, NDN pledged \$6 million dollars, rather than the \$3 million, in initial
9 funding to Renown for construction expenses and salaries and other operating expenses. *Id.* at ¶
10 1.

11 133. NDN also committed to recruiting and sharing staff and providing laboratory
12 services to Renown in connection with the NTI. *Id.* at ¶ 7.

13 134. Inexplicably, the MOU also states that NDN (an OPO) and Renown agree to share
14 and keep confidential any individual patient identifiable health information. *Id.* ¶ 10.

15 135. Yet, the early stages of establishing a transplant program do not require the
16 exchange of identifiable patient information, as there are not yet transplant patients from whom
17 to collect such information.

18 136. Thus, the NDN-Renown MOU clearly demonstrates an intent between Renown
19 and NDN to exchange identifiable patient information regarding potential and actual organ donors
20 anticipated at the NTI in Reno, despite DNW being the only federally designated OPO for all
21 organ donation recovery operations in the Northern Nevada DSA. Renown does not have a CMS
22 waiver appointing NDN as the OPO for the NTI.

23 //

24 //

25 //

The August 29, 2023 Meeting When Renown Advocates for NDN

1
2 137. Two months after NDN and Renown entered into the MOU, on or about August
3 29, 2023, representatives and stakeholders from Reno city government met with Renown, NDN,
4 and DNW representatives.

5 138. During this meeting, NDN presented about the NTI project in Reno.

6 139. At this meeting and, upon information and belief, in communications and
7 numerous public statements before community members and stakeholders, NDN repeated
8 misrepresentations that NDN is a more qualified and successful OPO than DNW and that the
9 NTI's transplant program will increase the number of Nevada citizens receiving organ transplants.

10 140. NDN's assertion that it will be a better OPO than DNW is based on limited and
11 non-predictive and therefore irrelevant and misleading data.

12 141. NDN relied on *interim*, broad-spectrum snapshot data to predict OPO
13 performance, which is like predicting how well a presidential candidate will do in the 2023
14 Massachusetts primary based on a 2022 national poll.

15 142. NDN's "tier" data is neither predictive nor relevant to the question of which OPO
16 can recover more organs in Reno.

17 143. DNW still outperforms NDN on all relevant and critical metrics, and DNW will
18 demonstrate such facts to CMS.

19 144. NDN's assertions are incorrect because they do not comport with federal law or
20 the corresponding organ, recovery, allocation, and distribution framework.

21 145. Notably, during this meeting, Renown also advocated for NDN to become its OPO
22 in the Northern Nevada DSA.

23 146. Neither NDN nor Renown disclosed the existence of the MOU at this meeting.

24 //

25 //

1 147. During this meeting, DNW advised that Renown had no legitimate legal basis to
2 be granted an OPO waiver to designate NDN as the new OPO for Renown in the Northern Nevada
3 DSA.

4 **Renown Applies for CMS OPO Waiver to Name NDN Its New OPO**

5 148. On or about September 11, 2023, Renown applied to CMS for an OPO waiver,
6 seeking to walk away from DNW and use NDN as its new OPO moving forward. *See* Exhibit 5
7 (Renown Health CMS OPO Waiver Request).

8 149. Renown did not timely provide DNW with notice of its waiver application.

9 150. Then by late October 2023, NDN's Vice President Ms. Shipman notified her
10 counterpart project lead at Renown that she shifted job responsibilities from being the NDN-
11 Renown NTI liaison to "working with Renown to aid NDN in serving as its designated OPO
12 beginning in 2024." ECF No. 19-1 (Shipman Decl.) at ¶ 6.

13 **Renown Notices Termination of Its Affiliation Agreement with DNW**

14 151. Despite never complaining of any material shortcomings or quality and
15 competency issues by DNW, Renown advised DNW in letters sent on September 29 and October
16 23, 2023, that it was unilaterally canceling its federally mandated Affiliation Agreement with
17 DNW without cause, effective January 4, 2024. *See* Exhibit 6 (Renown Termination Letters and
18 DNW Response).

19 152. In its September 29, 2023 Termination Letter, Renown stated, "[t]he reason for the
20 termination is that Renown is partnering with a Nevada-based donor network." *Id.*

21 153. On October 19, 2023, DNW responded to Renown advising it could not terminate
22 the Agreement unilaterally without cause and without a CMS OPO waiver, because doing so
23 contradicted the Agreement's termination provisions and violated governing federal law. DNW,
24 moreover, sought assurances that Renown would fulfill its contractual and federally imposed legal
25

1 obligations set forth therein during any remaining tenure of the Agreement prior to CMS granting
2 an OPO waiver. *See* Exhibit 6 (Renown Termination Letters and DNW Response).

3 154. Renown dismissed DNW's concerns and refused to provide assurances. *Id.* at Oct.
4 23, 2023 Erling Ltr. to Whaley.

5 155. On December 8, 2023, DNW filed its initial Complaint and sought a temporary
6 restraining order to prohibit Renown from illegally terminating the Agreement by January 4,
7 2024, because CMS had not yet ruled on Renown's OPO waiver application. *See generally* ECF
8 Nos. 1 and 2.

9 156. Then, 12 days later, on December 20, 2023, Renown informed DNW it would not
10 terminate the Affiliation Agreement as of January 4, 2024, but rather, will instead wait until CMS
11 awards an OPO waiver should it determine there is appropriate cause. *See* Exhibit 6 (Renown
12 Termination Letters and DNW Response).

13 157. Although Renown's Affiliation Agreement termination becomes effective only
14 upon it receiving a waiver from CMS, it has already taken noticeable actions negatively affecting
15 DNW's current ability to perform its federally mandated OPO organ donation and recovery
16 services.

17 158. Renown recently cancelled several meetings with DNW about organ recovery,
18 donation, and transplants.

19 159. These meetings are not mere administrative formalities. These donation-quality
20 outcome meetings are critical to enhance quality improvement of DNW and Renown's organ
21 donation, recovery, and transplant practices.

22 160. During these meetings, DNW and Renown staff discuss specific organ donation
23 and recovery cases to identify best practices and analyze operational shortcomings, all with a
24 collective goal to increase organ donation and recovery efficiencies.

25 //

1 161. Simply put, these meetings serve as the foundation for relationships between
2 DNW and Renown staff necessary to recover donated organs, reach transplant patients, and save
3 lives.

4 162. In addition, the Affiliation Agreement includes the obligation to have these
5 meetings as well as a host of other responsibilities Renown must satisfy. Exhibit 3 (Affiliation
6 Agreement) at Sec. 1 – Hospital Responsibilities; Sec. 4 – Hospital Policies and Procedures.

7 163. The same responsibilities are required under federal law to facilitate collaboration
8 between hospitals and designated OPOs, designed to facilitate a mitigation of impediments to the
9 achievement of the important public policy goal of saving lives through organ donation and
10 transplant. *See* 42 C.F.R. §§ 482.45, 485.643, 486.322.

11 164. Upon information and belief, on or about January 8, 2024, Renown staff expressed
12 confusion to DNW staff over DNW’s role as Renown’s OPO because the Renown staff
13 understood that Renown had “fired” DNW.

14 **NDN Facilitated an Illegal Quid Pro Quo with Renown to Push DNW Out of**
15 **the Northern Nevada DSA and Thereby Harmed DNW**

16 165. Any promise or payment of money or thing of value made in return for arranging
17 any service for which payment may be made by a federal or state healthcare program, violates the
18 federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) and the Nevada equivalent (NRS §
19 422.560).

20 166. NDN illegally induced Renown to terminate its Affiliation Agreement with DNW
21 and seek a CMS waiver to name NDN its new OPO through the promise of \$6 million in initial
22 funding and additional monies and to provide shared services to Renown, in support of Renown’s
23 transplant program and formation of the NTI.

24 //

25 //

1 167. Further, if any non-profit OPO promised or gave such payment to Renown, it
2 would also violate its obligations as a non-profit organization under state law and as a Medicare
3 contractor under federal law.

4 168. DNW also believes such promise and/or payment would create a system of
5 exchanging monetary value for the referral of potential organ donors, which is in opposition to
6 public policy prohibiting the exchange of valuable consideration for transplantable human organs.

7 169. Further, Renown has no legitimate basis to seek a waiver from CMS because any
8 waiver for NDN to serve as its OPO will not increase organ donations or assure equitable
9 treatment of transplant list patients in the Northern Nevada DSA. *See* 42 U.S.C. § 1320b-
10 8(a)(2)(A), (B); *see also* 42 CFR § 486.308(e).

11 170. NDN's performance in the recovery of organs for transplant pales in comparison
12 to DNW.

13 171. Upon information and belief, Defendant NDN lags behind Plaintiff DNW on every
14 OPTN performance metric for services performed in Nevada.

15 172. For the past decade, DNW's Nevada operations have maintained the best OPTN
16 performance and success rating of any Nevada OPO.

17 173. For example, DNW's OPTN kidney recovery/discard rate for the past four years
18 was well below the national average and the best of any Nevada OPO (discard rate reflects
19 recovered but unused organ donations and OPOs seek to limit discard rates to avoid waste of
20 valuable resources and high costs).

21 174. Upon information and belief, in the kidney donation context, NDN trails expected
22 organ yield national standards, and in 2021 and 2022 NDN had the worst kidney discard rate
23 nationally.

24 175. Upon information and belief, DNW in its Northern Nevada DSA procures and
25 provides more transplanted organs per capita than any Nevada OPO.

1 176. What is more, DNW's kidney procurement costs are lower than any other Nevada
2 OPO and DNW's costs and fees for recovery of all donated organs are less than NDN's.

3 177. Meaning, upon information and belief, that NDN becoming the only OPO in
4 Nevada will harm the Nevada organ donation and recovery space by making organ donation and
5 recovery in Nevada more expensive and less cost-effective for transplant centers, private
6 insurance companies, patients whose insurance requires co-insurance or copayments for organ
7 transplants, and federal and state government healthcare reimbursement programs.

8 178. Further, CMS's recent recertification review of DNW from 2018 through 2021
9 found DNW had zero performance deficiencies. *See* Exhibit 2.

10 179. The loss of Renown as a participating OPO hospital in the Northern Nevada DSA
11 is timed purposely to cause disruption and harm to not only donors and transplant recipients, but
12 also DNW's standing as an OPO.

13 180. As NDN well knows, 2024 is the year in which CMS will gauge performance
14 metrics of all OPOs nationally, and comparatively. *See* 85 FR 77898-01 (December 2, 2020 Final
15 Rule).

16 181. In 2026, CMS will evaluate OPO performance based upon the performance data
17 collected in 2024, to determine tier level assignment to the nation's OPOs.

18 182. Consequently, substantial interference in the daily performance of DNW in the
19 Northern Nevada DSA during 2024, the measuring year, could cause a significant negative impact
20 on DNW's performance data. Renown, particularly its trauma center, is by far the largest source
21 of organ recovery in the Northern Nevada DSA and interference with the donation recovery and
22 transplant rate could seriously diminish DNW's standing.

23 183. NDN's aim in sabotaging DNW at Renown and in the Northern Nevada DSA is
24 not to serve Nevadans, or organ donation, but to acquire territory and increase revenue for NDN.

25 //

1 184. Rather than collaborate with DNW to accomplish a lifesaving goal, NDN hopes to
2 weaken DNW's strong performance to serve its own territorial and financial goals, even as organ
3 donation processes inevitably suffer.

4 185. What is more, NDN's interference with Renown and the Affiliation Agreement
5 has made DNW's performance under the Affiliation Agreement more costly and burdensome.

6 186. Further, losing Renown as a partner hospital will increase DNW's overhead for all
7 its OPO operations in the Northern Nevada DSA to a dangerously burdensome level given that
8 the other Northern Nevada DSA hospitals have a much smaller number of organs that become
9 available due to limited patient populations served by those hospitals, and the lack of trauma
10 centers in those counties.

11 187. To be sure, but for NDN's illegal inducement of Renown, Renown would have not
12 wrongfully noticed premature termination of the Affiliation Agreement as of January 4, 2024,
13 thus causing DNW to file this lawsuit and incur significant time and expense.

14 188. DNW indeed initially filed this lawsuit to preserve its performance rights under
15 the Affiliation Agreement consistent with the Agreement and in accordance with federal law
16 governing OPO-hospital relationships.

17 **4. NDN Furthers Disruption and Causes Confusion in the Northern**
18 **Nevada DSA**

19 189. NDN has also furthered disruption and caused confusion in the organ donation
20 community in the Northern Nevada DSA.

21 190. Upon information and belief, over the past ten years, NDN made public
22 misrepresentations concerning its status as a federally designated OPO in the Northern Nevada
23 DSA, and misled numerous stakeholders and hospitals—including Renown—about NDN's
24 ability to provide organ donation services in the Northern Nevada DSA.

25 //

1 191. More recently, around May 2023, upon information and belief, NDN began
2 contacting other hospitals and medical providers in the Northern Nevada DSA, suggesting they
3 apply for OPO waivers to work with NDN, considering the supposed impending commencement
4 of the NTI in Reno.

5 192. NDN told hospitals in Douglas, Mineral, Churchill and Humboldt Counties that
6 continuing to work with DNW violated Medicare regulations. NDN's claim is false.

7 193. Upon information and belief, NDN created additional confusion by misleading
8 Renown and DNW employees via leaked false statements claiming NDN will be Renown's
9 Northern Nevada DSA OPO as of January 1, 2024.

10 194. These statements led many to believe Renown has already obtained a CMS OPO
11 waiver to work with NDN when it has not. Further, a mere application for a waiver does not
12 ensure that such a request will be granted.

13 195. Tellingly, Renown staff members who were engaged in crucial meetings regarding
14 organ donation quality and protocols queried whether they should even work with DNW on
15 continuous improvement initiatives, given their understanding that DNW would soon no longer
16 be Renown's OPO in the Northern Nevada DSA.

17 196. Upon information and belief, Renown canceled meetings with DNW on the basis
18 it believed NDN would replace DNW as Renown's OPO and assume DNW's organ recovery,
19 allocation, transport and donation role and responsibilities as outlined in the Affiliation
20 Agreement.

