

	<b>Procedure History</b>
<b>Procedure No.</b> AD040	Revised:
<b>Approving Jurisdiction</b> President	Reviewed:
<b>Original Signed By</b> David Atkinson	Effective: 10 08 12
<b>Administrative Responsibility</b> Vice President of jurisdiction involved in a particular Memorandum of Understanding or Letter of Intent	Approved: 10 08 11

## Memorandum of Understanding / Letter of Intent

### Procedure

#### DEFINITIONS

The definitions of “Contract”, “Letter of Intent” and “Memorandum of Understanding” below reflect the commonly accepted meanings of these terms. However, as indicated in the Policy document governing these Procedures, different areas of the University use these forms of agreements for different purposes and with different legal intents. The result is that, for the purposes of this Policy and related Procedures, MOU’s and LOI’s are given identical treatment.

**Contract:** A contract is

- (i) an agreement between two or more parties intended to create legal obligations that a court may enforce. The contract will normally be comprised of an exchange of promises between the parties. If a party executes an agreement under seal, it may be bound even though the other party has not given any promise in exchange.
- (ii) A contract may be subject to conditions; that is, the parties' obligations to perform it may be suspended pending the occurrence of certain events, including further approvals, whether by third parties or officials of the parties to the contract whose authority is greater than that of the individuals who signed the contract.

**Letter of Intent:** A Letter of Intent is a document which spells out the general interests of an organization involved in a potential undertaking with another organization(s). It provides an indication of intent to act and allows the originator of the Letter and its potential partners to move forward in their negotiations. Terms of the Letter of Intent may or may not be legally binding, depending on the intent of the parties and the wording contained in the document.

**Memorandum of Understanding:** A Memorandum of Understanding is an agreement negotiated between two or more parties that outlines the responsibilities to be assumed by each of the parties to achieve certain goals or results. Terms of the Memorandum of

Understanding may or may not be legally binding, depending on the intent of the parties and the wording contained in the document.

Other terms used by the University, equivalent to a Memorandum of Understanding, include: Agreement of Understanding, Memorandum of Cooperation.

**Unit:** The term “Unit” is used within this Policy and related Procedures documents to describe any of the University’s Faculties, schools, divisions, departments and other operating entities with responsibility for organizing and managing some aspect of the University’s activities.

For the purpose of this Policy and Procedures, the dean, manager or supervisor of a unit will be referred to as its Head.

## **PROCEDURES**

### **PREAMBLE:**

As indicated in the Policy document associated with these Procedures, MOU’s and LOI’s are used for different purpose and with different legal intents by various units within a University. For that reason the term MOU’s and LOI’s will be used interchangeably and will be referred to collectively as MOU/LOI’s.

MOU/LOI’s at Kwantlen tend to fall into one of two categories:

- (1) A document that outlines an intended line of action on the part of Kwantlen and other parties without imposing a legally enforceable obligation on any of the parties; for example, an agreement that the University will engage in activities to encourage the exchange of students and/or faculty and staff and/or collaborative research activities between Kwantlen and another postsecondary institution; while such an agreement is desirable, it would be counterproductive for Kwantlen to treat this as a legally enforceable arrangement in the form of a contract.
- (2) A document that outlines an intended line of action on the part of Kwantlen and other parties with the understanding that it is preliminary to the eventual negotiation of more formal arrangements between the parties; for example, an agreement to enter into an arrangement with a supplier to the University that will eventually require the dedication of substantial University resources such as staffing, space or a financial contribution in exchange for certain consideration from the supplier. In the Academic and International areas, a broad form of an MOU with a particular institution(s) is often used to establish a general, non-binding outline of the intent of both parties. More detailed agreements (either in the form of Addenda to the MOU or articulation agreements under Policy B15) are then used to outline detailed, binding arrangements with respect to a specific area of activity, such as a course or program.

The intent of the parties involved will dictate whether or not an MOU/LOI is legally binding. If it is the intent of the parties that the MOU/LOI is not to be legally binding, then this must be

clearly stated in the document. Suggested wording is included in "Contents of MOU/LOI" section, page 4.

## **INITIATION OF MOU/LOI**

- (1) Any employee within the University, hereinafter referred to as the “Initiator,” may initiate the development of an MOU/LOI.

