

DATED 13 August, 2019

PRUDENCE FOUNDATION

and

FOUNDATION FOR OLDER PERSONS' DEVELOPMENT

AGREEMENT

THIS AGREEMENT is made the 13 day of August 2019

BETWEEN:

- (1) **PRUDENCE FOUNDATION**, a company incorporated in Hong Kong whose registered office is at 13/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong ("**Prudence Foundation**"); and
- (2) **FOUNDATION FOR OLDER PERSONS' DEVELOPMENT**, a company incorporated in Thailand whose registered office is at 6 Soi 17 Nimmanhaemin Rd, Suthep Muang, Chiang Mai, Thailand ("**FOPDEV**").

Prudence Foundation and FOPDEV shall collectively be referred to as the "**Parties**" and each as a "**Party**".

WHEREAS:

- (A) Prudence Foundation and FOPDEV wish to cooperate to strengthen the Older Person Groups (OPGs) and Civil Society Organisations (CSOs) capacities of the disaster risk reduction ("**DRR**") network to promote consolidation and expansion of age-inclusive DRR including the older people's rights and income security in Thailand and ASEAN.
- (B) A project proposal relating to the Project was prepared by FOPDEV for the consideration of Prudence Foundation ("**Project Proposal**"). A copy of the Project Proposal is attached as Schedule 1.
- (C) Prudence Foundation and FOPDEV have agreed to cooperate on the Project on the terms and conditions of this Agreement.

NOW IT IS AGREED as follows:

1 INTERPRETATION

- 1.1. Unless the context otherwise requires, in this Agreement:

"**Affiliate**" means, in respect of a company or corporation, any other person that is controlled by such company or corporation or that controls, or is under common control with, such company or corporation and, for these purposes, a company or corporation shall be treated as being controlled by a person if that person (i) directly or indirectly holds more than 25 per cent. of the equity interest or voting rights of such company or corporation, and/or (ii) controls the composition of the majority of the board of directors or equivalent body of such company or corporation and/or (iii) is able, by contract or otherwise, generally to direct the management and operations of such company or corporation;

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which commercial banks in Hong Kong are generally open for business;

"**FOPDEV Personnel**" means FOPDEV's employees and, if applicable, those individuals, agents and subcontractors engaged by FOPDEV to provide the services under this Agreement;

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Intellectual Property**” means (a) intellectual property of whatever nature anywhere in the world and all rights pertaining thereto, whether registered or unregistered including, without limitation, patents, trade marks, rights in trade names and business names, service marks and Internet domain names and website addresses, registered designs, copyright and moral rights (including copyright in computer software), database rights (howsoever called), design rights, know-how, trade secrets and all other legal rights protecting intangible proprietary information; (b) applications in respect of, and rights to apply for and be granted, renewals or extensions of any of the rights listed at (a) above that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“**Law**” means (i) any statute, emergency decree, constitution, judicial decision, judgment, legislation, ordinance, regulation, order, or other legislative measure of any country or government entity; and (ii) any treaty, pact, compact, or other agreement to which any country or government entity is a signatory or party;

“**Project**” means Promoting Thailand's Age-inclusive disaster risk reduction including the older people’s rights and income security.

“**Project Deliverables**” means the intended results and objectives per the Project Proposal at Schedule 1.

“**Prudential Group**” means Prudential plc and its subsidiaries and subsidiary undertakings from time to time;

“**Prudential Policies**” means such policies, procedures, guidelines and systems of control of Prudence Foundation and any member of the Prudential Group as may be generally applicable from time to time;

“**Prudential Volunteer**” means any employee of Prudence Foundation or any member of the Prudential Group who volunteers to participate in the Project

“**Tax**” means all taxes, levies, duties, imposts, charges or withholdings, whether national, federal, state, local or provincial, imposed by any person, agency, body or entity authorised by Law to do so, including value added tax and goods and services tax, together with any interest, fines, additions or penalties with respect thereto, whether disputed or not;

“**GBP**” means the lawful currency of the United Kingdom

1.2. In this Agreement, a reference to:

(a) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation or regulation made under the statutory provision;

(b) one gender includes a reference to the other genders;

- (c) the singular number includes the plural and vice versa;
- (d) a person includes a reference to a natural person, body corporate, firm, association, partnership or unincorporated association and that person's legal personal representatives, permitted assigns and successors;
- (e) a Clause or Schedule, unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement;
- (f) this Agreement includes the Schedules; and
- (g) this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.3. The headings in this Agreement do not affect its interpretation.

