

SUBAWARD AGREEMENT
BETWEEN
UNIVERSITY OF PUERTO RICO
MAYAGÜEZ CAMPUS
AND
UNIVERSITY OF NEW HAMPSHIRE
SUBAWARD AGREEMENT NUMBER 2014-2015-010

ARTICLE 1-PARTIES.

UNIVERSITY OF PUERTO RICO, MAYAGUEZ CAMPUS, a higher education institution which is a governmental instrumentality of the Commonwealth of Puerto Rico represented by Dr. Marisol Vera Colón, Director of the Research and Development Center. (UPRM)

THE UNIVERSITY OF NEW HAMPSHIRE represented by Lisa Scigliano, Senior Grant and Contract Administrator (UNH).

Active in the Central Contractor Registration (CCR): Yes No

This constitutes a Subaward for the transfer of work under the approved project granted by National Oceanic and Atmospheric Administration entitled "Advancing the Caribbean Coastal Ocean Observing System (CarICOOS)". (Grant number NA11NOS0120035)

UPRM has the intention to work in this research project in connection with the UNH, for the latter has the facilities and the skilled personnel to undertake this effort.

Both parties recognize that they are legally bound by this Subaward and expressly agree to the terms and conditions expressed hereafter.

ARTICLE 2-STATEMENT OF WORK

UNH agrees to undertake activities in accordance with the Statement of Work appended as ATTACHMENT A.

The activities there described may not be subcontracted or assigned to third parties unless written authorization by UPRM is granted.

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ARTICLE 3-PERSONNEL

The activities to be performed under this Subaward will be under the direction and supervision of Dr. Joseph Salisbury, Principal Investigator. If Dr. Joseph Salisbury ceases to serve as PI for any reason, doctor Salisbury will promptly notify UPRM and Prof. Julio Morell, UPRM Principal Investigator. Both parties shall use good faith efforts to identify a mutually acceptable replacement within thirty (30) days. If a suitable replacement cannot be identified within the thirty-(30)-day period, UPRM shall have the right to terminate this Agreement upon written notice to doctor Salisbury doctor Salisbury.

ARTICLE 4-PERIOD OF PERFORMANCE

The effective period of this Subaward is June 1, 2014 to May 31, 2015. The Completion Date may be modified or extended only by mutual written agreement of the Parties.

ARTICLE 5- FUNDING AND ALLOWABLE COSTS

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This is a Cost Reimbursement Subaward. UPRM will reimburse UNH for the work done under the terms of this Subaward up to a total amount of \$26,001.00, to be paid from the account number 30231.008.000.XXXX.210.331420220102.00. This Amount will cover all the work performed by UNH under the terms contained in the Subaward. Additional funds may be obligated only by formal written modification and upon funds received by UPRM from the sponsor (NOAA).

Costs shall be incurred only in accordance with the Authorized Total included in the Budget approved this Subaward (As stated in ATTACHMENT B). The authorized amount will cover direct and indirect costs of the Statement of Work, as detailed in the Budget (ATTACHMENT B). Costs in excess of the Authorized Total will be incurred at UNH's sole liability. The Authorized Total may be increased only by mutual written agreement duly executed by the Parties, and upon receiving the funds from the Prime Sponsor.

Subrecipient can use the subaward money only for charges that are allowed under the applicable federal cost principles.

Transfer of funds and changes in the scope or objective of the project requires UPRM previous written approval.

ARTICLE 6- PAYMENT AND INVOICES

A. UNH shall be compensated, based on invoices as provided below, for actual costs incurred in the performance of UNH Research.

Payments for performance under this Subaward shall be issued by UPRM to UNH on a cost reimbursable basis within 60 days of receipt of **proper, approved** invoice(s) at UPRM's R&D Center Accounts Payable Division. Invoices should be received by UPRM monthly.

B. To be considered **proper** the invoice must be dated and contain the Subaward identification number _____, details of the expenses UNH is invoicing (i.e: salaries, fringe benefits, equipment, travel, supplies, etc.) and an original signature of an authorized representative of UNH- that certifies that the expenses reflected in the invoice(s) are actual expenditures consistent with the terms and conditions of this Subaward.

Invoices must include the following: "I hereby certify, to the best of my knowledge, and belief, that this invoice is correct, and that all items invoiced are based upon services rendered, consistent with the terms of this contract."