## **CONSULTATION**

- (2) Initiator discusses the prospective MOU/LOI with the Associate Vice President/Dean/Executive Director of the area ultimately responsible for the activities addressed by the MOU/LOI. If the Initiator is an Associate Vice President/Dean/Executive Director, then discussions will take place with their Vice President. Part of this discussion will involve whether an MOU/LOI form of agreement is appropriate in the circumstances. Consultation with the Office of Organization Risk Assessment may assist in determining the appropriateness of the form of agreement.
- (3) The Associate Vice President/Dean/Executive Director or Vice President, as appropriate, gives verbal approval to the Initiator to proceed with preliminary investigations.
- (4) The Initiator engages in a consultation process with other departments that may be involved in or affected by the proposed agreement. It is expected that, in all cases of agreements involving international partners, appropriate consultation will be undertaken with the department responsible for managing international contracts

## **BUDGET**

- (5) Initiator identifies resources required for the project (financial, human, equipment, space) and the source of funding for those resources, either from within the Unit’s budget, other parts of the University or from the partner institution(s). A form is provided as Appendix A for this purpose.

## **CONTENTS OF MOU/LOI**

- (6) An MOU/LOI is expected to include the information identified below; further information may be submitted to achieve additional clarity:
  - a) Mission envisaged by the parties to the MOU/LOI
  - b) Specific purpose and scope envisaged by the parties
  - c) End results as agreed by the parties
  - d) Responsibilities of each of the parties
  - e) Detailed Information about the commitment of resources (financial, human, space, equipment, etc.) and funding arrangements to cover the cost of the resources, both by Kwantlen and the other party(parties); refer to “Budget” section above, .
  - f) Agreement to negotiate in good faith
  - g) Agreement to use best or reasonable efforts to undertake obligations
  - h) Depending upon the stated intent of the parties the MOU/LOI may be legally enforceable. If the parties do not wish to be legally bound by the MOU/LOI, then the parties must state clearly and unambiguously their intention not to be legally bound (see suggested wording below\*)

- i) Arrangements regarding communications about the MOU/LOI document or its contents
- j) Issues of confidentiality in terms of sharing information about the MOU/LOI with third parties
- k) Length of the agreement
- l) Arrangements for renewal of the agreement
- m) Process to be followed in the event of disagreement between the parties
- n) Conditions under which either party can terminate the agreement
- o) Liability and any other insurance issues
- p) Contact persons
- q) Legal names of parties
- r) Authorizing signatures

\*"The parties to this MOU/LOI acknowledge that the parties are engaged in preliminary discussions which may or may not lead to a more formal agreement; as such, this MOU/LOI is not binding on either party."

## **BRIEFING DOCUMENT**

- (7) A "Briefing Document" (attached as Appendix B) must be prepared which provides, in summary form, a context and rationale for the MOU/LOI as well as a clear indication of the benefits to the University, commitment of resources, risk involved, etc. The document should include, at least, the following:
- a) Summary statement of mission, purpose and scope of the MOU/LOI
  - b) Background of the proposed partner institution
  - c) Background to the development of the partnership arrangements
  - d) Advantages to the University
  - e) A list of the individuals/departments within the University that have been consulted
  - f) Potential negative impacts of the MOU/LOI on the University (e.g. limits flexibility in negotiating with others, etc.)
  - g) Reason for using the MOU/LOI form of agreement as opposed to other forms such as a contract or articulation agreement
  - h) A brief overview of the commitment of resources and sources of funding
  - i) Commitment of resources by partner institutions: financial, human, space, equipment and an estimate of budget amounts involved
  - j) Nature of the risk assumed by Kwantlen in entering into this agreement
  - k) Consequences if MOU/LOI is not pursued by Kwantlen
  - l) Whether or not Board and/or Senate approval is required
  - m) A copy of the signature page attached as Appendix C

## **APPROVALS**

- (8) Each MOU/LOI will be signed by the appropriate signing officer(s) according to the University's Signature Policy E9. As well, each "Briefing Document" will include a "Signature Page" (Appendix C) which will act as evidence of the due diligence that is expected to be carried out at each level of review and approval. The Signature Page is an internal document and will not form part of the MOU/LOI.

