5.3 DISCIPLINARY POLICY

5.3.1 PREAMBLE

Whereas all cases will be heard in accordance to South African Laws, such as for instance:

- the Labour Relations Act
- the Law of Evidence
- the Criminal Procedures Act
- the Interpretation of Laws
- the Laws of Natural Justice

The Disciplinary Procedure as detailed in the Conditions of Employment Agreement (as published in Government Gazette No 16047 dated 28 October 1994) as amended by the collective agreement on conditions of service publicized in Government Gazette no. 7928 dated 18 June 2004 shall be the disciplinary procedure implemented, and the guidelines on disciplinary measures as approved for the Employment Equity Plan shall support the disciplinary procedure.

5.3.2 OBJECTIVES OF POLICY

To provide guidelines to employer in dealing with unsatisfactory performance by any EMPLOYEE.

To guide and help employer maintain disciplinary and appeal procedures which are fair, just and equitable for all its EMPLOYEES, irrespective of race, creed, sex, religion or job category

5.3.3 DEFINITIONS

In this policy a word or phrase to which a meaning has been assigned in Section 1.0 on definitions has that meaning, unless the context otherwise indicates.

5.3.4 PRINCIPLES

a. EMPLOYER’S Obligations

- Maintain fair, just and consistent discipline.
- Ensure that all EMPLOYEES are made aware of the standards of acceptable behaviour expected of them.

b. EMPLOYEES Obligations

- Comply with the various rules and procedures of the EMPLOYER.
- Carry out all reasonable instructions given to them.
- Comply with the law.
- Behave in an orderly and lawful manner.
- Treat the EMPLOYER’S property with care and respect and not use such property for anyone’s own benefit.
- Treat all other persons and their property with respect.
- Not to victimize or intimidate any other EMPLOYEES.
- Make themselves available for work in terms of the rules set by the EMPLOYER and regulated by the Basic Conditions of Employment Act.
- Perform their duties to the standards required by the EMPLOYER.
• Not to take part in any form of illegal industrial action or to incite or encourage other EMPLOYEES to participate in such actions. Disciplinary action may follow if any of these expected forms of good conduct is not met.

c. General

i. The EMPLOYER is entitled to suspend an EMPLOYEE on full pay pending on investigation into any alleged breach of the DISCIPLINARY CODE.

ii. Warnings to EMPLOYEES are cumulative only if the warnings issued are for the same type of offence and if it is still valid.

iii. If an EMPLOYEE is not dismissed or warned for a transgression of the DISCIPLINARY CODE, it will not be regarded as a precedent.

iv. An EMPLOYEE should be willing to submit himself to a breach test and/ or a blood test by a qualified medical doctor of the EMPLOYER’S choice.

v. EMPLOYEES may be requires having their property and/or persons searched on entering or leaving the EMPLOYER’S premises.

d. Corrective Action

i. Trading is a corrective action and is used where it was established that an EMPLOYEE had erred in ignorance.

ii. Preventative steps can be taken such as a transfer within the working place.

iii. The issuing of verbal or written warnings or dismissals is punitive.

iv. Counselling is a corrective action.

v. According to the circumstances either corrective or punitive action may be taken.

e. Rights

i. To be given prior warning of any charge against him/her.

ii. To be advised of the charge in writing.

iii. To be given time to prepare his/her defence.

iv. To be allowed a formal hearing or enquiry.

v. To be present at a formal hearing or enquiry.

vi. To be represented at a formal hearing or enquiry by an employee representative.

vii. To cross-examine any person giving evidence and to ask questions of any evidence produced.

viii. To call witnesses to testify on his/her behalf.
ix. To an interpreter agreed upon by the parties.

x. To appeal within 5 WORKING DAYS after verdict was communicated in writing against any penalty, which may be imposed, to a higher level of management.

ii. EMPLOYER’S Rights

i. To take the appropriate action where MANAGEMENT considers that an EMPLOYEE’S behaviour or performance is unacceptable or unsatisfactory.

ii. To call witnesses to testify on its behalf.

iii. To decide when an Employee’s behaviour or performance is unacceptable or unsatisfactory.

f. Nature of Disciplinary Action

i. Informal

In verbal warning is administered in the normal course of duties by an Employee’s immediate supervisor and such warning will not be recorded on the Employee’s personal file.

ii. Formal

In dealing with more serious or repeated cases of breach of discipline, a supervisor may initiate-

• A disciplinary hearing, which could result in a written, or final written warning, which is an extension of a verbal warning.
• A formal disciplinary enquiry which will be conducted by a chairman appointed by the MUNICIPAL MANAGER who will decide on the appropriate penalty.
• The MUNICIPAL MANAGER may appoint a panel to assist the chairman of a disciplinary investigation.