21 197. After Renown staff and DNW staff learned of Renown's September 29, 2023
22 Termination Letter, it impaired the level of trust needed between these organizations to support a
23 fully synchronized organ recovery, donation, and transplant system and interfered in the ability
24 of DNW staff at Renown to do their work successfully with its potential donor families causing
25 the threat of loss in organ donations.

1 198. In addition, upon information and belief, at an international organ donor
2 conference in October 2023, NDN’s CEO falsely represented from a public forum that NDN is
3 the sole Nevada OPO.

4 199. NDN’s misrepresentation upset DNW staff present at the conference and caused
5 insecurity.

6 200. NDN’s misrepresentation also confused the broader organ donation and transplant
7 community present, whose collaboration is essential for the organ donation and transplant system
8 to work effectively and efficiently.

9 201. In this way, NDN diminished years of DNW’s work establishing trusting
10 relationships with Northern Nevada DSA hospitals—like Renown—to foster a fully synchronized
11 organ recovery, donation, and transplant system to serve the maximum number of transplant
12 recipients.

13 202. Additionally in October 2023, NDN held a Job Fair at Atlantis Resort in Reno and
14 advertised for Reno-based organ-related job openings.

15 203. Upon information and belief, NDN posted flyers seeking job applicants at
16 hospitals in DNW’s Northern Nevada DSA in full sight of current DNW employees and hospital
17 personnel with whom they work, causing confusion, job insecurity and disruption, given that there
18 is no legitimate reason for NDN to seek employees for organ recovery in the Reno area presently
19 when there is no certainty when a waiver might be granted, or whether a waiver will be granted
20 at all.

21 204. Thus, in addition to interfering with DNW’s relationships with Northern Nevada
22 DSA hospitals and stakeholders, NDN interfered with DNW’s internal staff and operations.

23 205. Upon information and belief, in October 2023, NDN representatives approached
24 DNW employees about applying for NDN jobs serving Renown.

25 //

1 206. Also in October 2023, NDN posted online solicitations seeking organ recovery
2 employees for positions in the Northern Nevada DSA.

3 207. Further, upon information and belief, in November 2023, Renown instructed its
4 staff to stop collaborating with DNW in providing support for the National Celebration of Organ
5 Donation event held during the Rose Bowl Parade on or about January 1, 2024.

6 208. NDN's interference and disengagement of DNW concerning this event could have
7 denied a Reno-donor family and a Renown patient/organ recipient the opportunity to participate
8 in a nationwide celebration of their northern Nevada organ donor community and organ donor
9 generosity.

10 209. To ensure that these donor families and recipients were not so denied, DNW was
11 forced to make last-minute changes from the traditional venue of the pre-parade local celebration
12 from Renown to DNW's Nevada office.

13 210. Due to Renown's withdrawn support, DNW was also left to absorb the full cost of
14 transporting and housing the donor and recipient families in Pasadena, as well as the cost of floral
15 depictions of the donors that were included on the Rose Bowl Parade float.

16 211. This was a deviation from a long-standing collaborative effort between Renown
17 and DNW to honor local northern Nevadan organ donor families and recipients.

18 212. Further, in late November 2023, DNW's Chief Medical Officer was approached
19 and solicited to become the director of the NTI in Reno, which he declined.

20 **FIRST CAUSE OF ACTION**
21 **Intentional Interference with Contractual Relations**

22 213. Plaintiff DNW hereby incorporates the preceding allegations as if set forth fully
23 herein.

24 214. A claim for intentional interference with contractual relations exists when: (1)
25 there is a valid and existing contract; (2) defendant has knowledge of the contract; (3) defendant's

1 acts are intentional and intended or designed to disrupt the contractual relationship; (4) actual
2 breach or disruption of the contract occurs; and (5) plaintiff is harmed by the disruption or breach.
3 *Sutherland v. Gross*, 772 P.2d 1287, 1290 (Nev. 1989); *J.J. Indus., LLC v. Bennett*, 71 P.3d 1264,
4 1267 (Nev. 2003).

5 215. Further, a plaintiff must allege either an actual breach of a contract *or a significant*
6 *disruption of a contract* rather than a simple impairment of contractual duties. *Treasury Sols.*
7 *Holding Inc. v. Upromise, Inc.*, 2010 WL 5390134, at *5 (D. Nev. 2010).

8 216. “Allegations of increased cost for performance of contractual duties have
9 consistently been held sufficient to allege an actual disruption of a contract for an intentional
10 interference with contractual relations claim.” *Rimini St., Inc. v. Oracle Int’l Corp.*, No. 2:14-CV-
11 1699-LRH-CWH, 2017 WL 5158658, at *6 (D. Nev. Nov. 7, 2017).

12 217. “Generally, an action for intentional interference with contractual relations cannot
13 be based upon a defendant inducing the termination, rather than breach, of a contract that is
14 terminable at will *unless it was done maliciously or with improper means.*” *Id.* at *7 (emphasis
15 added).

16 218. NDN intentionally interfered with the Renown-DNW Affiliation Agreement.

17 219. At all relevant times, DNW maintained a valid Affiliation Agreement with
18 Renown to provide OPO services in accordance with governing federal law and regulations.

19 220. At all relevant times, NDN had knowledge of the existence of the Renown-DNW
20 Affiliation Agreement.

21 221. Indeed, as the designated Southern Nevada DSA OPO, NDN is well-versed
22 regarding the federal laws and regulations governing OPO-hospital relationships in respective
23 DSAs, and thus knew that DNW was the OPO designated to Renown in the Northern Nevada
24 DSA and that the Renown-DNW Affiliation Agreement existed.

25 //

1 222. NDN is “working with Renown to aid NDN in serving as its designated OPO
2 beginning in 2024.” ECF No. 19-1 (Shipman Decl.) at ¶ 6.

3 223. NDN engaged in a concerted campaign to become Renown’s designated OPO and
4 to eventually become the only OPO in Nevada.

5 224. As set forth above, NDN’s campaign included inducing Renown to terminate its
6 Affiliation Agreement with DNW and to seek a CMS OPO waiver to name NDN its new OPO
7 through the illegal promise of \$6 million in initial funding and additional monies and shared
8 services in support of Renown’s transplant program and formation of the NTI.

9 225. NDN’s actions were designed to induce Renown to terminate its Affiliation
10 Agreement with DNW, which, at a minimum, has disrupted the arrangement between Renown
11 and DNW and allows for NDN to obtain an unfair competitive advantage over DNW.

12 226. NDN knows its actions are certain, or substantially certain, to cause the disruption
13 of the Affiliation Agreement between Renown and DNW.

14 227. NDN’s intentional interference has resulted in the noticed termination and/or
15 disruption of the Affiliation Agreement between Renown and DNW.

16 228. As a result of the intentional interference, Renown noticed termination of the
17 Affiliation Agreement to be effective ninety days after CMS grants the OPO waiver request.

18 229. DNW has, in turn, been forced to dedicate substantial resources to protect its rights
19 under the Affiliation Agreement, consistent with the Agreement’s terms and governing federal
20 law and regulations.

21 230. Moreover, as set forth above, because of NDN’s interference with the Affiliation
22 Agreement, DNW has been forced to dedicate substantial resources to quell confusion among
23 Renown and DNW staff and the Northern Nevada community relating to Renown’s anticipatory
24 repudiation of the Affiliation Agreement.

25 //

1 238. DNW has ongoing and prospective relationships with its staff.

2 239. DNW has an interest in these relationships and the probable future benefit or
3 advantage to DNW by maintaining those relationships, and it is likely and probable that DNW
4 would realize these advantages absent NDN's ongoing wrongful and interfering conduct as
5 described above.

6 240. NDN had knowledge of the existence of these ongoing and prospective
7 relationships. For example, NDN contacted Renown and other hospitals in Douglas, Mineral,
8 Churchill, and Humboldt Counties attempting to convince those hospitals to terminate their OPO
9 relationship with DNW and seek CMS waivers to name NDN as their new OPO.

10 241. NDN has intentionally interfered with these ongoing and prospective
11 relationships by, for example, making numerous false and misleading representations about its
12 position as the only OPO in Nevada and that hospitals affiliated with DNW as their OPO are in
13 violation of CMS regulations.

14 242. These actions, among the others described above, are designed to disrupt and
15 confuse DNW's ongoing and prospective relationships in the Northern Nevada DSA, in order for
16 NDN to obtain an unfair competitive advantage over DNW.

17 243. NDN indeed knows its actions are certain or substantially certain to disrupt
18 DNW's ongoing and prospective relationships in the Northern Nevada DSA.

19 244. NDN's intentional wrongful acts intended or designed to disrupt DNW's ongoing
20 or prospective relationships in the Northern Nevada DSA include but are not limited to:

- 21 i. Contacting hospitals and medical providers in the Northern Nevada
22 DSA suggesting it would be to their advantage to apply for CMS
23 OPO waivers to work with NDN, in connection with the supposedly
24 impending commencement of the NTI in Reno, Nevada;
- 25 ii. Wrongly advising hospitals in Douglas, Mineral, Churchill, and
Humboldt Counties that their continued work with Plaintiff DNW
violates Medicare regulations;

- 1 iii. Falsely announcing before community members and stakeholders
- 2 that NDN is a superior OPO to DNW and that NDN's NTI transplant
- 3 will increase the number of Nevada citizens receiving organ
- 4 transplants in Nevada;
- 5 iv. Falsely representing to an international organ donor conference that
- 6 NDN is the sole Nevada OPO;
- 7 v. Wrongly soliciting job applicants for positions at Northern Nevada
- 8 DSA hospitals despite those hospitals not having a CMS OPO
- 9 waiver to work with NDN in the Northern Nevada DSA; and
- 10 vi. Approaching DNW employees about applying for NDN jobs
- 11 serving Northern Nevada DSA hospitals despite those hospitals not
- 12 having a CMS OPO waiver to work with NDN in the Northern
- 13 Nevada DSA.

14 245. NDN's actions interfering with DNW's ongoing and prospective relationships are

15 independently wrongful acts because they are proscribed by federal law and Nevada state law.

16 246. NDN's intentional interference has actually disrupted its ongoing and prospective

17 relationships in the Northern Nevada DSA. Indeed, but for NDN's tactics and as a direct result of

18 NDN's wrongful conduct, there is significant confusion in the Northern Nevada DSA about

19 DNW's roles as that DSA's federally designated OPO.

20 247. As a direct and proximate result of NDN's intentional interference with DNW's

21 ongoing and prospective relationships in the Northern Nevada DSA, DNW has now suffered and

22 will continue to suffer, economic harm, costs of mitigation, loss of goodwill, injury to its OPO

23 reputation, and other actual, consequential, and/or incidental damages in an amount to be

24 determined during this proceeding. NDN's wrongful conduct described herein was a substantial

25 factor in causing this harm.

 248. In engaging in this concerted campaign to interfere with DNW's ongoing and

 prospective relationships in the Northern Nevada DSA, NDN's conduct was willful, malicious,

 oppressive, and in conscious disregard of DWN's rights. DNW is therefore entitled to an award

 of punitive damages to punish NDN's wrongful conduct and to deter future wrongful conduct.

THIRD CAUSE OF ACTION
Violations of Nevada Deceptive Trade Practices Act

1
2
3 249. Plaintiff DNW hereby incorporates the preceding allegations as if set forth fully
4 herein.

5 250. A claim under Nevada’s Deceptive Trade Practices Act exists when: (1) a
6 defendant engaged in a deceptive trade practice or other unlawful or prohibited conduct as defined
7 by statute and (2) plaintiff suffers damages from the alleged deceptive trade practice. *Picus v.*
8 *Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009); *see also* NRS § 41.600(1), (2)(e)
9 (providing for a private cause of action for a plaintiff that is victim of a deceptive trade practice
10 violation).

11 251. Under NRS § 598.0923, a defendant engages in a deceptive trade practice when in
12 the course business it uses coercion in a transaction or knowingly violates a state or federal statute
13 or regulation relating to the sale or lease of goods or services. NRS § 598.0923(1)(c)-(d).

14 252. Other deceptive trade practices include a defendant knowingly disparaging the
15 services or business of another by false or misleading representation of fact (NRS § 598.0915(8)).

16 253. As described above, NDN committed deceptive trade practices within the meaning
17 of NRS § 41.600(2)(e) and NRS §§ 598.0915(8) and 598.0923(1)(c)-(d).

18 254. These acts include, without limitation:

- 19 i. Offering and promising Renown Health \$6 million in initial
20 funding and additional future monies and shared services for
21 Renown’s transplant program and the formation of the NTI on the
22 condition that Renown terminate its Affiliation Agreement with
23 DNW and seek a CMS waiver to name NDN its new OPO;
- 24 ii. Falsely announcing before community members and stakeholders
25 that NDN is a superior OPO to DNW and that NDN’s NTI
transplant will increase the number of Nevada citizens receiving
organ transplants in Nevada;

- 1 iii. Misleading Renown and DNW employees via leaked false
2 statements claiming NDN will be Renown Health’s designated
 Northern Nevada DSA OPO as of January 1, 2024;
- 3 iv. Falsely representing to an international organ donor conference
4 that NDN is the sole Nevada OPO;
- 5 v. Wrongly soliciting job applicants for positions at Northern
6 Nevada DSA hospitals despite those hospitals not having a CMS
7 OPO waiver to work with NDN in the Northern Nevada DSA; and
- 8 vi. Approaching DNW employees about applying for NDN jobs
9 serving Northern Nevada DSA hospitals despite those hospitals
10 not having a CMS OPO waiver to work with NDN in the Northern
11 Nevada DSA.

12 255. Notably, NDN illegally inducing Renown to terminate its Affiliation Agreement
13 with DNW and seek a CMS OPO waiver to name NDN its new OPO through the promise of \$6
14 million in initial funding and additional monies and shared services for Renown’s transplant
15 program and the formation of the NTI violates the federal Anti-Kickback Statute (42 U.S.C. §
16 1320a-7b(b)) and NRS § 422.560.

