

# REGISTRO DE CONTRATOS

TOMO 31 PÁGINA 94  
CONTRATO NUM. 2022-000167

## MEMORANDUM OF AGREEMENT (MOA)

This Memorandum of Agreement (the "Agreement") is made, entered and delivered on this day of march 11, 2022 (the "Effective Date") by and between the Caribbean Coastal Ocean Observing System, Inc., a not-for-profit corporation, incorporated and existing under the laws of the Commonwealth of Puerto Rico, represented herein by its President, Mr. Ruperto Chaparro Serrano, of legal age, married, administrator, and resident of Rincón, Puerto Rico, duly authorized in Article VII, Section 7.4 of the By-Laws of the Caribbean Coastal Ocean Observing System, Inc. ("CARICOOS INC"), hereby attached as Exhibit I to this Agreement, and the University of Puerto Rico, Mayaguez Campus ("UPRM"), a Puerto Rico public corporation created pursuant to Act No. 1 of January 20, 1966, as amended, represented herein by its Chancellor, Dr. Agustin Rullán Toro of legal age, married, engineer and resident of Cabo Rojo, Puerto Rico. CARICOOS INC and UPRM collectively hereinafter referred to as the legal Parties.

### RECITALS

**WHEREAS**, on April 21, 2016 the Parties hereto entered into a Memorandum of Understanding (the "2016 MOA") whereby CARICOOS INC, as an independent not-for-profit corporation certified as a tax-exempt organization under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and Section 1101.01 (a)(2) of the Puerto Rico Internal Revenue Code of 2011, as amended, and successor in interest of the Caribbean Regional Association for Ocean Observing ("CaRA"), was acknowledged by the UPRM as the Regional Coastal and Ocean Observing System ("Regional Association") for Puerto Rico, the U.S. Virgin Islands and the Island of Navassa (the "US Caribbean") pursuant to the Integrated Coastal and Ocean Observing System Act of 2009 (the "ICOOS Act") and agreed, among other collaborations, to redefine and modify the historical fiscal sponsorship relationship between the Parties in order for CARICOOS INC to transition into strict compliance with the requirements for certification by the National Ocean and Atmospheric Administration ("NOAA") as a Regional Information Coordination Entity ("RICE") pursuant to Section 12304(c)(3) of the ICOOS Act. Under this 2016 MOA UPRM acts as "Awardee" and "Pass Through Entity (PTE)" in the project: CARICOOS: Enhancing Coastal Intelligence for the US Caribbean (CFDA 11.012) NA16NOS0120026, actually in the final phase under a no-cost extension until May 31, 2022.

*NET*  
**WHEREAS**, effective as of April 28, 2017, CARICOOS INC, after meeting the Integrated Ocean Observing System (IOOS) Certification Criteria, was certified by NOAA as a RICE pursuant to the ICOOS Act. Accordingly, as of today, CARICOOS INC is both, the Regional Association and the Regional Coastal Ocean Observing System ("RCOOS") for the US Caribbean, and a component of the US Integrated Ocean Observing System ("System") established under Section 12304 of the ICOOS Act. The System is in charge with the mission of addressing regional and national needs for ocean information, to gather specific data on key coastal, ocean, and Great Lakes variables, and to ensure timely and sustained dissemination and availability of these so that decision-makers can take action to improve safety, enhance the economy and protect the environment.

**WHEREAS**, CARICOOS INC, with the support of the UPRM, is fulfilling its mission to timely deliver high priority, accurate and reliable ocean data and forecasts to its stakeholders in the US

Caribbean in scenarios such as: port recovery for the US Coast Guard (USCG) and Puerto Rico Port's Authority; search and rescue operations, maritime operations (for port pilots, captains and maritime facilities) and recreational activities (marinas), marine weather reporting and forecasting by the National Weather Service in San Juan and implementing coastal resource management efforts.

**WHEREAS**, CARICOOS INC is required under the ICOOS Act to complete its transition into full fiscal independence that started with the 2016 MOU in order to continue to observe its requirements as the Regional Association and RCOOS for the US Caribbean and comply with its statutory objective and mission of effectively and efficiently maintain the operational status of the System and its responsiveness in the event of a national crisis. The NOAA-IOOS Program Office in charge of overseeing compliance with, and granting funding under, the ICOOS Act is continuously monitoring the Regional Association and RCOOS of the System. CARICOOS INC, as a full fiscal independent entity, submitted a proposal and obtained an award to continue the required tasks as Regional Association and RCOOS for the US Caribbean for the US Integrated Ocean Observing System (IOOS).

**WHEREAS**, the Parties hereby acknowledge the need for continued support and collaboration between UPRM and CARICOOS INC for the further development of this initiative. Currently, the project "Enhancing coastal intelligence in the US Caribbean archipelago: The Caribbean Coastal Ocean Observing System" (Awarded to UPRM, as fiscal agent of CARICOOS INC, for period: June 1, 2016 –May 31, 2021: Award # NA16NOS0120026) is currently active ("2016 Award") and is received a no-cost extension to complete pending activities until May 31, 2022. In addition, by December 29, 2020, CARICOOS INC submitted a new proposal for funding under federal funding opportunity number NOAA-NOS-IOOS-2021 for the FY 2021 Implementation of the U.S. Integrated Ocean Observing System (IOOS), and obtained the award to continue the required tasks as Regional Association and RCOOS for the US Caribbean for the US Integrated Ocean Observing System (IOOS) (the "2021 Project").