C. To be considered **approved**, an invoice must contain the dated approval initial or signature of UPRM representative or his designee.

D. The total amount authorized for expenditure under this Subaward is that stated in Article 5. This amount shall no be exceeded unless this Subaward is amended to add additional funds. UPRM will not pay any amount in excess of the stated amount.

E. Invoices shall be sent to:

Vanessa Gutiérrez
Administrative Officer
CariCOOS Project
University of Puerto Rico
Mayagüez Campus
PO Box 3446
Lajas, Puerto Rico 00667

F. Payments should be made to:

Sponsored Programs Administration
51 College Road
Durham, NH 03824

G. Final invoices must be received within 60 days of the termination of this subaward and shall be marked "final". Invoices that exceed either period of performance or the obligated amount of this subaward may be considered improper invoices, and may be returned to the UNH unpaid. Acceptance and payment by UPRM of any improper invoices shall not be considered as a waiver of UPRM right to return future improper invoices.

H. If, by any reason, this Subaward is terminated; only invoices for work performed to the date of such termination will be considered proper and paid correspondingly, subject to Article 16 of this Subaward.

I. Failure of the subrecipient to comply with the terms set forth in this subagreement can result in the withholding of payment. Final Payment under this Subaward shall depend upon receipt by UPRM of all services, reports, and/or supplies set forth hereunder. UPRM has the option to conduct a final audit by an UPRM representative or by UNH's cognizant audit agency. UPRM reserves the right to withhold final payment of the Subaward until all services, reports, and/or supplies set forth hereunder are delivered.

ARTICLE 7- RECORDS AND AUDIT

A. Records of work performed under this Agreement are to be retained by the UNH for at least three (3) years after final payment and all pending matters are closed. If an audit, litigation, or other action involving the records is started before the end of the three-year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three-year period, whichever comes last. UNH agrees to give UPRM, the sponsor (UNH), the Comptroller General of the United States or of the Commonwealth of Puerto Rico, or any of their authorized representatives, access to these records and any other pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts and transcripts.

B. UNH agrees to comply with the requirements of OMB Circular A-133 or Circular A-21 as appropriate. UNH further agrees to provide UPRM with copies of any independent auditors' reports **within** 30 days of their receipt by UNH. Where the report includes instances of non-compliance with federal laws and regulations, UNH shall provide copies of responses to the report and a plan for corrective action.

ARTICLE 8- PUBLICATIONS

In the event UNH wishes to publish or present any material from work performed under this Agreement, UNH agrees to provide UPRM with a copy of the publication, or the presentation, in order to allow UPRM with a thirty (30) days

period in which to review each publication or presentation to identify patentable subject matter and to identify any inadvertent disclosure of Confidential Information (as defined Article 26 below). If either UPRM or the Prime Sponsor indicates it would like patent applications filed, UNH agrees to delay publication up to an additional sixty (60) days to permit such patent filing. Any further extension will require subsequent agreement between the parties.

UNH further agrees that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing programs funded in whole or in part with Federal funds, the UNH shall clearly state (1) the percentage of total cost of the program or project that will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

ARTICLE 9- INTELLECTUAL PROPERTY

UPRM Intellectual Property

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Title to any invention, improvement or discovery, whether or not patentable or copyrightable, which was reduced to practice or conceived and developed solely by UPRM's employees and/or students (UPRM's inventions) shall remain the sole and exclusive property of UPRM. Title and the right to determine the disposition of any copyrights or copyrightable material first produced or composed solely by employees and/or students of UPRM ("UPRM Copyrights") shall remain with UPRM. Neither UPRM inventions nor UPRM copyrights shall be subject to the terms and conditions of this Subaward.

UPRM Inventions shall be in accordance with the *University of Puerto Rico's Institutional Policy on Patents, Inventions and Their Commercialization*, Certification 132 (2002-2003) of the University of Puerto Rico Board of Trustees.

UPRM Copyrights shall be in accordance with UPR Policies contained in the *Institutional Property Regarding Intellectual Property of the University of Puerto Rico*, Certification 93-140 of the Puerto Rico Council on Higher Education.

UNH Intellectual Property

Title to any invention, improvement, discovery, whether or not patentable or copyrightable, which was reduced to practice or conceived and developed in the performance of the Subaward, and made solely by UNH Principal Investigator and/or other UNH scientists and researchers working under the supervision of the UNH Principal Investigator at UNH (hereinafter "UNH Researchers") pursuant

to this Subaward, without significant use of funds or facilities administered by UPRM, shall remain the sole and exclusive property of UNH ("UNH Invention").