1.4. Any words following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms, and shall be deemed to be immediately followed by the words "without limitation".

2 OPERATIVE CLAUSES

2.1 The Project shall be conducted and completed in accordance with the Project Proposal

2.2 Prudence Foundation shall provide grant funding for the Project in the sum of GBP210,000 ("**Grant**"). The Grant shall be paid by Prudence Foundation to FOPDEV in three (3) annual instalments as follows:

- (a) First year 1st instalment of GBP42,000 by Q3 2019, 2nd instalment of GBP28,000 by Q2 2020;
- (b) Second year 1st instalment of GBP42,000 by Q3 2020, 2nd instalment of GBP28,000 by Q2 2021;
- (c) Third year 1st instalment of GBP42,000 by Q3 2021, 2nd instalment of GBP28,000 by Q2 2022;
- (d) Prudence Foundation shall not be required to pay (i) the second year instalment (in whole or in part) unless it is satisfied that the objectives and results set out in the Project Proposal for the first year of the Project have been met or achieved and it provides written confirmation of the same by July 2020 (or such other time as agreed in writing between the Parties); and (ii) the third instalment (in whole or in part) unless it is satisfied that the objectives and results set out in the

Projects Proposal for the second year of the Project have been met or achieved and it provides written confirmation of the same by July 2021 (or such other time as agreed in writing between the Parties). If Prudence Foundation is not required to pay the second instalment (in whole or in part) pursuant to this Clause 2.4, it shall have no liability for the payment of the third instalment (in whole or in part).

2.3 FOPDEV shall provide Prudence Foundation with written interim reports and final reports covering at least the following items

- Progress against the objective and results
- Progress against log frame
- Main achievements for the period
- Material variance in activities or plans for the past or future period
- Quotes from community members or projects' beneficiaries
- Photos showing the projects' activities and beneficiaries
- Actual expenditure compared to budget detailing projects' expenditure against the original budget
- Details of any communications activities / press / events that have taken place during the reporting period
- Findings from any base, mid or end-line or research report (if applicable)

2.4 The interim and final report shall be submitted to Prudence Foundation by the following date:

- (a) First year: Interim: 28 February 2020, Final: 31 August 2020;
- (b) Second year: Interim: 28 February 2021, Final: 31 August 2021; and
- (c) Third year: Interim: 28 February 2022, Final: 31 August 2022.

- 2.5 A final report for the Project covering the period August 2019 to July 2022 shall be submitted to Prudence Foundation by September 2022.

3 TERM

The term of this Agreement shall commence from the date of this Agreement and shall terminate immediately upon the earlier of (i) the completion of the Project and (ii) the termination of this Agreement in accordance with Clause 11 (“**Term**”).

4 LIMITATION OF LIABILITY

- 4.1 Notwithstanding anything herein to the contrary, the maximum aggregate liability of Prudence Foundation and its Affiliates, directors and employees under this Agreement shall be limited to GBP210,000.
- 4.2 In no event shall Prudence Foundation be liable for consequential, indirect, special, or punitive loss, damage or expense (including loss of profits and opportunity costs) howsoever caused arising out of or in connection with this Agreement or the Project, even if it has been advised of their possible existence.
- 4.3 Without prejudice to Clause 4.2, Prudence Foundation shall not be liable to FOPDEV for any liability, loss, damages, costs or expenses caused by (i) any act or omission of any Prudential Volunteer or as a result of such Prudential Volunteer taking part in the Project or (ii) any non-acceptance by Prudence Foundation of any Project Deliverables.