**WHEREAS**, the purpose of this agreement is to establish a modified relationship between UPRM and CARICOOS INC that will allow CARICOOS INC to strictly comply with requirements ICOOS Act, as overseen by the NOAA-IOOS Program Office, while securing the continued support and collaboration by the UPRM under the 2016 Award and the 2021 Project.

**WHEREAS**, based on the above and to maintain continued support and collaboration, the Parties hereby intend to redefine and modify the existing relationship subject to the terms and conditions provided in this Agreement.

**NOW, THEREFORE**, with the intent to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CARICOOS INC and UPRM agree as follows:

## **ARTICLE I ENGAGEMENT AND SCOPE OF SERVICES**

1.1 Recitals. The above Recitals are hereby incorporated by reference and made an integral part of

this Agreement.

1.2 Engagement. CARICOOS INC, as legal entity acknowledged and certified as the RCOOS for the US Caribbean under the ICOOS Act, hereby establishes a collaboration with UPRM with respect to certain aspects of its research activities, operations and business (as defined in Section 1.3 hereof), and the UPRM hereby agrees to said collaboration with CARICOOS INC, pursuant to and in accordance with the terms and conditions of this Agreement as it applies to 2016 Award (#NA16NOS0120026) and its ongoing no-cost extension, and for the 2021 Project. This Agreement supersedes the 2016 MOU between the Parties.

1.3 Collaboration. UPRM – CARICOOS INC collaboration will be that deemed necessary or desirable for the fulfillment of CARICOOS INC’s mission and objectives, including, but not limited to, the following:

1.3.1 For the 2016 Award to UPRM & its No-Cost Extension:

- (i) Research and development activities by UPRM researchers and students are required for CARICOOS INC to fulfill its mission. CARICOOS INC’s operations, for developing, validating, and operating observational assets and management of derived data, design, and implementation of numerical modeling tools and the configuration and operational delivery of information technology products require a close collaboration with UPRM.
- (ii) UPRM will continue to act as fiscal agent to the project, providing back office support services, including, without limitation, (i) accounting services (e.g. receipts, disbursements, record-keeping and reporting), (ii) general secretarial and administrative services (e.g. typing, copying, filing, e-mailing, data entry, telephone handling, and facsimile transmission), (iii) management on behalf of or for the benefit of CARICOOS INC of funds received from awards granted to the UPRM as sponsor or on behalf of CARICOOS INC, (iv) human resources, (v) compliance advice and guidance related to administration and filing of any reports, audits (including OMB single audit compliance) and any other related services required by any federal grants or donations received for the benefit of the project, (vi) any and all services or activities included as a component of the indirect costs as determined pursuant the regulations and guidelines issued by the U.S. Department of Labor and any agreement between the UPRM and a government agency or department with respect to the project or CARICOOS INC; and (vii) submitting grants, contracts and sub-awards stated in proposals.
- (iii) Facilities currently utilized for administrative and scientific activities consistent with CARICOOS INC’s mission and objectives will continue to be available for said purposes. This includes access to office and laboratory space at UPRM. CARICOOS INC and UPRM will honor the existing agreement to reimburse the R& D Center for the cost of maintenance, utilities and access to the office space at the R&D Center until May 31, 2022. Said agreement may be extended to include additional facilities at UPRM if and when their use is not granted through sponsored research at UPRM.
- (iv) All other matters (personnel, compensation, fiduciary duties, project assists and equipment, etc.) under the 2016 MOU remain unaltered and in full force and effect.

The 2016 MOU prevails and controls in any discrepancies or conflicts with this 2021 MOU in any matters related to the 2016 Award.