17 256. NDN’s deceptive trade practices have proximately caused Renown to notice
18 termination of its Affiliation Agreement with DNW and caused disruption and confusion among
19 Renown and DNW and DNW’s other healthcare affiliates and relationships in the Northern
20 Nevada DSA.

21 257. Further, this evidence that NDN has engaged in deceptive trade practices is *prima*
22 *facie* evidence of NDN’s intent to injure DNW and obtain an unfair competitive advantage. *See*
23 NRS § 598.0953.

24 258. As a direct result of NDN’s conduct, DNW has suffered and will continue to suffer
25 economic harm, costs of mitigation, loss of goodwill, injury to DNW’s OPO reputation, and other
 actual, consequential, and/or incidental damages in an amount to be determined in the course of
 this proceeding.

//

- 1 ii. Using the NTI to fully integrate organ recovery and transplant in
2 Nevada through non-competitive partnerships with organ
 donation, recovery, and transplant stakeholders;
- 3 iii. Offering Renown Health \$6 million to fund Renown’s transplant
4 program and a promise to raise millions in more funding, provided
 that Renown allows NDN to serve as its OPO;
- 5 iv. Falsely announcing before community members and stakeholders
6 that NDN is a superior OPO to DNW and that NDN’s NTI
 transplant will increase the number of Nevada citizens receiving
 organ transplants in Nevada;
- 7 v. Misleading Renown and DNW employees via leaked false
8 statements claiming NDN will be Renown’s designated Northern
 Nevada DSA OPO as of January 1, 2024;
- 9 vi. Falsely representing to an international organ donor conference
10 that NDN is the sole Nevada OPO;
- 11 vii. Wrongly soliciting job applicants for positions at Northern
12 Nevada DSA hospitals despite those hospitals not having a CMS
 OPO waiver to work with NDN in the Northern Nevada DSA; and
- 13 viii. Approaching DNW employees about applying for NDN jobs
14 serving Northern Nevada DSA hospitals despite those hospitals
 not having a CMS OPO waiver to work with NDN in the Northern
 Nevada DSA.

15
16 269. As a direct result of NDN’s conduct, DNW has suffered and will continue to suffer
17 economic harm, costs of mitigation, loss of goodwill, injury to DNW’s OPO reputation, and other
18 actual, consequential, and/or incidental damages in an amount to be determined in the course of
19 this proceeding.

20 270. Unless NDN is enjoined from continuing to commit the acts of unfair trade
21 practices described herein, NDN’s actions are likely to recur and will cause DNW irreparable
22 injury for which there is no adequate remedy at law.

23 271. DNW is also seeking treble damages, together with reasonable attorney fees and
24 costs. NRS § 598A.210.

25 //

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, in light of the foregoing allegations, Plaintiff Donor Network West seeks
3 a judgment awarding it the following relief:

- 4 a. Injunctive relief including an order prohibiting NDN from engaging
5 in the wrongful conduct described herein and remedying the harm
6 caused by NDN’s conduct;
- 7 b. Damages in an amount to be determined at trial;
- 8 c. Punitive damages in an amount to be determined at trial;
- 9 d. Attorneys’ fees, costs, and expenses incurred in connection with this
10 action; and
- 11 e. All such other and further relief this Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff DNW demands a trial by jury on all issues so
14 triable.

15 DATED this 16th day of January 2024.

16 HUTCHISON & STEFFEN, PLLC

17 /s/ Devon T. Reese

18 Jason D. Guinasso (Nevada Bar No. 8478)

19 Devon T. Reese (Nevada Bar No. 7496)

20 Alex Velto (Nevada Bar No. 14961)

21 5371 Kietzke Lane

22 Reno, Nevada 89511

23 Telephone: (775) 853-8746

24 Facsimile: (775) 201-9611

25 dreese@hutchlegal.com

avelto@hutchlegal.com

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DILWORTH PAXSON LLP

Nina Spizer (*Pro Hac Vice*)

Silvio Trentalange (*Pro Hac Vice*)

1500 Market Street, Ste. 3500E

Philadelphia, PA 19102

Telephone: (215) 575-7000

Facsimile: (215) 575-7200

nspizer@dilworthlaw.com

strentalange@dilworthlaw.com

Attorneys for Plaintiff Donor Network West

EXHIBITS INDEX

Index No.	Document Title	No. of Pages*
Exhibit 1	CMS Agreement	2
Exhibit 2	May 4, 2022 CMS Ltr. to Whaley	4
Exhibit 3	Affiliation Agreement	8
Exhibit 4	NDN-Renown Memorandum of Understanding	7
Exhibit 5	Renown Health CMS OPO Waiver Application	3
Exhibit 6	Renown Health Termination Notices and DNW Response	22

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EXHIBIT 1

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HUTCHISON & STEFFEN
A PROFESSIONAL LLC

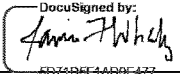
HEALTH INSURANCE BENEFITS AGREEMENT**AGREEMENT WITH ORGAN PROCUREMENT ORGANIZATION PURSUANT TO §1138(b) OF THE SOCIAL SECURITY ACT (the Act)**

For the purpose of establishing eligibility under titles XVIII and XIX of the Act, Donor Network West
hereinafter referred to as the Organ Procurement Organization, hereby agrees; *(Insert Name of Facility)*

- (A) To maintain compliance with the requirements of titles XVIII and XIX of the Act, §1138 of the Act, applicable regulations including the conditions set forth in Part 486, subpart G, title 42 of the Code of Federal Regulations, those conditions of the Organ Procurement and Transplantation Network established under §372 of the Public Health Service Act that have been approved by the Secretary, and to report promptly to the Centers for Medicare & Medicaid Services (CMS) any failure to do so;
- (B) To file a cost report in accordance with 42 CFR 413.24(f) within 5 months after the end of each fiscal year;
- (C) To permit CMS to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO and to make a determination of reasonable cost based upon the cost report filed by the OPOs;
- (D) To provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;
- (E) To pay to CMS amounts that have been paid by CMS to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO;
- (F) Not to charge any individual for items or services for which that individual is entitled to have payment made under §1881 of the Act;

This agreement, upon submission by the Organ Procurement Organization and upon acceptance for filing by the Secretary of Health and Human Services, shall be binding on the Organ Procurement Organization and the Secretary. The agreement may be terminated by either party in accordance with regulatory requirements. In the event of de-certification, costs for the procurement of organs will not be available to the Organ Procurement Organization furnished on or after the effective date of the de-certification.

This agreement shall become effective on the date specified below by the Secretary or his Delegate, and shall remain in effect as specified by 42 CFR 486.309 unless the OPO is de-certified.

FOR THE ORGAN PROCUREMENT ORGANIZATION	ACCEPTED FOR SECRETARY OF HEALTH AND HUMAN SERVICES BY:
NAME Janice F. Whaley 	NAME <i>R. Angelones</i>
TITLE CEO	TITLE Senior Health Insurance Specialist
DATE 5/5/2022 12:10 PM PDT	DATE 05/09/2022
EFFECTIVE DATE OF AGREEMENT 2/11/2022	

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0512. The time required to complete this information collection is estimated to average 2 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to CMS, Attn: PRA Reports Clearance Officer, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

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EXHIBIT 2

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HUTCHISON **&** STEFFEN

A PROFESSIONAL LLC

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Survey & Operations Group
San Francisco Survey and Enforcement Division
90 7th Street, Suite 5-300 (5W)
San Francisco, CA 94103-6707



May 4, 2022

Janice Whaley
Donor Network West
12667 Alcosta Blvd, Suite 500
San Ramon, CA 94583
Sent via email: JWhaley@dnwest.org

Re: CMS Certification Number: 05P005

IMPORTANT NOTICE - PLEASE READ CAREFULLY

Dear Ms. Whaley:

I am pleased to inform you that as a result of the recertification survey completed by surveyors of the Healthcare Management Solutions on February 11, 2022, Donor Network West was found to be in compliance with the Medicare requirements listed at 42 C.F.R 483 Subpart G for Organ Procurement Organizations (OPO). Donor Network West continues to meet the certification requirements at 42 C.F.R §486.303, including the conditions for coverage at §486.320 through §486.348 and therefore is recertified as an OPO, effective February 11, 2022. As part of the survey process, the OPO was requested to provide a copy of their Donor Service Area (DSA). Donor Network West's DSA includes the following counties:

California

Bay Area: Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma

Valley Region: Alpine, Fresno, Inyo, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, San Luis Obispo, Stanislaus, Tulare, Tuolumne

North Region: Butte, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity

Nevada

North Region: Carson City, Churchill, Douglas, Humboldt, Mineral, Washoe

Enclosed with this letter you will find a copy of the form CMS 2567 statement of deficiencies and a copy of form CMS 576-A health insurance benefits agreement. As a reminder, an authorized representative must sign, date and return the CMS 2567(s) to our office. An authorized representative must sign, date and return the CMS 576-A to our office as well.

We thank you for your cooperation and look forward to working with you on a continuing basis in the administration of the Medicare program. If you have any questions, please contact me at: Rosanna.Angeldones@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink that reads "R. Angeldones". The signature is written in a cursive, slightly slanted style.

Rosanna Angeldones
Health Insurance Specialist
Acute & Continuing Care Branch
San Francisco & Seattle

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 05/03/2022
FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 05P005	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED 02/11/2022
NAME OF PROVIDER OR SUPPLIER DONOR NETWORK WEST			STREET ADDRESS, CITY, STATE, ZIP CODE 12667 ALCOSTA BLVD, SUITE 500 SAN RAMON, CA 94583		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
Z 000	<p>INITIAL COMMENTS</p> <p>An unannounced Medicare Organ Procurement Organization (OPO) Re-approval survey was conducted on site from 02/08/22 through 02/11/22. The entrance conference convened on 02/08/22 at 9:00 AM with the President and CEO and the Director of Quality Assurance and Regulatory Affairs.</p> <p>An exit conference conducted on 02/11/22 at 2:00 PM and included the President and CEO, the Vice President of Strategic Partnerships, the Director of Quality Services, and the Vice President of Quality Systems.</p> <p>There were no deficiencies cited. This facility was found to be in substantial compliance with the Federal Conditions for Coverage (CfCs) set forth in 42 CFR Part 486, Subpart G.</p>	Z 000			
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE			TITLE		(X6) DATE

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 05/03/2022
FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 05P005	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED 02/11/2022
NAME OF PROVIDER OR SUPPLIER DONOR NETWORK WEST			STREET ADDRESS, CITY, STATE, ZIP CODE 12667 ALCOSTA BLVD, SUITE 500 SAN RAMON, CA 94583		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
E 000	Initial Comments On behalf of the Centers for Medicare & Medicaid Services (CMS), an unannounced on-site Recertification Survey conducted at the above-named Organ Procurement Organization (OPO) from 02/08/22 through 02/11/22 resulted in substantial compliance respective to the Emergency Preparedness Program Condition of Participation under 42 CFR 485.625.	E 000			

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE _____ TITLE _____ (X6) DATE _____

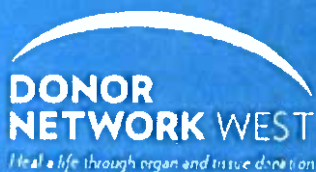
Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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EXHIBIT 3

Click on the image to view the exhibit.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



Main Office
12667 Alcosta Blvd., Ste. 500
San Ramon, CA 94583

Fresno Office
6721 H. Willow Ave., Ste. 104
Fresno, CA 93710

Nevada Office
1495 Ridgeview Dr., Ste. 90
Reno, NV 89519

Clinical Center
4550 Norris Canyon Rd., Ste. 100
San Ramon, CA 94583

Main Line
888.570.9400

Donor Referral Hotline
1.800.55DONOR

Tax ID 94-3062436



AFFILIATION AGREEMENT

THIS AGREEMENT is made by and between **Donor Network West**, a federally designated not-for-profit Organ Procurement Organization (OPO) and tissue and eye recovery agency, and **Renown Health**, a licensed general acute care hospital, hereafter "Hospital".

WHEREAS, the National Organ and Transplant Act (42 U.S.C. 273, et. seq.) ("Act") provides that organ procurement organizations shall establish effective agreements with hospitals and other healthcare entities in its service area to identify potential donors and to work in conjunction with donor institutions to establish a reliable system of acquiring, preserving and transporting donated organs and tissues; and

WHEREAS, Donor Network West is designated by the Secretary of Health and Human Services as the organ procurement agency to serve the counties of Northwestern Nevada (the "Donation Service Area"), in accordance with NRS Chapter 451.500 *et seq.* or successor statutes, henceforth referred to as the Uniform Anatomical Gift Act ("UAGA"), and federal law and regulations, including 42 CFR §482.45 *et seq.*, henceforth, also referred to as the "Medicare Conditions of Participation".

WHEREAS, Hospital is located in Donor Network West's Donation Service Area and is required by state and federal law and regulations, including the Medicare Conditions of Participation, to participate in Donor Network West's organ procurement program in accordance with the UAGA; and

WHEREAS, the parties are mutually dedicated to the increased availability of organs, tissue, and eyes for transplantation and research.

