MEMORANDUM OF UNDERSTANDING
BOSTON MEDICAL CENTER
AND
MAUREEN CANCEMI, CAROL FREITAS, SERGIO GONCALVES, RUTH KAHN, JOHN KELLY, KRISTEN MCCOSH, BARBARA RIVERO, PRISCILLA WALKER, AND THE BOSTON CENTER FOR INDEPENDENT LIVING

On June 21, 2011 the parties to this Memorandum of Understanding entered into a Structured Negotiations Agreement for the purpose of exploring whether possible claims regarding care received by patients with mobility and sensory disabilities[1] at Boston Medical Center (BMC) could be resolved without the need for formal litigation. The specific items that were subject to negotiations included, but were not limited to:

a. Removal of architectural barriers at BMC facilities;
b. Installation of accessible medical equipment at BMC;
c. Modifications of policies and procedures to improve access to quality health care at BMC for persons with disabilities;
d. Improvements to patient-provider communications for patients with disabilities;
e. Training medical professionals, staff and volunteers in use of accessible medical equipment, implementation of modified policies, and effective communications for improving access to quality health care at BMC for persons with disabilities;
f. Provision of "auxiliary aids and services," as defined by the Americans with Disabilities Act, for persons with disabilities at BMC;
g. Appropriate ways to assess BMC's progress toward achieving these objectives.

[1] The parties recognize that this agreement may be expanded to include and address issues specific to persons with other types of disabilities, including, but not limited to, behavioral and intellectual disabilities.

As a result of these negotiations, Maureen Cancemi, Carol Freitas, Sergio Goncalves, Ruth Kahn, John Kelly, Kristen McCosh, Barbara Rivero, Priscilla Walker, and the Boston Center for Independent Living ("BCIL") (the "Claimants") and BMC, have reached the following agreement:

I. DEFINITIONS

Definitions of the terms contained in this Agreement appear in the Appendix.

II. EFFECTIVE DATE, DURATION, AND OVERSIGHT OF THE MEMORANDUM OF UNDERSTANDING

The provisions of this MOU are effective as of October 1, 2013 (the "effective date") and shall remain in effect through September 30, 2019 (the "expiration date"). If BMC does not fully satisfy its obligations under this agreement, the expiration date shall be extended solely as to any particular obligation that has not been satisfied until such obligation has been satisfied.

BMC has assigned responsibility to oversee implementation of this MOU to its Care of the Patient with Disabilities Oversight Committee. The Committee and its chair(s) report directly to senior management at BMC.

III. ASSESSMENT OF ACCESS BARRIERS AND CORRECTIVE ACTION PLANS

A. Architectural Barrier Removal

1. BMC engaged Evan Terry Associates, P.C. ["ETA"] as an Architectural Consultant to provide an architectural barrier survey for BMC's Menino Pavilion, Yawkey Ambulatory Care Center, and parking garages at 610 and 710 Albany Street, and the major pedestrian travel routes to and from these buildings. ETA prepared two reports following this survey: Architectural Access Survey and ADA Architectural Report. BMC plans to complete

subsequent surveys that will include BMC's second inpatient building, the Newton Pavilion, and an additional outpatient building, the Preston Family Building. BMC will also complete surveys of all its patient and public facilities, including the Shapiro Ambulatory Care Center, as part of its facilities planning process. Any further architectural barrier surveys shall be equal in scope and detail to those conducted by ETA. Claimants will be provided copies of all survey reports prepared while this agreement is in effect, whether done by outside consultants or BMC staff, within 30 days of the completion of the reports. BMC may remove a building from the survey process if BMC anticipates removing the building from service as a public or patient care facility.

2. BMC has, in consultation with Claimants and the City of Boston, developed a process for reviewing barriers identified in barrier assessment surveys. As part of that process, BMC and Claimants will identify and agree on priorities and a schedule for corrective action, taking into account the time, resources, and capital required for corrective action. Once the parties have set a schedule for corrective action, it shall be incorporated by reference into this agreement. BMC and Claimants may also agree on other projects for corrective action related to facilities that may not yet have been the subject of a barrier assessment survey.