5 INDEMNITY

- 5.1 FOPDEV hereby undertakes to indemnify and keep indemnified Prudence Foundation from and against all losses, damages, claims, demands, expenses, costs, actions and proceedings whatsoever which Prudence Foundation may at any time sustain, incur or suffer or which may become payable by or brought or made against Prudence Foundation as a result of or in consequence of (i) any breach, non-observance or non-performance by FOPDEV of any terms or conditions, or any of FOPDEV’s undertakings or obligations, contained herein or (ii) any error, act, omission or negligence of FOPDEV or the FOPDEV Personnel arising out of or in connection with the Project;
- 5.2 This Clause 5 shall survive the termination of this Agreement.

6 INTELLECTUAL PROPERTY

- 6.1 Nothing in this Agreement conveys to FOPDEV any right, title or interest in or to the Intellectual Property of Prudence Foundation or any member of the Prudential Group.

- 6.2 FOPDEV shall not be authorised to use any Intellectual Property of Prudence Foundation or any member of the Prudential Group unless expressly permitted to do so in writing by Prudence Foundation or the relevant member of the Prudential Group.

7 TAXES

- 7.1 All payments to be made by Prudence Foundation hereunder shall be made free and clear of and without deduction for or on account of Tax. If Prudential Foundation is required by any applicable Law or any governmental or regulatory body to make any withholding in respect of any Taxes from payments made or due to the FOPDEV under this Agreement, Prudence Foundation will make that withholding from the amount payable by Prudence Foundation under this Agreement and pay the net balance to the FOPDEV.

8 FORCE MAJEURE

- 8.1 Neither Party shall be liable to the other for any failure to perform its obligations under this Agreement where such failure is caused by war, acts of terrorism, fire or any other event beyond its reasonable control (each a “**Force Majeure Event**”). For the avoidance of doubt, any industrial action, adverse weather event or failure on the part of an agent or subcontractor shall not be deemed to be a Force Majeure Event.
- 8.2 Each Party shall inform the other as soon as reasonably practicable if a Force Majeure Event occurs which adversely affects the performance of its obligations under this Agreement. The Party relying on the terms of Clause 8.1 shall use its reasonable endeavours to mitigate the effects of any such Force Majeure Event.
- 8.3 In the event that a Force Majeure Event prevails for more than thirty (30) Business Days, then Prudence Foundation may terminate this Agreement by notice in writing to FOPDEV, with immediate effect.
- 8.4 Prudence Foundation shall not be obliged to pay for any obligations which are not performed or any uncompleted part of the Project or Project Deliverables which are not satisfied as a result of a Force Majeure Event suffered by FOPDEV.

9 CONFIDENTIALITY

- 9.1 Each Party shall keep confidential and shall not, without the prior written consent of the other Party, disclose or use any information (whether oral, written or in electronic form) relating to the business, customers, employees, officers, suppliers, products, trade secrets, financial or other affairs of the other Party received or obtained as a result of entering into this Agreement or the existence or subject matter of this Agreement (“**Confidential Information**”) except for:
- (a) disclosures to its employees, officers or representatives who need to know such confidential information for the purposes of carrying out the Party's obligations under this Agreement; and
 - (b) disclosures required by applicable Law or any governmental or regulatory body;
 - (c) disclosures to the Party's auditors and professional advisers advising on the subject matter of this Agreement and who are bound by a suitable confidentiality undertaking;
 - (d) in the case of Prudence Foundation, disclosures to any member of Prudential Group for internal reporting purpose; and
 - (e) information that is or becomes publicly known otherwise than due to a breach of this Clause.

- 9.2 FOPDEV may not use the name or logo of Prudence Foundation or any Affiliate or refer to Prudence Foundation or any Affiliate or the subject matter of this Agreement directly or indirectly in any print, broadcast or online advertisement, sales presentation, marketing letter, news release or release to any professional or trade publication or written or oral communication with any media organisation, government agency, department or authority of any jurisdiction without Prudence Foundation's prior written approval.
- 9.3 Neither Party shall use the other Party's Confidential Information for any purpose other than in relation to this Agreement.
- 9.4 FOPDEV shall, on request by Prudence Foundation at any time, deliver up to Prudence Foundation any Confidential Information which it holds in respect of Prudence Foundation or, at Prudence Foundation's direction, destroy such Confidential Information and delete it from FOPDEV's systems.
- 9.5 This Clause 9 shall survive the termination of this Agreement.