NOW, THEREFORE, the parties agree as follows:

1. Hospital Responsibilities

Identification of Donors: Hospital shall notify Donor Network West of all potential organ, tissue, and eye donors, and in conjunction therewith, further agrees to:

a. Promptly refer all deaths and imminent deaths for organ, tissue, and eye donation. Imminent deaths are defined in the clinical cues as ventilated patients with a non-survivable illness or injury. Notification of deaths shall be deemed "timely" if received within one hour of death. Notification of imminent deaths shall be deemed "timely" if received at the first indication that the patient has suffered a non-recoverable illness/injury or prior to plans for family discussions regarding comfort care or withdrawal of life-sustaining measures or prior to formal brain death declarations. Donor Network West shall respond to referrals in a timely manner as defined in Donor Network West Policy SE-P-004. Clinical triggers for referral shall be mutually agreed upon, and documented in Hospital policy, pursuant to 42 CFR 482.45 and in 42 CFR 486, subpart G.

b. Ensure timely and legal documentation of death, signed by hospital authorized personnel including a timely confirmation of the initial declaration in cases of death by neurologic criteria. Ensure documentation of death declarations in patient's medical record with date, time and signature of physicians. No physician involved in the documentation of death shall participate in any procedure relating to removal or transplantation of organs;

c. Medically manage the patient in order to maintain and maximize the option of organ donation for patients/families prior to the time Donor Network West takes over such maintenance, and enter appropriate documentation in the patient's medical record of all such donor management activities;

d. Provide access to and copies of the potential donor's medical record in accordance with federal and state law and Sections 5 and 6 below;

- e. Assist Donor Network West in donor management during the pre-recovery process. Provide one-to-one nursing, under Donor Network West's protocols, and maintain potential donors while the testing and placement of organs / anatomical gift(s) takes place, as medically appropriate;
- f. Work with Donor Network West to create a collaborative team approach to ensure all families of potential donors within Hospital are sensitively informed about the gift of organs, tissue, or eyes made by their family member's valid document of gift or registration as a donor, both as defined by the UAGA, or their option to donate organs, tissue, and eyes, whichever is applicable. In accordance with the requirements for designated requesters contained in 42 CFR 482.45, Donor Network West personnel shall bear primary responsibility as the designated/appropriate requestor for approaching the appropriate member of the defined classes who may authorize donation in accordance with NRS 451.566, collaborating with the Hospital staff and documenting consent or decline, as well as medical/social history. If requested by Hospital, Donor Network West will provide annual designated requestor training for qualified Hospital personnel;
- g. Provide an appropriate location, including, as applicable, an operating room or other adequate facility for aseptic recovery of anatomical gifts, and personnel, as needed. Provide access to hospital services such as laboratory services, radiological services, cardiology services, anesthesia services, morgue access, and operating room availability on a 24/7 basis. Donor Network West may require urgent access to the operating room in cases when the potential organ donor becomes unstable or family requests impose time constraints;
- h. Hospital hereby designates Donor Network West as its sole tissue and eye recovery agency and engages Donor Network West as Hospital's tissue and eye recovery agency pursuant to 42 CFR 482.45. Changes to this designation may be made only upon one-hundred eighty (180) days written notice to Donor Network West;
- i. Work cooperatively with Donor Network West to facilitate continuing education to Hospital staff on all aspects of organ, tissue, and eye donation;
- j. With the approval of both parties, designate a key committee to review and improve the donation process, including, but not limited to, the creation of policies and procedures with regard to the recognition of documents of gift as legally binding documents, pronouncement of brain death, and Donation after Circulatory Death (DCD).
- k. Identify one or more staff members to serve as a donation liaison to Donor Network West;
- l. Utilize discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;
- m. Honor the wishes of the decedent to donate organs, tissues, and eyes as expressed in a valid document of gift. Pursuant to the UAGA as defined in Nevada law (NRS 451.500), an anatomical gift, that is not revoked by the donor before death, is irrevocable and does not require the consent or concurrence of any person after the donor's death. This includes an anatomical gift that is made by means of and/or is registered in the Nevada Donor Registry. If the potential donor is found to be registered on the Nevada Donor Registry, Hospital will collaborate with Donor Network West to notify the donor's family members as appropriate, and address any questions or concerns they may have, but in no circumstances shall the hospital permit a third-party to effectively revoke a gift.
- n. In case where there is no document of gift, ensure, in collaboration with Donor Network West, that the authorized donation decision-maker for each potential donor is informed of his/her options to donate organs, tissue, or eyes or to decline to donate.

o. In cooperation with Donor Network West, develop and implement a procedure to provide for the recovery of donated organs after circulatory death (DCD donation).

p. To ensure that the electronic simultaneous organ placement process prescribed by the United Network for Organ Sharing (UNOS) is utilized to maximize and expedite the anatomical gift, Hospital will provide Donor Network West with a wired/wireless secure Internet connection in or near the Critical Care units and Operating Room, in order for Donor Network West to upload donor information to UNOS and simultaneously share that information with prospective transplant centers;

2. OPO Responsibilities

Recovery of Organs/Tissues/Eyes: Donor Network West shall coordinate the retrieval of anatomical gift(s) and in conjunction therewith, further agrees to:

a. Promptly evaluate all potential donors to determine their medical suitability for organ, tissue, or eye donation on a 24/7 basis;

b. Review each potential donor patient's medical record to ensure documentation of brain death declarations with date, time, and signature of one (1) licensed physician, or, in the case of DCD donors, ensure appropriate documentation of cessation of heart and respiratory function, as defined by hospital policy;

c. During donation after brain death, Donor Network West will manage the donor during the pre-recovery process under Donor Network West's protocols and procedures. During DCD donation, the attending physician or designee shall continue to medically manage the patient until circulatory death occurs;

d. Work with Hospital on creating a collaborative team approach to ensure all families of potential donors within Hospital are sensitively informed about the potential donor's decision to donate as documented by valid document of gift, or the family's option to donate, as applicable. Donor Network West personnel shall bear primary responsibility for approaching the family and documenting authorization or refusal, as well as medical/social history;

e. Coordinate surgical procedures and personnel for the organ, tissue or eye recovery, including the coordination and provision of an appropriately licensed or otherwise qualified recovery team. In the case of tissue and eye recovery, Donor Network West will coordinate surgical recovery, utilizing trained recovery technicians;

f. If the potential donor is determined to be a coroner's case, Donor Network West will ensure that the coroner or medical examiner is notified of the death and all pertinent information pursuant to any existing protocol, and that any required approval for recovery is documented in the medical record;

g. Preserve, transport, and distribute organs for transplantation according to the guidelines established by the Organ Procurement and Transplantation Network, and otherwise facilitate the use of anatomical gift(s) as required by the UAGA;

h. Provide follow-up communication with the donor family;

i. Provide continuing education to Hospital staff on all aspects of donation, including DCD donation;

j. Utilize discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

k. Record promptly and maintain all information pertaining to Donor Network West's performance of duties and services under this Agreement and Donor Network West's records relating to services performed hereunder shall be available to Hospital upon request, subject to applicable laws and regulations.

3. Donor Network West Organ Surgical Recovery Team Responsibilities

a. Donor Network West shall, at the request of Hospital, provide Hospital with any professional licensing or credentialing information provided by the recovery teams, which information shall have been represented by such recovery teams and Donor Network West to be complete and accurate on the members participating in the recovery procedure. State licensure is not required for organ or tissue recovery.

b. Donor Network West shall utilize Hospital's staff physicians to the extent reasonably available, to assist Donor Network West in evaluating potential organ donors to determine their medical suitability for donation. However, when Hospital's physicians are not available, Hospital grants Donor Network West permission to consult with licensed and qualified medical professionals of its choice to assist in such evaluation.

4. Hospital Policies and Protocols: Hospital and Donor Network West shall cooperate in developing and approving policies and procedures to maximize donation and to further implement the provisions of this Agreement, 42 CFR 482.45 and applicable Joint Commission standards, and for compliance with all applicable laws, regulations, and standards relating to the donation of anatomical gift(s).

5. Death Record Review: In order to conduct necessary reviews of records in accordance with the 42 CFR 482.45 and 42 CFR 486 part G, Donor Network West shall have access to review all death records to improve identification of potential donors. This review enables both parties to evaluate and monitor the effectiveness of the services provided and to provide a means to verify compliance with all applicable laws, regulations, and standards relating to the donation of anatomical gift(s). Donor Network West will provide Hospital with an analysis and evaluation of Hospital's organ and tissue donation process.

6. Electronic Health Records: In the event that Hospital implements an electronic health records system, Hospital will provide Donor Network West timely access to the patient records within that system to facilitate all aspects of donation and death record reviews.

7. Confidentiality: All patient information is considered confidential and each party shall maintain in strict confidence, consistent with applicable federal and state law, any information disclosed by Hospital to Donor Network West or an agent of Donor Network West. Hospital acknowledges that HIPAA, at 45 CFR 164.512(h), allows information to be released to OPOs or other entities involved in organ and tissue donation and transplantation without patient release. OPOs are not Business Associates of Hospitals, and do not enter into Business Associate Agreements. In addition, disclosure may occur under the following circumstances:

a. Where disclosure is required under any federal or state law or regulation;

b. Where such information is used for the compilation of statistical data upon request of other organizations. However, in no event shall the parties disclose the name, home address, social security number, names of next-of-kin of a patient, or other patient identifying information for this purpose;

c. For Donor Network West or IRB approved research projects, if and only if all patient identifiers have been removed, or if the information is subject to a Limited Data Use Agreement between Hospital and researcher, if applicable.

8. Hospital Reimbursement: Hospital agrees to provide Donor Network West with an itemized bill (request for reimbursement) for directed services incurred for all patients accepted by Donor Network West as donors within seven months of the close of the case. Failure to provide Donor Network West with a request for reimbursement within this time frame will result in the elimination of any liability on the part of Donor Network West for hospital services provided. Donor Network West agrees to pay Hospital with respect to donor evaluation, donor maintenance, and recovery of anatomical gift(s), pursuant to the Donor Hospital Case Rate Reimbursement

Schedule in effect for the date of recovery. The Schedule is attached hereto as Exhibit A, and incorporated herein Schedule will be reviewed annually and updated periodically.

9. **Emergency Preparedness:** In accordance with Centers for Medicare and Medicaid Services (CMS) 42 CFR §§486.360, Donor Network West shall maintain an emergency preparedness plan that strives to ensure continuation of operations during emergency situations. In the event of a natural, technological or man-made disaster, Donor Network West will provide notification to the donor hospital when emergency situations impact normal processes. Donor Network West will fulfill responsibilities outlined in the affiliation agreement to the best of its ability. Hospital shall maintain an emergency preparedness plan. In the event of a natural, technological or man-made disaster, Hospital will notify Donor Network West when emergency situations impact normal processes or Hospital function, notify Donor Network West when emergency situations threaten the safety and well-being of Donor Network West staff, and fulfill responsibilities outlined in the affiliation agreement to the best of its ability.

10. **Termination:** This Agreement may be terminated by either party only upon the occurrence of one or more of the following circumstances:

- a. Decertification by the CMS of Donor Network West as the designated organ procurement organization for Hospital;
- b. Upon designation of another organ procurement organization by the CMS to be Hospital's designated organ procurement organization;
- c. Upon the granting of a waiver to Hospital by the CMS to work with another organ procurement organization; or
- d. Upon a showing by Hospital that it is no longer subject to compliance with any federal or state regulation requiring that it refer potential organ and tissue donors to any organ procurement organization.

This agreement shall stand as a document without expiration. Either party desiring to terminate this Agreement in response to any of the aforesaid circumstances or without cause shall provide as reasonable notice as is possible, but in no case less than ninety (90) days' written notice to the other party. Such notice shall specifically state the reason for termination of the Agreement, and such party desiring to terminate this Agreement shall provide such documentation to the other party supporting the reason so stated.

12. **Insurance**

a. **General and Professional Liability Insurance:** Each party will obtain and maintain comprehensive general liability insurance (including coverage for professional liability) in connection with its obligations under this Agreement. Such insurance coverage shall be in amounts not less than \$1 million per claim/\$3 million annual aggregate, and coverage shall be insured through an insurer that is qualified to do business in the State of Nevada. Each party shall bear its cost of such insurance, and certificates of insurance evidencing such coverage shall be made available to the parties upon their request. Any insurance required under this section may be obtained through a program(s) of self-insurance.

b. **Workers' Compensation:** Donor Network West is providing workers' compensation coverage pursuant to the State of Nevada for its employees and contractors providing services under this agreement and can provide evidence of coverage as requested.

13. **Professional and Administrative Responsibility:** The parties agree that Hospital retains professional and administrative responsibility for all services rendered by Donor Network West, to the extent permitted by federal law.

14. **Compliance:** Donor Network West and Hospital agree to comply with all federal, state, and local laws and regulations, which pertain to the performance of this Agreement, including, without limitation, applicable regulations promulgated by OSHA, CMS, OPTN, CDC, and FDA, as applicable. Hospital has no legal obligation to vaccinate Donor Network West staff. Furthermore, Donor Network West staff are not hospital employees and are not required to attend hospital orientation or other programs mandated for staff. Donor Network West is solely responsible for maintaining records for Donor Network West employees with regard to job competencies, training, immunizations, and medical testing. Donor Network West agrees to work cooperatively with Hospital with regard to facilitating Hospital's demonstrated compliance with those standards of care and quality promulgated by the Joint Commission, which applies to the performance of this Agreement. Both parties agree to work cooperatively to implement appropriate changes, correct deficiencies, and/or establish policies required and/or recommended by the inspecting agencies.

15. **Notices:** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows or such other addresses as may later be designated by the party:

If to Hospital:
Renown Health
1155 Mill Street, Z-1
Reno, NV 89502
Attn: Contract Coordinator

If to Donor Network West:
Donor Network West
12667 Alcosta Blvd., Suite 500
San Ramon, CA 94583
Attn: Chief Executive Officer

16. **Amendments:** This Agreement may be amended or modified at any time in writing and signed by authorized representatives of both parties. The parties agree to amend this agreement to the extent amendment is required to comply with applicable federal and state laws and regulations and any changes thereto.

17. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and applicable federal law.

18. **Severability:** The provisions of this Agreement are severable. If any one or more provisions of this Agreement are held invalid, the remaining provisions shall continue in full force and effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, by affixing their signature below, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative, to be effective as of the last date written below.

Donor Network West

12667 Alcosta Blvd., Suite 500

San Ramon, CA 94583

By: Janice F. Whaley
(Signature)

JANICE F. Whaley
(Printed Name)

CEO
(Title or Position)

Date: 8/30/19

Renown Health

1155 Mill Street, Z-1

Reno, NV 89502

By: Erik Olson
(Signature)

ERIK OLSON
(Printed name)

CEO
(Title or Position)

Date: 8/30/19

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EXHIBIT PAGE ONLY

EXHIBIT 4

PFP/T gpy p"O go qtcpf wo "qh'Wpf gtucpf lpi

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

MEMORANDUM OF UNDERSTANDING
BETWEEN
RENOWN REGIONAL MEDICAL CENTER
and
NEVADA DONOR NETWORK, INC.

