



## Commonwealth of Australia

### Parties

Name Commonwealth of Australia as represented by the Australian High Commission, Suva

Address 37 Princes Road, Tamavua

Contract name **Gardening Services at the Australian High Commission, Suva**

Name **[insert Name of Service Provider]**

Address **[insert Business Address of Service Provider]**

### A. Background

- A.1** The Commonwealth requires the provision of the Services stipulated in Schedule 1.
- A.2** The Service Provider has fully informed itself on all aspects of the Commonwealth's requirements and has:
- (a) submitted an offer; and
  - (b) represented that it has the requisite skills and experience to meet those requirements.
- A.3** The Commonwealth has agreed to engage the Service Provider, and the Service Provider has agreed to be engaged, to provide the Services on the terms and conditions of this Contract.

### B. This Contract

- B.1 Services:** The Service Provider agrees to provide the Services to the Commonwealth and the Commonwealth agrees to purchase the Services in accordance with the terms of this Contract.
- B.2 Contract Documents:** This Contract comprises:
- (a) the Special Conditions (if any);
  - (b) this document including the Statement of Requirement;
  - (c) The Commonwealth General Conditions of Contract available at <https://www.tenders.gov.au/?event=public.document.list> in the form they appeared at 9:00 am (local Canberra time) on the date of this Contract; and
  - (d) Annex 1 – Service Provider's Offer (if any).
- If there is any ambiguity or inconsistency between the documents comprising the Contract, the item or document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- B.3 Special Conditions:** The Service Provider must comply with the Special Conditions (if any).
- B.4 Definitions:** Some terms are given special meanings in clause 2.38 of the *Commonwealth General Conditions of Contract*. Where a term is defined in the *Commonwealth General Conditions of Contract*, that term has the same meaning in each of the documents comprising this Contract, unless when read in context, it appears that a different meaning is intended.

## Statement of Requirement

### 1.1 Term

This agreement commences on the <sup>th</sup> of March 2012 and continues for a two (2) year period until <sup>th</sup> of March 2014, subject to earlier termination in accordance with the terms of this agreement.

The Australian High Commission may extend this Term for a further period of one (1) year with the same terms and conditions by giving reasonable written notice (within 30 business days) before the end of the Term.

### 1.2 The Services

Garden maintenance services as set out in Schedule 1 (or in each Work Order given by the Australian High Commission under this agreement). Work Orders that deviate from Schedule 1 will be quoted and charged separately.

The Service Provider agrees to provide these services in accordance with the performance standards specified under Special Conditions of Contract.

### 1.3 Working Hours

The specified personnel must work from Monday to Friday between the hours of 8.00am – 4:30pm.

### 1.4 Delivery location and instructions

Delivery Address and Instructions for Services	37 Princess Road Tamavua, Suva
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### 1.5 Specified Personnel

The services must be provided by: 7 gardeners (1 supervisor and 6 gardeners). The supervisor must have the relevant educational background and experience to qualify for this position, particularly in landscaping.

The Service Provider must ensure that the specified personnel have appropriate skills, qualifications and experience to provide the Services. All personnel will be subject to prior security checks and the Australian High Commission may at any time refuse to accept any gardener or other personnel as being part of the specified personnel and such person shall be promptly changed.

### 1.6 Contract Price and payment

The total amount of the contract is ??? per year.

The Service Provider will invoice the Australian High Commission for the provision of Services on a monthly basis.

If the Australian High Commission disputes an item invoiced, the disputed item may be delayed for payment until settlement of the dispute, while the undisputed part shall be paid.

The Australian High Commission agrees to pay a correctly rendered invoice within 30 days of receipt of the invoice, subject to the Australian High Commission being objectively satisfied with the provision of the Services.

### 1.7 Intellectual Property

Any intellectual property rights created as a result of the Service Provider's performance of this Contract vests in the Service Provider. The Service Provider grants the Australian High

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Commission a non-exclusive, irrevocable, perpetual, worldwide, fee-free licence (including a right to sublicense) to use, modify, adapt, publish or otherwise exploit the Services and any Material and any adaptation of the Services or any Material for any purpose other than commercial exploitation, to the extent that Material embodies any of the intellectual property rights created by this Contract which vests in the Service Provider.

The Service Provider warrants that it owns all intellectual property rights necessary to grant this licence, provide the Services and Material to the Commonwealth and to allow the Australian High Commission to use the Services for their usual purpose and in the manner contemplated by the Statement of Requirement.