1.3.2 For the 2021 Project:

- (i) CARICOOS INC, as a sole responsible party of its fiscal matters, submitted the proposal to NOAA and has been awarded the 2021 Project (the “2021 Project”). The 2021 Project includes two projects led by UPRM faculty to be formalized as a cooperative agreement and/or subaward, (as defined in 2 CFR§ 200.24)<sup>1</sup>, as determined by CARICOOS INC (hereinafter referred to as the “Cooperative Agreement”). UPRM will continue to charge the off-campus rate (26%) for indirect costs related to said Cooperative Agreement with the UPRM under the 2021 Project. UPRM must appoint a UPRM Liaison to lead all communications and interactions with CARICOOS INC.
- (ii) CARICOOS INC will act as its own fiscal agent to the 2021 Project, with all the responsibilities it entails.
- (iii) Research and development activities by UPRM researchers and students will continue as required to fulfill the IOOS mission given to CARICOOS INC. CARICOOS INC operations enhance the academic services that its scientists provide for UPRM and the community, including important stakeholders in the US Caribbean, such as the US Coast Guard, the Puerto Rico Ports Authority, the National Weather Service, PR Department of Natural and Environmental Resources, and the Environmental Protection Agency increasing UPRM visibility and impact. Thus, it is anticipated that qualified CARICOOS INC’s scientists may hold “ad-honorem” or contract appointments, supported by sponsored projects at UPRM, in order to serve in graduate committees, teach courses, and or participate in externally funded projects for which they serve as Principal or Co-Principal Investigators. Administrative or technical personnel currently employed at UPRM (e.g. Grant Manager) holding permanent appointments whose time and effort are compensated with CARICOOS INC’s funding will continue holding their appointments and fulfilling their responsibilities and duties with CARICOOS INC.
- (iv) Facilities currently utilized for administrative and scientific activities consistent with CARICOOS INC’s mission and objectives will continue to be available for said purposes. This includes access to office and laboratory space at UPRM. CARICOOS INC and UPRM will subscribe an agreement for the reimbursement of the cost of maintenance, utilities and access to the office space at the R&D Center effective from June 1, 2022; provided, however, that until said agreement is duly executed between the Parties, CARICOOS INC may continue the possession and use of UPRM’s facilities on a month by month basis pursuant to the terms and conditions applicable to the use of the facilities under the 2016 MOA. An analogous agreement may be extended to include additional facilities at UPRM if and when

<sup>1</sup> Definition of Cooperative Agreement:

[https://www.govregs.com/regulations/expand/title2\\_chapterII\\_part200\\_subpartA\\_subjgrp28\\_section200.24#title2\\_chapterII\\_part200\\_subpartA\\_subjgrp28\\_section200.24](https://www.govregs.com/regulations/expand/title2_chapterII_part200_subpartA_subjgrp28_section200.24#title2_chapterII_part200_subpartA_subjgrp28_section200.24)

their use is not granted through sponsored research at UPRM.

- (v) Project Assets and Equipment. The parties hereby acknowledge that all equipment and/or assets, whether within the premises of the UPRM or not, acquired by funding granted for the development and execution of the mission and objectives of CARICOOS INC observing system, including those of its predecessor CaRA and including those acquired while the UPRM serve as sponsor and/or fiscal agent of CARICOOS INC, shall be available for its use, exploit and benefit as long as needed, with priority over any allowed user, irrespective of whether or not the CARICOOS INC or its mission and objectives continue to be supported by federal awards. The use of such assets or equipment shall comply with any applicable federal or local regulation or statutes.

1.4 CARICOOS INC may provide research and administrative support to partner projects duly qualified as so, and approved by its Board of Directors or as Scope of the UPRM's Responsibility. This Agreement requires collaboration from UPRM at the level defined under the Cooperative Agreement to maintain the operation, mission, and objectives of CARICOOS INC as RCOOS of the US Caribbean under the IOOS Act. UPRM collaboration will be in accordance with local and federal laws and regulations including OMB Omni Circular 2 CFR parts 200, as applicable; and as defined in any subsequent agreements.

## ARTICLE II GENERAL PRINCIPLES AND AGREEMENTS

2.1 For the 2016 Award to UPRM & its No-Cost Extension:

- (a) Personnel. The UPRM shall utilize its own employees or personnel (the "University Employees"), equipment, facilities, and other assets to provide the services and/or collaborations set forth under this Agreement.
  - i. UPRM employees performing duties for CARICOOS INC will continue holding partial or full-time appointments at UPRM while supported by CARICOOS INC and/or other external funding sources. Administrative or technical personnel currently employed at UPRM (e.g. Grant Manager) whose time and effort are compensated with CARICOOS INC funding will continue holding their appointments and fulfilling their responsibilities and duties with CARICOOS INC.
  - ii. Qualified CARICOOS INC scientists may hold "ad-honorem" or contract appointments, supported by sponsored projects at UPRM, in order to serve in graduate committees, teach courses, and or participate in externally funded projects for which they serve as Principal or Co-Principal Investigators.
  - iii. Personnel appointments sponsored by CARICOOS INC and/or partner projects will remain as present being supervised by CARICOOS INC's Principal Investigator and/or project directors regardless of the supervisor's place of employment.
  - iv. It is agreed and understood that, except as specifically set forth in this Agreement, CARICOOS INC does not have any decision-making authority or involvement

whatsoever in the hiring, firing, training, promotion, compensation, incentives, benefits, termination, policies, procedures or any other aspect whatsoever of the employment by the UPRM of its employees. Accordingly, the UPRM hereby agrees to indemnify, defend and hold harmless CARICOOS INC, its members, officers, directors and all other affiliates, from and against any actions, proceedings, claims, losses, liabilities, damages, deficiencies, judgments, settlements, costs of investigation and other expenses (including interest, penalties and reasonable attorneys' fees and disbursements) incurred by them (collectively, "Losses") based upon, arising out of or in connection with, or otherwise in respect of any aspect of the hiring, employment or termination, of the UPRM Employees. In addition, the UPRM agrees and will at all times legally aver that CARICOOS INC is neither a joint nor co-employer for purposes of any and all legal proceedings.