This Agreement, which commences upon the latest date to appear on the signature page, is by and between Nevada Donor Network, Inc., a Nevada non-profit corporation (“NDN”), with its principal office at 2055 E. Sahara Avenue, Las Vegas, NV 89104 and Renown Health d.b.a. Renown Regional Medical Center, Renown South Meadows Medical Center, and Renown South Meadows Medical Center dba Renown Rehabilitation Hospital (collectively “*Renown*”) at 1155 Mill St, Reno, NV 89502.

WHEREAS, there are currently over 600 Nevadans awaiting a lifesaving transplant;

WHEREAS, the United Network for Organ Sharing (“UNOS”) estimates that approximately 87% of the 106,000 people nationally awaiting transplant require a kidney transplant;

WHEREAS, Nevada residents can only secure transplant services at a single hospital in Southern Nevada;

WHEREAS, the majority of Nevada residents are forced to seek transplantation services outside of the State;

WHEREAS, Nevada payors (health plans and Medicaid/Medicare) are forced to incur additional expenses to send Nevada residents to adjacent states to secure transplantations;

WHEREAS, Renown is in the business of offering medical services in Northern Nevada and desires to expand its offerings within the State of Nevada to include a transplant program, initially focusing on kidney transplants;

WHEREAS, the NDN is a federally-approved organ procurement organization designated to service the majority of the State of Nevada, which currently exports over 90% of Nevada donor organs outside of the State due to the lack investment in transplantation services within the State;

WHEREAS, Renown and NDN desire to increase the availability of organ transplants within the State of Nevada and agree that a collaborative model is needed to address the underserved population of Nevadans awaiting transplant;

WHEREAS, Renown and NDN believe that the formation of the Nevada Transplant Institute (“NTI”) is the solution to meeting the needs of this underserved population;

WHEREAS, NDN has secured a grant from the State of Nevada to assist in the formation and initial funding of the NTI;

WHEREAS, Renown and NDN wish to enter into an agreement to facilitate the formation of the NTI.

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions and conditions contained in this Agreement, Renown and the Nevada Donor Network hereby agree as follows:

1. Nevada Donor Network Funding Commitment. NDN hereby pledges to Renown a minimum amount of Six Million Dollars (\$6,000,000), a minimum of Three Million of which will be dedicated to construction expenses, and a minimum of Three Million Dollars (\$3,000,000) of which will be dedicated to salaries and related expenses, which as provided herein is designated for the benefit of Renown in connection with the formation and funding of the NTI and the creation of Renown’s transplant program.
2. Funding Purpose. It is understood and agreed that the Commitment, articulated above, is intended to support the formation of the NTI and Renown’s creation of a transplant program by NDN’s direct expenditure or reimbursement to Renown for initial and ongoing expenses to include physician and key employee salaries, facility enhancements and/or Tenant Improvements of Renown, and other mutually agreed upon investments appropriate and necessary to form the NTI and create Renown’s transplant program.
3. Funding Source. It is NDN’s intent to form the NTI, a separate non-profit entity, that is not within the control of NDN. To achieve this goal, NDN created The Nevada Donor Network Foundation (“Foundation”) to locate and secure public and private grants and philanthropy to assist with the formation and funding of NTI. Through the Foundation, NDN has been successful in securing a portion of the funds needed to form the NTI. Currently, the largest source of funding is an American Rescue Plan (“ARPA”) grant which NDN applied for and was awarded. The ARPA grant is subject to certain limitations. As the sub-recipient of the ARPA grant, NDN will act as administrator of the ARPA grant funds. Renown acknowledges that NDN’s pledge is partially conditioned upon NDN’s ability to supply these funds in connection with the ARPA grant.
4. Reimbursement for Costs. NDN agrees to reimburse Renown for certain expenses associated with the creation of its transplant program (“Qualified Expenses”). The Parties will establish a list of Qualified Expenses prior to the formation of NTI which will include, without limitation, recruitment costs, salaries and benefits for staff and physicians, training CME/CEU, rent/space allocation, and other operational costs. Renown must submit a plan to NDN with the estimated cost and capital expenses for creating the transplant program including but not limited to expenses related to physician and key employee salaries, facility enhancements and/or Tenant Improvements of Renown, hardware and/or software needs, and capital expenditures. Qualified Expenses, including capital reimbursement, will

not exceed the amount of the committed funds above plus any additional grant or philanthropy dollars raised per Section 6 herein.

5. Reimbursement Process. NDN is the facilitator of the ARPA grant funds. As such, Renown must submit all Qualified Expenses to NDN for submission to the State for disbursement of ARPA grant funds. No later than 60 days after incurring a Qualified Expense, Renown agrees to submit proof of the expense to NDN. Upon receipt, NDN agrees to submit these expenses in a reasonable time, not to exceed 30 days, to the State for disbursement of grant funds. NDN will reimburse Renown in full or in part upon NDN's receipt of the disbursed grant funds or within 60 days of NDN's submission for disbursement to the State, whichever occurs first.

- 5.1 Disallowed Expenses: NDN commits to making every effort to work alongside Renown to identify and determine, in advance, the eligibility of submitted expenses for disbursement under the ARPA grant. In the event NDN reimburses Renown for expenses that are disallowed under the ARPA grant, NDN will: a) immediately notify Renown in writing of the disallowed expense, the amount disallowed, and the reason the expense was disallowed; b) within 14 days, the parties will meet and confer about the expenses and make good faith efforts to resolve any disagreement about the proposed disallowed expenses; and c) if the parties agree that certain expenses are disallowed, NDN may deduct an amount equal to the disallowed expense from the next reimbursement.

6. Future Funding. NDN is committed to continuing its support of Renown's transplant program. Understanding that the initial pledge of \$6,000,000 may not be sufficient to sustain Renown's transplant program, NDN commits to partnering with Renown to identify, fundraise, and secure an additional Nine Million Dollars (\$9,000,000), for a total of Fifteen Million Dollars (\$15,000,000) in support of Renown's transplant program. If the additional \$9,000,000 in funds, or a portion thereof, are secured solely through grants or philanthropy under NDN's control, NDN and Renown will negotiate an addendum to this Agreement that will define the terms for how those funds can be accessed and utilized. NDN agrees that for the duration of this Agreement, it shall allocate 100% of all funds raised in partnership with Renown for the benefit of Renown's transplant program and a mutually agreed upon portion of new funds raised for the benefit of NTI through grants or philanthropy to the \$9,000,000 reserve funding identified herein.

7. Duties of the Nevada Donor Network. NDN recognizes that the formation of the NTI and creation of Renown's transplant program requires support beyond the \$6,000,000 financial pledge above. Thus, NDN further agrees to:

- 7.1 Recruitment Support: It is the intent of Renown and NDN to identify local, Nevada, talent to fill the positions necessary to establish a world-class transplant program. NDN agrees to assist Renown in identifying such necessary talent. This assistance may come by: a) NDN leveraging its network to identify talent; b) NDN's People, Culture, & Development Department ("PC&D"), human resources, engaging in direct recruitment of talent; and/or c) NDN paying, in whole or in part, for a recruitment and/or consulting firm to assist in locating the necessary talent.

- 7.2 Sharing of Resources: NDN agrees to share certain staff, personnel, contractors, and/or resources that may be within its control, employ, or under contract in order to support Renown's creation of a transplant program.
- 7.3 Laboratory Services: NDN currently operates and/or has relationships with certain laboratories who conduct tests/screenings necessary to facilitate transplantation. NDN agrees to offer Renown access to this network of laboratories as it creates its transplant program.
8. Term. This Agreement and the relationship between the parties shall continue until the formation of NTI (which agreement shall incorporate the terms of this Agreement), until all commitments have been performed or the date upon which all ARPA funds must be spent, currently designated as December 31, 2026, whichever occurs first.
9. Indemnification and Limitation of Liability.
- 9.1 Each party shall indemnify and hold harmless the other party from any claim, liability, or loss resulting from the willful, wrongful or negligent act or omission of the indemnifying party, its agents or employees. Each party shall notify the other immediately in writing of any claim or injury or damage related to activities performed pursuant to this Agreement, whether the claim is verbal or written, or whether informal or by summons and complaint. The provisions of this Section survive termination of this Agreement.
- 9.2 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE ENTITLED TO INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING IN CONNECTION WITH THE DEFAULT OR BREACH OF ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION HEREUNDER, NEVADA DONOR NETWORK'S LIABILITY HEREUNDER WILL NOT EXCEED THE AGGREGATE PROCEEDS AFFORDED BY NEVADA DONOR NETWORK'S INSURANCE COVERAGE.
10. Confidentiality. NDN and Renown agree that the nature of this Agreement is sensitive. As such, must be held to the strictest level of confidentiality. In carrying out this agreement, NDN, as an Organ Procurement Organization ("OPO"), and Renown, as a hospital, their mutual employees, agents, and representatives may have access to individually identifiable health information maintained by NDN and Renown respectively, including patient names and other medical information, that may be in electronic, oral, or written form. Any such information shared between the parties shall be kept confidential in accordance with all laws and regulations and shall not be disclosed except as necessary to carry out their duties under this Agreement or as permitted or required by law and regulation.
11. Records. Until the expiration of four (4) years after the termination of this Agreement, each party shall make available upon written request of either party, relevant government

entity, or any of its duly authorized representatives, this Agreement, and books, documents and records that are necessary to verify the nature and extent of expenses incurred, reimbursed, or disbursed under this Agreement.

12. Notices. All notices and other communications under this Agreement must be delivered in person or sent by pre-paid first-class mail, as follows:

12.1 If to Nevada Donor Network, to:

Joseph Ferreira
President and Chief Executive Officer
Nevada Donor Network, Inc.
2055 E. Sahara Avenue
Las Vegas, NV 89104

12.2 If to Renown, to:

Dr. Brian Erling
President and Chief Executive Officer
Renown Regional Medical Center
1155 Mill Street
Reno, NV 89502

13. Assignment. Neither party may assign its rights or delegate performance of its duties hereunder without the prior written consent of the other party hereto.

14. Conflict of Interest. NDN and Renown agree that this Agreement does not represent a conflict of interest. To the extent one may be construed, NDN and Renown herein expressly waive the perceived or actual conflict existing or arising during the formation and execution of this Agreement.

15. General Provisions.

15.1 Entire Agreement: This Agreement and all related exhibits constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended or modified by written agreement signed by duly authorized officers of each party. Neither party shall make any claim that this Agreement has been orally altered or modified in any respect whatsoever.

15.2 Choice of Law: This Agreement will be governed and construed according to the laws of Nevada.

15.3 Jurisdiction and Forum: Nevada Donor Network and Renown irrevocably consent to the exclusive jurisdiction of the courts of the state of Washoe County Nevada

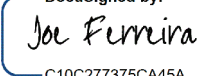
and/or the United States District Court in Washoe County Nevada in any and all actions between the parties arising hereunder.


- 15.4 Service of Process: Nevada Donor Network and Renown irrevocably consent to service of process by hand delivery or certified mail, return receipt requested, postage prepaid, to the address set forth in Section 12.
- 15.5 Severability: If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected. If the scope of any restrictive provision in this Agreement is too broad to permit enforcement to its full extent, then such restriction will be reformed to the maximum extent permitted by law.
- 15.6 Counterparts: This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of Renown Regional Medical Center and the Nevada Donor Network.

NEVADA DONOR NETWORK, INC.

RENOWN REGIONAL MEDICAL CENTER

DocuSigned by:

 C10C277375CA45A...
 By: Joseph Ferreira
 Title: President and CEO
 Date: 6/21/2023

DocuSigned by:

 CECDA77789604DD...
 By: Brian Erding
 Title: President & CEO, Renown Health
 Date: 6/21/2023

[Signature Page to Nevada Donor Network Memorandum of Understanding]

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EXHIBIT PAGE ONLY

EXHIBIT 6

Renown Health Termination Notices and DNW Response

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



Renown Regional Medical Center P 775-982-4100
1155 Mill Street, N-11 F 775-982-5933
Reno, Nevada 89502

September 29, 2023

Janice Whaley
CEO Donor Network West
5440 Reno Corporate Dr.
Reno, NV 89511

Re: Notice to Terminate without Cause Affiliation Agreement

Dear Ms. Whaley:

Pursuant to Section 10 of Renown Health's and Donor Network West's Affiliation Agreement dated August 30, 2019, Renown Health provides this Notice of Termination. The reason for the termination is that Renown is partnering with a Nevada-based donor network. The termination will be effective 90 days from date of this letter.

Renown appreciates the many years of service that Donor Network West has provided to the donor community in Northern Nevada and the great work that both organizations have done on behalf of patients and families in critical need of organ donations.

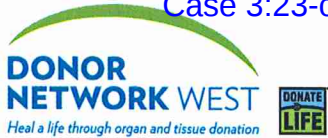
Thank you for your partnership.

Very truly yours,

DocuSigned by:

4C0C89FB2E7949B
Brian Erling, M.D.
CEO Renown Health





October 19, 2023

Sent *via* certified mail and e-mail to:

Brian Erling, M.D.
CEO Renown Health
Renown Regional Medical Center
1155 Mill Street N-11
Reno, Nevada 89502
brian.erling@renown.org

**Re: Response to October 6, 2023, Notice of Intent to Terminate
2019 Affiliation Agreement**

Dear Dr. Erling:

We are in receipt of a notice from you *via* certified mail on October 6, 2023, where you purport to terminate Donor Network West’s decades of effective partnership with Renown Health and the Affiliation Agreement that has been in effect since August 30, 2019 (“Agreement”). Donor Network West values its relationship with Renown Health. I write this response with the hope that you reconsider your decision, as it has already begun to cause confusion, uncertainty, and is jeopardizing the important life-saving mission of organ and tissue donations and transplantation in the Northern Nevada area.