For the purposes of identifying required approvals for the internal “Signature Page” document, the University has determined that MOU/LOI’s will fall into one of four categories:

- Domestic, Type A Agreements
- Domestic, Type B Agreements
- International, Type A Agreements
- International, Type B Agreements

Domestic Type A Agreements will exhibit all of the following features:

- The activity contemplated by the MOU/LOI is a regular and ongoing part of the Unit’s operations
- Resources required (financial, human, equipment, space) to satisfy the requirements of the MOU/LOI are within the approved budget of the Unit and do not exceed \$25,000
- The MOU/LOI is not binding on the University

Domestic Type B Agreements will exhibit any of the following features:

- The activity contemplated by the MOU/LOI is not a regular and ongoing part of the Unit’s operations
- Resources required are beyond the budget of the Unit or, if within budget, exceed \$25,000
- The MOU/LOI is binding on Kwantlen

International Type A Agreements are used for exploratory arrangements and will exhibit all of the following features:

- Agreement is not binding on the University
- Agreement does not require a commitment of University resources
- Agreement does not involve course credit articulation or any form of program linkages

International Type B Agreements are used for more formal arrangements and will exhibit any of the following features:

- Agreement is binding on the University
- Agreement requires a commitment of University resources
- Agreement involves articulation or some form of program linkage

<b>SIGNATURE REQUIREMENTS FOR VARIOUS TYPES OF MOU/LOI's</b>				
<b>SIGNATURE</b>	<b>DOMESTIC TYPE A</b>	<b>DOMESTIC TYPE B</b>	<b>INTERNATIONAL TYPE A</b>	<b>INTERNATIONAL TYPE B</b>
Associate Vice President, Dean or Executive Director of Units Consulted (where applicable)	required	required	required	required
Associate Vice President, Dean/Executive Director of Unit responsible for MOU	required	required	required	required
Vice President, Academic (see NOTE below)	not required	required	not required	required
Vice President, Fin. & Admin. (see NOTE below)	not required	required	not required	required
Vice President. Of Unit responsible for MOU (if not incl. above)	not required	required	not required	required
Senior International person	not required	not required	not required	required
President or designate	not required	required	not required	required

NOTE: The signature of the Vice President, Academic affirms that he/she approves the MOU/LOI and, in particular that any academic issues including, where necessary or desirable, consultation and/or approval of the Senate or Board has been undertaken.

The signature of the Vice President, Administration affirms that he/she approves the MOU/LOI and, in particular that any financial, legal, human resource or organizational risk issues and, where necessary or desirable, consultation and/or approval of the Senate or Board has been undertaken.

## **CONTROL OF MOU'S/LOI'S**

- (9) The Associate Vice President/Dean/Director's Office responsible for the MOU/LOI will forward the final copy of the MOU/LOI including all required signatures to the Office of the University Secretary.
- (10) The Office of the University Secretary will maintain a central repository of all MOU/LOI's enacted by the University which will include:
- The original, signed copy of the MOU/LOI
  - A register indicating the date of the agreement, the parties to the agreement, a brief description of the purpose of the MOU/LOI, the expiry date of the agreement and procedures required to either renew or cancel the agreement.
  - The Office will monitor any requirements to renew, expiry dates and other, similar provisions and so inform the responsible area

## **RELATED POLICY**

Refer to [\*Memorandum of Understanding / Letter of Intent\*](#) Policy AD040



**SUMMARY OF RESOURCES REQUIRED (FINANCIAL, HUMAN,  
EQUIPMENT, SPACE) AND SOURCE OF FUNDING**

(to be provided by Department of Finance Operations)

**LETTERS OF AGREEMENT / MEMORANDA OF UNDERSTANDING**  
**BRIEFING DOCUMENT**

This Briefing Document has been designed to accompany each MOU/LOI that is brought forward to the University for approval. It will also act as a check list to determine the work that needs to be done before the MOU/LOI document itself is drawn up. The "Response" section is used by the person completing the form to respond to each of the "Issues" identified in the form. The "Comments" section is used by any of the reviewers of the Briefing Document to note their assessments or concerns.