10 ANTI-BRIBERY

- 10.1 In performing this Agreement, FOPDEV must: (a) comply with all applicable anti-bribery and anti-corruption laws and regulations, including The US Foreign Corrupt Practices Act and UK Bribery Act; (b) not act in any way that is or could be construed as a violation of such laws and regulations, including not offering any bribe or making any facilitation payment to any public official or other person; (c) ensure that it has appropriate internal procedures within its organisation to prevent bribery by its workforce and any other person under its control; and (d) not do anything that may cause Prudence Foundation or any of its Affiliates to breach any anti-bribery or anti-corruption Law. FOPDEV must promptly notify Prudence Foundation in writing of any actual or potential breach of this Clause. If FOPDEV breaches or appears to breach this Clause, Prudence Foundation may, without notice and without liability, immediately terminate this Agreement.
- 10.2 The rights and obligations under this Clause 10 shall survive the termination or expiration of this Agreement.

11 TERMINATION

- 11.1 Prudence Foundation shall have the right to terminate this Agreement at any time by giving FOPDEV not less than thirty (30) days' prior written notice.
- 11.2 Either Party shall have the right to terminate this Agreement with immediate effect by giving written notice to the other Party:
- (a) if the other Party commits a material breach of the terms and conditions of this Agreement and either that such material breach is: (i) incapable of remedy; or (ii)

if it is capable of remedy, the other Party has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to do so;

(b) if the other Party is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations;

(c) if the other Party ceases or threatens or is likely to cease business; or

(d) if it becomes illegal under any applicable Law or regulation for this Agreement to continue.

11.3 Termination of this Agreement shall be without prejudice to any rights or obligations which have accrued or arisen under this Agreement prior to the time of termination and any rights or obligations expressed or intended to continue in force after and despite termination of this Agreement.

11.4 If either Party terminates this Agreement in accordance with its terms, each Party shall return to the other Party or (if return is not practicable) destroy all Confidential Information and copies thereof of the other Party that it then has in its possession or control, except that Prudence Foundation may retain copies of any Confidential Information supplied by FOPDEV if required in order to comply with applicable Law or rules of any governmental or regulatory body or Prudential Group policies. Where applicable and if requested by Prudence Foundation, FOPDEV shall, within seven (7) Business Days of Prudence Foundation's request, provide a certificate signed by its director or authorised officer confirming destruction of the Confidential Information.

12 FURTHER ASSURANCE

12.1 Each Party shall perform this Agreement in good faith and in a spirit of mutual cooperation, trust and confidence and shall, on being required to do so by the other Party, do or procure the doing of all such acts and execute and deliver all such documents (whether as a deed or otherwise) as such other Party may reasonably consider necessary to give effect to the terms of this Agreement.

13 REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Each Party represents and warrants to the other Party that:

(a) it is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement; and

- (b) this Agreement has been duly authorised, executed and delivered by it and constitutes valid and legally binding obligations enforceable against such it in accordance with the terms of the Agreement;
- (c) the performance of its obligations under this Agreement will not violate any Law applicable to it or any contract binding on it.

13.2 FOPDEV warrants to Prudence Foundation that:

- (a) it has obtained and shall maintain all necessary consents, approvals or authorisations of, or filing or registration with, any governmental or regulatory authority or other third parties required for its execution and delivery of this Agreement and the performance of its obligations under this Agreement.
- (b) it shall not, and shall procure that all FOPDEV Personnel shall not, in carrying out the Project, infringe any Intellectual Property or any other rights of any nature of any third party; and
- (c) it shall carry out its obligations of the Project with due care and diligence, and shall ensure that all FOPDEV Personnel shall possess the requisite skill and experience to carry out their respective work and duties.

