ALGONQUIN COLLEGE

Non-Binding Agreement – not a Contract

1. **Non-Binding Agreements** are agreements that are not legally enforceable. These may include:

   o A Letter of Intent, Memorandum of Understanding/Agreement, Term Sheet, and a Conditional Offer

2. A **Non-Binding Agreement** is a document used to help both parties form a Binding Contract. Reasons for using a **Non-Binding Agreement** include:

   o Not all terms and conditions have been determined but the parties want to document an agreement outline.

   o The Parties wish to document an agreement but the agreement is conditional on certain conditions or milestones being met.

   o If the Parties feel that "time is of the essence" a **Non-Binding Agreement** can formalize the relationship between parties before they develop a Binding contract.

3. **A Non-Binding Agreement** may become Binding with the drafting of a new document that states it is supplemental to the **Non-Binding Agreement**, and together, they include all the necessary elements of a Binding contract. Together, the two documents become Binding on the Parties.

4. When parties DO intend an agreement to be Binding, circumstances may cause the document to be **Non-Binding** (or invalid), including:

   o Force Majeure, Frustration, Uncertainty, Illegality, Impossibility, Misrepresentation, Mistake, Fraud, Undue Influence, Legal Capacity, Lack of Consideration

5. A **Non-Binding Agreement** may actually be Binding on the Parties. The defining factor will be the original intent of the parties.

   o If the parties originally intended to enter into a binding agreement and assuming the agreement contains all essential contract elements, it will be binding on the parties even if it has been drafted in the form of a Memorandum of Understanding or Memorandum of Agreement.

6. A **Non-Binding Agreement** may be Binding if the Parties include an exchange of consideration (something of value) within the document. If the intention of the Parties is for the document to be Non-Binding, state in the document recitals that the Parties intended the document to be **Non-Binding** and ensure that there is no exchange of consideration.