The Service Provider warrants that the provision of the Services in accordance with the Contract will not infringe any third party's intellectual property rights.

### 1.8 Contract Managers and Addresses for Notices

#### The Australian High Commission's Contract Manager:

Name/position title: Debbie Lim / Second Secretary and Vice Consul

Postal Address: P. O. Box 214, Suva

Facsimile: 3382065

Telephone: 3382211

Email Address: Debbie.lim@dfat.gov.au

#### The Service Provider's Contract Manager:

Name/position title: [insert name]/ [insert position title].

Postal Address: [insert postal address including postcode]

Facsimile:

Telephone: [insert telephone area code and telephone number]

Mobile: [insert mobile number]

Email Address: [insert email address]

Both Contract Managers will be responsible for the general liaison and accepting and issuing any written notices under this Contract.

Any such notice is deemed to have been received:

- (a) If served by express courier, on the date signed for;
- (b) If served by hand delivery, on the date delivered by hand;
- (c) If sent by facsimile transmission, when the transmitting machine produces a written report that the notice has been effectively sent to the other party; or
- (d) If sent by electronic transmission, when the transmitting computer produces a written report that the notice has been effectively sent to the other party, if the sender confirms such notice by express courier, hand delivery or facsimile transmission as specified above;

Provided that if the notice is deemed under sub-paragraph (iii) or (iv) to have been received or a day which is not a business day, it will be deemed to have been received on the next business day.

### 1.9 Address for Invoices

The address for invoices is:

Name/position title: Pisila Fiu-Khan / Property Officer

Postal Address: P. O. Box 214, Suva

Facsimile: 3382065

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Telephone: 3382211

Email Address: Pisila.fiu-khan@dfat.gov.au

## 1.10 Termination

This agreement may be terminated immediately:

- (a) By one party if the other party is wound up, placed under receivership or enters into administration; or
- (b) At the expiration of the Term of this Contract.

Additionally, this Contract may also be terminated by either party by giving the other 30 day written notice, if there is a breach of this Contract or in its absolute discretion.

Termination shall not relieve either party from all obligation or liabilities incurred under the Contract before the date of any termination.

## 1.11 Jurisdiction

This Agreement shall be governed by the laws of Fiji and both parties submit to the non-exclusive jurisdiction of the courts of Fiji.

## 1.12 Entire Agreement

The Contract constitutes the entire agreement between the parties and any written or oral agreement, arrangement or understanding made or entered into by the parties prior to the date of the Contract shall not in any way be read or incorporated into the Contract.

## 1.13 Force Majeure

Neither party shall be liable for any act, omission, or failure to fulfil its obligations under the Contract if such act, omission or failure arises from any cause which is reasonably beyond its control. The party unable to fulfil its obligations shall immediately notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure.

## 1.14 Sub-Contractors and Assignment

- (a) The Service Provider may subcontract the performance of part of the Services, with the written prior consent or approval of Australian High Commission.
- (b) If requested by the Australian High Commission, the Service Provider must provide to the Australian High Commission a copy of any proposed or executed subcontract;
- (c) The Service Provider must comply with such other conditions in relation to subcontracts as the Australian High Commission in its absolute discretion advises in writing to the Service Provider;
- (d) The Service Provider must report annually to the Australian High Commission as to the performance of each of the subcontractors engaged by the Service Provider including details of any defects in such performance and the steps taken to ensure compliance with the Contract.
- (e) Despite any consent or approval given by the Australian High Commission, the Service Provider will remain at all times fully responsible for ensuring the suitability of a sub-contractor and for ensuring that the Services are performed in accordance with the Contract.

## 1.15 Variations of Contract

Except as otherwise expressly stated in the Contract, none of the conditions or provisions of the Contract shall be varied, waived, discharged, or released, either at law, or in equity, unless by a written agreement duly signed by persons authorised to sign agreements on behalf of the parties hereto.

### 1.16 Variation in the Services

- (a) Without invalidating the Contract, the Australian High Commission may by notice in writing to the Service Provider vary the Services to be performed under the Contract (such changes to be referred to as a "Variation").
- (b) Where the Variation does not cause an increase or decrease in the amounts payable under this Contract, the Service Provider shall comply with the notice of Variation and the Contract shall be altered in accordance with that Variation.
- (c) Where the notice of Variation causes an increase or decrease in the amounts payable under this Contract, the notice of Variation shall not alter the terms of the Contract unless the terms of the Variation are agreed between the parties and that agreement is set out in writing and signed by both parties.
- (d) The Service Provider shall not claim for any extra Services it performs or for an addition to the amounts payable or for payment on a proportional basis unless in accordance with a notice of Variation which has been agreed by both parties.

<b>Special Conditions of Contract</b>
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## 2.1 Reports

The Service Provider is required to provide the following reports to the Commonwealth on the specified date:

Report Type	Indicative Content	Due Date
Monthly Report	<ul style="list-style-type: none"> <li>• Tasks completed on a weekly basis</li> <li>• Fuel used</li> </ul>	When invoice is submitted (by the 8 <sup>th</sup> day of the next month)

## 2.2 Performance Standards

The Service Provider must ensure that Services are provided in accordance with the following Performance Standards:

Service Provider obligation	Performance Standard
Compliance	The Service Provider and its Personnel must comply with the terms of this agreement and the Commonwealth's policies and procedures.
Services	The Service Provider must ensure that the Services are provided on time and in accordance with the requirements set out in this Contract.
Security	The Service Provider and its Personnel must comply with all Commonwealth security policies and procedures notified by the Commonwealth from time to time.
Records, processes and procedures	All records, processes and procedures must be maintained in an accurate and accountable manner, as reasonably determined by the Commonwealth.
Reports	All reports must be provided on time in accordance with this Contract, and to a standard satisfactory to the Commonwealth.
Meetings	You must attend meetings as required by the Commonwealth, and Personnel who attend meetings must be suitably qualified and informed of the matters to be considered and have the authority to make relevant decisions, as reasonably determined by the Commonwealth.
Invoicing	All invoices must be submitted in accordance with the invoicing requirements in this Contract.

## 2.3 Service Provider's Obligations

The Service Provider must, ensure that its Personnel (where applicable):

- (a) **policies, procedures, directions:** comply with the Commonwealth's practices, policies, procedures and reasonable directions, as notified by the Commonwealth from time to time, including:
  - i. the Commonwealth's security requirements; and

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- ii. the Values and Code of Conduct of the Australian Public Service, the DFAT Code of Conduct for Overseas Service (where applicable), the Australian Government's Lobbying Code of Conduct, the Commonwealth Protective Security Policy Framework.
  
  - (b) **standard of security obligations:** perform security obligations to the highest professional standards described or indicated in the requirements of the Commonwealth Protective Security Policy Framework as amended from time to time;
  
  - (c) **meetings:** attend meetings with the Commonwealth to discuss the Services when required, for no additional charges;
  
  - (d) **change of control:** notify the Commonwealth if there is a change in Control of the Service Provider's legal entity (not applicable if Service Provider is an individual);
  
  - (e) **insurance:** take out and maintain throughout the Term (or such other period as required by the Commonwealth) the following insurance:
    - i. Public liability: \$10 million per event, unlimited in aggregate;
  
    - ii. Property damage: \$[insert value or N/A] per event, unlimited in aggregate;
  
    - iii. Professional indemnity: \$[insert value or N/A] per event, unlimited in aggregate.
- and provide the Commonwealth with evidence of the currency and amount of cover under those insurance policies, promptly on request (for the avoidance of doubt, this clause replaces clause 2.9 of the Commonwealth General Conditions of Contract);
- (f) **official information:** comply with the security requirements for the protection of official information:
    - i. detailed in the Commonwealth Protective Security Policy Framework as minimum standards; and
  
    - ii. as advised by the Commonwealth from time to time during the Term of this Contract;

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- (g) **recordkeeping:** comply with any standards prescribed by the Commonwealth from time to time for the creation, care, access, storage, preservation and return or legal destruction of its records (including Material) and any Commonwealth material. This obligation continues until 7 years after termination or expiry of this Contract or completion of any legal action arising out of or in connection with this Contract, whichever occurs later;
- (h) **return of records:** on the expiry or termination of this Contract, promptly return all Commonwealth records and material (including Material) to the Commonwealth, provided that you may keep a single copy for your records;
- (i) **reports:** give the Commonwealth any oral or written information and any reports reasonably requested by it from time to time in relation to this Contract and the Services;
- (j) **security clearances:** Specified Personnel must hold a security clearance to the level specified below at all times during the Term. The cost of obtaining each security clearance will be borne by the Service Provider. The Service Provider must ensure that Specified Personnel promptly provide to the Commonwealth relevant details to assist with the security clearance process, and notify the Commonwealth promptly in writing of any change in circumstances which is likely to affect the Commonwealth's assessment of the Specified Personnel's entitlement to hold a security clearance; and
- (k) **Specified Personnel:** ensure that any specified personnel perform their designated role under this agreement, and not remove or replace (temporarily or permanently) specified personnel, or appoint a person as Specified Personnel, without the AHC's consent. Any costs resulting from a change to Specified Personnel will be the responsibility of the Service Provider.
- (l) **travel:** make travel arrangements in consultation with the Commonwealth if the Commonwealth requires the Service Provider or its Personnel to undertake travel to perform any part of this Contract. Travel insurance must be arranged and separately paid for by the Service Provider. Except as otherwise required by the Commonwealth, any of the Service Provider's Personnel travelling outside Australia to perform any part of this Contract must travel on a private passport; and
- (m) **Counterparts:** This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### 2.4 Service Provider Representations and Warranties

The Service Provider represents and warrants that:

- (a) **authority:** it has full capacity and authority to enter into and perform this Contract;
- (b) **capability:** it has the capability to lawfully perform its obligations under this Contract;
- (c) **unsettled judgments:** at the date of this Contract, no judicial decision, or pending judicial decision, relating to employee entitlements exists or is likely to arise, that has not been met in full by it.

### 2.5 General:

- (a) **Discretion:** the Commonwealth may exercise a right or remedy or give or refuse to give its consent in any way it considers appropriate (including by imposing conditions). Where the Commonwealth is required to be satisfied as to a matter, it must be satisfied in its sole and absolute discretion.

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- (b) **Further steps:** The Service Provider will promptly, at its expense, do anything required by law or that the Commonwealth reasonably requests to give effect to this Contract (such as obtaining consents, or signing and producing documents in a form and content satisfactory to the Commonwealth).
- (c) **Survival:** Without limitation, clause 1.7 survives the expiry or termination of this Contract.

### 2.6 Definitions

**Commonwealth Protective Security Policy Framework** means the Commonwealth Protective Security Policy Framework, or any replacement, in force from time to time available on the Attorney General's website, <http://www.ag.gov.au/pspf>

**Control** of a corporation means having the power (directly or indirectly) to control more than 50% of the membership of the board of directors, more than 50% of the voting shares of the corporation, or otherwise direct or cause the direction of the management and policies of the corporation.

**Material** means any material brought into existence as part of or for the purposes of providing the Services and includes, without limitations, documents, equipment, information, reports or data stored by any means.

**Personnel** means the Service Provider and its officers, employees, sub-contractors and agents (including Specified Personnel).

**Services** means the Services specified at Schedule 1.

**Signing Page**

**EXECUTED** as an Agreement

**Signed** for and on behalf of the  
**Commonwealth of Australia** as  
represented by its duly authorised  
delegate in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of delegate



\_\_\_\_\_  
Name of witness (*print*)

\_\_\_\_\_  
Name of delegate (*print*)

\_\_\_\_\_  
Position of delegate (*print*)

\_\_\_\_\_  
ON: [*insert date*]

**Executed by** [*insert company name of  
Service Provider*] ACN: [*insert  
Service Provider's ACN*] in accordance  
with Section 127 of the Corporations Act  
2001

\_\_\_\_\_  
Signature of director



\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)



\_\_\_\_\_  
Name of director (*print*)

\_\_\_\_\_  
Name of director/company secretary (*print*)

\_\_\_\_\_  
ON: [*insert date*]

\_\_\_\_\_  
ON: [*insert date*]

<b>Schedule 1</b>
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**Scope of Works**

**Area:** 4 hectare property including the following areas:

- Official residence
- Pool area
- Club house
- Children's playground
- Multi-purpose court
- Four (4) staff houses
- Car park areas
- Three (3) guardhouses located at each gate
- Multiple garden areas

**Daily Maintenance:**

- Watering
- Lawn mowing
- Trimming and pruning
- Fertilizing
- Insect and weed control
- Clear fallen leaves and debris from gutter, drains
- Sweep all paving and concrete areas
- Clean both top and rear gate entrances
- Clean residential driveways.
- Remove any rubbish and place in nominated area
- Clean multi-court and playground area of debris using a petrol-driven leaf blower

**Regular Tasks:**

**Fertilizing:**

- Apply high potash feed around the bases of flowering plants and shrubs.
- Apply nitrogen rich liquid feed to the lawn to green it up and to encourage the grasses to put on rapid growth.
- Apply a lawn fertilizer with a relatively high phosphate and potassium levels to encourage the development of strong roots; water well after applying any kind of fertilizer.
- Apply fertilizer to soil to stimulate growth.

**Weeding:**

- Fork over and remove weeds.
- Weed carefully between plants in borders and beneath trees and shrubs.
- Spray pesticide when needed.

**Pruning:**

- Lift, divide and replant congested clumps of plants or over-sized herbaceous plants, discarding any weak sections.
- Prune, cut out any damaged, dead or crossing stems to ensure that all nutrients go directly in the productive, healthy growth.
- Prune back/deadhead flowering plants as they have finished flowering to promote the formation of new buds and encourage growth.
- Trim hedges regularly to avoid having to cut them back too much at any one time.
- Trim back herbaceous plants that have grown excessively.
- Layer shrubs and climbers.

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### **Lawn Maintenance:**

- Rake the lawn clear of twigs, leaves and other debris.
- Mow the lawn twice monthly with lawnmower machine and/or handheld brush cutters.
- Repair worn out areas of the lawn and re-seed any worn patches.
- Remove and control weeds from lawn by hand or with an appropriate weed killer.
- Neaten up lawn edges of any untidy, squashed or damaged lawn edges.
- Aerate the lawn by using garden fork to encourage good drainage and to stimulate root growth.
- Level off uneven areas of the lawn.
- Fertilise annually to maintain healthy vigorous growth.

### **Garden Beds:**

- Mulch with woodchips or similar on all garden beds every 12 months.
- Fertilise garden beds every 3 months.
- Remove weeds by spraying and or manual methods every month and additionally as required.
- Trim to encourage healthy growth as required.
- Mulch all cuttings and recycle in garden beds.
- Undertake aerating / turning of garden beds on a regular basis.
- Establish an ongoing system of cutting propagation at maintenance facility to replace dead plants and undertake continual minor establishment works as gardens mature.

**Note:** Plants that die due to the Service Provider's negligence will be replaced without charge to the High Commission.

### **Trees:**

- Trim annually (or as required) prior to cyclone season to prevent nuisance or damage to property.
- Allow for tree surgery to protect existing trees from decay and insect attack.
- Denutting of palm trees as required.

### **Driveways / Paths / Drains:**

- Sweep clean after maintenance operations to ensure free of cuttings, soil, etc.
- Remove any weed growth.
- Ensure drains are kept clean and free of accumulated debris to allow water to flow freely.
- Sweep and / or hose paving area surrounding the pool and place any rubbish in a nominated area, as requested.
- Clear debris from gardens outside walls on a weekly basis.
- Water blast pathways, driveways, drainage and multi-purpose court on a quarterly basis.
- Clean gutters of debris on a monthly basis.

### **Service Provider's obligations:**

The Service Provider shall provide the following:

#### **Manpower:**

- 6 gardeners working daily on-site and;
- 1 supervisor to supervise the site.

#### **Permanently allocated equipment to include:**

- Powered lawn mower machine
- Manual lawn mower
- Brush cutters
- Leaf blower
- Garden hoses (length as required)
- Wheel barrow
- Oscillating sprinklers
- Long handled pruner

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- Pruning shears
- Pesticide pump and sprayer
- Spades, forks, hand trowel, secateurs, rakes, gloves, and other necessary equipment required to perform the duties.
- Safety equipment including goggles, ear muffs, face shields, gloves, appropriate footwear, rain gear and protective uniform.

### **Fertilizer / mulch / weed killer:**

- Details of all chemicals and products are to be provided to the Second Secretary (Administration) for approval. Chemicals and products can only be used by the Service Provider once approval has been given by the Australian High Commission.
- The Service Provider will not swap or use any other chemicals or products without prior approval from the Australian High Commission.

## Gardening Services – Australian High Commission

### Work Order

**Work Order between the Commonwealth of Australia (represented by the Australian High Commission, Suva) and [INSERT CONTRACTOR] DATED [INSERT]**

	Required Information	Details
1	Work Order Number	
2	Date of Work Order	
3	Contractor Name	
4	Additional Services  (including a detailed description of all services and other deliverables to be provided by the Contractor under this Work Order)	
5	Specified Personnel (if any)  (including names, designated role and specific tasks to be performed)	
6	Service Fee	
7	Due date for completion	
8	Invoices	
9	Additional Performance Standards (if applicable)	
10	Other Australian High Commission requirements (if applicable)	
11	Australian High Commission contact  (Name and contact details)	