- (b) Compensation: The UPRM shall have the right to reimbursement of indirect costs established for any award or sub-award or collaborative agreement managed by the UPRM on behalf or for the benefit of the project at an indirect cost rate equal to the off-campus rate determined, from time to time, pursuant to the regulations and guidelines issued by the OMB 200 CFR and any agreement between the UPRM and a government agency. It is agreed by the Parties that the services and/or collaborations to be provided by the UPRM to CARICOOS INC under this Agreement exclusively applies to grants, cooperative agreements, awards, sub-awards and/or any other type of funding for projects or programs of CARICOOS INC that entail the payment or reimbursement of indirect costs.
- (c) UPRM Fiduciary Duties: The UPRM hereby acknowledges and agrees that, as fiscal agent for the **2016 Award**, it has a fiduciary duty towards CARICOOS INC with respect to any and all monies and/or funds controlled, managed, administered or held on CARICOOS INC's behalf; all of which shall be deemed held in trust by the UPRM for the benefit of CARICOOS INC and shall not be commingled with other funds or monies of the UPRM. The UPRM shall take any and all measures to guarantee that any cash or capital advance, as defined in 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, received on behalf, or for the benefit, of CARICOOS INC are, pursuant to applicable federal and local governmental regulations, used exclusively for the purposes set forth under this Agreement and for the furtherance of the purposes and mission of CARICOOS INC and/or as required under any applicable cooperative agreement or grant. Any and all advance payment funds received by the UPRM shall be managed in accordance to federal regulation OMB 200 CFR.
- (d) Protection of Tax-Exempt Status. The UPRM agrees that any funds managed or administrated on behalf or for the benefit of CARICOOS INC pursuant to this Agreement shall not be used in any way that would jeopardize the tax-exempt status of CARICOOS INC. UPRM agrees to comply with any written request by CARICOOS INC that it cease activities which, in CARICOOS INC's sole opinion, might jeopardize CARICOOS INC's tax status, and further agrees that CARICOOS INC may immediately terminate this Agreement in the event that UPRM fails to comply with any such request.
- (e) Grants: The UPRM shall not solicit grants for itself and/or on behalf of CARICOOS INC that are earmarked for the activities of CARICOOS INC or its projects or related directly

or indirectly to the activities, objectives and mission of CARICOOS INC, unless a prior agreement is reached with the President of CARICOOS INC, or any other officer appointed on his or her behalf.

- (f) Project Assets and Equipment. The Parties hereby acknowledge that all equipment and/or assets, whether within the premises of the UPRM or not, acquired by funding granted for the development and operation of the CARICOOS INC observing system, shall be available for its use, exploit and benefit as long as needed, with priority over any allowed user, irrespective of whether or not the project continues to be supported by federal awards. The use of such assets or equipment shall comply with any applicable federal or local regulation or statutes.
- (g) Continued Collaboration. The Parties hereby agree to continue to engage in collaborative activities consistent with the CARICOOS INC's mission and objectives including, without limitation, in (i) the development and support of regional activities in the US Caribbean, (ii) facilitate educational opportunities that mutually benefit the Parties, (iii) identify and share observation and data products, (iv) collaborate on the operation and development of the observing systems in the US Caribbean region, (v) or other activities consistent with the CARICOOS INC's mission and objectives.. Nothing in this Agreement may be construed and/or interpreted as a limitation in the scope of collaboration among the Parties. CARICOOS INC will continue to collaborate with UPRM to develop and promote marine research initiatives within the US Caribbean region.
- (h) Books and Records; Financial Statements.
- i. The two parties are committed to maintaining records of all reports of timesheets for jobs, communications and all other documents related to the coordination of activities discussed in this Agreement in order that they be available for examination or copying by the Office of Internal Auditors of the University of Puerto Rico, by a firm of outside auditors hired by the University of Puerto Rico, by the Office of the Comptroller of Puerto Rico in its auditing of the University of Puerto Rico as required by law. Audits will be carried out at reasonable times during the course of the services or after their completion, in accordance with generally recognized auditing practices. Said documents will be kept for a period of no less than six (6) years or until the Office of the Controller of Puerto Rico has made its investigation, whichever occurs first.
  - ii. The UPRM shall prepare and furnish to CARICOOS INC, in a format reasonably acceptable to it and setting forth in detail the actual costs and expenses of the services, any information reasonably requested by CARICOOS INC. In addition, the UPRM shall within 45 days from the closing or end of each fiscal year of the Project (i.e. May 31), provide to CARICOOS INC a report detailing all costs and expenses of the services charged against CARICOOS INC as an indirect cost and/any other financial or administrative report or information required by an award, sub-award or collaborative agreement managed by the UPRM on behalf or for the benefit of CARICOOS INC or the Project.

- iii. The UPRM shall permit an authorized representative of CARICOOS INC to review and copy the books and records relating to the provision of the Services, during normal business hours upon reasonable advance notice.