UNH individually developed Copyrightable Material

Title and the right to determine the disposition of any copyrights or copyrightable material first produced or composed in the performance of UNH Research ("UNH Copyrights") solely by employees and/or students of UNH shall remain with UNH.

UNH hereby grants to UPRM an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, distribute and perform all such copyrightable materials, including software and/or informational databases, developed under this Agreement for the purpose of allowing UPRM to meet its reporting/deliverables obligations under the Prime Agreement.

ARTICLE 10- Joint Intellectual Property

Joint Inventions

The parties shall have joint title to any invention conceived or first reduced to practice jointly by employees and/or students of the UPRM; and employees/or students of UNH in the performance of the Subaward.

UNH shall notify UPRM of any Joint Invention promptly after an invention disclosure is received. Shortly following the disclosure of a joint invention, technical and patent representatives of UPRM and UNH will discuss details of handling such Joint Invention, provided that title to any patent remains in the names of both Parties.

Each Party shall have the independent unrestricted right to license non-exclusively to third parties any such Joint Invention without accounting to the other Party.

Joint developed Copyrightable Material

Copyrightable material, including software and/or informational databases, first produced or composed in the performance of the Subaward by employees and/or students of the UPRM and employees and/or students of UNH, shall be jointly owned by both Parties, who shall each have the independent, unrestricted right to dispose of such copyrightable material as they deemed appropriate, without any obligation of accounting to the other Party.

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ARTICLE 11- NAMES AND LOGOS

Neither party shall use the name or logos of the other in any advertising, sales, promotion, or other publicity matter without prior written approval.

ARTICLE 12- INDEMNIFICATION

To the extent authorized by the Constitution of Puerto Rico and the laws of the Commonwealth of Puerto Rico, UPRM is responsible for its own wrongful or negligent acts or omissions, and those of its directors, officers, employees, and agents to the extent that the same arise out of or on account of any failure on the part of UPRM to perform any work or duty required under the terms of this Agreement, or from risks of personal injury or property damage attributable to the negligence or intentional misconduct of UPRM.

UNH is responsible for its own wrongful or negligent acts or omissions, and those of its directors, officers, employees, and agents to the extent that the same arise out of or on account of any failure on the part of the UNH to perform any work or duty required under the terms of this Agreement, or from risk of personal injury or property damage attributable to the negligence or intentional misconduct of UNH.

ARTICLE 13- NO DISCRIMINATION

Both parties are equal opportunity employers and do not discriminate on the basis of sex, race, color, age, religion, national origin or handicap, veteran status, religious or political beliefs. This policy is consistent with relevant government statues and regulations, including those pursuant to Title IX of the Federal Rehabilitation Act of 1973, as amended.

ARTICLE 14- CERTIFICATIONS

Acceptance of this Subaward constitutes certification that UNH is not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

Acceptance of this Subaward constitutes certification that UNH is not delinquent on any Federal debt.

Acceptance of this Subaward constitutes certification that the UNH is in compliance with OMB Circular A-133, OMB Circular A-110 (if applicable) and OMB Circular A-21 (if applicable).

Certification Regarding Responsible Conduct of Research. Acceptance of this subaward constitutes certification that the UNH has a plan in place to provide appropriate training and oversight in the responsible and ethical conduct of research to undergraduates, graduate students and postdoctoral researches who will be supported by NSF to conduct research.

Acceptance of this Subcontract constitutes certification that to the best of the UNH knowledge and belief:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subcontractor, to any person for influencing or attempting to influence an office or employee of any agency, Member of Congress in connection with the awarding of a Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- b. If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard Form LLL- "Disclosure Form to Report Lobbying" in accordance with its instructions.

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ARTICLE 15- DISPUTES

Any dispute arising under this Subaward shall be brought to the attention of the Director of the UPRM's Research and Development Center. The Director should make a reasonable effort to resolve all issues by negotiation without litigation. However, in the events of necessary legal actions both parties agree to litigate any and all conflicts in the U.S. District Court for Puerto Rico under all applicable US laws and local Puerto Rico laws.

This Article shall not be construed to limit the administrative or legal rights otherwise available to the parties in the event of violations of the terms or conditions of this Subaward.