iii. Disciplinary Steps

Disciplinary steps should be initiated as soon as possible after discovering that an EMPLOYEE is alleged to have breached the DISCIPLINARY CODE.

g. Categories of Misconduct

An EMPLOYEE will be guilty of misconduct if he/she wilfully or negligently-

i. Contravenes or fails to comply with any of the provisions of the CONDITIONS OF SERVICE, any applicable legislation, any EMPLOYER rules, procedures of his/her service contract; or

ii. Fails or refuse to obey a lawful and reasonable instruction given to him/her by person authorized to do so; or

iii. Is insubordinate by word or behaviour; or

iv. Is negligent by word or behaviour; or

v. Partakes of any intoxicating substance to such an extent that he/she is unable to perform his/her duties properly, or the unauthorised possession of or trading in intoxicating substances; or
vi. Commits or partakes in any act of fraud, corruption, bribery or theft, unlawfully appropriates the EMPLOYER’S property, or willfully or negligently damages it, uses it or permits it to be used in an improper or unauthorised manner; or

vii. Fails to present himself/herself for work, or absents himself/herself in his/her workplace or duty, without LEAVE or valid reason, or is absent form work for a period as stipulated in Part 2, Paragraph 8.4; or

viii. Knowingly makes a false statement in order to advance himself/herself in his/her post or to prejudice the EMPLOYER, its service or anyone in the EMPLOYER’S SERVICE; or

ix. Assaults, intimidates or victimizes or threatening to assault another EMPLOYEE or a member of the public in the course of his/her duties; or

x. Conducts himself/herself in a disgraceful, unbecoming and dishonest manner prejudicial to the good and proper working of the EMPLOYER’S service or conducts himself/herself in such a manner that the position of trust between EMPLOYER and EMPLOYEE is impaired; or

xi. Commits any act of sexual harassment; or

xii. Disclose or uses (otherwise than in the discharge of his/her duties) information acquired in the course thereof without the prior consent of the EMPLOYER; or

xiii. Engages in remunerative work outside the EMPLOYER’S service, where permission to perform such work has not been unreasonably withheld commits himself/herself thereto without first requesting and receiving the EMPLOYER’S permission (or contravenes any conditions upon which such permission is granted by the EMPLOYER); or

xiv. Does, allows or causes anything detrimental to the EMPLOYER, its discipline or its efficiency.

NOTE:

(a) In assessing the seriousness of the breach, regard shall be given to the consequences or possible consequences of the EMPLOYEE’S action in order to ascertain whether the EMPLOYER/EMPLOYEE relationship is adversely impaired or the EMPLOYER’S property and/ or operations are jeopardized or any lives are endangered.

(b) Depending on the circumstances, the above could be viewed as GROSS MISCONDUCT if the EMPLOYER/EMPLOYEE relationship is adversely impaired or EMPLOYER’S property and/or operations are jeopardized or any lives endangered.

(c) Nothing in this DISCIPLINARY CODE and procedure shall affect the EMPLOYER’S right to summarily terminate an EMPLOYEE’S contract of employment on grounds recognised by law as efficient.

h. Validity of Disciplinary Action

Written warning shall remain effective for a period of 6 months, and final written warnings shall remain effective for a period of 9 months, and may not be referred to or used against EMPLOYEE at any further disciplinary procedure.

i. Disciplinary Procedure

i. Informal Discipline (Verbal Warnings)

Verbal warnings serve to educate and coach EMPLOYEES in correcting or improving any deviant behaviour. These warnings are not written down and placed on the EMPLOYEE’S file. The supervisor has the discretion to decide how many verbal warnings must be given to a subordinate before he/she initiates any formal disciplinary measures.

ii. Formal Discipline (Written and final Warning)

A supervisor may give a formal written or final warning for a breach of “other misconduct” not stipulated in Par.6.
iv. When issuing a written or final warning, the EMPLOYEE must be given the opportunity to state his case and he must be allowed to call in any witnesses to support his/her case.

v. The supervisor must always complete the form “Disciplinary Warning Form” and must endeavour to obtain the EMPLOYEE’S signature acknowledging that disciplinary action has been taken. If the EMPLOYEE refuses to sign, a witness must be obtained to sign. The EMPLOYEE should be advised of his/her right to appeal against the decision within 5 WORKING DAYS. Any EMPLOYEE who has been given a final warning must be advised that any further breaches of discipline within the next 9 months could result in DISMISSAL.

vi. Formal Disciplinary Enquiries

A formal discipline enquiry may be held where one of GROSS MISCONDUCT (see par.6) is or where the breach is such that DISMISSAL may be considered (for example, if the EMPLOYEE already has a valid warning)

i. A supervisor may initiate a formal enquiry by completing the form “Notification of Disciplinary Enquiry”. A copy of this form must be given to the accused EMPLOYEE who should sign the document. If he/she refuses to sign, then a witness must also read to the accused EMPLOYEE.