Success within the organ and tissue donation community is built upon a network of relationships, irrespective of state boundaries. Communication is essential and at the core of these relationships and our life-saving mission. Given the long-standing relationship between Donor Network West and Renown Health, and the importance of the work we have done together, I am saddened by your notice. It is abrupt. To the extent Renown Health has any complaints or concerns about the life-saving services we offer to the residents of Northern Nevada, we have never been approached by you or informed of them. We work closely and collegially with your staff. I expected that some outreach or conversation, or at the very least an in-person meeting with you, would have predated this action. It did not.

The reason given in your notice for seeking termination of our Agreement is that Renown Health “is partnering with a Nevada-based donor network.” Donor Network West does not accept your notice as a document that terminates the Agreement under the law or the terms and conditions of the Agreement itself. Your purported actions violate both. Accordingly, your notice is invalid and rejected.



As a threshold matter, your suggestion that Donor Network West is not based in Nevada is incorrect as a matter of both law and fact.

Donor Network West is the only Organ Procurement Organization (“OPO”) designated and authorized by the U.S. Secretary of Health and Human Services to serve western Northern Nevada pursuant to the National Organ and Transplant Act (42 U.S.C. 273, et. seq.), the Uniform Anatomical Gift Act (NRS Chapter 451, et. seq.), and Medicare Conditions of Participation (42 C.F.R. Part 482, et. seq.). As such, Donor Network West has successfully served the residents of Washoe County, Carson City, Douglas County, Mineral County, Churchill County, and Humboldt County for over four decades.

Federal law mandates that once the Centers for Medicare & Medicaid Services (“CMS”) has defined an exclusive geographic service area, *i.e.*, western Northern Nevada, and has designated an OPO for an area, *i.e.*, Donor Network West, hospitals in that area are required pursuant to the Social Security Act (42 U.S.C. 1138, et. seq.) and other federal regulations (42 C.F.R. 486, et. seq.) to work exclusively with that OPO. Hospitals must also have an exclusive written agreement with their designated OPO to identify potential donors (42 C.F.R. 486, et. seq.). Donor Network West is Renown Hospital’s designated OPO, and CMS has not changed this designation.

The policy behind this federal designation is to transcend political boundaries to match organ donors with recipients as quickly as possible. This approach—one based upon a federal designation involving an OPO’s region and geography—is embraced and practiced throughout the organ and tissue donation community. It is also the law.

Be assured, Donor Network West is Nevada-based. We operate a headquarters in Reno that employs approximately 45 experienced staff members with an estimated budget of \$4.8 million for fiscal year 2024. In June 2022, we opened a new 17,000 square foot office in Reno to continue serving the growing organ and tissue needs of Northern Nevadans.

Donor Network West partners with such entities as the University of Nevada, Reno School of Public Health; the Nevada Hospital Association; and Donate Life Nevada. We recently established the Northern Nevada Advisory Council, which is comprised of Northern Nevada community leaders and stakeholders in our mission. We have been (and continue to be) a long-term member of the Northern Nevada community. Any assertion otherwise is false.

As the second largest OPO in the nation, Donor Network West serves more than 13 million people and connects organ and tissue donors to 45 counties that are geographically interconnected and located throughout the Northern Nevada and Northern California regions. As the OPO for the region, Donor Network West provides Northern Nevadans with access to 7 transplant centers and 175 partnering donor hospitals. In addition, we



work with over 500 funeral homes and 44 coroners and medical examiners. We are the only OPO in Nevada that provides high quality and world-renowned multi-organ transplant services. We not only procure kidneys for transplants, but other life-sustaining organs, such as hearts, lungs, livers, and pancreases.

Our record of success in Northern Nevada is supported by federal data compiled by the Organ Procurement & Transplantation Network (“OPTN”) within the U.S. Department of Health & Human Services. Donor Network West’s donation rate in Northern Nevada for the year 2022 was ranked in Tier 1. We received the highest OPO ranking in Nevada. Donor Network West’s kidney recovery/discard rate for the past four years was well below the national average of 26%. We maintained the best rating of any OPO in Nevada. Over the past decade Donor Network West’s partnership with Renown Health has resulted in a 46% increase in organ donations. Donor Network West’s commitment to providing access and equitable treatment to patients is unparalleled. That Renown Health now seeks to end this relationship is unfortunate and, frankly, puzzling.

Section 10 of the Agreement expressly sets forth four limited circumstances that may support its termination, all of which are predicated on CMS action. None of them apply in this case. Your notice is therefore premature, ineffective, and fails to activate the required 90-day termination period. Only upon CMS review and approval could the “without cause” notification be effectuated. Again, this has not occurred.

Pursuant to the Agreement, as well as state and federal law, Donor Network West remains the federally-designated OPO for western Northern Nevada and Renown Health. Absent a determination by CMS, we shall continue to serve Renown Health and the residents of Northern Nevada as we have done for the past four decades. We expect that you shall continue partnering with us in good faith to meet the organ and tissue health care needs of Northern Nevadans in accordance with your contractual and legal obligations.

Rumors of Renown Health’s unprecedented notice to Donor Network West and course of action have already begun to circulate through the organ and tissue donor community. This has caused disruption and uncertainty to our life-saving mission, which, ultimately, impacts the patients and families we serve.

We request that you immediately withdraw your notice, disavow any intent to terminate our relationship, and provide written assurances to us by **5:00 p.m. Monday, October 23, 2023**, that Renown Health intends to honor its Agreement with Donor Network West and its obligations under state and federal law. Your failure to do so will result in Donor Network West pursuing legal action against Renown Health, and others, as necessary to protect the patients and communities we serve in Northern Nevada.

**DONOR
NETWORK WEST**

Heal a life through organ and tissue donation



It remains my sincere hope that this matter can be promptly resolved without litigation, which is in no one's best interest. Please feel free to contact me directly if you would like to meet in person or further discuss this matter.

Warm regards,

A handwritten signature in blue ink that reads "Janice Whaley". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Janice Whaley
President and CEO
Donor Network West



Renown Health
10315 Professional Circle
Reno, NV 89521

Via: certified mail

Donor Network West
Attn: Janice Whaley
12667 Alcosta Blvd., Ste. 500
San Ramon, CA 94583

Re: October 6, 2023 Notice of Termination of 2019 Affiliation Agreement

Dear Ms. Whaley-

Your letter dated October 19, 2023 to Dr. Brian Erling was forwarded to me for response.

Renown Health is certainly willing to discuss the concerns you raise in your letter. However, Renown Health disagrees that its Notice of Termination dated October 6, 2023 of the parties' August 30, 2019 Affiliation Agreement ("Agreement"), is invalid. Under Donor Network West's reading of the Agreement, it would be a contract of infinite duration, which is strongly disfavored under Nevada and federal law. See, e.g., *In re Draft Bars LLC*, No. 16-16656-MKN, 2020 WL 5806499, at *8 (Bankr. D. Nev. Sept. 29, 2020) ("As a matter of law, contracts of perpetual duration are terminable at will.") (citing Restatement (Second) of Contracts § 33, cmt.d (1981)). Donor Network West appears to take the position that Renown Health was perpetually bound by the Agreement unless an external party, CMS, took action that would result in the termination of the Agreement. This interpretation would be contrary to public policy and void if true, but it is not supportable under the plain language of the Agreement.

Paragraph 10, Termination, provides that "[e]ither party desiring to terminate this Agreement" may do so "without cause", subject to at least a 90 day notice provision. Donor Network West's interpretation would render the "without cause" language of Paragraph 10 completely meaningless and would read this phrase out of the Agreement. See *Musser v. Bank of America*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998) ("A basic rule of contract interpretation is that '[e]very word must be given effect if at all possible.'") (quoting *Royal Indem. Co. v. Special Serv.*, 82 Nev. 148, 150, 413 P.2d 500, 502 (1966)). Donor Network West's argument that the "without cause" language could only be used "upon CMS review and approval" is grammatically impossible as the sentence states that termination may occur "in response to any of the aforesaid circumstances or without cause." (Agreement ¶ 10) (emphasis added).

renown.org



October 23, 2023

Page 2

If this was not enough, Donor Network West appears to have forgotten that the specific “without cause” language was requested by Renown Health and agreed to by Donor Network West. For confirmation, please review the attached email chain and redlined draft by Donor Network West’s Kevin Campbell. Any attempt by Donor Network West to litigate and challenge Renown Health’s termination would be frivolous given the plain language of the Agreement as well as the unequivocal communication between the parties where “without cause” was added by Donor Network West to the Agreement.

That Donor Network West’s disagrees with our explanation is of no moment. The Agreement indisputably provides Renown the opportunity to terminate without cause consistent with Nevada law. Although unnecessary, Renown here responds to two of your arguments against recognizing the termination notice. One, you indicate that Donor Network West is a Nevada-based organization. The Agreement, on the first page, identifies Donor Network West’s headquarters as San Ramon, California. Notice under the Agreement was required to be sent to the corporate headquarters in San Ramon, California, per the Notice provision. That you have an office in Nevada does not negate Renown’s desire to affiliate with a Nevada-based organization.

Two, you also indicate that federal law mandates that Renown use only Donor Network West. Be advised that on September 11, 2023, Renown sought a waiver under 42 CFR § 486.308 from the Centers for Medicare and Medicaid services. See attached. Renown anticipates that that waiver will be granted in due course prior to the end of the 90 day termination window. Paragraph 10(c) of the Agreement specifically also permits termination in that instance, which would render any dispute by Donor Network West moot.

Renown Health is willing to discuss Donor Network West’s concerns throughout the notice period and commits to providing the full 90-day notice period, regardless of whether such is required, and will not terminate the Agreement prior to January 4, 2024. Should Donor Network West wish to negotiate a longer transition period, we are also willing to discuss extending that timeframe. Finally, we are not aware of any public disclosure of the Notice of Termination and any such awareness of the Notice would be the result of Donor Network West’s communications rather than of Renown Health’s.

Very truly yours,

/s/ Paul Harris

Paul Harris, Esq.

renown.org



Mary Ann Ellis

From: Jamie Winter
Sent: Tuesday, September 3, 2019 10:40 AM
To: Erik Olson
Cc: Maricarmen Cresci
Subject: RE: Contract review - Affiliation Agreement - Donor Network West
Attachments: Renown - 8-30-19 - Redlined_Addtl Renown Redlines.docx

Good morning-

Thank you for sending this along for my review. I am pleased with the revisions to which they agreed. I included one comment to you in the attached, revised version (see Section 15 "Notices") and included reference to the requirement that copies of notices must also be sent to Legal. After you confirm/revise the notice provision, as deemed necessary, I think you can move forward with execution.

Jamie

From: Erik Olson
Sent: Friday, August 30, 2019 1:37 PM
To: Jamie Winter <JWinter@renown.org>
Subject: FW: Contract review - Affiliation Agreement - Donor Network West

fyi

From: Kevin Campbell [<mailto:KCampbell@dnwest.org>]
Sent: Friday, August 30, 2019 11:54 AM
To: Janice Whaley <JWhaley@dnwest.org>; Erik Olson <EOlson@renown.org>
Cc: Emily Lara <ELara@dnwest.org>
Subject: RE: Contract review - Affiliation Agreement - Donor Network West

EXTERNAL EMAIL: This email originated outside of Renown Health.
DO NOT CLICK on links or attachments unless you recognize the sender and know the content is safe.
REPORT IT to the Service Desk at 4042 and send it as an attachment to infoprot@renown.org.

Hi Eric,

Please see below for responses in red. I have tracked the changes so you can easily review. As soon as Janice arrives in the office we will send you a signed version to fully execute.

Begin forwarded message:

From: Erik Olson <EOlson@renown.org>
Date: August 30, 2019 at 11:01:13 AM PDT
To: 'Janice Whaley' <JWhaley@dnwest.org>
Cc: Maricarmen Cresci <MCresci@renown.org>
Subject: FW: Contract review - Affiliation Agreement - Donor Network West

Hi Janice,

I'm now having time to review the Affiliation Agreement. A couple of question/requests:

1. We will need to remove the indemnification language per direction of Renown Legal. If you feel language should remain, we will need our attorneys to discuss and draft. **We are removing the indemnification clause. Keep in mind that it was mutual so your legal would have probably been comfortable with the verbiage. In the interest of time, we will omit it.**
2. Please add termination for cause language under the Termination section. I'm comfortable with 90 day notice. This would likely only apply to the tissue and eye services, as CMS designates OPO. **Added.**
3. Hospital reimbursement section references a Schedule A. I'll need to track that down, unless you have it. **I have attached the hospital rates. I have also updated the contract to state that these are reviewed annually but updated periodically. We do not necessarily change them each year.**
4. Should I assume the lease agreement, which is separate, addresses the costs/reimbursement of the space you are using in the hospital? **Yes, we will encompass that aspect in the lease.**

Thank you,
Erik

775-830-5691 – call my cell if you want to discuss.

From: Jamie Winter

Sent: Thursday, August 8, 2019 12:10 PM

To: Erik Olson <EOlson@renown.org>

Cc: Maricarmen Cresci <MCresci@renown.org>

Subject: FW: Contract review - Affiliation Agreement - Donor Network West

Hi Erik-

Unfortunately I can't redline or comment on the agreement within the body of the document as it is in PDF and already signed by the other party's representative.

Legal Terms: There are no glaring issues with the legal terms of the agreement **with the exception of** indemnification which I would prefer we strike as we usually don't agree to indemnify a business partner in the broad way that the document contemplates.

Business/Operational Terms: I also wanted to comment on the following:

1. Please confirm that Renown Health is the appropriate contracting entity and not RRMCM as the document references "Hospital".
2. Please confirm that you, as the business owner, have closely reviewed all the operational terms and obligations and we can achieve the obligations and meet the requirements of the document. Specifically please closely review:
 - a. Section 1
 - b. Section 4
 - c. Section 5
3. Please confirm that you are o.k. with no option to terminate the arrangement except in "for-cause" situations. There is no "Not for Cause" option which I would prefer was included.

Please let me know how you wish to handle. If you'd like to request a Word version I can mark-up the document and we can send it back for their review. I'm happy to help in whatever way needed.

