

SUBAWARD AGREEMENT
BETWEEN
UNIVERSITY OF PUERTO RICO
MAYAGÜEZ CAMPUS
AND
UNIVERSITY OF THE VIRGIN ISLANDS

SUBAWARD AGREEMENT NUMBER 2012-2013-002

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. Walter Silva Araya, Acting Director of the Research and Development Center (UPRM)

UNIVERSITY OF THE VIRGIN ISLANDS, represented by Dr. David Hall, President

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This constitutes a Subaward for the transfer of work under the University of Puerto Rico Sea Grant College Program Institutional Plan for 2012-2014 approved by the National Oceanic and Atmospheric Administration's, National Sea Grant Program (Grant number NA10OAR4170062)

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

The UNIVERSITY OF THE VIRGIN ISLANDS agrees to undertake activities in accordance with the Statement of Work appended as ATTACHMENT A for the research project titled *U.S. Virgin Islands Marine Advisory Service* project number M-151-2-12.

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

ARTICLE 3-PERSONNEL

The activities to be performed under this Subaward will be under the direction and supervision of **Dr. Kostas Alexandridis**, University of the Virgin Islands Principal Investigator. If Dr. Alexandridis ceases to serve as Principal Investigator for any reason, the University of the Virgin Islands will promptly notify UPRM and Ruperto Chaparro, 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 the University of the Virgin Islands.

ARTICLE 4-PERIOD OF PERFORMANCE

The effective period of this Subaward is from February 1, 2012 ("The Effective Date") to January 31, 2014 (The "Completion Date"). The Completion Date may be modified or extended only by mutual written agreement of the Parties.

ARTICLE 5- FUNDING AND ALLOWABLE COSTS

This is a Cost Reimbursement Subaward. UPRM will reimburse the University of the Virgin Islands for the work done under the terms of this Subaward. The budget(s) incorporated into this Subaward are for a total of \$128,587 in federal funds. Federal funding available at this time is limited to \$62,843 for this funding period. Receipt of any prospective funding is contingent upon the availability of funds from Congress, satisfactory performance, continued relevance to program objectives, and will be at the sole discretion of the Department of Commerce. Neither the Department of Commerce nor UPRM is liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. Additional funds may be assigned only by formal written modification. Cost reimbursements will be paid from the account number 535225 / 30231.502.002.xxxx.210.331420620601.00.

Costs shall be incurred only in accordance with the Authorized Total included in the Budget approved in 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 University of the Virgin Islands' 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 of up to 10% of federal share is permitted without prior approval of UPRM. Changes in the scope or objective of the project require UPRM previous written approval.

ARTICLE 6- PAYMENT AND INVOICES

A. The University of the Virgin Islands shall be compensated, based on invoices as provided below, for actual costs incurred in the performance of this research.

Payments for performance under this Subaward shall be issued by UPRM to University of the Virgin Islands on cost reimbursable basis within 60 days of receipt of **proper, approved** invoice(s). Invoices should be received by UPRM monthly.

B. To be considered **proper** the invoice must be dated and contain the Subaward identification number, detailed current and cumulative costs, and an original signature of an authorized representative that certifies that the expenses reflected in the invoice(s) are actual expenditures consistent with the terms and conditions of this Subaward. University of the Virgin Islands shall submit financial reports evidencing expenses invoiced (i.e. financial/transaction reports generated by financial system). Cost-sharing should be reported with each invoice. 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." Payments may be withheld until receipt of required cost-share, reports, and/or close-out documentation.

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 not 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:

University of Puerto Rico - Mayagüez
Sea Grant College Program
Call Box 9000
Mayagüez, Puerto Rico 00681-9000

F. Payments should be made to:

University of the Virgin Islands
Moriah Jacobs
Accounting Department
#2 John Brewers Bay
St. Thomas, VI 00802-9990

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 University of the Virgin Islands 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 Subaward 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 and, at UPRM's option, a final audit by a UPRM representative or by University of the Virgin Islands' 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 University of the Virgin Islands 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 is later. University of the Virgin Islands agrees

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

ARTICLE 8- PUBLICATIONS

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In the event University of the Virgin Islands wishes to publish or present any material from work performed under this Agreement, University of the Virgin Islands agrees to provide UPRM with a copy of the publication, or the presentation, in order to allow UPRM with a thirty (30) day 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 above). If either UPRM or the Prime Sponsor indicates it would like patent applications filed, University of the Virgin Islands 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.

University of the Virgin Islands 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 money, the University of the Virgin Islands 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.

University of the Virgin Islands Principal Investigator shall acknowledge UPRM's support by including the project number in any publications or presentations related to this research project.

ARTICLE 9- INTELLECTUAL PROPERTY

UPRM Intellectual Property

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.