NOTE:
Before the accused EMPLOYEE is advised in writing of the pending case, the supervisor must ensure that a date, time, venue as well as the detail of the charges of the intended enquiry is obtained from the chairman of the disciplinary panel. The EMPLOYEE should be given a reasonable period from when he is advised of the pending disciplinary enquiry to the date and time when the enquiry is to take place.

i. Before the appointed time of enquiry, the chairman must ensure that all the parties to the enquiry have been informed of the date, time and venue of the pending enquiry by reference to the chairman’s checklist.

ii. At such enquiry, the chairman and panel may:

- Call witnesses;
- Submit any documentation;
- Produce exhibits in substantiation of the charge;
- Cross-examine the EMPLOYEE charged and any witnesses of the EMPLOYEE charged;
- Inspect any documentation; and
- Exhibit submissions by the EMPLOYEE charged.

iii. Penalties

If an EMPLOYEE is found guilty of misconduct in terms of this chapter after a formal discipline enquiry/hearing has been held, any one of the following sanctions may be imposed:

iv. Reprimand (Corrective Counselling)
v. Written warning
vi. Final written warning
vii. Transfer to another department or position  
viii. Demotion (rank and/or SALARY)  
v. Withholding increments for a continuous period of not more than 12 months  
x. Suspension without payment of SALARY for a period not exceeding 7 WORKING DAYS, provided that the EMPLOYEE may not be suspended on a day on which he would not normally work  
x. Any other penalty mutually agreed upon by the parties  
xii. DISMISSAL with or without notice.

j. Appeal Procedure

i. An EMPLOYEE has the right to appeal against the findings of any disciplinary enquiry or hearing under the following circumstances:

- If he/she is of the opinion that the decision is unfair and punishment is not commensurate with the offence.
- If new evidence or witnesses are available which may materially influence the decision of the hearing or enquiry.
- If disciplinary procedures were not adhered to.
- Any other reasonable or judicial circumstances.

ii. An EMPLOYEE may lodge an appeal within 5 WORKING DAYS after he/she was notified of the decision of the MUNICIPAL MANAGER in writing.

iii. The appeal hearing must be conducted according to the procedures for other disciplinary enquiries except that it need not hear all the previous statements, as the information needed can be obtained from the minutes or recording of the original hearing enquiry. Minutes must be kept of the proceedings.

iv. The appellant may be assisted and represented by an EMPLOYEE REPRESENTATIVE.

v. The EMPLOYEE must hear the appeal within 20 WORKING DAYS after the lodging of the appeal.

vi. The chairman of the appeal hearing should not have been involved in the original discipline case.

k. General

i. Neither the EMPLOYEE nor the witnesses can be compelled to make statements prior to or during the disciplinary hearing or enquiry.

ii. Wherever possible, disciplinary hearings or enquiries should be held within normal WORKING HOURS.

iii. If the EMPLOYEE is absent from the hearing or enquiry, the case should be postponed and he/she should be notified in writing of another date on which to attend. Should the EMPLOYEE fail to attend again, the hearing or enquiry may proceed without the EMPLOYEE.
iv. If an EMPLOYEE is dismissed in his absence because of failure to be at work for any reason such as desertion, imprisonment or other causes, an enquiry must be held on his return to work, in order to allow the EMPLOYEE to explain the reason for absence. If the reason is not acceptable, then the decision to dismiss will stand and the normal appeal procedures may be followed if lodged by the EMPLOYEE. If an employee who is deemed to have been discharged at any time reports for duty, the employer may, on good cause shown and notwithstanding anything to the contrarily contained in this Act, approve the reinstatement of the employee in the employee’s former post or in any other post on such conditions relating to the period of the employee’s absence from duty or otherwise as the employer may determine.

v. The fact that misconduct may result in criminal charges being laid against an EMPLOYEE does not prevent the EMPLOYER from holding a disciplinary hearing or enquiry in accordance with its procedures. It is preferable for such hearing or enquiry to be concluded prior to the laying of criminal charges.

vi. The chairman of the hearing or enquiry should only have access to the EMPLOYEE’S previous disciplinary record after he has made the decision that the EMPLOYEE is guilty of the charge. This record should only be referred to for the purpose of determining and appropriate penalty.