3. To ensure ongoing compliance with the architectural requirements of Disability Rights Laws, BMC will integrate accessible design criteria into the BMC facilities master planning; assure its staff have adequate knowledge of relevant codes; implement an ongoing accessibility audit program; and implement an annual training program for staff responsible for installing paper towel dispensers, soap dispensers, signs, etc.

4. If at any time while this agreement is in effect, BMC plans to undertake a renovation, modification, or improvement to any part of its facilities or to undertake new

building construction or renovation of existing or newly acquired or leased buildings, any of which exceeds one million dollars ($1,000,000) in construction costs and which affects the renovation, modification, or improvement of inpatient rooms, inpatient bathrooms or toilet rooms, exam and treatment rooms, bathrooms associated with exam and treatment rooms, hallways, waiting rooms or registration areas, all relevant documents shall be submitted to an architectural consultant with demonstrated expertise in assuring access to facilities for people with disabilities and experience with the ADA and ADAAG for a plan review sufficient to show compliance with Disability Rights Laws prior to commencement of any work and within an early enough timeframe for a meaningful review. Within sixty (60) days after execution of this agreement, Claimants will provide BMC with a list of architectural consultants with the required expertise and experience. BMC may propose additional architectural consultants for Claimants' approval and addition to the list of acceptable architectural consultants. The architectural consultant shall complete the plan review within a reasonable period of time. BMC will review any recommendations for changes and will either accept them, reject them, or propose alternative means for addressing the issues identified in the plan review. If BMC accepts the recommended changes they shall be put into effect forthwith. If BMC rejects them or proposes alternative solutions, the parties shall promptly meet and confer regarding such determination. Any renovation, modification, or improvement project to any part of the Facilities that does not reach the dollar threshold identified above shall be reviewed internally for compliance with the Disability Rights Laws and any variances from such laws will be addressed. The tool used for such internal review will be shared with Claimants when developed.

B. Accessible Medical Equipment

1. Within 180 days of the effective date of this agreement, BMC will conduct a review of all medical equipment and furniture used in the facility to determine whether the equipment is readily accessible to and usable by patients with disabilities, whether there is sufficient accessible medical equipment to meet patient needs, whether the equipment is located in accessible areas, whether there are accessible bathrooms and changing rooms available as needed for use of the equipment, whether staff members are properly trained to assist patients with disabilities with use of the equipment, and whether equipment is available to assist patients with disabilities in transferring to examination tables, examination chairs, scales, radiologic and diagnostic equipment, dental chairs, ophthalmology equipment, etc. when necessary. In addition, BMC, as part of its regular process of policy review and development, will review hospital policies and procedures related to the use and maintenance of diagnostic equipment to determine whether the policies properly address the access needs of patients with disabilities and to determine whether additional policies and procedures are needed to ensure proper care of patients with disabilities.

2. BMC shall conduct its reviews in consultation with Claimants, and BMC may engage a consultant, satisfactory to Claimants, with demonstrated expertise in the use of diagnostic medical equipment to advise the parties in conducting the reviews and to assist in the preparation of policies and plans.

3. Within 60 days after completing its review of accessible medical equipment, BMC will provide Claimants with a report on the results of the review.

4. After consulting with Claimants, BMC shall prepare a proposed plan for (a) the purchase of additional equipment, relocation, supplementation, or modification of the existing

equipment, and other methods to eliminate barriers, or, if no new equipment or modifications to existing equipment would overcome a barrier posed by the existing equipment or it is an undue burden to purchase or modify equipment, what alternatives should be utilized to ensure that individuals with disabilities receive equal access to medical services; (b) modifications to areas where medical equipment is located; (c) providing appropriate training; (d) providing necessary equipment and facilities for safe transfers; and (e) a schedule for the purchase and modification of the equipment and the implementation of other related barrier removal efforts.

5. BMC will consider in good faith any proposal from Claimants regarding policies and procedures and the plan for addressing barriers related to medical equipment before making final decisions.

6. BMC will promptly begin implementation of the final plan for addressing barriers related to medical equipment developed under the process described above.