2.2 For the 2021 Project:

- (a) 2021 Proposal. CARICOOS INC will directly, and as sole responsible party of its fiscal matters, submitted the proposal to NOAA, which has been awarded, for the 2021 Project, thus the UPRM will no longer support CARICOOS INC as its fiscal agent. As part of the 2021 Proposal, CARICOOS INC will, after approval of the 2021 Project, subject to any limitations by NOAA, engage in a Cooperative Agreement with UPRM which will include the scope of the collaboration between the Parties regarding the 2021 Project and specific details about funding, personnel, and compensation and compliance issues concerning the approved award. The Cooperative Agreement shall be, unless otherwise agreed by the Parties thereunder, consistent with this Agreement; in particular, this Section 2.2.
- (b) Personnel & Associated Compensation: a) Except as otherwise addressed in the Cooperative Agreement, CARICOOS INC will reimburse UPRM, on **no more than a quarterly** basis, for expenditures corresponding to salaries and fringe benefits of UPRM faculty and **non-faculty** employees committing time and effort to executive duties for CARICOOS INC. Said duties include, but are not limited to, CARICOOS INC management and research pertinent to the 2021 Project, and agreed upon in the Cooperative Agreement to be issued after 2021 Project is approved.; b) Non-faculty appointments at UPR/UPRM sponsored (paid for) by CARICOOS INC and/or its partner projects will remain programmatically supervised by CARICOOS INC's Principal Investigator and/or Project Directors regardless of the supervisor's place of employment, understanding this supervision power in any way contravenes the UPRM Personnel Policies Procedures and benefits.; c) It is anticipated that CARICOOS INC's scientists may hold "*ad-honorem*" or contract appointments supported with external funds, at UPRM in order to serve in graduate committees, teach courses, and/or continue their participation on current sponsored projects for which they serve as Principal Investigators. This "*ad-honorem*" or contract appointments will be granted within the UPRM policies and requirements and by the sole discretion of UPRM.
- (c) University Employees. University Employees supporting CARICOOS INC under the Cooperative Agreement shall be subject to the applicable provisions of Section 2.1 (a).
- (d) Protection of Tax-Exempt Status: The UPRM agrees not to engage as part of the Cooperative Agreement and the services to be provided to CARICOOS INC thereunder in any action that could jeopardize the tax-exempt status of CARICOOS INC. UPRM agrees to comply with any written request by CARICOOS INC that it cease activities which, in CARICOOS INC's sole opinion, might jeopardize CARICOOS INC's tax status, and further agrees that CARICOOS INC may immediately terminate the Cooperative Agreement in the event that UPRM fails to comply with any such request.
- (e) Grants: CARICOOS INC may act as fiscal agent on behalf of UPRM for sponsored projects aligned with CARICOOS INC's activities, mission and objectives that are solicited by the UPRM with the prior written consent of CARICOOS INC or that



otherwise are deemed by the Parties not directly or indirectly related to the activities, objectives and mission of CARICOOS INC. Proposals for such projects shall be submitted by CARICOOS INC on behalf of UPRM after review and approval by the CARICOOS INC's Board of Directors or as otherwise authorized under its governance structure. The Principal Investigator shall be responsible for meeting all the necessary UPRM requirements and acquiring all the necessary UPRM approvals through the institutional proposal routing system BEFORE being considered by CARICOOS INC. CARICOOS INC will reimburse UPRM for faculty and staff salaries, student stipends, and applicable indirect costs. UPRM shall designate a unique account number on its financial system for projects administered through this modality. The Parties shall enter into separate agreements for the management of each project.

- (f) First Negotiation: Recognizing UPRM as one of the leading repositories of scientific and technical expertise in areas pertinent to coastal ocean observing in the US Caribbean and CARICOOS INC position as Regional Association, RCOOS and RICE under the ICOOS Act, each Party hereby grants to the other a right of "first negotiation" in order to collaborate through cooperative agreements, sub-awards or as otherwise agreed between the Parties in future projects directly or indirectly related to coastal ocean scientific matters within the US Caribbean. For purposes of this Agreement, said right of first negotiation shall mean that the Parties shall negotiate exclusively and in good faith for the a period of 90 days after notice to the other of the project opportunity on how to collaborate in said project; provided, that after lapse of said period either party may be entitled to solely carry out or independently submit a proposal for the applicable scientific project without any further obligation to the other. Notwithstanding, UPRM hereby agrees not to undertake a project or action that may impair or challenge CARICOOS INC's position as Regional Association, RICE or RCOOS under the ICOOS Act.
- (g) Project Assets and Equipment: The 2021 NOAA Cooperative Agreement with CARICOOS INC will establish what is related to the ownership of the project assets and equipment committed to the CARICOOS INC functions under the agreement. Nevertheless, except otherwise provided in the Cooperative Agreement or under federal regulations, the Parties agree in this matter the following:
- i. CARICOOS INC will be responsible of all operation and maintenance of such assets and equipment.
  - ii. CARICOOS INC will maintain a public liability insurance to cover any claim related to any damage that may be caused by any of these assets or equipment that includes UPRM as additional insured by endorsement.
- (h) Continued Collaboration: Research and development activities by UPRM researchers and students will continue, as required, to fulfill the IOOS mission and objectives given to CARICOOS INC. CARICOOS INC operations enhance the academic services that its scientists provide for UPRM and the community, including important stakeholders in the US Caribbean, such as the US Coast Guard, the Puerto Rico Ports Authority and the National Weather Service, increasing UPRM visibility and impact. Under the CARICOOS INC-UPRM Collaborative Agreement, CARICOOS INC scientists will continue the ongoing close collaboration with Co-Principal Investigators at UPRM who along with their research teams which will have access to data, observational capabilities

and technical support from CARICOOS INC.