University of the Virgin Islands 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 University of the Virgin Islands Principal Investigator and/or other University of the Virgin Islands scientists and researchers working under the supervision of the University of the Virgin Islands Principal Investigator pursuant to this Subaward, without significant use of funds or facilities administered by UPRM, shall remain the sole and exclusive property of University of the Virgin Islands.

University of the Virgin Islands 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 University of the Virgin Islands Research solely by employees and/or students of University of the Virgin Islands shall remain with University of the Virgin Islands.

University of the Virgin Islands 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, for UPRM's research and educational purposes for all University of the Virgin Islands Copyrights.

ARTICLE 10- Joint Intellectual Property

Joint Inventions

The parties shall have joint title to (i) any invention conceived or first reduced to practice jointly by employees and/or students of the UPRM; and employees/or students of University of the Virgin Islands in the performance of the Subaward; and (ii) any invention conceived or first reduced by employees of University of the Virgin Islands with significant use or funds administered by UPRM.

University of the Virgin Islands 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 University of the Virgin Islands 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/or students of University of the Virgin Islands, 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.

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

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.

University of the Virgin Islands 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 University of the Virgin Islands 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 University of the Virgin Islands.

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 statutes 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 University of the Virgin Islands 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 University of the Virgin Islands is not delinquent on any Federal debt.

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

Acceptance of this Subcontract constitutes certification that to the best of the University of the Virgin Islands' 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.

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 University of the Virgin Islands only. It does not establish a relationship between the University of the Virgin Islands and the Sponsor. 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 University of the Virgin Islands shall be given written notice of the termination or suspension, including a written explanation of the reason(s) for such action. Where appropriate, the University of the Virgin Islands shall be given reasonable time to cure any deficiency in its performance. If the deficiency is not corrected within a reasonable time, as defined by UPRM in consultation with the University of the Virgin Islands, the Subaward may then be immediately terminated or suspended.

C. Within 60 days of the effective date of termination, the University of the Virgin Islands 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 University of the Virgin Islands 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.

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University of the Virgin Islands 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 University of the Virgin Islands be insufficient to cover obligations in the legally binding transaction, the University of the Virgin Islands 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 University of the Virgin Islands for all reasonable and allowable costs incurred by 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. Walter Silva Araya
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 University of the Virgin Islands:

Dr. David Hall
President
University of the Virgin Islands
#2 John Brewers Bay
St. Thomas, VI 00802-9990

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

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In performing activities under this Subaward, the University of the Virgin Islands shall be considered as an independent contractor and shall not be entitled to any benefits applicable to employees of UPRM. The employees of the University of the Virgin Islands 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 University of the Virgin Islands employees, consultants, agents or independent contractors.

ARTICLE 20- REPORTING REQUIREMENTS

Reports shall be submitted to UPRM as follows:

Dr. Kostas Alexandridis, University of the Virgin Islands Principal Investigator will provide UPRM Principal Investigator, Ruperto Chaparro, annual technical progress reports, and any other interim reports required by sponsor. A final technical report shall be submitted to UPRM Principal Investigator within sixty (60) days of the Completion Date or earlier termination.

University of the Virgin Islands shall notify UPRM within forty five (45) days after University of the Virgin Islands Principal Investigator and/or Researchers disclose invention(s) to University of the Virgin Islands 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 University of the Virgin Islands.

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 Subaward will be carried out without any of the parties disclosing Confidential Information to the other parties. However, if in the performance of the attached statement of work, University of the Virgin Islands' Principal Investigator requires access to information either UPRM or the Prime Sponsor considers confidential ("Confidential Information"), and should it became 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 University of the Virgin Islands 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 University of the Virgin Islands 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 inure 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 AND WARRANTIES

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- ACCEPTANCE AND VALIDITY

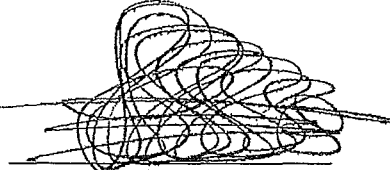
This Agreement shall not be considered accepted or effective until signed below by authorized representatives of both of the parties. By signing below, each individual warrants that he or she is authorized to legally bind his or her organization to this Agreement.

**For the University of Puerto Rico
Mayagüez Campus:**



Dr. Walter Silva Araya
Director
Research and Development Center

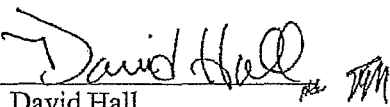
Date: October 8, 2012.



Ruperto Chaparro, MA
Principal Investigator

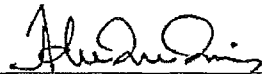
Date: 9-27-12

For the University of the Virgin Islands:



Dr. David Hall
President

Date: August 14, 2012



Dr. Kostas Alexandridis
Principal Investigator

Date: 10 August, 2012