

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”), having an effective date of January 1, 2024 (the “Effective Date”), sets forth the understanding between the University of North Carolina at Wilmington, a constituent institution of the University of North Carolina, a higher education system, and duly organized under the laws of North Carolina, having its principle office at 601 South College Road, Wilmington, North Carolina 28403 (“UNCW”), and the Committee to Honor America’s Veterans, a not-for-profit corporation organized under the laws of North Carolina, having its principal office at 700 Sunset Boulevard, Sunset Beach, NC 28468 (“CHAV”), regarding each Party’s interest in this MOU and the rights and obligations to accomplish these goals. Each Party hereto shall be referred to as a “Party” and the Parties together shall be referred to as the “Parties”.

I. Background:

As part of her graduate studies at UNCW, former graduate student, Caelin Quigley, worked on a project at UNCW using software tool, Microsoft Power BI, (“Microsoft Tool”), to help organize and label data provided by CHAV that allows a user to locate specific individuals and the brick associated with the particular individual on a locator map (“Application”) housed on the Microsoft Power BI server. CHAV provides a spreadsheet with the requisite data; UNCW reviews the data, uploads it, and then publishes the same using the Microsoft Tool. Once the data is published, CHAV’s website users may easily search and locate specific bricks and related individuals.

Since Ms. Quigley’s graduation, UNCW personnel, specifically Kenneth McMillan and Ron Vetter (“UNCW Personnel”), have agreed to monitor and maintain the Application for the benefit of CHAV and its users subject to the terms and conditions set forth below. Therefore, the Parties agree to the following terms and conditions.

II. Ownership

The Parties acknowledge the following:

Microsoft owns the Microsoft Tool. UNCW pays a license fee and licenses the Microsoft Tool from Microsoft for a variety of applications across the UNCW campus, including without limitation, the Application, which is housed on a Microsoft server. CHAV owns the data identified on the spreadsheet provided to UNCW, and UNCW owns the Application. UNCW recognizes CHAV’s operational dependence on this application and should the services described in this document become non-viable for UNCW to perform UNCW will make the application code available as freeware to CHAV in order that CHAV can continue to utilize it for the purposes intended.

III. Purpose:

The purpose of this MOU is to clarify and document how each Party will work to ensure that the Application and CHAV website work together to allow users the ability to quickly locate bricks at the Sunset Beach Town Park Memorial ("Memorial") that have been donated in honor of friends and family members ("Purpose"). The Memorial still has several hundred brick spaces available for donations which require a method to update the data base, which uses the Application. This MOU establishes the obligations of both Parties to ensure efficient methods are employed for future updates of the bricks at the Memorial and to maintain reasonable and necessary updates to the Application.

IV. General Provisions:

The Parties recognize that the collaboration to affect the Purpose is dynamic in nature and will require flexibility between the Parties as specific goals and targeted outcomes may shift during the Term (hereinafter defined) of this MOU. As such, each Party agrees to use reasonable efforts to accomplish the Purpose while applying the tenets of reasonableness and good faith.

V. Responsibilities/Tasks of CHAV:

CHAV will be responsible for the following tasks:

1. Maintain and update the brick listing and identification spreadsheet relating to the Memorial ("Spreadsheet").
2. Provide the Spreadsheet to UNCW biannually by May 31st and November 30th of each calendar year that this MOU is in effect.
3. Ensure the columns contained in each version of the Spreadsheet match

Prior versions of the Spreadsheet as the features in the Microsoft Tool are reliant on the naming conventions of the original Spreadsheet.

4. Provide and maintain appropriate security and backup of the master brick locator Spreadsheet as required by applicable policies, procedures and laws.
5. Provide free access to the public to the website concerning the brick locator at the Memorial.
6. Provide and maintain appropriate security, maintenance, and updates to the Memorial website on a regular and reasonable basis.

7. Provide and update contact information for the CHAV representative responsible for the foregoing responsibilities. As of the date of this MOU, the CHAV representative is Lou DeVita, having an electronic mail address of deesatplay@atmc.net.
8. Pay all costs and fees incurred to support and accomplish the foregoing tasks.