14 NOTICES

- 14.1 A notice or other communication under or in connection with this Agreement shall be in writing and delivered personally or sent by first class pre-paid post (or air mail if overseas) or by fax to the party due to receive the notice or communication as follows:

To Prudence Foundation:

Address: 13/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong

Facsimile: +852 3112 0153

Attention: Marc Fancy, Executive Director

To FOPDEV:

Address: 6 Soi 17, Nimmanhermin Road, Tambon Suthep, Amphoe Muang, Chiang Mai 50200

Facsimile: +66 53 224616

Attention: Sawang Kaewkantha, Executive Director

or to another address, fax number or attention person specified by a Party by seven (7)

Business Days' prior written notice to the other Party.

15 ASSIGNMENT AND SUBCONTRACTING

- 15.1 FOPDEV may not assign or transfer any part of the benefit or burden of, or any of its rights, interest or obligations under, this Agreement or subcontract any part of this Agreement without the prior written consent of Prudence Foundation. FOPDEV shall at all times remain responsible for all acts and omissions of any subcontractor as if those acts and omissions were its own.
- 15.2 Prudence Foundation may assign, novate or transfer all or any part of this Agreement to any third party (including any member of the Prudential Group) without requiring FOPDEV's consent (and FOPDEV shall enter into a novation agreement with such third party at Prudence Foundation's written request).

16 THIRD PARTY RIGHTS

- 16.1 This Agreement shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights. No third party shall have any right to enforce or rely on any provision of this Agreement which does or may confer any right or benefit on any third party, directly or indirectly, expressly or impliedly. The application of any legislation giving rise to or conferring on third parties contractual or other rights in connection with this Agreement is hereby expressly excluded.

17 MISCELLANEOUS

- 17.1 Except as otherwise expressly provided in this Agreement, each Party shall bear its own costs and expenses of and incidental to the preparation, negotiation, execution and implementation of this Agreement and all other documents referred to herein.
- 17.2 If any provision of this Agreement is held by any competent court or authority to be illegal, invalid or unenforceable in whole or part, the legality, validity and enforceability of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.
- 17.3 No variation, supplement, or replacement of or to this Agreement or any of its terms shall be effective unless made in writing and signed by or on behalf of each Party.
- 17.4 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. A waiver of any breach of this Agreement or any right or

remedy under this Agreement shall not be effective, or implied, unless that waiver is in writing and is signed by the Party against whom that waiver is claimed.

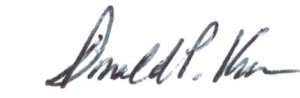
- 17.5 The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.
- 17.6 This Agreement shall be binding upon, and inure to the benefit of, each of the Parties and their respective successors and permitted assigns.
- 17.7 With respect to the subject matter of this Agreement, this Agreement and the other documents referred to herein constitute the entire agreement between the Parties and supersede all prior understandings and communications between the Parties or any of them, oral or written, with respect to the transactions contemplated herein. Each Party acknowledges that (i) in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement and (ii) no claim shall arise in respect of any agreement, understanding or communication so superseded by this Agreement.
- 17.8 The relationship of the Parties under this Agreement does not constitute a partnership or trust. FOPDEV shall not make any representation on behalf of Prudence Foundation, bind Prudence Foundation in any way or represent itself as the agent of Prudence Foundation.
- 17.9 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement is governed by, and shall be construed in accordance with, Hong Kong law. The Parties irrevocably submit to the non-exclusive jurisdiction of the Hong Kong courts in relation to any matter, claim or dispute arising out of or in connection with this Agreement.
- 18.2 FOPDEV agrees that any writ, judgment or other notice of legal process in connection with any legal action or proceedings arising out of or in connection with this Agreement may be served on it by being delivered to FOPEV's registered office.

IN WITNESS WHEREOF this Agreement has been executed on the date first above written.

SIGNED by Donald Kanak)
for and on behalf of)
PRUDENCE FOUNDATION)
in the presence of: Marc Fancy)



SIGNED by Sawang Kaewkantha)
for and on behalf of)
FOUNDATION FOR OLDER PERSONS')
DEVELOPMENT)
in the presence of:)



SCHEDULE 1

FOPDEV Proposal

[Final version to be included]