

Share Academy

Guidance on developing a Memorandums of Understanding & Partnership Agreements



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Introduction:

Our scoping exercise into the relationships and projects that occur between museums and academics, students, and Higher Education Institutions (HEIs) revealed that all of the museums interviewed had experience of collaboration. These ranged from informal student placements, through to assisting researchers and doctoral students, and more formal museum and academic partnerships.

An overriding feature of the projects and relationships was that the majority were based on informal contacts. Many placements, projects, and partnerships were created without structured forward planning and agreements. This form of relationship development was deemed to be successful for the museums and academics, students, and HEIs involved but did lead to misunderstandings during the process potentially putting projects and future relationships at risk. Informal setups can lead projects to deviate from their original purpose and mean potential risks are not always anticipated. A Memorandum of Understanding or Partnership Agreement helps smooth out any potential issues at the outset and ensures all partners have the same understanding – not always the case with verbal agreements.

To ensure that projects are successful it is important to plan a project, from initiation right through to evaluation and the project close. Guidance on project planning has been developed by Share Academy and this can be downloaded at the London Museums Group website.

What is a Memorandum of Understanding or Partnership Agreement?

A Memorandum of Understanding (MoU) or Partnership Agreement (PA) is a non-binding, non-exclusive, mutually beneficial agreement with a partner body. It sets out a statement of the responsibilities, activities, outcomes, and lead contacts between the parties involved in the project.

If suitable, following completion of a Memorandum of Understanding, the parties may go on to enter into a legally binding agreement to deliver services but the Memorandum or Agreement itself is not legally binding.

Terminology – Memorandum of Understanding, Partnership Agreement, or something different?

In our second iteration of Share Academy we funded 15 projects between museums and academics at UCL, and the University of the Arts London. From this we discovered an important difference between the two Higher Education Institutions involved. This was the terminology of how the partnerships between the museum and academic were expressed.

One Higher Education Institution was happy with the terminology of Memorandum of Understanding and as such these agreements were quickly agreed and signed off by all parties. But, within the other HEI the use of the terminology Memorandum of Understanding caused some concern. The HEI's development were concerned that by creating an MoU there was a risk that a quasi-legal agreement was being established. Therefore, they requested that all the MoU's were reviewed by them before being signed off. On investigation it was the fact that the partners were using, in the eyes of that HEI, the more formal term – Memorandum of Understanding - rather than the agreement itself that was the problem. So, an equivalent 'Partnership Agreement' would have been acceptable and would not have needed to be submitted to the development team.

What we learnt from this was it is important to get to know how your academic partner's organisations administrative structures and idiosyncrasies. Each HEI will have its own procedures, structures, and processes that must be adhered to for success partnerships to flourish. So, it may be easier to produce an informal Partnership Agreement rather than a Memorandum of Understanding in some circumstances. But, it is what is contained within these agreements or MoUs that is important and the advice below is relevant to whichever is agreed upon by you and your partner.

What should it contain?

It is important that a MoU/PA contains all the relevant information to create a foundation on which a project will work and be successful. You are likely to have discussed all of its contents when first broaching the project idea to your museum or academic partners but the MoU/PA will ensure all partners have the same understanding and provide a reference point throughout the project. However, it is also important to understand that as the project develops there may be aspects of the work that you had not initially discussed – as such there needs to be an understanding of the 'spirit' of the document as well as its contents. This will ensure that people can proceed with confidence rather than being concerned with avoiding activity that is not covered in the MoU/PA.

There is no agreed formal structure for a MoU/PA and there is a wide degree of flexibility on how you structure and word your document, but it may be that one or more of the parties involved are likely to have an organisational style that they must adhere to. If this is the case it must be agreed in advance who is the 'lead' organisation and then to follow their organisational styles or template. It is likely within Higher Education Institutions that department, facilities, and/or their parent body will have organisational guidance on constructing Memorandums of Understandings or Partnership Agreements.

It is important to write in plain English so it is easily understood - and not easily misunderstood - by all partners, and any staff joining the project after it starts. However, breaking a MoU/PA into the following three distinct areas is advisable:

- a) Purpose of the Memorandum of Understanding/Partnership Agreement
- b) General Agreements
- c) Specific Agreements

At the formation of the Memorandum/Agreement you will have agreed on the Purpose and are likely to have most of what could be considered 'General Agreements' in place. It is the third area - 'Specific Agreements' - where you may, or may not, be prepared and is thus optional. These three areas and contents are explained in more detail below.

1. Purpose of the Memorandum of Understanding

Parties: State who the Memorandum/Agreement covers, stating their full legal name and any associated company or charity registration details

Reason: State why you are writing the Memorandum/Agreement, for instance to clarify practical and operational aspects of the working relationship.

Project Background/Introduction: Set out the background to your project and the drivers for your organisations to decide to work together. It should include information on whether the project is part of a wider programme, for instance Share Academy, and the timeframe for the project.

2. General Agreements

Aims and Objectives: Set out what the aims and objectives of the project are to be. This may seem obvious but it is here that many informal relationships encounter difficulties. If they are not explicitly defined at the beginning partners may have mismatched expectations.

Spirit of the agreement: It is important, particularly for new people joining the project or external people, to be able to grasp the wider intent and the level of mutual goodwill that is intended by the document. This section would include an acknowledgement that each party intends working collaboratively and in the genuine best interests of the other – that this is an agreement born out of a desire to share risk, resources and results.

Synopsis of overall activities: Briefly set out what the main activities will be. Remember to assign each party their respective activities so everyone is clear as to what is expected of them - there is nothing worse than getting half way through a project and realising that each party thinks the other is responsible for key activities.

Term, Termination, and Review: Set out the exact timeframe for your project and MoU/PA to cover; state how you will resolve disputes; and how you will review it. For instance, could include points such as:

- This Memorandum of Understanding/Partnership Agreement will be valid from the date of the signature to 31st October 2015; after this date it will be reviewed and following the review, may be renewed by mutual agreement of the Parties.
- The terms of this Memorandum may be amended at any time by mutual written consent.
- The Parties will endeavour to resolve any disputes amicably by negotiation.

3. Specific Agreements

In this area you have the opportunity to include more specific details about the project in terms of activities, people, marketing, intellectual property, etc. Keep in mind that the Memorandum/Agreement should not be the project plan and does not need to go into the level of detail expected by Project Management and Project Planning documentation. It may be that you have not agreed all of the details but if you have these can be recorded in your Memorandum/Agreement or referenced as an appendix to it.

Responsibility: In this section you need to set out the key responsibilities of each party - they may include 'service and maintenance' items (for examples IT), management, marketing, interpretation, creation, and evaluation. Sometimes legal conditions may be attached to some responsibilities within a project, for instance data collection and protection. If any of the parties are required to sign documents then describe them. You may wish to attach any such documents in an appendix, so these documents are referred to in the MoU/PA but separate to it.

Key contacts: Record the lead people responsible for the project. You do not need to list all of the participants for each of the project partners. It is prudent to assign responsibility to roles, followed by named contacts ie Museum Director,

Rhiannon Smith, etc to ensure that there is ownership of the project within the role as well as with the named person.

Financial obligations/budget: If there is funding attached to the project state where it is coming from, what it covers, and how it will be distributed. Set out who is the overall organisation responsible for budget management.

Dissemination/Publications: Do you need to disseminate your project to a wider audience? How are you going to do this? Set out which party is responsible for what - it is likely that in museum and academic partnerships different audiences will need to be addressed in different ways.

Branding: How is the project to be branded? What is to be included in the branding? Make sure that both parties are aware and approve any use of each others logo, name, or other designation.

Intellectual Property: It is essential when any work is being created to designate intellectual property rights beforehand. Who will have ownership of the work and how will it be used? If you are working with students they may have different expectations. Remember, be fair, be clear, and set out what you expect at the start.

Other/General: Any other information you may have agreed upon but is not included in the above.

Legal disclaimer: For clarification it is also useful to include a statement setting out that MoU/PA does not imply any legal partnership, venture, or contract; or that the MoU/PA does not affect each parties ability to work with other parties.

Notes

Remember a MoU/PA is not a legal document and therefore is non-binding and should not be onerous for the parties to agree on and enter into. The legal status of the Memorandum/Agreement should be stated within it.

If you are writing a MoU/PA as a precursor to entering into a legally binding contract with other organisations you should always consider seeking legal advice as once the tenets of law have been applied the legal status of a MoU/PA may alter.

Most of what will be written in your Memorandum/Agreement will have been discussed and decided beforehand in the exploration, planning and preparation meetings. The MoU/PA cannot in itself deliver consensus – it is the documentary record of consensus – the creation of which provides you with an opportunity to clarify any issues where ambiguity may exist. The best results emerge when the creation of a MoU/PA is perceived as a joint creative process. It is likely that you will have to develop your Memorandum/Agreement over a series of meetings, phone conversations, or emails to reach agreement.

You should always check with partners whether there is already a standard template of a Memorandum of Understanding/Partnership Agreement that they are required to follow and consider using this. Whether to follow this template should be agreed in advance between all the parties involved, or if there is a lead partner you may decide to follow their existing templates. The important thing to remember is that the MoU/PA, and its structure, content, and meaning, must be agreed and be supported by all parties involved.

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