Finally, attached hereto is a completed legal contract review form for your records.

Thanks!

Jamie Winter

From: LegalReview

Sent: Thursday, August 08, 2019 10:23 AM

To: Jamie Winter <JWinter@renown.org>

Subject: FW: Contract review - Affiliation Agreement - Donor Network West

Hi Jamie,

Here is the Donor Network contract that we talked about where Erik wants your review with no specific questions. Please note that Erik is meeting with Donor Network on the 21st and would like your response prior.

<G:\Legal Department\Contracts\3-Vendors\Donor Network West>

Bekah

Rebekah Riley, CP

Paralegal

50 West Liberty Street, Suite 1100, N14

Reno, Nevada 89501

P: 775-982-4823

rriley@renown.org

[For what matters most. A Report to Thank our Community](#)

Confidentiality Note: This e-mail message contains information from the Donor Network West that may be privileged and/or confidential. If you are not the addressee or an authorized recipient of this message, any distribution, copying, publication, or use of this information for any purpose is prohibited. Please notify the sender immediately by e-mail and then delete this message.



AFFILIATION AGREEMENT

THIS AGREEMENT is made by and between **Donor Network West**, a federally designated not-for-profit Organ Procurement Organization (OPO) and tissue and eye recovery agency, and **Renown Health**, a licensed general acute care hospital, hereafter "Hospital".

WHEREAS, the National Organ and Transplant Act (42 U.S.C. 273, et. seq.) ("Act") provides that organ procurement organizations shall establish effective agreements with hospitals and other healthcare entities in its service area to identify potential donors and to work in conjunction with donor institutions to establish a reliable system of acquiring, preserving and transporting donated organs and tissues; and

WHEREAS, Donor Network West is designated by the Secretary of Health and Human Services as the organ procurement agency to serve the counties of Northwestern Nevada (the "Donation Service Area"), in accordance with NRS Chapter 451.500 *et seq.* or successor statutes, henceforth referred to as the Uniform Anatomical Gift Act ("UAGA"), and federal law and regulations, including 42 CFR §482.45 *et seq.*, henceforth, also referred to as the "Medicare Conditions of Participation".

WHEREAS, Hospital is located in Donor Network West's Donation Service Area and is required by state and federal law and regulations, including the Medicare Conditions of Participation, to participate in Donor Network West's organ procurement program in accordance with the UAGA; and

WHEREAS, the parties are mutually dedicated to the increased availability of organs, tissue, and eyes for transplantation and research.

NOW, THEREFORE, the parties agree as follows:

1. Hospital Responsibilities

Identification of Donors: Hospital shall notify Donor Network West of all potential organ, tissue, and eye donors, and in conjunction therewith, further agrees to:

a. Promptly refer all deaths and imminent deaths for organ, tissue, and eye donation. Imminent deaths are defined in the clinical cues as ventilated patients with a non-survivable illness or injury. Notification of deaths shall be deemed "timely" if received within one hour of death. Notification of imminent deaths shall be deemed "timely" if received at the first indication that the patient has suffered a non-recoverable illness/injury or prior to plans for family discussions regarding comfort care or withdrawal of life-sustaining measures or prior to formal brain death declarations. Donor Network West shall respond to referrals in a timely manner as defined in Donor Network West Policy SE-P-004. Clinical triggers for referral shall be mutually agreed upon, and documented in Hospital policy, pursuant to 42 CFR 482.45 and in 42 CFR 486, subpart G.

b. Ensure timely and legal documentation of death, signed by hospital authorized personnel including a timely confirmation of the initial declaration in cases of death by neurologic criteria. Ensure documentation of death declarations in patient's medical record with date, time and signature of physicians. No physician involved in the documentation of death shall participate in any procedure relating to removal or transplantation of organs;

c. Medically manage the patient in order to maintain and maximize the option of organ donation for patients/families prior to the time Donor Network West takes over such maintenance, and enter appropriate documentation in the patient's medical record of all such donor management activities;

d. Provide access to and copies of the potential donor's medical record in accordance with federal and state law and Sections 5 and 6 below;

Main Office
12667 Alcosta Blvd., Ste. 500
San Ramon, CA 94583

Fresno Office
6721 N. Willow Ave., Ste. 104
Fresno, CA 93710

Nevada Office
1495 Ridgeview Dr., Ste. 90
Reno, NV 89519

Clinical Center
4550 Norris Canyon Rd., Ste. 100
San Ramon, CA 94583

Main Line
888.570.9400

Donor Referral Hotline
1.800.55DONOR

Tax ID 94-3062436



e. Assist Donor Network West in donor management during the pre-recovery process. Provide one-to-one nursing, under Donor Network West's protocols, and maintain potential donors while the testing and placement of organs / anatomical gift(s) takes place, as medically appropriate;

f. Work with Donor Network West to create a collaborative team approach to ensure all families of potential donors within Hospital are sensitively informed about the gift of organs, tissue, or eyes made by their family member's valid document of gift or registration as a donor, both as defined by the UAGA, or their option to donate organs, tissue, and eyes, whichever is applicable. In accordance with the requirements for designated requesters contained in 42 CFR 482.45, Donor Network West personnel shall bear primary responsibility as the designated/appropriate requestor for approaching the appropriate member of the defined classes who may authorize donation in accordance with NRS 451.566, collaborating with the Hospital staff and documenting consent or decline, as well as medical/social history. If requested by Hospital, Donor Network West will provide annual designated requestor training for qualified Hospital personnel;

g. Provide an appropriate location, including, as applicable, an operating room or other adequate facility for aseptic recovery of anatomical gifts, and personnel, as needed. Provide access to hospital services such as laboratory services, radiological services, cardiology services, anesthesia services, morgue access, and operating room availability on a 24/7 basis. Donor Network West may require urgent access to the operating room in cases when the potential organ donor becomes unstable or family requests impose time constraints;

h. Hospital hereby designates Donor Network West as its sole tissue and eye recovery agency and engages Donor Network West as Hospital's tissue and eye recovery agency pursuant to 42 CFR 482.45. Changes to this designation may be made only upon one-hundred eighty (180) days written notice to Donor Network West;

i. Work cooperatively with Donor Network West to facilitate continuing education to Hospital staff on all aspects of organ, tissue, and eye donation;

j. With the approval of both parties, designate a key committee to review and improve the donation process, including, but not limited to, the creation of policies and procedures with regard to the recognition of documents of gift as legally binding documents, pronouncement of brain death, and Donation after Circulatory Death (DCD).

k. Identify one or more staff members to serve as a donation liaison to Donor Network West;

l. Utilize discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

m. Honor the wishes of the decedent to donate organs, tissues, and eyes as expressed in a valid document of gift. Pursuant to the UAGA as defined in Nevada law (NRS 451.500), an anatomical gift, that is not revoked by the donor before death, is irrevocable and does not require the consent or concurrence of any person after the donor's death. This includes an anatomical gift that is made by means of and/or is registered in the Nevada Donor Registry. If the potential donor is found to be registered on the Nevada Donor Registry, Hospital will collaborate with Donor Network West to notify the donor's family members as appropriate, and address any questions or concerns they may have, but in no circumstances shall the hospital permit a third-party to effectively revoke a gift.

n. In case where there is no document of gift, ensure, in collaboration with Donor Network West, that the authorized donation decision-maker for each potential donor is informed of his/her options to donate organs, tissue, or eyes or to decline to donate.

o. In cooperation with Donor Network West, develop and implement a procedure to provide for the recovery of donated organs after circulatory death (DCD donation).

p. To ensure that the electronic simultaneous organ placement process prescribed by the United Network for Organ Sharing (UNOS) is utilized to maximize and expedite the anatomical gift, Hospital will provide Donor Network West with a wired/wireless secure Internet connection in or near the Critical Care units and Operating Room, in order for Donor Network West to upload donor information to UNOS and simultaneously share that information with prospective transplant centers;

2. OPO Responsibilities

Recovery of Organs/Tissues/Eyes: Donor Network West shall coordinate the retrieval of anatomical gift(s) and in conjunction therewith, further agrees to:

a. Promptly evaluate all potential donors to determine their medical suitability for organ, tissue, or eye donation on a 24/7 basis;

b. Review each potential donor patient's medical record to ensure documentation of brain death declarations with date, time, and signature of one (1) licensed physician, or, in the case of DCD donors, ensure appropriate documentation of cessation of heart and respiratory function, as defined by hospital policy;

c. During donation after brain death, Donor Network West will manage the donor during the pre-recovery process under Donor Network West's protocols and procedures. During DCD donation, the attending physician or designee shall continue to medically manage the patient until circulatory death occurs;

d. Work with Hospital on creating a collaborative team approach to ensure all families of potential donors within Hospital are sensitively informed about the potential donor's decision to donate as documented by valid document of gift, or the family's option to donate, as applicable. Donor Network West personnel shall bear primary responsibility for approaching the family and documenting authorization or refusal, as well as medical/social history;

e. Coordinate surgical procedures and personnel for the organ, tissue or eye recovery, including the coordination and provision of an appropriately licensed or otherwise qualified recovery team. In the case of tissue and eye recovery, Donor Network West will coordinate surgical recovery, utilizing trained recovery technicians;

f. If the potential donor is determined to be a coroner's case, Donor Network West will ensure that the coroner or medical examiner is notified of the death and all pertinent information pursuant to any existing protocol, and that any required approval for recovery is documented in the medical record;

g. Preserve, transport, and distribute organs for transplantation according to the guidelines established by the Organ Procurement and Transplantation Network, and otherwise facilitate the use of anatomical gift(s) as required by the UAGA;

h. Provide follow-up communication with the donor family;

i. Provide continuing education to Hospital staff on all aspects of donation, including DCD donation;

j. Utilize discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

k. Record promptly and maintain all information pertaining to Donor Network West's performance of duties and services under this Agreement and Donor Network West's records relating to services performed hereunder shall be available to Hospital upon request, subject to applicable laws and regulations.

3. Donor Network West Organ Surgical Recovery Team Responsibilities

a. Donor Network West shall, at the request of Hospital, provide Hospital with any professional licensing or credentialing information provided by the recovery teams, which information shall have been represented by such recovery teams and Donor Network West to be complete and accurate on the members participating in the recovery procedure. State licensure is not required for organ or tissue recovery.

b. Donor Network West shall utilize Hospital's staff physicians to the extent reasonably available, to assist Donor Network West in evaluating potential organ donors to determine their medical suitability for donation. However, when Hospital's physicians are not available, Hospital grants Donor Network West permission to consult with licensed and qualified medical professionals of its choice to assist in such evaluation.

4. Hospital Policies and Protocols: Hospital and Donor Network West shall cooperate in developing and approving policies and procedures to maximize donation and to further implement the provisions of this Agreement, 42 CFR 482.45 and applicable Joint Commission standards, and for compliance with all applicable laws, regulations, and standards relating to the donation of anatomical gift(s).

5. Death Record Review: In order to conduct necessary reviews of records in accordance with the 42 CFR 482.45 and 42 CFR 486 part G, Donor Network West shall have access to review all death records to improve identification of potential donors. This review enables both parties to evaluate and monitor the effectiveness of the services provided and to provide a means to verify compliance with all applicable laws, regulations, and standards relating to the donation of anatomical gift(s). Donor Network West will provide Hospital with an analysis and evaluation of Hospital's organ and tissue donation process.

6. Electronic Health Records: In the event that Hospital implements an electronic health records system, Hospital will provide Donor Network West timely access to the patient records within that system to facilitate all aspects of donation and death record reviews.

7. Confidentiality: All patient information is considered confidential and each party shall maintain in strict confidence, consistent with applicable federal and state law, any information disclosed by Hospital to Donor Network West or an agent of Donor Network West. Hospital acknowledges that HIPAA, at 45 CFR 164.512(h), allows information to be released to OPOs or other entities involved in organ and tissue donation and transplantation without patient release. OPOs are not Business Associates of Hospitals, and do not enter into Business Associate Agreements. In addition, disclosure may occur under the following circumstances:

a. Where disclosure is required under any federal or state law or regulation;

b. Where such information is used for the compilation of statistical data upon request of other organizations. However, in no event shall the parties disclose the name, home address, social security number, names of next-of-kin of a patient, or other patient identifying information for this purpose;

c. For Donor Network West or IRB approved research projects, if and only if all patient identifiers have been removed, or if the information is subject to a Limited Data Use Agreement between Hospital and researcher, if applicable.

8. Hospital Reimbursement: Hospital agrees to provide Donor Network West with an itemized bill (request for reimbursement) for directed services incurred for all patients accepted by Donor Network West as donors within seven months of the close of the case. Failure to provide Donor Network West with a request for reimbursement within this time frame will result in the elimination of any liability on the part of Donor Network West for hospital services provided. Donor Network West agrees to pay Hospital with respect to donor evaluation, donor maintenance, and recovery of anatomical gift(s), pursuant to the Donor Hospital Case Rate Reimbursement

Schedule in effect for the date of recovery. The Schedule is attached hereto as Exhibit A, and incorporated herein Schedule will be ~~reviewed annually and~~ updated ~~periodically~~ annually.

9. Emergency Preparedness: In accordance with Centers for Medicare and Medicaid Services (CMS) 42 CFR §§486.360, Donor Network West shall maintain an emergency preparedness plan that strives to ensure continuation of operations during emergency situations. In the event of a natural, technological or man-made disaster, Donor Network West will provide notification to the donor hospital when emergency situations impact normal processes. Donor Network West will fulfill responsibilities outlined in the affiliation agreement to the best of its ability. Hospital shall maintain an emergency preparedness plan. In the event of a natural, technological or man-made disaster, Hospital will notify Donor Network West when emergency situations impact normal processes or Hospital function, notify Donor Network West when emergency situations threaten the safety and well-being of Donor Network West staff, and fulfill responsibilities outlined in the affiliation agreement to the best of its ability.