C. <u>Policies and Procedures</u>

1. As part of its regular process of policy review and development, BMC will review hospital policies and procedures relevant to patient care to determine whether they properly address the access needs of patients and support persons with disabilities and to determine whether additional policies and procedures are needed to ensure proper care for patients with disabilities. The review will include, but not be limited to, policies and procedures that relate to alternative formats; communication access and assistance; service access; scheduling exam rooms and patient room access; location, maintenance and use of accessible medical equipment; use of personal medical equipment; use of personal care attendants; weight measurement; auxiliary aids and services; the accessibility of websites; lifting and transferring patients with

mobility disabilities; maintenance of accessible features, aids and services; use of service animals; and patient complaints.

2. BMC shall consult with Claimants during the review of relevant policies and on the preparation of new and revised policies. BMC will consider in good faith any proposal from Claimants.

3. BMC will promptly implement any new and revised policies developed under the process described above in accordance with its procedures for adopting and implementing hospital policies.

D. Training

1. BMC is developing a system-wide disability training program for all employees on disability awareness and on providing equal access to services for patients with disabilities, including, among other things, the particular needs and concerns of patients with mobility and sensory disabilities.

2. BMC shall require all newly hired employees providing direct patient assistance to have training appropriate for their responsibilities on the Disability Rights Laws within a reasonable time from their initial hire date. BMC shall also provide opportunities for new contractors to receive similar training.

3. BMC will also provide additional training for employees whose responsibilities require further specialized disability training. The training module will vary for different categories of employees, and training methods will be adapted as necessary. The parties agree that currently available disability training models could be improved to better meet the needs of BMC and its patients with disabilities and BMC will work with Claimants on developing the training curricula for specialized disability training

4. BMC shall also provide and promote opportunities for contractors whose practice or responsibilities include patient or family contact to participate in the disability training programs.

5. BMC will review the content of its disability training programs at least every two years, and will conduct each review in consultation with Claimants.

6. BMC will make its disability training programs available on an on-going basis for the duration of this Agreement.

IV. EFFECTIVE COMMUNICATIONS

A. General Communications

BMC will develop and implement best practices for promoting patient engagement and consult with Claimants as appropriate. Among other things, BMC will promote patient engagement by: (a) communicating information about medical care and treatment to patients with disabilities in a way that is understandable to them; (b) engaging in shared decision-making that takes into account a patient's unique needs, values and priorities; (c) adopting written standards for communication; and (d) assuring patients access, in compliance with regulatory requirements, to their medical records.

B. Communication Assistance

1. BMC will provide communication assistance by providing appropriate Auxiliary Aids and Services where the aids and services are necessary to ensure effective communication with patients and their support persons. BMC shall not impose any fees or charges on patients or visitors with disabilities for providing any Auxiliary Aids or Services.

2. BMC will consult with patients and their support persons about their needs for communication assistance and the kinds of Auxiliary Aids and Services that will provide effective communication. If more than one Auxiliary Aid or Service would be effective to communicate particular information to the patient or support person, BMC may select the effective method of its choice. BMC is not required to provide the Auxiliary Aid or Service the individual prefers if there is another method that results in effective communication, although BMC will provide the individual the Auxiliary Aid or Service he or she prefers, if possible.

V. NEEDS ASSESSMENTS

1. BMC will, in consultation with Claimants, review its system for screening individuals seeking care at BMC to make sure it appropriately determines whether a person has a disability within the meaning of the ADA and implementing regulations, and assesses the needs of those persons identified as having a disability.

2. The purpose of the needs assessment is to determine a patient's needs in relation to the actual provision of medical care that meets the following criteria: (a) care is comprehensive, coordinated, personalized and planned; (b) the patient's experience of care is routinely assessed and improved; (c) patients and their caregivers are full partners in their care; and (d) the patient's access to care meets standards of Disability Rights Law. The assessment must identify an individual's communication needs and preferences with respect to Auxiliary Aids and Services, the need for appointments at particular times of day, the need for longer appointments, the need for a particular type of transfer equipment and/or assistance, the need for accessible diagnostic equipment, the need to use certain personal medical equipment and any other needs relevant to the provision of safe and effective care. The results of the needs

assessment will be incorporated into the patient's electronic medical record. BMC has begun a process to implement a new electronic medical record system and will, as part of the implementation, review the extent to which it can use the system for a needs assessment.