VI. Responsibilities/Tasks of UNCW:

UNCW will be responsible for the following tasks:

1. Update the Application to include new or amended information included on the Spreadsheet provided by CHAV to UNCW. UNCW shall update the Application on a bi-annual basis following receipt of the Spreadsheet.
2. Maintain the Application to ensure that it is available for CHAV website users on a regular basis expressly subject to the following: a) periodic updates; b) backup requirements; c) availability and compatibility of the Microsoft Tool; and d) CHAV maintaining and providing access to its website.
3. Secure and backup the Application and associated data in accordance with applicable and existing policies and procedures of UNCW and the State of North Carolina.
4. Correct and update the Application as reasonably required, to include new data and to correct any abnormalities reported by CHAV to UNCW.
5. Provide a link to CHAV to allow it to access the Application and related information on a read only basis in perpetuity. Authorship and editing rights to the Application and its related data, including the right to alter, amend, or revise the Application and its relevant data shall remain solely with UNCW without reducing user functionality.
6. Pay all costs and fees incurred relating to its license of the Microsoft Tool and maintenance, security, and updates to the Application.
7. Provide and update contact information for the UNCW representative responsible for maintaining and updating the Application. As of the date of this MOU, the UNCW representative is Kenneth McMillian, having an electronic mail address of mcmillank@uncw.edu.

VII. Confidentiality:

- a. Either Party may provide Confidential Information to the other Party (a “Disclosing Party”) and either Party may receive Confidential Information from the other Party (a “Receiving Party”).
- b. “Confidential Information” means any information owned or possessed by the Disclosing Party, in any medium or format, including oral, written and digital communications, provided to, or obtained by, the Receiving Party (including its respective directors, officers, employees, agents and representatives), including but not limited to, that which relates to, concerns or arises out of research, product plans, new chemical entities, products, services, developments, inventions (whether or not patentable), processes, designs, drawings, data, trade secrets, methods, know-how, and marketing or finances. Documents containing confidential information shall be clearly marked as “Confidential”. Confidential Information does not include information that (i) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party’s files and records prior to the time of disclosure, (ii) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any improper inaction or action of the Receiving Party, (iii) is expressly approved by the Disclosing Party, in writing, for public release, (iv) comes into the possession of the Receiving Party from a third person that was not, to the Receiving Party’s knowledge, subject to any confidentiality restriction, or (v) is independently developed by the Receiving Party without reference to or reverse-engineered from the Disclosing Party’s Confidential Information.
- c. The Receiving Party hereby agrees not to use or disclose Confidential Information of the Disclosing Party except to carry out the Purpose; provided, however, that UNCW may publicly disclose Confidential Information in the form of presentations, publications, or the like for educational and teaching purposes in support of UNCW’s mission; and further provided that Confidential Information of the Disclosing Party may be used or publicly disclosed by the Receiving Party upon the written permission of the Disclosing Party. Furthermore, the Receiving Party may disclose Confidential Information of the Disclosing Party if required by law, including, with out limitation, the North Carolina Public Records Act, or court or governmental order or process, provided the Receiving Party gives the Disclosing Party prompt prior written notice of such requirement to permit the Disclosing Party to seek a protective order or other appropriate relief prior to the Receiving Party releasing the Confidential Information. The Receiving Party agrees that it will take all reasonable measures and take the necessary precautions to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent the Confidential Information from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, but in no circumstances less than reasonable care. The Receiving Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidential

Information of the Disclosing Party immediately after Receiving Party learns of such misuse or misappropriation.

- d. The Receiving Party's obligation of confidentiality of Confidential Information shall be for a period of three (3) years following the latter of the expiry or termination of this MOU.
- e. Any of the Disclosing Party's Confidential Information provided to or otherwise obtained by the Receiving Party in connection with this MOU will be promptly returned to the Disclosing Party, accompanied by all copies of such Confidential Information (regardless of medium) upon the written request of the Disclosing Party, or in the alternative, the Receiving Party will certify that it, and all persons to whom the Receiving Party has disclosed the Confidential Information has destroyed all Confidential Information without retaining the same.
- f. Nothing in this MOU is intended to nor shall it grant any rights under any patent, copyright, trademark, trade secret, methodology, know-how or other intellectual property right of the Disclosing Party, nor shall this Agreement grant the Receiving Party any rights in or to the Disclosing Party's Confidential Information, except as otherwise set forth herein or as set forth in a separate writing executed by the authorized representative of each Party.

VIII. Intellectual Property, and Research Data

8.1 Prior Existing Intellectual Property: Each Party acknowledges and agrees that, as between the Parties, each Party is and shall remain the sole and exclusive owner of all right, title, and interest in and to its intellectual property that is conceived and/or reduced to practice prior to the Effective Date of this MOU, and that this MOU does not affect such ownership. Each Party acknowledges that it acquires no rights under this MOU to the other Party's Intellectual Property other than the limited rights specifically granted in this MOU.

8.2: MOU Intellectual Property: Each party acknowledges and agrees that, as between the Parties, each Party is and shall remain the sole and exclusive owner of all right title and interest in and to its intellectual property conceived and/or reduced to practice subsequent to the Effective Date providing such intellectual property is not directly implicated by this MOU.

IX. Liability/Indemnification

Each Party shall be responsible for its own actions/inactions relative to carrying out its obligations as set forth hereunder and neither Party shall be liable to the other Party for any cause of action whatsoever except for actions of gross negligence or willful misconduct. Neither Party shall, under any circumstances, be liable to the other Party for indirect, incidental, special, punitive or consequential damages resulting from or in any way related to this MOU. Both

Parties shall, however, retain the right to take any and all actions they believe are necessary to protect their interests.

X. Term

This MOU shall remain in effect from the Effective Date until terminated by either Party ("Term"). Either party may terminate the MOU at any time, with or without cause, effective upon thirty (30) days' written notice to the other party. If terminated a method of continuing application operation and usage by CHAV should be negotiated by the parties.

XI. Assignment/Amendment/Non-waiver

This MOU shall be binding upon and for the benefit of the undersigned Parties, their successors and assigns, provided that this MOU may not be assigned or transferred without the prior written consent of both Parties. This MOU may only be amended by a writing signed by authorized representatives of both Parties and failure to enforce any provision of this MOU by a Party shall not constitute a waiver of any term hereof by such Party.

XII. Miscellaneous

- 12.1 Modification and Amendment. The terms of this MOU may not be amended or modified except by a written agreement duly executed by the Parties.
- 12.2 Participation in Similar Activities. Notwithstanding the terms of this MOU, this MOU in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, entities and/or individuals.
- 12.3 Use of Trademarks and Press Releases. The Parties shall not use the marks or names of the other Party for any purpose without prior written permission of the mark or logo holder. No press release, nor any other written statements in connection with the work performed under this MOU intended for use in public media shall be made by either Party without the other Party's written consent, which shall not be unreasonably withheld. In any such statements, the Parties shall describe the scope and nature of their participation accurately and appropriately.
- 12.4 Entire Agreement. This constitutes the entire agreement between the Parties as of the Effective Date with respect to the subject matter of the MOU and supersedes any previous written or oral representations, statements, negotiations, or agreements.
- 12.5 No Agency or Employment Relationship. Nothing in this MOU shall be construed to create an agent, fiduciary, legal representative, joint venture, partnership, franchise, business opportunity, employment or similar relationship between the Parties. Each Party shall be deemed an independent contractor of the other.

- 12.6 Severability. If any part of this MOU is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other terms, covenants, conditions, and agreements in this MOU.
- 12.7 Applicable Law. The Parties agree to comply with all laws, ordinances, acts, rules and regulations applicable to this MOU. This MOU and the Parties shall be governed by, construed by, enforced by and disputes settled in accordance with the laws of the State of North Carolina.
- 12.8 Notice. Any notice required or permitted to be given to the parties hereto shall be in writing and deemed to have been properly given if delivered in person, mailed by certified mail, return receipt requested, or mailed by a nationally recognized carrier such as UPS or FedEx, to the other party at the appropriate address as set forth below. Other addresses may be designated in writing by the parties during the term of this Agreement. The addresses to be used are as follows:

UNCW:

ATTN: Dr. Ron Vetter
Dean of the College of Science and Engineering
University of North Carolina at Wilmington
601 South College Road
CB#5642
Wilmington, NC 28403
Telephone: 910-962-3930
Email: vetterr@uncw.edu

With a copy to:

Julia Wicker Lee, *Associate General Counsel*
Office of General Counsel
University of North Carolina at Wilmington
601 South College Rd., CB#5662
Wilmington, North Carolina 28403-5662
Telephone: 910-962-2130
Email: leejw@uncw.edu

CHAV:

ATTN: Lou DeVita,
Assistant Treasurer
Committee to Honor America's Veterans
Address: 700 Sunset Boulevard North
Sunset Beach, NC 28468
Telephone: 910-269-6416

Email: deesatplay@atmc.net

With a copy to:

John F. Corbett, Jr.
Chairman
Committee to Honor America's Veterans
700 Sunset Boulevard North
Sunset Beach, NC 28468
Telephone: 571-251-8778
Email: johnfcorbett@atmc.net

11.9 Authority. Each Party represents and warrants that the person signing below on behalf of the respective Party has the requisite authority to execute this Agreement and bind such Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal as of the Effective Date with the intent to be legally bound thereby.

University of North Carolina at Wilmington

Approved By:



Name: Dr. Ron Vetter

Title: Dean of the College of Science and Engineering

Committee to Honor America's Veterans

Approved By:



Name: John F. Corbett, Jr.

Title: Chairman, Committee to Honor America's Veterans