<b><u>ISSUE</u></b>	<b><u>RESPONSE</u></b>	<b><u>COMMENTS</u></b>
<b><u>BACKGROUND</u></b>		
Provide a summary statement of the mission, purpose and scope of the MOU/LOI		
Describe the background of the proposed partner institution		
Describe the background to the development of the draft agreement		
Describe the advantages to the University of entering into this draft agreement		
Describe the consequences to the University if the MOU/LOI is not pursued		

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<b><u>ISSUE</u></b>	<b><u>RESPONSE</u></b>	<b><u>COMMENTS</u></b>
<b><u>CONSULTATION</u></b>		
Describe the consultation process that has been undertaken with other departments and list the departments and individuals involved; if this draft agreement involves international partners, the International Programs and Exchanges Department must be consulted		
<b><u>AGREEMENT FORM</u></b>		
Describe why an MOU/LOI form of agreement has been used as opposed to other forms such as a contract; this is particularly critical if the agreement is binding on both parties		
If this draft agreement involves articulation of curriculum with another AGREEMENT FORM, continued academic institution, then a MOU/LOI may be appropriate unless arrangements are far enough advanced that a Program Articulation Agreement should be prepared (under the Articulation Policy)		

<p>Is this draft agreement within the normal operating parameters of your unit (Faculty, department, division, etc.) or is it unique to your area? Describe the situation.</p>		
<p>Is Senate or Board approval required?</p>		
<p><b><u>BUDGET</u></b></p>		
<p>Are the resources (human, financial, physical) required by this draft agreement available within your BUDGET, continued approved budget? Ensure that a summary of the resources and sources of funding associated with this draft agreement has been included in the draft MOU/LOI on the form provided as part of these Procedures. Ensure that the Finance Department reviews and approves the summary.</p>		
<p><b><u>OR</u></b></p>		
<p>If the resources (human, financial, physical) required by this draft agreement are not entirely available within your approved budget, provide a summary outline of the costs and anticipated sources of funding associated with this draft agreement on the form provided. Provide details of items relating to your unit budget and BUDGET, continuing those relating to the broader University or other sources. Include details of</p>		

any related funding and expenditures relating to the partner institution. Ensure that the Finance Department reviews and approves the summary.		
<b><u>RISKS</u></b>		
Describe the economic risks associated with this agreement (as measured by the human, financial and physical resources required).		
Describe the academic risks associated with this agreement.		
Does this agreement include an indemnification clause (e.g. promise to take financial responsibility for losses incurred by the other party) and, if so, has it been approved by the Province? (the Office of Organization Risk Assessment should be consulted)		

**SIGNATURE PAGE (to be attached to Briefing Document)**

**This "Signature Page" forms part of the Briefing Document that accompanies each MOU/LOI. It acts as evidence of the due diligence that is expected to be carried out at each level of review and approval.**

**Signature of Associate Vice President / Dean / Executive Director of Units consulted (where applicable)**

Department \_\_\_\_\_ Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

Department \_\_\_\_\_ Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

Department \_\_\_\_\_ Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

**Signature of Associate Vice President / Dean / Executive Director (or equivalent position) of Unit responsible for MOU/LOI**

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

(signature indicates that draft agreement and briefing document/checklist/approvals have been reviewed, that risks have been appropriately identified and that Associate Vice President/Dean/Director recommends the agreement)

**Signature of Vice President, Academic (required only for Domestic, Type B and International, Type B Agreements)**

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

(signature affirms that he/she approves the MOU/LOI and, in particular, that any academic issues including, where necessary or desirable, consultation and/or approval of the Senate or Board has been undertaken)

**Signature of Vice President, Finance and Administration (required only for Domestic, Type B and International, Type B Agreements)**

Signature \_\_\_\_\_

(signature affirms that he/she approves the MOU/LOI and, in particular that any financial, legal, human resource or organizational risk issues and, where necessary or desirable, consultation and/or approval of the Senate or Board has been undertaken. )

**Signature of Senior International Official** (required only for International, Type B Agreements)

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

(signature indicates that the International Programs and Exchanges Department is in agreement with this LOI/MOU)

**Signature of President (or designate)** (required for all Domestic Type B and International, Type B Agreements)

Signature \_\_\_\_\_