VI. QUALITY MEASUREMENT

1. BMC will confer with Claimants to discuss ways for BMC best to determine whether patients with disabilities receive care that is consistent with practice standards at BMC and whether patients with disabilities encounter any problems related to their disabilities that adversely affect the care they receive. To the extent feasible, the quality measurement system shall, among other things, include a procedure for determining whether patients with disabilities are weighed and have their body mass index determined when medically appropriate, whether patients are able to transfer to medical diagnostic equipment or furniture safely, effectively and in a manner consistent with their preferences, whether communications with BMC staff are timely and effective, and whether needs for personal care are properly addressed.

2. To the extent feasible, BMC will incorporate metrics related to care for patients with disabilities into systems used in the hospital for assessing quality and safety, and, to the extent feasible, BMC will use the systems to evaluate care on an individual basis for patients identified as having a disability.

VII. COMMUNITY OUTREACH AND PARTICIPATION

BMC will use its best efforts to assure participation by individuals with disabilities or their caregivers on its Patient Family Advisory Council. The parties will work together to assure that individuals with disabilities and organizations advocating on behalf of individuals with disabilities play an active role in ensuring that BMC provides the highest quality care to patients with disabilities.

VIII. REPORTING

1. During the term of this agreement, the parties will meet at least quarterly to review the work completed in meeting the goals of this agreement and the work planned for the next quarter.

2. BMC shall provide Claimants with annual status reports which include:

   a. The extent to which BMC has completed the work under each provision of this agreement;

   b. The extent to which BMC has modified the work under any provision of this agreement and the reason(s) for the modifications;

   c. A list of any renovation, modification, or improvement project to any part of the Facilities that exceeds One Million Dollars ($1,000,000) in construction costs and that was reviewed pursuant to Section III during the year;

   d. What problems, if any, BMC has encountered that has resulted in a delay of or modification to proposed work under specific provisions of this agreement; and

   e. BMC's proposal to remedy any problems that have resulted in a delay of work required under any provision of this agreement.

3. BMC shall submit to Claimants a final report three months before the expiration date of this agreement. This report shall describe BMC's compliance with this agreement, and any unmet obligations under this agreement, the reasons they are unmet, and the proposed resolutions.

4. Upon Claimants' request, and not more frequently than every six months, BMC shall, consistent with applicable patient confidentiality obligations, provide a summary of written

and oral complaints made to BMC through its patient advocacy department regarding architectural barriers, policies, practices and procedures, accessible medical equipment, communications, assessment of needs, and quality of care as they relate to disability access. These complaint summaries will include the following information about each complaint:

a. The date of the incident that is the subject of the complaint;

b. The facility that is the subject of the complaint;

c. The issue raised in the complaint;

d. The form of the complaint (phone call, letter, email, in-person complaint, etc.);

e. The relief requested in the complaint; and

f. BMC's response to the complaint, if any, and any actions taken or planned to be taken, including the timeline for completion of any action still in progress.

IX. DISPUTE RESOLUTION

The Parties agree that any dispute arising out of this agreement relating to its interpretation and application, including the performance of the obligations set forth in this agreement, shall be addressed in the following manner:

1. A party complaining that a violation has occurred or that a dispute has arisen as to the interpretation and application of this agreement will give notice to counsel for the other party. The notice shall set forth the complaint/dispute and shall propose a resolution.

2. Within two weeks of delivery of the written claim of such alleged violation or dispute the parties shall meet and confer in an effort in good faith, through informal negotiation, to resolve the issue.

3. If the issue remains unresolved after a reasonable period of meeting and conferring, the parties will attempt to resolve the matter in mediation, using a mediator who is jointly selected by the parties.

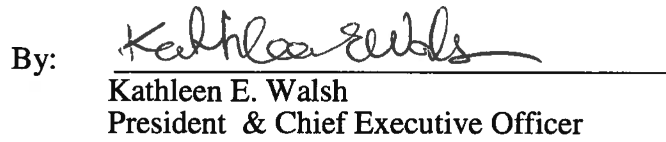
4. If mediation does not resolve the dispute, the parties shall retain all rights and legal remedies, including an action to enforce this Agreement, available to them under this Agreement.