This Subaward establishes a relationship between the UPRM and the UNH only. It does not establish a relationship between the UNH and the Sponsor (NOAA). Nor does it establish any employment relationship between University employees and UPRM.

ARTICLE 16- TERMINATION

A. Either party may terminate or suspend this Subaward with or without cause in whole or in part upon **thirty** (30) days written notice to the other party.

B. In all instances of termination or suspension of the Subaward by UPRM the UNH shall be given written notice of the termination or suspension, including a written explanation of the reason(s) for such action. Where appropriate, the UNH shall be given reasonable time to correct any deficiency in its performance. If the deficiency is not corrected within a reasonable time, as defined by UPRM in consultation with the UNH, the Subaward may then be immediately terminated or suspended.

C. Within 60 days of the effective date of termination, the UNH shall submit to UPRM a final report, a final financial report and final invoice.

D. Upon receipt of a notice of termination or suspension as specified above, the UNH shall take immediate action to minimize all expenditures and obligations financed by this Subaward and shall cancel unliquidated obligations wherever possible. Except as provided below, no further reimbursement shall be made after the effective date of termination or suspension.

UNH shall within 30 calendar days after the effective date of termination or suspension repay to UPRM all unexpended funds disbursed by UPRM that are not otherwise obligated by a legally binding transaction applicable to this Subaward. Should the funds paid by UPRM to the UNH be insufficient to cover the UNH obligations in the legally binding transaction, the UNH may submit to UPRM within 60 calendar days after the effective date of termination or suspension a written claim covering such obligations. If this Agreement is terminated for any reason prior to the Termination Date, UPRM must reimburse UNH for all reasonable and allowable costs incurred by UNH for the Project through the date of termination. However, in no event will UPRM financial obligation for Project exceed the amount specified in Article 5.

ARTICLE 17-NOTICES

Any official notices required under the terms of this Subaward shall be hand delivered or sent by Certified Mail, postage prepaid, return receipt requested, to the appropriate individual and address listed below.

For the UPRM:

Dr. Marisol Vera

Director

Research and Development Center

University of Puerto Rico - Mayagüez
Call Box 9000
Mayagüez, PR 00681-9000
Tel: (787) 831-2065
Fax: (787) 831-2060

For the UNH:

Lisa Scigliano
Sponsored Programs Administration
51 College Road
Durham, NH 03824

ARTICLE 18- ATTACHMENTS

The Following attachments are an integral part of this Subaward:

- 1) Attachment A: Statement of Work
- 2) Attachment B: Budget
- 3) Attachment C: Subrecipient certifications

ARTICLE 19- INDEPENDENT CONTRACTOR

In performing activities under this Subaward, the UNH shall be considered as an independent contractor and shall not be entitled to any benefits applicable to employees of UPRM. The employees of the UNH shall not be considered as employees of the UPRM. Nothing in this Subaward will be deemed to create an employer-employee or principal-agent relationship between UPRM and UNH employees, consultants, agents or independent contractors.

ARTICLE 20- REPORTING REQUIREMENTS

Reports shall be submitted to UPRM as follows:

UNH Principal Investigator, Joseph Salisbury will provide UPRM Principal Investigator, Prof. Julio Morell, biannual technical progress reports. A final technical report shall be submitted to UPRM Principal Investigator within sixty (60) days of the Completion Date or earlier termination.

UNH will provide quarterly financial reports.

UNH shall notify UPRM within forty five (45) days after UNH Principal Investigator and/or UNH Researchers disclose invention(s) to UNH personnel responsible for intellectual property protection and licensing.

A final patent report shall be submitted to UPRM within sixty (60) days of the Completion Date or earlier termination. A negative report is required.

ARTICLE 21- WAIVER

No waiver of any term, provision or condition of this Subaward whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition, or of any other term, provision, or condition of this Subaward.

ARTICLE 22- MODIFICATION OR AMENDMENT

Amendments and modifications to this Subaward shall only be in writing and signed by an authorized representative of the UPRM and the UNH.

ARTICLE 23- INCORPORATED TERMS OF THE PRIME AGREEMENT

This Subaward is subject, where applicable, to the terms and conditions of the Prime Agreement.

ARTICLE 24- ENTIRE AGREEMENT

This writing contains the entire agreement of the parties and there are no promises, understandings, or agreements of any kind pertaining to this Agreement other than those written in this Agreement. This Agreement supersedes any previous written or oral representations, statements, negotiations, or agreements.