- (i) About Books and Records: UPRM will be responsible for maintaining all records and documentation related to the activities associated with the Cooperative Agreement and any other award or contracts extended by CARICOOS INC to the UPRM. Additional details or special conditions will be provided in the Cooperative Agreement to be executed after the 2021 Project is approved.

### ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS

3.1 Representations and Warranties. The Parties hereby acknowledge, warrant, and represent to each other that:

- a. It has full legal power, capacity, and authority to execute, deliver and perform this Agreement and to consummate and perform the obligations stated herein.
- b. The execution and delivery of this Agreement and the performance of the obligations stated herein have been duly and validly authorized, and no other proceedings are necessary to authorize the execution and delivery of this Agreement or the performance of the obligations set forth herein.
- c. This Agreement constitutes a valid and legally binding obligation of the Parties, enforceable against it in accordance with its terms and conditions, except as such obligations and their enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.
- d. The execution, delivery and performance of this Agreement, or the performance of the obligations stated herein, will not: (i) violate any provision of its charter or other organic document; (ii) require the UPRM or CARICOOS INC to obtain any consent, approval or action of, or make any filing with or give any notice to, any governmental body or any other person, except for filing of the Agreement with the Office of the Comptroller of Puerto Rico; (iii) violate, conflict with or result in the breach of any of the terms of, result in a material modification of the effect of, or otherwise cause the termination of or give any other contracting party to a contract the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under any contract to which the UPRM or CARICOOS INC is a party or by or to which any of their respective properties may be bound or subject, or result in the creation of any lien upon the properties of the UPRM or CARICOOS INC pursuant to the terms of any such contract in such a way as would have a material adverse effect upon the Parties or its business, operations, or activities; (iv) violate any order of any governmental body against, or binding upon, the UPRM or CARICOOS INC or upon their respective properties or businesses, operations, or activities; (v) violate any law of any governmental body; or (vi) violate or result in the revocation or suspension of any license or permit in such a way as would have a material adverse effect upon the Parties.
- e. CARICOOS INC represents that none of its members or directors has any economic interest in the grants that may be awarded to UPRM under this agreement and that if any economic interest arises, UPRM will be notified before the grant is awarded.

3.2 Covenants of the UPRM. During the term of this Agreement, the UPRM agrees to:

- a. Maintain all of its facilities related to any collaboration under this Agreement in reasonably good working condition, with all necessary utilities for its intended use;
- b. Comply with all laws, rules, regulations and orders applicable to the UPRM and CARICOOS INC and the operation of their respective businesses and activities; and
- c. Maintain all licenses, permits or other authorizations required to be maintained for the performance of any collaboration under this Agreement.

**ARTICLE IV  
TERM AND TERMINATION**

4.1 Term. This Agreement shall be effective upon signature by both parties, and shall continue in effect until 5 years or if terminated with 30 days' written notice by either Party as stated below in clause 4.2.

4.2 Termination. Either Party may terminate this Agreement by giving 30 days' written notice to the other Party. The foregoing notwithstanding, if CARICOOS INC reasonably determines that UPRM actions under this Agreement may jeopardized CARICOOS INC's tax-exempt status or its qualification and accreditation as RCOOS by NOAA under the ICOOS Act, CARICOOS INC may terminate this Agreement immediately upon written notice to the UPRM.

4.3 Effect of Termination. Upon the termination of this Agreement, the UPRM shall deliver to CARICOOS INC copies of all written data and information which is related to the ongoing business, operations and activities of CARICOOS INC, or which was generated by or for CARICOOS INC in connection with the performance of the services or collaborations during the term hereof, except to the extent any such data has previously been delivered to CARICOOS INC.

**ARTICLE V  
MISCELLANEOUS**

5.1 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any Party to any other Party pursuant to this Agreement shall be in writing and shall be hand-delivered or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile transmission, addressed as follows:

	UPRM	CARICOOS INC
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Address:	Call Box 9000 Mayagüez, PR 00681-9000	PO Box 3446 Lajas, PR 00667
Attention:	R&D Center Director	Chairperson of the Board of Directors

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be hand-delivered, mailed, or transmitted by facsimile transmission in the manner described above, shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or the answer back being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

5.2 Relationship of the Parties. Nothing in this Agreement shall be construed to create a partnership or joint venture between the UPRM and CARICOOS INC for any purpose, and it is expressly agreed that, in performing its obligations hereunder, the UPRM shall have the relationship defined by this Agreement and the Cooperative Agreement.