X. TIMEFRAMES AND DEADLINES

The parties understand that the completion of particular assessments or actions contemplated in this agreement may be delayed due to circumstances beyond either party's control, and therefore both parties agree to consider requests to extend such timelines and deadlines in a reasonable manner, and to not withhold any agreement to so extend unreasonably. If any stage of this Agreement is completed early, any time saved due to such early completion will be added onto the next related obligation as set out in this Agreement.[2]

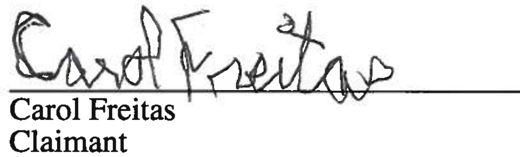
[2] For example, Task A must be completed within 120 days; Task B must be completed within 180 days of Task A's completion. If Task A is completed within 90 days, then Task B must be completed within 210 days of Task A's completion.

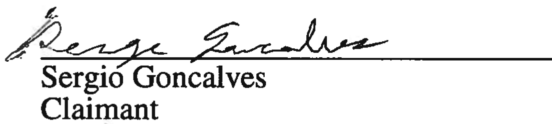
BOSTON MEDICAL CENTER CORPORTATION:

By: 
Kathleen E. Walsh
President & Chief Executive Officer

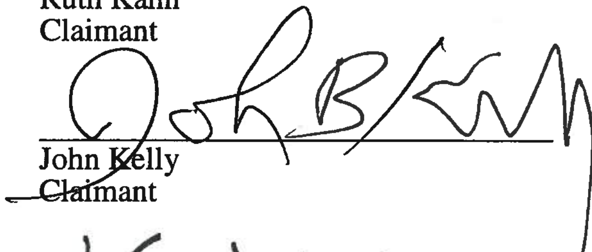
For Claimants:

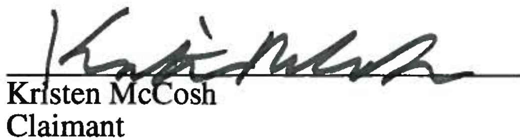
Maureen Cancemi
Claimant


Carol Freitas
Claimant

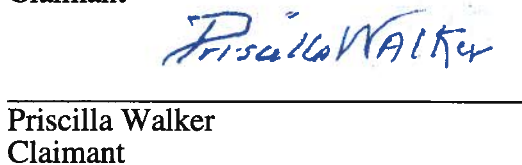

Sergio Goncalves
Claimant

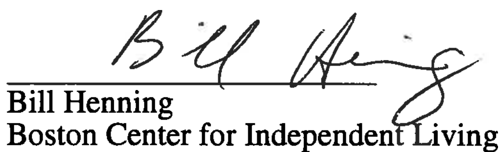
Ruth Kahn
Claimant


John Kelly
Claimant


Kristen McCosh
Claimant

Barbara Rivero
Claimant


Priscilla Walker
Claimant


Bill Henning
Boston Center for Independent Living

DEFINITIONS APPENDIX

1. "ADA" means and refers to the Americans with Disabilities Act as codified at 42 U.S.C. § 12101, et seq., as amended by the ADA Amendments Act of 2008, P.L. 110-335, 122 Stat. 3553 (2008).

2. "ADAAG" means and refers to the ADA Standards for Accessible Design, commonly referred to as the Americans with Disabilities Act Access Guidelines, as codified at Appendix A to 28 C.F.R. Part 36. The Guidelines to be followed under this Agreement are the Guidelines in effect at the time the Architectural Consultant completes his survey, except that if amendments to or a different version of the Guidelines are adopted by the Department of Justice, BMC will comply with the amended or revised Guidelines. BMC shall not be required to make alterations to any work it has done pursuant to this Agreement prior to the effective date of the amended or revised Guidelines.

3. "Access" and "Accessible" mean and refer to conditions that comply with the relevant and applicable standards set forth in the Disability Rights Laws.

4. "Accessible Medical Equipment and Furniture" means and refers to medical equipment and furniture that is accessible to and useable by patients with disabilities, including, but not limited to, examination tables, examination chairs, lift equipment, scales, radiologic and diagnostic equipment, dental chairs, ophthalmology equipment, and any other medical equipment used in the medical context for the provision of health care services.