ARTICLE 25- SEVERABILITY

In the event that any term or provision of this Agreement or any application of a term or provision of this Agreement is deemed illegal, invalid, unenforceable or void, the parties agree that another provision that is legal and enforceable and achieves the same objective will be submitted. If that is not possible, then the parties shall be relieved of all obligations arising under the provision. If the remainder of this Agreement is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

ARTICLE 26- CONFIDENTIAL INFORMATION

It is expected that the Research Project object of this Subward will be carried out without any of the parties disclosing Confidential Information to the other parties. However, if in the performance of UNH's Research, UNH's Principal Investigator requires access to information either UPRM or the Prime Sponsor considers confidential ("Confidential Information"), and should it become necessary to disclose any Confidential Information, the parties will notify each other in advance of such disclosure and will negotiate in good faith the rights and obligations of the Parties with respect the protection such Confidential Information.

ARTICLE 27- EXPORT CONTROL

UPRM is subject to United States laws and regulations controlling the export of goods, software and technology including technical data, laboratory prototypes and other commodities. UPRM policy is to comply with all applicable laws and regulations including the Arms Export Control Act, the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR") and the laws and regulations implemented by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"). Diversion contrary to U.S. law prohibited. The transfer of certain technical data, services and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by UNH that it will not re-export or retransfer the data or commodities, other than prohibited information, to certain foreign countries without prior approval of the cognizant US government agency. While UPRM agrees to cooperate in securing any license that the cognizant agency deems necessary in connection with this Agreement, the UPRM cannot guarantee that such licenses will be granted. The UNH agrees to obtain permission from the US government to re-transfer or re-export for any goods, software and technology that requires such authorization and will not allow any U.S. origin goods, software or technology to be used for any purposes prohibited by United State law, including, without limitation, support for terrorism or for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

ARTICLE 28- ASSIGNMENT

This Agreement shall be binding upon and to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other party, except to a

successor to all or substantially all of its business and assets. Any attempted assignment in violation of this Article 28 is void.

ARTICLE 29- REPRESENTATIONS

In no event shall UPRM or the Prime Sponsor, its trustees, directors, officers, employees, students and affiliates, be liable for incidental or consequential damages of any kind, including economic damages or injury to persons or property and lost profits, regardless of whether UPRM or the Prime Sponsor was advised, had other reasons to know, or in fact knew of the possibility of the foregoing. This Article shall survive the expiration or earlier termination of this Subaward.


ARTICLE 30- FEDERAL FUNDING ACCOUNTING AND TRANSPARENCY ACT (FFATA)

UPRM is required, pursuant to the Federal Funding Accounting and Transparency Act (FFATA), Public law 109-282, to file a report by the end of the month following the month in which the UPRM awards a subaward greater than or equal to \$25,000.00. The legislation requires that the information on federal awards be made available to the public in a single, searchable website (USAspending.gov). If this agreement is for \$25,000 or more, subawardee must complete Attachment D. UPRM will file the report.

31- ACCEPTANCE AND VALIDITY

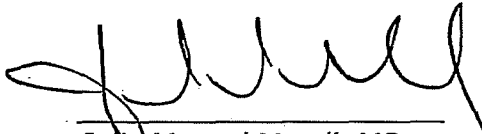
This Agreement shall not be considered accepted or effective until signed below by authorized representatives of both of the parties. By signing below, each individual warrants that he or she is authorized to legally bind his or her organization to this Agreement.

For the University of Puerto Rico Mayagüez Campus:



Marisol Vera Colón, PhD
Director *frmk*
Research and Development Center

Date: 1/16/2015



Julio Manuel Morell, MS
Principal Investigator

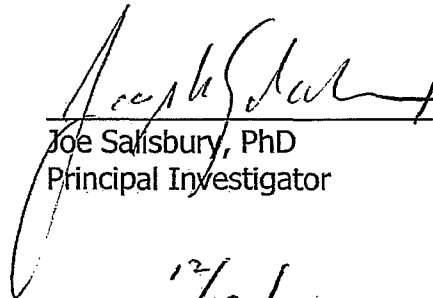
Date: _____

For the University of New Hampshire:



Lisa Scigliano
Senior Grant and Contract Administrator

Date: 12/16/2014



Joe Salisbury, PhD
Principal Investigator

Date: 12/18/14