5.3 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto without the prior written consent of the other party.

5.4 Indemnity. Each of the parties consents to hold harmless and exonerate the other party from responsibility in the case of any judicial or extrajudicial claim, and to provide indemnity for damages and/or mental or moral anguish that may be suffered by any person or legal entity, when said damages are alleged to have been caused by the negligent, reckless, and/or culpable actions, conduct, or omissions of each party, its agents or employees, when such damages shall have occurred totally or partially during the realization of this Agreement.

5.5 Liabilities. Neither the parties shall assume any liabilities to each other. As to liability to each other the parties do not waive any defense as a result of this Agreement. Likewise, this provision shall not be construed to limit the parties' rights, claims or defenses which arise as a matter of law pursuant to any provisions of this Agreement. Additionally, this agreement shall not be construed to limit the sovereign immunity of the Government of Puerto Rico and the University of Puerto Rico, as applicable.

5.6 Governing Law. This Agreement and all issues arising hereunder shall be governed by, construed under, and enforced in accordance with the laws of the Commonwealth of Puerto Rico without giving effect to the principles of conflict of laws therein.

5.7 Venue. All actions or proceedings arising in connection with this Agreement shall be tried

and litigated in, and each Party hereby submits to the exclusive jurisdiction of, the courts of the Commonwealth of Puerto Rico and the Federal court located in San Juan, Puerto Rico.

5.8 Additional Actions and Documents. Each of the Parties hereto agrees to take or cause to be taken such further actions, to execute and deliver or cause to be executed and delivered such further documents and instruments, and to use its best efforts to obtain such consents as may be necessary or desirable in order to effectuate fully the purposes, terms and conditions of this Agreement.

5.9 Severability. If any part of any provision of this Agreement is declared invalid by a court of competent jurisdiction, this Agreement shall be construed as if such part did not exist, and the balance hereof shall be given full force and effect.

5.10 Force Majeure. In the event that the performance of the obligations under this Agreement are impeded by reason of Force Majeure, the parties shall be released from their obligations and neither party shall be responsible for any damage sustained and have no further recourse against the other party. Force Majeure shall mean fire, earthquake, hurricane, flood, Act of God or natural disaster, epidemics or pandemics, nuclear explosions, strike, work stoppages, or other labour disturbance, riots or civil commotions, vandalism, war or other act of any nation, terrorism, power of government, or government agency, or any other cause which is beyond the control of the parties.

5.11 No Third-Party Beneficiaries. This Agreement is intended for the benefits of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

5.12 Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of all of the parties hereto.

ART  
5.13 Entire Agreement. This Agreement, including other writings referred to herein or delivered pursuant hereto, constitutes the entire agreement of the Parties with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. To the extent there is any conflict between this Agreement and the Cooperative Agreement, with respect to the 2021 Project and the 2021 Proposal, the Cooperative Agreement to be executed by the Parties shall control; provided, that for all other purposes the terms and conditions of this Agreement shall remain in full force and effect.

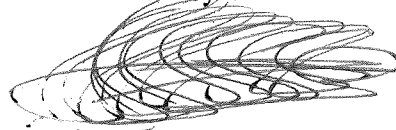
5.14 Amendments. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, or discharge is sought.

5.15 Registry. No service shall be rendered or received based on the terms of this agreement until it is presented for registry in the Office of the Controller of the Commonwealth of Puerto Rico according to Law No. 18, dated October 30, 1975.

*[signatures in the following page]*

AT

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the Effective Date.



CARIBBEAN COASTAL OCEAN OBSERVING SYSTEM, INC  
Name: Ruperto Chaparro Serrano  
Title: President & Chairperson  
EIN: 66-0842495



March 11, 2022

UNIVERSITY OF PUERTO RICO, MAYAGUEZ CAMPUS  
Name: Agustin Rullán Toro  
Title: Chancellor  
EIN: 66-0433761

Recomendado para firma:



Ramon F. Abreu Baez, BsChE, PE, JD

**Exhibit 1**

**(From CARICOOS By Laws, no change from 2016 MOA)**

(iii) ensure the adequacy of financial disclosures and internal controls. The Treasurer of CARICOOS shall be an ex-officio member of this committee.

6.4 *Program Committees.* Program Committees are authorized by the Board of the Directors and serve at the pleasure of, and report to, the Executive Director. These committees may handle operational or management issues and serve in either advisory or functional roles for the Executive Director. Reports on the activities of program committees are provided to the Board of Directors through the Executive Director. At a minimum, the following Program Committees shall be established by the Board of Directors:

- a. Data Management and Communications Committee (DMAC). This committee will oversee development of the data management and communications component of CARICOOS and ensure its alignment with the IOOS DMAC Plan.
- b. Education and Outreach Committee. This committee is the primary body to provide guidance and assistance to CARICOOS in matters of education, outreach and public awareness.
- c. Observing System Committee. This committee shall aid in the technical and scientific development of CARICOOS observations. It will be responsible for the development of standards, *QA/QC* procedures, consideration of and recommendations on technology improvements necessary to meet present and future needs, and development of requirements for scientific research and pilot projects. It shall have members that are experts in various fields of ocean observing.
- d. Products and Services Committee. This committee shall be responsible for identifying the products and services necessary to meet the requirements of CARICOOS user community. It shall define the initial user input and feedback processes and develop the products and distribution mechanism.