10. Termination: This Agreement may be terminated by either party only upon the occurrence of one or more of the following circumstances:

- a. Decertification by the CMS of Donor Network West as the designated organ procurement organization for Hospital;
- b. Upon designation of another organ procurement organization by the CMS to be Hospital's designated organ procurement organization;
- c. Upon the granting of a waiver to Hospital by the CMS to work with another organ procurement organization; or
- d. Upon a showing by Hospital that it is no longer subject to compliance with any federal or state regulation requiring that it refer potential organ and tissue donors to any organ procurement organization.

This agreement shall stand as a document without expiration. Either party desiring to terminate this Agreement in response to any of the aforesaid circumstances ~~or without cause~~ shall provide as reasonable notice as is possible, but in no case less than ~~ninetyone hundred eighty (90+80)~~ ninetyone hundred eighty (90+80) days' written notice to the other party. Such notice shall specifically state the reason for termination of the Agreement, and such party desiring to terminate this Agreement shall provide such documentation to the other party supporting the reason so stated.

~~11. Indemnification: Each Party shall defend, indemnify, and hold the other parties and their officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party or its officers, employees, and agents.~~

12. Insurance

a. General and Professional Liability Insurance: Each party will obtain and maintain comprehensive general liability insurance (including coverage for professional liability) in connection with its obligations under this Agreement. Such insurance coverage shall be in amounts not less than \$1 million per claim/\$3 million annual aggregate, and coverage shall be insured through an insurer that is qualified to do business in the State of Nevada. Each party shall bear its cost of such insurance, and certificates of insurance evidencing such coverage shall be made available to the parties upon their request. Any insurance required under this section may be obtained through a program(s) of self-insurance.

b. Workers' Compensation: Donor Network West is providing workers' compensation coverage pursuant to the State of Nevada for its employees and contractors providing services under this agreement and can provide evidence of coverage as requested.

13. Professional and Administrative Responsibility: The parties agree that Hospital retains professional and administrative responsibility for all services rendered by Donor Network West, to the extent permitted by federal law.

14. Compliance: Donor Network West and Hospital agree to comply with all federal, state, and local laws and regulations, which pertain to the performance of this Agreement, including, without limitation, applicable regulations promulgated by OSHA, CMS, OPTN, CDC, and FDA, as applicable. Hospital has no legal obligation to vaccinate Donor Network West staff. Furthermore, Donor Network West staff are not hospital employees and are not required to attend hospital orientation or other programs mandated for staff. Donor Network West is solely responsible for maintaining records for Donor Network West employees with regard to job competencies, training, immunizations, and medical testing. Donor Network West agrees to work cooperatively with Hospital with regard to facilitating Hospital's demonstrated compliance with those standards of care and quality promulgated by the Joint Commission, which applies to the performance of this Agreement. Both parties agree to work cooperatively to implement appropriate changes, correct deficiencies, and/or establish policies required and/or recommended by the inspecting agencies.

15. Notices: All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows or such other addresses as may later be designated by the party:

If to Hospital:
Renown Health
1155 Mill Street, Z-1
Reno, NV 89502
Attn: Contract Coordinator

With a copy to:
[Renown Health](#)
[Legal Department](#)
[50 West Liberty Street, Suite 1100](#)
[Reno, Nevada 89501](#)

If to Donor Network West:
Donor Network West
12667 Alcosta Blvd., Suite 500
San Ramon, CA 94583
Attn: Chief Executive Officer

16. Amendments: This Agreement may be amended or modified at any time in writing and signed by authorized representatives of both parties. The parties agree to amend this agreement to the extent amendment is required to comply with applicable federal and state laws and regulations and any changes thereto.

17. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and applicable federal law.

18. Severability: The provisions of this Agreement are severable. If any one or more provisions of this Agreement are held invalid, the remaining provisions shall continue in full force and effect.

Commented [JW1]: Erik: Is this the correct address?
Adding Legal as well.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, by affixing their signature below, each of the parties has caused this Agreement to be executed on its behalf by its duly authorized representative, to be effective as of the last date written below.

Donor Network West

12667 Alcosta Blvd., Suite 500

San Ramon, CA 94583

By: _____
(Signature)

(Printed Name)

(Title or Position)

Date: _____

Renown Health

1155 Mill Street, Z-1

Reno, NV 89502

By: _____
(Signature)

(Printed name)

(Title or Position)

Date: _____



Administration P 775-982-4100
10315 Professional Circle
Reno, NV 89521

September 11, 2023

Director of the Division of Technical Payment Policy
Chronic Care Policy Group
Center for Medicare
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

To Whom it May Concern,

This letter shall serve to inform you that we have made the decision to sign an Agreement with the Nevada Donor Network, Inc. (NVLV) to become the Organ Procurement Organization (OPO) provider for organ, tissue and eye recovery services for Renown Regional Medical Center, Renown South Meadows Medical Center, and Renown South Meadows Medical Center dba Renown Rehabilitation Hospital (collectively, "Renown") effective January 1, 2024. This decision was driven by the desire of the organization to improve the services we provide to the community we serve. As such, Renown is formally requesting a "**waiver**" by copy of this notice as it relates to NVLV, a high-performing, Nevada-based OPO in good standing with the Centers for Medicare and Medicaid Services (CMS) which is outside of the CMS designated service area for Renown.

This request is submitted in accordance with 42 CFR §486.308 titled ***Designation of one OPO for each service area.***

"...(e) A hospital may request and CMS may grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to CMS establishing that –

- (1) The waiver is expected to increase organ donations; and
- (2) The waiver will ensure equitable treatment of patients listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement."

It is the position of Renown that the above stated conditions in the CMS regulations are met through Renown's Agreement with NVLV as follows: NVLV is a Tier 1 OPO per the CMS April 2023 Organ Procurement Organizations (OPO) Annual Public Aggregated Performance Report. Based on this independently reported data, we are confident NVLV will assist Renown to "**increase organ donations**" in the hospital system as a result of our Agreement. Renown is confident this will be the case given NVLV's longstanding and consistent performance status as an OPO leader since 2012. We also believe NVLV's effective presence as a CMS-designated OPO covering 14 of the 17 counties in the State of Nevada (representing 80% of the state's population) will be an additional factor contributing to the success of this new relationship. The infrastructure of NVLV and location of its offices in proximity to



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Administration
10315 Professional Circle
Reno, NV 89521

P 775-982-4100

Renown also allows for more cost-effective coverage and service to our hospital and community, which we believe will positively impact CMS from a fiscal perspective.

Based on independently published and publicly available data from the CMS April 2023 Organ Procurement Organizations (OPO) Annual Public Aggregated Performance Report, NVLV's performance achieves higher relative outcomes for donation rate and transplantation rate in comparison with our current OPO provider named Donor Network West (CADN) as seen in Table 1. This is also true when analyzing population-based data for the comparison between CADN and NVLV in Table 2.

Table 1

Performance Measure	NVLV	CADN
CMS Donation Rate	15.95	10.89
CMS Donation Rate Tier Status	1A*	2C*
Age Adjusted Transplantation Rate	51.07	37.85
Age Adjusted Transplantation Rate Tier Status	1A*	2B*

*'Intra-tier' classifications assign a letter "A-E" along with the tier level noting an OPO's placement within the tier for the donation and transplantation rates.

Source: CMS 2023 OPO Annual Performance Data

Table 2

	Population	Transplants	Donors	Deaths	DPMP*	TPMP**
NVLV	2,822,349	858	200	26,600	71	304
CADN	13,650,942	2207	385	109,609	28	161

*Donors Per Million of Population served

**Transplants Per Million of Population served

Source: OPTN/UNOS and SRTR January 2023 report

In addition, based on the recently published and publicly available **CMS 2023 OPO Aggregate Performance Report**, which monitors performance of all OPOs from January 1, 2021, through December 31, 2021, NVLV is ranked 6th out of 56 OPOs for donation rate (CADN is ranked 33rd out of the 56) and NVLV is ranked 5th out of 56 OPOs for transplantation rate (while CADN is ranked 22nd out of 56).

In accordance with CMS regulations, our Agreement with NVLV "will [continue to] ensure equitable treatment of patients listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter



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Reno, NV 89521

P 775-982-4100

into an agreement", as follows: The process of organ allocation is driven by the relevant policies set forth by the Organ Procurement and Transplantation Network (OPTN). Because NVLV follows all national allocation policies set forth by the OPTN, the organs recovered for transplantation at Renown will continue to be allocated by NVLV in accordance with regulation for patients "listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement." As a matter of fact, because we believe our donation rates will improve in partnership with NVLV, this will positively impact the equitable treatment of patients listed throughout the region by making more organs available to those who desperately wait, no matter which donation service area they might be listed in.

Based on the objective performance data exemplified by NVLV since its transformation in 2012 and the positive impact Renown expects its agreement with NVLV will have on patients listed for transplant, we appreciate your consideration of this formal notice of our agreement with NVLV and this waiver request.

Thank you for your consideration.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Brian Erling".

Brian Erling, MD, MBA
President and CEO

CC:

David Wright, CMS Quality Safety & Oversight Group

Steven Chikering, CMS Associate Regional Administrator, Western Division of Survey and Certification

Edgardo Japitana CMS Nurse Consultant, U.S. Department of Health and Human Services

Richard Whitley, Director, Nevada Department of Health and Human Services



renown.org



Renown Regional Medical Center P 775-982-4100
1155 Mill Street, N-11 F 775-982-5933
Reno, Nevada 89502

December 20, 2023

Via U.S. Mail and Email

Janice Whaley CEO
Donor Network West
5440 Reno Corporate Dr.
Reno, NV 89511

Attn: Chief Executive Officer
Donor Network West
12667 Alcosta Blvd., Suite 500
San Ramon, CA 94583

Re: Amendment to Notice to Terminate Without Cause Affiliation Agreement

Dear Ms. Whaley:

Renown Health provided a Notice of Termination on September 29, 2023 to provide Donor Network West with sufficient advance notice before termination and the Notice of Termination was valid as the Affiliation Agreement permits termination without cause. From a practical perspective, however, Renown Health believed that the timing of the termination would coincide with the granting of Renown Health’s waiver request to the Centers for Medicare and Medicaid Services (“CMS”). As it was not Renown Health’s intention to terminate the Affiliation Agreement prior to the granting of a waiver by CMS, Renown Health hereby amends its Notice of Termination as follows.

Pursuant to Section 10 of the Affiliation Agreement, Renown Health hereby provides notice that it extends the effective date of the termination date in the September 29, 2023 Notice of Termination from 90 days from the date of the Notice of Termination to 90 days from the date of the “granting of a waiver to [Renown Health] by the CMS to work with another organ procurement organization.” Affiliation Agreement § 10(c).

DocuSigned by:

Brian Erling

Brian Erling, President and CEO, Renown Health



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EXHIBIT PAGE ONLY

EXHIBIT 5

Tgpqy p"J gcmj "EO UQRQ"Y ck>"Cr r declkp"

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



Administration
10315 Professional Circle
Reno, NV 89521

P 775-982-4100

September 11, 2023

Director of the Division of Technical Payment Policy
Chronic Care Policy Group
Center for Medicare
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

To Whom it May Concern,

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This request is submitted in accordance with 42 CFR §486.308 titled *Designation of one OPO for each service area*.

"...(e) A hospital may request and CMS may grant a waiver permitting the hospital to have an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located. To qualify for a waiver, the hospital must submit data to CMS establishing that –

- (1) The waiver is expected to increase organ donations; and
- (2) The waiver will ensure equitable treatment of patients listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement."

It is the position of Renown that the above stated conditions in the CMS regulations are met through Renown's Agreement with NVLV as follows: NVLV is a Tier 1 OPO per the CMS April 2023 Organ Procurement Organizations (OPO) Annual Public Aggregated Performance Report. Based on this independently reported data, we are confident NVLV will assist Renown to "*increase organ donations*" in the hospital system as a result of our Agreement. Renown is confident this will be the case given NVLV's longstanding and consistent performance status as an OPO leader since 2012. We also believe NVLV's effective presence as a CMS-designated OPO covering 14 of the 17 counties in the State of Nevada (representing 80% of the state's population) will be an additional factor contributing to the success of this new relationship. The infrastructure of NVLV and location of its offices in proximity to



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10315 Professional Circle
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P 775-982-4100

Renown also allows for more cost-effective coverage and service to our hospital and community, which we believe will positively impact CMS from a fiscal perspective.

Based on independently published and publicly available data from the CMS April 2023 Organ Procurement Organizations (OPO) Annual Public Aggregated Performance Report, NVLV's performance achieves higher relative outcomes for donation rate and transplantation rate in comparison with our current OPO provider named Donor Network West (CADN) as seen in Table 1. This is also true when analyzing population-based data for the comparison between CADN and NVLV in Table 2.

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Source: CMS 2023 OPO Annual Performance Data

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**Transplants Per Million of Population served

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In accordance with CMS regulations, our Agreement with NVLV "will [continue to] ensure equitable treatment of patients listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter



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10315 Professional Circle
Reno, NV 89521

P 775-982-4100

into an agreement", as follows: The process of organ allocation is driven by the relevant policies set forth by the Organ Procurement and Transplantation Network (OPTN). Because NVLV follows all national allocation policies set forth by the OPTN, the organs recovered for transplantation at Renown will continue to be allocated by NVLV in accordance with regulation for patients "listed for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement." As a matter of fact, because we believe our donation rates will improve in partnership with NVLV, this will positively impact the equitable treatment of patients listed throughout the region by making more organs available to those who desperately wait, no matter which donation service area they might be listed in.

Based on the objective performance data exemplified by NVLV since its transformation in 2012 and the positive impact Renown expects its agreement with NVLV will have on patients listed for transplant, we appreciate your consideration of this formal notice of our agreement with NVLV and this waiver request.

Thank you for your consideration.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Brian Erling", written over a light blue horizontal line.

Brian Erling, MD, MBA
President and CEO

CC:

David Wright, CMS Quality Safety & Oversight Group

Steven Chikering, CMS Associate Regional Administrator, Western Division of Survey and Certification

Edgardo Japitana CMS Nurse Consultant, U.S. Department of Health and Human Services

Richard Whitley, Director, Nevada Department of Health and Human Services



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