5. "Agreement" shall mean this Memorandum of Understanding.

6. "Architectural Barrier" means and refers to a physical impediment to accessibility of patient-care services or other visitor services at a BMC facility, including, but not limited to, parking facilities, entrances, paths of travel, restrooms, patient bedrooms, examination

rooms, waiting areas, treatment rooms, laboratories, counters, public telephones, drinking fountains, pharmacies, cafeterias, gift shops and any other fixed features within BMC facilities that are regulated by Disability Rights Laws.

7. "Auxiliary Aids and Services" means and refers to services and devices necessary for ensuring that no individual with a disability is excluded, denied services, segregated or otherwise discriminated against and includes those services and devices necessary for ensuring effective communication with Individuals with Sensory Disabilities, which may include but is not limited to: qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; accessible websites; and audible prescription labels.

8. "BMC" means and refers to the Boston Medical Center, a Massachusetts nonprofit corporation.

9. "Claimants" means and refers to Maureen Cancemi, Carol Freitas, Sergio Goncalves, Ruth Kahn, John Kelly, Kristen McCosh, Barbara Rivero, Priscilla Walker, and the Boston Center for Independent Living.

10. "Claimants' Counsel" means and refers to the law offices of Greater Boston Legal Services ("GBLS") and the attorneys and other employees therein.

11. "Days" means calendar days.

12. "Disability" means and refers to the definition of disability in the ADA and implementing regulations.

13. "Disability Rights Laws" means and refers to the ADA and implementing regulations, the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., and implementing regulations, and the Rules and Regulations of the Massachusetts Architectural Access Board ("MAAB"), 521 Code of Massachusetts Regulations § 1.00, et seq.

14. "Effective Date" shall mean the date set out in Section II of this Agreement as the Effective Date.

15. "Expiration Date" shall mean the date set out in Section II of this Agreement as the Expiration Date.

16. "Facilities" means and refers to all portions of BMC premises where health care services are provided and to which the public is invited, including but not limited to: (a) the physical structures, such as hospital buildings, (b) exam rooms, patient bedrooms, public restrooms, waiting areas, treatment rooms, laboratories (to the extent they are utilized by patients), pharmacies (in areas utilized by the public), gift shops and cafeterias within hospital buildings, (c) paths of travel and entrances serving these physical structures and (d) parking facilities under the control of BMC.

17. "Individual with a Disability" for the purposes of this agreement means and refers to an individual with a mobility disability and/or sensory disability.

18. "Individual with a Mobility Disability" means and refers to any individual who meets the general definition of "disability" and has any impairment or condition that limits or makes difficult the major life activity of moving his or her body or a portion of his or her body. "Mobility disability" includes, but is not limited to, orthopedic and neuro-motor disabilities and any other impairment or condition that limits an individual's ability to walk, maneuver around objects, ascend or descend steps or slopes, and/or operate controls. An individual with a mobility disability may use a wheelchair or other assistive device for mobility or may be semi-ambulatory.

19. "Individual with a Sensory Disability" means and refers to any individual who meets the general definition of "disability" and has any visual disability that limits or makes difficult the major life activity of seeing, and/or any hearing disability that limits or makes difficult the major life activity of hearing, and/or any speech disability that limits or makes difficult the major life activity of speaking. "Sensory disability" means and refers to visual disability, and/or hearing disability, and/or speech disability.

20. "Medical Equipment and Furniture" means and refers to, but is not limited to, examination tables, examination chairs, lift equipment, scales, radiologic and diagnostic equipment, dental chairs, ophthalmology equipment, and any other equipment used in the medical context for the provision of health care services, including diagnosis, treatment and rehabilitation.

21. "Parties" means and refers to BMC and the Claimants.

22. "Removal of Barriers," "Alteration," "Readily Achievable Barrier Removal," "Maximum Extent Feasible," and "Undue Burden" mean and refer to those terms as defined in the ADA and its regulations. It is understood that among the considerations as to whether a

particular barrier removal is readily achievable will be, but is not limited to, expense and patient care considerations, and that among the considerations as to whether a particular recommendation for a particular piece of Accessible Medical Equipment would result in an Undue Burden will be, but is not limited to, expense and patient care considerations.