ARTICLE VII

Chairperson: Executive Officers

7.1 *Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies.* The Board of Directors may elect or appoint a Chairperson of the Board of Directors, a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as they may determine. Except for the Chairperson of the Board of Directors, any such offices of the Corporation may but need not be held by a Director. Any two or more offices may be held by the same person except the office of President and Secretary.



The Board of Directors shall have power to appoint such other officers and agents as the board may deem necessary for the transaction of the business of CARICOOS. Unless otherwise provided in these Bylaws, or in a resolution of the Board of Directors, each such officer shall hold office until the Annual Meeting of the Board of Directors next succeeding his or her election, and until his or her successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the Corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any Regular or Special meeting.

7.2 *Powers and Duties of Executive Officers.* The officers of CARICOOS shall have, in the management of the Corporation, the powers and duties prescribed in these Bylaws and such other powers and duties as may be prescribed by resolution of the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his duties.

7.3 *Chairperson of the Board.* The Chairperson of the Board of Directors shall be selected by the Board of Directors from among its members. The Board of Directors may elect a Vice-Chairperson of the board from among its members. The Chairperson or in his or her absence the Vice-Chairperson, if any, shall preside over all meetings of the Board of Directors. The Chairperson shall be an ex-officio member of all Committee meetings, and will have the discretion to be a voting member and, if so, will be counted in the quorum of such meetings.

7.4 *President; Chief Executive Officer.* The President shall be the Chief Executive Officer of CARICOOS and, shall have, subject to the control of the Board of Directors, general charge and supervision of the affairs of the Corporation; he or she may sign and execute in the name of the Corporation, all deeds, mortgages, bonds, contracts or other instruments duly authorized by the Board of Directors; and shall have and perform such other duties, as from time to time may be assigned to him or her by the Board of Directors.

7.5 *Vice-President.* During the absence or disability of the President of the Corporation, the Vice-President, or, if there be more than one, the Executive Vice-President shall have all the powers and functions of the President. The Vice-President shall perform such duties as may be prescribed by the Board of Directors or the Chairperson from time to time.

7.6 *Secretary.* The Secretary shall keep the minutes of all meetings of the Board of Directors and of the members, in books provided for the purpose; he or she shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be custodian of the records of the Corporation; shall see that the corporate seal is affixed to all documents as may be necessary; and, shall perform all duties incident to the office of a secretary of a corporation and such other duties as from time to time may be assigned to him or her by the Board of Directors or the Chairperson.

7.7 *Treasurer.* The Treasurer, subject to the direction of the Board of Directors, shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit or cause to be deposited in the name of the Corporation, all moneys or other valuable effects in such banks, trust companies or other depositories as shall from time to time be designated by the Board of Directors; he or she shall render to the Chairperson and to the Board of Directors, whenever requested, an account of the financial condition of the Corporation, and in general, he or she shall perform all the duties incident to the office of the treasurer of a corporation, and such other duties as may be assigned to him or her by the Board of Directors or the Chairperson.

7.8 *Compensation.* Officers shall receive no compensation, either directly or indirectly, for performance of their duties as Officers of CARICOOS, unless reasonable compensation is unanimously approved Board of Directors subject to any guidelines or restrictions applicable to not for profit corporations. The Officers may be reimbursed for any reasonable expenses, disbursements or liabilities made or incurred by such person for or on account of the Corporation directly related to their duties as Officers.

## ARTICLE VII

### Executive Director: Staff

8.1 *Executive Director.* The position of Executive Director shall be established by the Board of Directors, based on an approved job description. The Executive Director may, but need not be, the President or Chief Executive Officer of CARICOOS. The Executive Director has day-to-day responsibilities for the organization, including carrying out the organization's goals and policies. The Executive Director shall attend all meeting of the Board of Directors, report on the progress of the organization, answer questions of the Board of Directors, and carry out other duties as proscribed. The Executive Director serves at the pleasure of the Board of Directors. He or she shall also report to the President, if not the same person.

8.2 *Staff.* The Board of Directors may establish additional staff positions based on the requirements of CARICOOS to fulfill its mandate. The Executive Director shall prepare and submit for approval of the Board of Directors all job descriptions for such positions. The Executive Director shall be responsible for advertising, interviewing, hiring, supervising, and evaluating all CARICOOS staff, with guidance of the Board of Directors.

8.3 *Compensation.* The salary of the Executive Director and Staff, if any, shall be fixed from time to time by resolution of the Board of Directors. In all cases, any salaries received by the Executive Director shall be reasonable following guidelines applicable to not-for-profit corporations and given in return for services actually rendered to or for the Corporation.

## ARTICLE IX

### Indemnification

9.1 CARICOOS shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a Director, Officer, employee or agent of CARICOOS, or is or was serving at the request of CARICOOS as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding