

Archived Decisions for the Portfolio Holder for Leisure and Culture 2014



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ARCHIVED PORTFOLIO HOLDER DELEGATED DECISION

1.	2014-01-08 BUDGET VIREMENT
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(Pages 3 - 22)

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Decisions taken by Individual Portfolio Holders

Councillor A. York
Portfolio Holder for Leisure and Culture

Decision Published 8 January 2014
Decision effective from 14 January 2014

Budget Virement

DECISION	Reason for Decision
To approve the budget virement in respect of the MEND budget for 2013/14.	In accordance with Financial Standing Orders.

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Is this virement Temporary or Permanent? *(delete as appropriate)*

Budget Increases

Description	MEND Budget – See Attached
Financial Code	CS102
Existing Budget	£
Increase Required	£ 64,030
Revised Budget	£ 64,030

Budget Reductions/ Increased Finance

Description	Mend Budget
Financial Code	CS102 9611 CSMYTIME
Existing Budget	£
Reduction/Increased Income	£ 64,030
Revised Budget	£ 64,030

If new or additional grant received please provide further details

Description	Mytime MEND Grant Via CYPP
Grant Ref	PHW012013
Duration of Grant	31 March 2014
Other Detail	See Attached

Budget Profile

Year	Budget Profile Detail
2012-13	12ths

Please provide detail, e.g. 12 equal instalments or 4 equal instalments from June 09 to Sept 09, etc., or attach details.

Other Financial Implications (future years capital/ revenue – Do not leave blank)

None

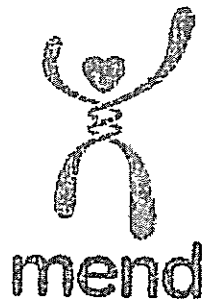
Approvals

Signatures

Required in all cases	Head of Service		Date	19/11/13
Required in all cases	Head of Finance, and Corporate Performance		Date	27/12/13
£25,001 to £75,000	Portfolio Cabinet Member A. KIL YGRW		Date	03/01/14
£75,001 - £300,000	Cabinet Minute Ref.		Date	
Over £300,000	County Council Minute Ref.		Date	

FMS Updated (office use only)		
Accountant: Signature	Print Name	Date
Copy of Authorised form returned to Head of Service		
Signature	Print Name	Date

COPY NUMBER IN GRANT FILE



Mytime MEND AGREEMENT

This Mytime MEND Agreement comprises this page, the following page, the subsequent signature page and Annexes 1, 2, 3, 4, 5 and 6 (the "Agreement") and is made between:

- (1) **Mytime MEND Limited**, incorporated and registered in England and Wales with company number 08334662, a wholly owned subsidiary of Mytime Active Limited, whose registered office is at Linden House, 153-155 Masons Hill, Bromley, Kent, BR2 9HY ("Mytime MEND"); and
- (2) **Powys County Council (CYPP)** incorporated and registered in England and Wales whose registered office is at Powys County Council, County hall, Llandrindod Wells, Powys, LD1 5LG (the "Programme Organiser").

(together, the "Parties").

BACKGROUND

Mytime MEND has carried out extensive research into the causes and effects of childhood obesity. It has devised a series of programmes (the "MEND Programmes") under which children and their parents / carers can be supported and educated to overcome their obesity and other associated physical and psychological challenges. The MEND Programmes include MEND 2-4, MEND 5-7 and MEND 7-13, targeting children of each specified age group. The MEND Programmes do not aim for rapid weight loss but rather focuses on health outcomes and providing a foundation for healthy living.

Mytime MEND has also devised and can provide related interventions and services, including One Day Childhood Obesity Awareness Training and Talking About Weight training for frontline staff, various primary prevention interventions, programme delivery and ancillary consulting, project management assistance and monitoring and evaluation services.

For the purposes of this Agreement, "Programme" means the combination of MEND 5-7 and MEND 7-13 Programmes licensed by the Programme Organiser under this agreement, as defined in Annex 2.

The Programmes have been devised by Mytime MEND so that it can be implemented at any suitable premises by any sufficiently qualified third party, acting under guidance from Mytime MEND. The Programme Organiser wishes to be appointed and Mytime MEND agrees to appoint the Programme Organiser to establish, run and deliver the Programme to children in the location given below, on the terms set out in this Agreement.

THE PARTIES NOW AGREE AS FOLLOWS:

Appointment

Mytime MEND hereby appoints the Programme Organiser to establish, run and deliver the Programmes in the location (defined in Annex 2) on the terms and conditions of this Agreement, as further set out in Annex 1. The Programme Organiser accepts this appointment on the same terms and conditions.

Number of places

The appointment of the Programme Organiser under this Agreement entitles it to deliver the Programmes to the maximum number of children, as set out in Annex 2, over the Term. Each child shall be accompanied by a family member or carer and shall attend the Programme sessions, typically held over a 10 week period, with a measurement session at enrolment and completion.

Funds

In consideration of the obligations of the Programme Organiser under this Agreement, MEND shall provide the Programme Organiser with a portion of the funds made available to it by Public Health Wales for the running of the Programme as a contribution to the Programme Organiser's costs including staff, venue and recruiting costs and some physical activity equipment.

Term

The term of the appointment shall be from the date of signature of this Agreement to March 31st 2014, unless terminated earlier by either Party for one of the reasons set out in clause 15 of Annex 1. The Programme Organiser shall aim to have delivered the Programmes to the full number of children it is entitled to (see "Number of Places" above) by the end of the Term. Should the Programme Organiser wish to increase the number of programmes or training specified within this Agreement an additional Agreement shall be signed.

Entire Agreement

This Agreement and the Manuals constitute the entire Agreement between the Parties and supersede all prior Agreements, discussions, or arrangements between them in connection with the subject matter of this Agreement. In the event of any conflict between this Agreement and the Manuals, the terms of this Agreement shall prevail.

THIS AGREEMENT IS EXECUTED ON 28th June 2013

Signed by

for and on behalf of Mytime MEND LTD Director

.....

Date

Signed by

for and on behalf of Powys County Council Senior Partnership
(CYPP) Manager

28/6/13.....

Date

Annex 1

Terms and Conditions of appointment

DEFINITIONS	2.	MYTIME MEND'S OBLIGATIONS
<p>1.1 The definitions in this clause apply throughout this Agreement:</p> <p>Children's Packs: the products provided by Mytime MEND for the purposes of the Programmes listed in Annex 2. The contents of the Children's Packs may be amended by Mytime Mytime MEND from time to time.</p> <p>Confidential Information: this Agreement, the Manuals, any improvements or modifications to the Programmes devised by the Programme Organiser, all documentation relating to Public Health Wales and any other information which is disclosed to the Programme Organiser by Mytime MEND in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential) or shall otherwise come into the hands of the Programme Organiser in relation to the Programme.</p> <p>Initial Mytime MEND Training: training on the background and aims of the Programme, Programme Management and how to run each aspect of the Programmes, further details of which are given in Annex 3.</p> <p>Licensed Trade Marks: the Mytime MEND Trade Marks, Public Health Wales logos and any additional trade or service marks or applications for the same licensed to Mytime MEND in connection with the Programme and set out in Annex 6.</p> <p>Manuals: the manuals setting out in detail the operations and procedures for running, implementing and delivering the Programmes, compiled by Mytime MEND and updated from time to time.</p> <p>MEND Kit and Exercise Equipment: the equipment provided by Mytime MEND to the Programme Organiser under clause 2 of this Annex 1, details of which are specified in Annex 2 with contents listed in the additional Programme annexes.</p> <p>MEND Trade Marks: the trade mark "MEND" registered in England & Wales under number 2348319 (in classes 9, 16, 18, 21, 24, 25, 26, 28, 35,36,41 and 44), and/or any other trade or service marks notified to the Programme Organiser from time to time, whether registered or unregistered (refer to Annex 4).</p> <p>MEND-trained Staff: the employees of, subcontractors to or volunteers for the Programme Organiser who have attended either the Initial MEND training or subsequent MEND training courses provided by MYTIME MEND under clause 5.</p> <p>OMMS: Mytime MEND's proprietary web-based Operations Management and Monitoring System designed to facilitate set-up and management of the MEND Programmes and to enable MYTIME MEND and the Programme Organiser to monitor the progress made both by the Programmes (and each Programme) as a whole and (to a more limited extent) by participants individually.</p> <p>Questionnaires, Resources and Reports Packs: the electronic document templates provided by MYTIME MEND for the purposes of the Programme listed in Annex 2.</p> <p>Term: the term of the appointment under this Agreement, specified on page 2.</p> <p>Public Health Wales: the organization providing financial support to MYTIME MEND under this Agreement to enable the MEND Programmes to be run by the Programme Organiser as set out in this Agreement.</p> <p>Public Health Wales Agreement: the agreement between MYTIME MEND and Public Health Wales dated 17 February 2012 for the running of the Programmes under certain terms and conditions.</p>	<p>2.1 On signature of this Agreement or at a time to be agreed thereafter, Mytime MEND shall provide the Programme Organiser with:</p> <ul style="list-style-type: none"> (a) general advice and guidance on how to establish the Programme as and when reasonably requested by the Programme Organiser; (b) the Children's Packs, MYTIME MEND Kits and the Questionnaires, Resources and Reports Packs as specified in Annex 2 with contents listed in the additional Programme annexes; (c) one set of the Manuals on loan for each Programme running concurrently; (d) the initial MEND Training. <p>2.2 Throughout the Term, MYTIME MEND shall:</p> <ul style="list-style-type: none"> (a) support the Programme Organiser with know-how, advice and guidance relating to the Programmes using the project management facility and associated resources on OMMS or by telephone and email; (b) supply the Children's Packs to the Programme Organiser at the Programme Organiser's cost; (c) provide the Programme Organiser with access to OMMS; (d) provide the Programme Organiser with information from OMMS and the ability to generate appropriate analysis after each Programme; (e) supply additional MYTIME MEND Kit and Exercise Equipment and/or copies of the Manuals (or pages of the Manuals) as reasonably requested by the Programme Organiser according to the needs of the Programmes only and at the Programme Organiser's cost; (f) keep the Programme Organiser informed of available updates to the Manuals and provide an updated copy of the Manuals (or the relevant pages, as appropriate) on loan as soon as reasonably possible thereafter, at the Programme Organiser's cost. In the event the Manuals are updated and a new version provided to the Programme Organiser under this clause, the Programme Organiser shall immediately return the outdated versions to MEND; and (g) manage online registrations through Mytime MEND's website. <p>2.3 Mytime MEND shall nominate a representative who shall be responsible for the Programme Organiser's account with Mytime MEND (the "Operations Manager"). The Operations Manager shall be the Programme Organiser's first point of contact for any questions or issues concerning any aspect of his appointment that may arise during the Term.</p> <p>2.4 The Operations Manager at the date of this Agreement is named in Annex 2. If the representative acting as Operations Manager changes at any time during the Term, Mytime MEND shall notify the Programme Organiser of this in writing.</p>	<p>3. THE OBLIGATIONS OF THE PROGRAMME ORGANISER</p> <p>3.1 The Programme Organiser shall establish, manage and deliver the Programme in the Location for the Term. In doing so, the Programme Organiser shall at all times:</p> <ul style="list-style-type: none"> (a) act in accordance with the Instructions given in the Manuals or other instructions given by Mytime MEND, as appropriate, including (but not limited to) instructions arising from the relationship between Mytime MEND and Public Health Wales; (b) conform to, and ensure that its staff at all times conform to, Mytime MEND's Privacy Policy; (c) act in accordance with the law and all applicable regulatory controls and shall ensure that it has all

- necessary regulatory consents and appropriate policies in place for providing a service of this kind to children, including (but not limited to) child protection, health and safety, employment, equal opportunities, Freedom of Information policies and phonographic licences,
- (d) be responsible for promoting the Programme in the Location;
- (e) take all reasonable steps to ensure the safety of the children attending the Programme;
- (f) obtain the written consent of the legal carer or guardian of each child attending the Programme before having any direct contact with them;
- (g) conduct itself and ensure that its staff act at all times in a professional and diligent manner; and
- (h) conduct itself and ensure that its staff act at all times in a manner that befits working with and holding a position of responsibility over children, including (but not limited to) complying with MEND's child protection policy in force from time to time.
- 3.2 The Programme Organiser acknowledges that the funds by Public Health Wales to Mytime MEND to enable the Programme Organiser to run the Programme is conditional on the Programme Organiser's performance of its obligations under this Agreement. Public Health Wales has the right to withhold or request repayment of the funds under circumstances set out in the Terms and Conditions. The Programme Organiser shall comply immediately with any request made by Mytime MEND of any nature regarding the use of the funds provided by Public Health Wales
- 3.3 The Programme Organiser shall:
- (a) use its best endeavours to recruit children to fill the places on the Programmes;
- (b) provide or source a suitable room or rooms at the Venue (and organise the use of other facilities as required from time to time) for the operation of the Programme;
- (c) use only the Mytime MEND Kit and Exercise Equipment, Children's Packs and Questionnaires, Resources and Reports Pack documents which are supplied by Mytime MEND for the purposes of the Programme and use those Mytime MEND Kit and Exercise Equipment, Children's Packs and Questionnaires, Resources and Reports Pack documents for the purposes of the Programme only;
- (d) provide Mytime MEND with all details of Programme staff and participants required for the purposes of (i) efficient operation of OMAS and (ii) Mytime MEND's quality control of its services and development of the Programme, no less frequently than once at the start and once at the end of the programme;
- (e) input the required measurement data for children participating in the Programmes within two weeks of the start and end of each Programme and six and twelve months after the start of each programme, and attendance data within one week of each session, and (further measurement data as often thereafter as possible);
- (f) ensure that the insurance policies required under clause 9 of this Annex 1 (and any other policies the Programme Organiser considers necessary) are in place prior to the commencement of the Programme;
- (g) provide Mytime MEND with regular feedback relating to the Programme, in particular (but not only) as detailed under clause 10 of this Annex 1;
- (h) open and staff the Venue for the purposes of delivering the Programme;
- (i) foster cooperation with other Programme Organisers in neighbouring areas to assist in the establishment of the Programme, to further the growth of the Programme generally and, at the request of MEND, to provide other potential Programme organisers with information as reasonably requested;
- (j) use best efforts to ensure the success of the Programme and thereafter to promote and extend the Programme generally;
- (k) not make any copies nor allow any copies to be made of any materials or the Manuals (or pages of the Manuals) without first obtaining Mytime MEND's express written consent;
- (l) not copy, adapt, publish or otherwise make use of the structure or content of the Programme, even if it is published or delivered under a different name;
- (m) not engage in any business or activity which competes with the Programme whether in or outside the Location;
- (n) not operate the Programme outside the Location; and
- (o) not use any Confidential Information for any purpose other than for delivering the Programme in the manner detailed in this Agreement.
- (p) respond to any reasonable requests for information from Mytime MEND and allow Mytime MEND staff access to the Programme with a view to Quality Assurance as long as Mytime MEND have provided five days notice; these visits are conducted to identify areas that need support, collect feedback and gather examples of best practice for the benefit of the Programme Organiser and all other Programme Organisers and they may involve filming of the Programme (with prior signed consent of Participants) for internal use only unless otherwise agreed by both parties;
4. STAFFING
- 4.1 Minimum staffing requirements for proper delivery of the Programme are set out in the additional Programme Annexes. The Programme Organiser shall:
- (a) manage and take full responsibility for the hiring and payment of sufficient suitably qualified staff (or volunteers, if appropriate) to carry out its duties under this Agreement;
- (b) take full responsibility to Mytime MEND and to the participants of the Programmes for the conduct of its staff and volunteers engaged in the delivery of the Programme;
- (c) only employ staff for the purposes of delivering the Programme with the skills and qualifications set out in Annex 3;
- (d) ensure that all staff have sufficiently up to date enhanced CRB approval specific to the organisation delivering the Programme and are not prevented in any way from working with children by any governmental authority or other organisation;
- (e) ensure that all staff engaged directly with delivery of the Programme have attended the relevant MEND Training required for the role, for the avoidance of doubt, Exercise leaders should attend all days of training;
- (f) ensure that all staff engaged directly with delivery of the Programme have passed their post-training assessment, scoring 70% or more, at the earliest of 30 days after their training or 1 week prior to starting to deliver MEND Programmes, if a Leader fails the assessment they may retake it once. If a Leader fails twice the Programme Organiser must pay for them to attend a second set of training at the Programme Organiser's cost and in the meantime they may only assist on a Programme;
- (g) ensure that there is at least one member of staff present at each Programme session who is competent in first aid;
- (h) ensure that there will be at least one member of staff present at each Programme session who is knowledgeable on child protection regulations and the practices required of the Programme Organiser under the regulations;
- (i) ensure that all staff and volunteers, as appropriate, are fully insured for the work demanded of them by the Programme; and
- (j) ensure that it has a designated member of staff responsible for the recruitment, training and support of volunteer staff.
- 4.2 For the avoidance of doubt, nothing in this Agreement shall serve to create a relationship of employment between Mytime

	MEND and the volunteers or staff of the Programme Organiser responsible for delivering the Programmes.		Health, University College London that any specific research should not be submitted for publication.
6. TRAINING		7.4	All goodwill accruing as a result of the Programme Organiser's use of the Licensed Trade Marks shall be the property of Mytime MEND, Public Health Wales or any other third party owner of the Licensed Trade Marks, as appropriate, and the Programme Organiser shall do whatever is required of it to give effect to this clause.
5.1 MYTIME MEND shall provide:		7.5	MEND shall be entitled to amend the list of Mytime MEND Trade Marks in the event that it acquires additional trade marks (or disposes of existing Mytime MEND Trade Marks) after the date of the Agreement. In the event Mytime MEND notifies the Programme Organiser of any such amendment, the Programme Organiser shall follow Mytime MEND's instructions as to the use of the new trade marks.
(a)	initial MEND training for the number of employees of the Programme Organiser specified in Annex 3; and	7.6	The Programme Organiser shall notify Mytime MEND of any possible infringement of the Mytime MEND Trade Marks, copyright or other intellectual property rights owned by Mytime MEND or licensed to Mytime MEND as soon as the Programme Organiser becomes aware of it.
(b)	if requested by the Programme Organiser, additional MEND Training on the Programme for other employees of the Programme Organiser, at a time and location to be agreed between the Parties and at the Programme Organiser's cost.	8. PUBLIC HEALTH WALES	
5.2	The Programme Organiser shall pay the amount specified in Annex 4 for the MEND Training.	8.1	Except with the written consent of Public Health Wales and Mytime MEND, the Programme Organiser shall not make any press announcements or publicise the Contract or any part thereof in any way.
5.3	In the event that Mytime MEND Training booked by the Programme Organiser for any of its existing or future employees or volunteers is cancelled by the Programme Organiser, a cancellation fee shall be payable by the Programme Organiser to MEND, as further set out in Annex 4.	8.2	The Programme Organiser shall take all reasonable steps to ensure the observance of Condition 8.1 by its Staff.
6. ADVERTISING		8.3	The provisions of this Condition 8 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
6.1	Mytime MEND shall provide the Programme Organiser with generic electronic templates of suitable advertising material and press releases (the "Advertising Templates") to enable the Programme Organiser to advertise the Programme in the Location. The Programme Organiser may also generate their own advertising material, promotional literature and press releases subject to clauses 6.2, 6.3 and 6.4. If the Programme Organiser generates their own advertising material, promotional literature and press releases they should include the MEND logo.	9. INSURANCE	
6.2	Copying or publishing any other Programme materials for any purpose is not permitted under this Agreement.	9.1	The Programme Organiser shall take out and maintain for the Term insurance cover (the "insurance") with a reputable insurance company. The Programme Organiser shall provide Mytime MEND with a copy of its current certificate of insurance on request.
6.3	Any announcements made to the media or the general public concerning the Programme or the Programme Organiser's involvement in the Programme shall be copied to Mytime MEND for its information. Mytime MEND shall be entitled to display, use or modify any such announcements or advertising material for its own purposes.	9.2	The Programme Organiser shall ensure that the insurance covers it for the following risks:
6.4	Any announcements made to the media or the general public concerning Mytime MEND shall first be submitted to Mytime MEND for its approval.	(a)	liability for employees and third parties, to £10 million;
7. TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS		(b)	damage to property (for example, all Venues used and MEND Kit and Exercise Equipment), to £10 million;
7.1	The Programme Organiser acknowledges that the copyright and all other rights in the Manuals and Advertising Templates are the property of or licensed to Mytime MEND. The Programme Organiser shall not copy (whether for distribution or otherwise) or in any other way adapt the Manuals or any part of them without first obtaining Mytime MEND's express written consent. The Programme Organiser shall not use and shall ensure that others do not use the Manuals, the Mytime MEND Kit and Exercise Equipment or the Advertising Templates outside the Location or beyond the Term.	(c)	any liability the Programme Organiser may incur towards the children attending the Programme or their families at any Venue, to £10 million; and
7.2	The Programme Organiser acknowledges that the Licensed Trade Marks are all either the property of Mytime MEND or licensed to Mytime MEND under a valid licence agreement between Mytime MEND and the third party owner of the Licensed Trade Marks. Mytime MEND hereby funds the Programme Organiser a non-exclusive licence of all the Licensed Trade Marks in the Location for the purposes of running the Programme on the terms of this Agreement but the Programme Organiser shall be entitled to use only the Mytime MEND Trademarks.	(d)	any liability arising from the misuse of the Trade Marks or other trademarks licensed to Mytime MEND, to £1 million.
7.3	For the avoidance of doubt the Programme Organiser agrees not to use the Licensed Trade-Marks for any other purpose than specified in this Agreement. The Programme Organiser shall not behave in any manner that is likely to damage the reputation or goodwill in the Licensed Trade Marks. The Programme Organiser undertakes to discuss any proposed academic research with Mytime MEND and the Institute of Child Health, University College London prior to commencement to ensure alignment with their research strategy and to avoid duplication. In addition the Programme Organiser agrees to comply with any request from either Mytime MEND or the Institute of Child	10. OPERATIONS MANAGEMENT AND MONITORING SYSTEM (OMMS)	
		10.1	The Programme Organiser shall enter and update all relevant participant information (as specified in writing from time to time by Mytime MEND) on the OMMS database within the timescale specified in clause 3.3(e).
		10.2	The Programme Organiser acknowledges that the participant information required for the OMMS database may be considered personal data and/or sensitive personal data under the Data Protection Act 1998. The Programme Organiser shall ensure it obtains all written consents from all participants and/or their families or guardians and any other third parties necessary (i) to permit the Programme Organiser to comply with its obligations under clause 10.1 above; and (ii) to permit Mytime MEND to use the information for the purposes of creating and publishing reports based on the information obtained by it from the Programme Organiser via OMMS (the "Reports").
		10.3	The Programme Organiser shall keep all participant information securely, shall only use such information for the purposes for which it was obtained from each participant and shall comply with all obligations imposed on it by the Data Protection Act 1998 in relation to such information.

10.4	The Programme Organiser acknowledges that the OMMS database on which the participant information is entered and stored and all intellectual property rights in that database is the property of Mytime MEND and the Programme Organiser hereby assigns all rights it may have in OMMS to MEND. Mytime MEND hereby provides the Programme Organiser a non-exclusive licence to use OMMS for the purposes of this Agreement only. Any other use, copying or publishing by the Programme Organiser of either the OMMS database or the information contained in OMMS is not permitted under this Agreement.	14.2	than to its employees or volunteers directly concerned with the Programme in the Location. The provisions of clause 14.1 shall not apply to any Confidential Information:
10.5	From time to time, Mytime MEND shall create Reports based on the information obtained by it from OMMS, which it may then offer to the Programme Organiser as part of the training or guidance provided under this Agreement. The Programme Organiser acknowledges that all intellectual property rights in the Reports is the property of Mytime MEND and, in the event the Programme Organiser purchases or accepts any Reports, the Programme Organiser shall only use those Reports for the purposes of the Programme and shall not copy or otherwise publish them for any purpose whatsoever.	(a)	that the Programme Organiser can prove was already in its possession at the date of receiving the Confidential Information from Mytime MEND; or
11.	CONTINUOUS IMPROVEMENT	(b)	which becomes public knowledge other than through a breach of an obligation of confidentiality owed (whether directly or indirectly) to Mytime MEND.
11.1	Mytime MEND invests in the continuous improvement of the Programme in order to ensure that it remains at the forefront of its field. Programme Organisers are expected to participate in this process for the collective benefit of all organisers of the MEND Programmes	14.3	The Programme Organiser shall, at the request of Mytime MEND but at its own expense, take all such steps as Mytime MEND may require to enforce any confidentiality undertaking given by an officer, employee or volunteer of the Programme Organiser including, in particular (but not limited to) taking legal proceedings and enforcing of any judgment obtained.
11.2	The Programme Organiser shall provide Mytime MEND with regular feedback from staff and participants on the success of the Programme and the quality of its staff, no less than once each year on the anniversary of the date of this Agreement and again at the end of the Programme.	14.4	This clause 14 shall remain in force after the expiry or earlier termination of this Agreement.
11.3	If the Programme Organiser devises any improvements, additions or modifications to any part of the Programme, it shall notify Mytime MEND as soon as possible. The Programme Organiser shall not be entitled to implement any improvements or modifications of any kind without first obtaining Mytime MEND's prior written consent.	15.	TERMINATION
11.4	The Programme Organiser shall introduce any improvements or modifications into the Programme requested by Mytime MEND.	15.1	Mytime MEND may terminate this Agreement immediately on termination or withdrawal of the funds by Public Health Wales for any reason whatsoever
11.5	The Programme Organiser acknowledges that any improvements, additions and modifications made (by either party) to any part of the Programme or the associated know-how, guidance other information or physical items provided to the Programme Organiser by Mytime MEND and all rights that exist in them shall be the property of Mytime MEND. The Programme Organiser agrees to do whatever is required of it to give effect to this clause.	15.2	Mytime MEND may terminate this Agreement forthwith if the Programme Organiser:
12.	TRANSFER OF THE PROGRAMME ORGANISER'S APPOINTMENT	(e)	becomes bankrupt (if an individual) or goes into liquidation (if a company);
12.1	The Programme Organiser shall not be entitled to transfer, sub-license, sub-contract or otherwise assign any of its rights or obligations under this Agreement to any other person or organisation without prior agreement and written permission from MEND.	(f)	becomes insolvent;
12.2	Mytime MEND shall be entitled, with the consent of Public Health Wales, to transfer, sub-license, sub-contract or otherwise assign any of its rights or obligations under this Agreement to a third party and shall notify the Programme Organiser if this takes place	(g)	has an administrator or receiver of its undertaking appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Programme Organiser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
13.	NON-COMPETITION	(d)	commits an incurable breach of a material provision of this Agreement;
13.1	The Programme Organiser shall not during the Term:	(e)	fails to remedy a breach complained of within the time frame then specified by Mytime MEND;
(a)	carry on any other business or activity identical or similar to the Programme; or	(f)	breaches any provision (or provisions) of this Agreement on more than one occasion;
(b)	entice employees away from Mytime MEND or from other organisers of the Programme in other locations.	(g)	is sold to or merged with another person or organisation or undergoes a significant change in ownership structure;
14.	CONFIDENTIALITY	(h)	abandons the Programme;
14.1	The Programme Organiser shall keep (and shall ensure that all its officers, employees and volunteers keep) secret and confidential the Confidential Information communicated to it by Mytime MEND, either in preparation for to or as a result of entering into this Agreement. It shall not disclose the Confidential Information or any part of it to any person other	(i)	or any of its staff engaged directly or indirectly in managing or delivering the programme, are convicted of a criminal offence or subjected to a formal enquiry or investigation by the Police, Charity Commission, the Office of the Scottish Charity Regulator, HM Revenue and Customs or any other regulatory body; or
		(j)	acts dishonestly or provides significantly incorrect or misleading information to Mytime MEND in connection with Mytime MEND's application for funding from Public Health Wales or at any time during the term of this Agreement.
		15.3	Either party may terminate this Agreement on giving the other party six months' notice of its intention to terminate in writing.
		16.	OBLIGATIONS FOLLOWING TERMINATION
		16.1	On termination the Programme Organiser shall immediately:
		(a)	stop using and cease to trade or carry on any activity under the Trade Marks and no longer hold itself out as the operator of the Programme;
		(b)	stop accessing the OMMS database, whether to enter, update or review information or for any other purpose whatsoever;

<p>(c) subject to any written agreement of the parties to the contrary, return the Manuals and all Mytime MEND Kit and Exercise Equipment to MYTIME MEND (without taking or retaining any copies);</p> <p>(d) cease to use the Advertising Templates provided by Mytime MEND and return all copies of the same (in any format whatsoever, whether paper, electronic or otherwise) to Mytime MEND. Any electronic copies that cannot be returned must be immediately deleted from the medium on which it is stored;</p> <p>(e) give all Programme participant lists and full details of contracts with Programme participants (and any copies made of the same) to MEND;</p> <p>(f) pass all enquiries and details of potential Programme participants and replacement Programme organisers (and any copies made of the same) to Mytime MEND and generally shall assist Mytime MEND in finding a replacement organiser for the Programme in the Location;</p> <p>(g) not divulge or use any Confidential Information for any purpose whatsoever; and</p> <p>(h) pay to Mytime MEND all monies outstanding under this Agreement or otherwise including (but not limited to) all unspent funds money and pay all debts incurred to any other person in connection with the Programme.</p> <p>15.2 If Mytime MEND terminates this Agreement under any of clauses 15.1(d), 15.1(e), 15.1(f), 15.1(h) or 15.1(i), the Programme Organiser shall repay to Mytime MEND the entire funds provided under this Agreement.</p> <p>17. LIMITATION OF LIABILITY</p> <p>17.1 Mytime MEND's entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Programme Organiser in respect of any breach of this Agreement shall be limited to the price paid by the Programme Organiser under this Agreement.</p> <p>17.2 Nothing in this Agreement shall limit or exclude MEND's liability for death or personal injury resulting from negligence or for any damage or liability incurred by the Programme Organiser as a result of fraud or fraudulent misrepresentation by MEND.</p> <p>18. INDEMNITY</p> <p>18.1 The Programme Organisers shall jointly and severally indemnify Mytime MEND against any loss, cost, or expense incurred by Mytime MEND arising from any act, neglect, default or any breach of this Agreement by the Programme Organiser, its agents, employees, volunteers, scouts, clients or Programme participants.</p> <p>19. DATA PROTECTION</p> <p>19.1 In addition to the Programme Organiser's obligations under clause 10 above, the Programme Organiser shall ensure that it obtains all written consents needed from (or on behalf of) the children attending the Programme and their families in order to lawfully share their personal data with Mytime MEND for the purposes of research and the development of the Programme.</p> <p>19.2 The Programme Organiser shall at all times act in accordance with the Data Protection Act 1998 in the processing of personal data for the purposes of this Agreement.</p> <p>20. AGENCY</p> <p>20.1 Nothing in this Agreement shall be construed as making the Parties partners or joint venturers or render any party liable for any of the debts or obligations of the other.</p>	<p>20.2 The Programme Organiser is not and shall not hold itself out as the agent of MYTIME MEND and under no circumstances shall the Programme Organiser have authority to commit MYTIME MEND to any contract with any other person, nor shall it hold itself out to any other person as having such authority.</p> <p>21. WAIVER</p> <p>The failure of any Party at any time to enforce any of the provisions of this Agreement or to exercise any right under this Agreement shall in no way affect that Party's rights or constitute a waiver of that right.</p> <p>22. CONTINUING PROVISIONS</p> <p>The termination of this Agreement (for whatever reason) shall be without prejudice to the accrued rights, liabilities and other remedies of the Parties.</p> <p>23. MODIFICATION OF THE AGREEMENT</p> <p>No modification, alteration waiver or renewal of any of the provisions of this Agreement shall be effective unless made in writing and signed by each Party.</p> <p>24. NOTICES</p> <p>Any notice or consent required to be given to any Party in connection with this Agreement shall be in writing and shall be sent by post or recorded delivery to the address of the other Party set out on the cover page of this Agreement (or otherwise, if so notified by that Party after the date of this Agreement). Every such notice or consent shall be deemed to have been given at the time when, in the course of ordinary transmission, it should have been delivered at the address to which it was sent.</p> <p>25. GOVERNING LAW & JURISDICTION</p> <p>This Agreement is governed by English law. In the event of a dispute arising under it, the Parties submit to the exclusive jurisdiction of the English courts.</p> <p>26. THIRD PARTY RIGHTS</p> <p>26.1 For the purpose of this clause 26, "Rights" shall refer to the benefit of any of the following:</p> <p>(a) a right of Mytime MEND under this Agreement;</p> <p>(b) an obligation on the Programme Organiser under this Agreement; or</p> <p>(c) a warranty or other representation given by the Programme Organiser under this Agreement.</p> <p>26.2 Public Health Wales shall be entitled to enforce any of the Rights on Mytime MEND's behalf against the Programme Organiser.</p> <p>26.3 The Parties may not amend or delete clause 26.2 without prior written consent of Public Health Wales.</p> <p>26.4 Subject to clause 26.2, this Agreement does not create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any party who is not a party to this Agreement.</p>
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Annex 2

Programme Details

Programme Type and Number: 20 x MEND 7-13 Programmes
3 x MEND 5-7 Programmes

Programme delivery schedule

	Q1 2013 (Jan – March)	Q2 2013 (April – July)	Q3 2013 (July- September)	Q4 2013 (September -December)	Q1 2014 (January- March)
MEND 5-7	0	0	1	1	1
MEND 7-13	5	5	0	5	5

LOCATION, VENUE AND OPERATIONS MANAGER

Location:

Ystradgynlais Sports Centre 5-7&7-13, Brecon 7-13, Llandrindod Wells 7-13, Newtown 7-13 and Welshpool 7-13

Operations Manager: Kate Underwood

CHILDREN'S PACKS (details enclosed in programme annexes)

number of children x 7-13s Children's Packs

number of children x 5-7 Children's Packs

QUESTIONNAIRES, RESOURCES AND REPORTS PACKS (details of which in programmes annexes)

number of children x Questionnaires, Resources and Reports Pack (produced electronically, hard copy materials to be printed by Programme Organiser)

MEND KIT AND EXERCISE EQUIPMENT (details of which in programmes annexes)

insert number of kits x sets of MEND kits, the contents of which may vary from time to time:

TRAINING BOOKING REFERENCE

This reference to be used when booking 7-13 training places: PHW02POW

This reference to be used when booking 5-7 training places: PHW01POW

Annex 3
Price and Payment

Amount payable by MYTIME MEND over the Term per MEND 7-13 Programme delivered:

£4000.00

Amount payable by MYTIME MEND over the Term per MEND 5-7 Programme delivered:

£2010.00

Total Contract value: £ 86,030

Please Note: The above price per programme covers venue hire, delivery staff costs, any associated recruitment costs, printing and postage costs.

If the Programme Organiser orders any additional equipment or resources, such as physical activity equipment or flyer printing through MEND, the Programme Organiser will be invoiced for the additional amount.

The total number of programmes delivered by the Programme Organiser can be varied to the numbers stated in annex 2. Any variation in numbers will need to be agreed with the Operations manager in advance. MYTIME MEND will issue a contract variation in writing to agree the revised programme numbers.

Please note that Programmes cannot be deferred. Unless by prior arrangement and confirmed in writing.

PAYMENT TERMS:

All payments to the Programme organiser will be made in arrears each quarter on receipt of a signed payment claim form (enclosed as annex 5) with a valid invoice, provided that all OMMS data has been entered.

Please note: MYTIME MEND standard payment terms are 30 days from date of invoice receipt

TRAINING CANCELLATION SCHEDULE

MEND Training

If training is booked by the Programme Organiser and then cancelled the following charges shall apply, depending on how far in advance of the scheduled training dates notice of cancellation is given:

- More than 6 weeks notice: £0
 - 4 - 6 weeks notice: £50 per person
 - 1- 3 weeks notice: £100 per person
 - Less than 1 weeks notice: £150 per person
- Plus an additional £50 administration fee per cancellation.*

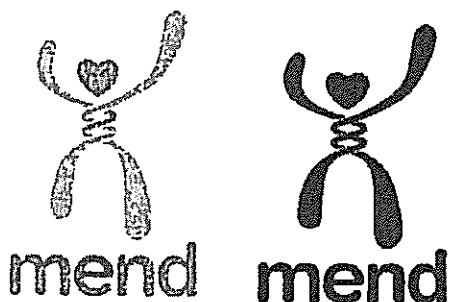
The above charges are payable by the Programme Organiser within 15 days of receipt of an invoice from MYTIME MEND and are exclusive of VAT.

Annex 4

Licensed Trade Marks

Trademarks owned by Mytime MEND:

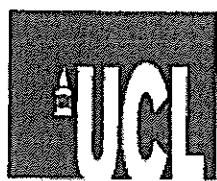
"MEND". Registered in England and Wales under number 2348319 (in classes 9, 16, 18, 21, 24, 25, 26, 28, 35, 36,41 and 44)



Trade mark owned by Great Ormond Street Hospital and licensed to MEND, not to be used by the Programme Organiser without the separate written permission of MEND:



NHS Trust Trade mark owned by Institute of Child Health and licensed to MEND, not to be used by the Programme Organiser without the separate written permission of MEND:



UCL INSTITUTE OF CHILD HEALTH

Trade mark owned by Public Health Wales





Public Health Wales Mytime MEND Claim Form

Contact:
Organisation:

Address

Breakdown of claim:

OMMS code	OMMS data entered?	Delivery Quarter	Amount
TOTAL			

BACS details:

Account name: Account number: Sort code: Bank name: Bank address:

I confirm that all monies have been spent on Mytime MEND projects.

Signed:

Date:

For office use only: Claim form ref:

Date:

