



**HARRY GWALA DEVELOPMENT AGENCY (PTY) LTD**  
[REG. No: 2011/001221/07]

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**POLICY: DISCIPLINARY AND CODE OF CONDUCT**

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<b>Administrative Responsibility:</b>	Chief Executive Officer
<b>Implementing Department / Departmental Unit</b>	Corporate Services Department

# DISCIPLINARY AND CODE OF CONDUCT POLICY

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## POLICY DOCUMENT CONTROL

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Version	Author	Date	Revised Date
V1	Corporate Services Manager		11 April 2024

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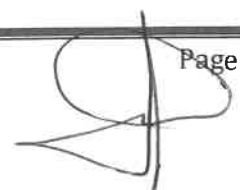
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## PREAMBLE

Harry Gwala Development Agency (HGDA) accepts the responsibility for managing and controlling the activities of the business in a harmonious and fair manner in meeting its obligations to stakeholders and customers. Within this framework, HGDA strives to promote fair, equitable, just, and consistent treatment of all employees in dealing with behaviour, which is detrimental to effective working relationships or is in conflict with any legislation and policy that promotes harmonious and effective workplace behaviour.

For discipline to be maintained fairly, employees should know what constitutes misconduct and/or unacceptable behaviour in the workplace and the procedure that will be followed when dealing with such behaviour.

### 1. INTERPRETATION OF THE POLICY

1.1. Except to the extent to which the context may otherwise require, this Policy shall be construed in accordance with the following provisions of this subparagraph:

1.1.1. Any word or expression importing any gender shall include the other gender.

1.1.2. Words importing the singular also include the plural, and *vice versa*, where the context requires.

1.1.3. The following words shall have the meanings hereby assigned to them –

"**APPEAL**" means the right of an employee to challenge the outcome a disciplinary enquiry;

"**APPEAL ENQUIRY**" means an enquiry at which an employee is given the opportunity to state his/her case against the outcome of a decision taken by the Chairperson of a disciplinary enquiry;

"**CHAIRPERSON**" means the person that presides over the proceedings of the disciplinary enquiry;

"**DAY**" means any normal working day, excluding Saturdays, Sundays, and public holidays;

"**DEPARTMENTAL HEAD**" means a Heads of the Department who reports to the CEO;

"**DISCIPLINE**" means the measures taken by the company to manage the conduct or performance of the employee, including but not limited to counselling, a reprimand, a written warning, a final written warning, suspension, demotion, and dismissal;

"**EMPLOYEE REPRESENTATIVE**" means a fellow employee of the company stationed at the same premises who assists the accused employee during the enquiry;

"**ENQUIRY**" means a meeting chaired by a designated Chairperson, the objective of which is to consider relevant facts with a view to making an appropriate decision in a disciplinary matter;

**"INVESTIGATING OFFICER"** means the manager or supervisor or presiding officer who conducts the investigation and who may present the allegations against the employee at a disciplinary enquiry;

**"OTHER MEASURES"** means counselling on performance or conduct, informal disciplinary action (for example a reprimand) or any other action which is appropriate in the circumstances but is not a formal warning.

## **2. OBJECTIVE OF THE POLICY**

The objective of this Policy is to:

- 2.1. State, in broad terms, the standard of conduct and behavioural rules which apply to employees of HGDA;
- 2.2. Ensure that employees have knowledge of such what constitutes misconduct and/or unacceptable behaviour;
- 2.3. Promote certainty and consistency in the application of discipline;
- 2.4. Set out circumstances which may lead to disciplinary measures being taken.

## **3. SCOPE OF APPLICATION**

The Policy applies to all contract employees of HGDA, including interns and experiential learners.

## **4. PRINCIPLES**

- 4.1. The company recognises and supports the principle that employers and employees should treat each other with mutual respect and dignity
- 4.2. This Policy is guided by relevant legislation including but not limited to the provisions of the Labour Relations Act, other company Policies, Codes of Good Practice as gazetted from time to time, and decisions of the CCMA and/or Labour Courts.
- 4.3. Discipline is regarded as part of the company's responsibility which shall be exercised where the work performance or conduct of an employee is unacceptable or unsatisfactory or the employee fails to observe the terms and conditions of his/her contract of employment. All forms of discipline must be seen as corrective action and not as punishment.
- 4.4. The company shall endeavor to exercise this responsibility fairly and consistently considering the needs for the effective operation of its business and the safety and fair treatment of its employees and sound industrial relations. The company

has therefore established these rules to govern the conduct of employees.

- 4.5. The Corporate Services Department may be requested by any employee or the company to give guidance or information at any stage of the disciplinary process.
- 4.6. The Disciplinary Code and Procedure is intended to promote fairness and avoid unfair discrimination.
- 4.7. Every employee has the right to be represented at a disciplinary enquiry by an employee representative, who may also be present when the employee is being informed of any formal disciplinary action to be taken against such an employee. As the disciplinary procedure is an internal process neither the company nor the employee may be represented by a person other than an employee of the company.
- 4.8. All annexure referred to herein may be obtained from the Corporate Services Department and those forms should be used in the disciplinary process.
- 4.9. The Disciplinary Code and Procedure is not intended to be exhaustive and does not necessarily set out all applicable standards and rules of conduct.

## 5. GENERAL RULES

- 5.1. The company endeavors to apply principles of enlightened industrial relations, policies, and practices, and supports the promotion of sound labour relations.
- 5.2. Disciplinary sanctions may not be applied unless:
  - 5.2.1. The Chairperson has followed the procedures set out in this Disciplinary Code and Procedure to establish whether adequate reasons exist; and
  - 5.2.2. The employee has been given the opportunity to respond to any allegations.
- 5.3. The company's disciplinary process takes the following two forms:
  - Informal process; and/or
  - Formal process.
- 5.4. The severity of disciplinary action shall depend on the merits of each case and mitigating and aggravating factors shall be considered by the Chairperson. The actions set out in the Disciplinary Code are guidelines only and the company may impose, at its discretion, different actions to those indicated.
- 5.5. Written warnings for different and/or similar offences shall be accumulative. This means that the company is entitled to consider the entire operative disciplinary history of the employee.
  - Disciplinary action taken against employees shall lapse as from the date of issuing to the time the action expires as follows:
  - Written reprimand — after 3 months;
  - Written warning — after 6 months;
  - Final written warning — after 9 months.

- 5.6. A lapsed action shall not be considered in deciding subsequent disciplinary action, unless it is in such a nature that a trend of habitual behaviour has been established.

## 6. DISCIPLINARY PROCEDURES

### INFORMAL PROCESS

- 6.1. Informal process — reprimand / counselling / written warnings these will not necessarily need a formal disciplinary enquiry but may be applied without any formal enquiry after an investigation has been conducted provided that the investigation finding is simple and straight forward.

An employee may be given a reprimand and/or counselled in the following circumstances:

- 6.1.1 where work performance or conduct is considered unacceptable; and/of

- 6.1.1. if terms and conditions of employment are not observed; and/or

- 6.1.2. The Disciplinary Code is breached.

- 6.1.3. Reprimand / counselling / written warnings are intended to be informal with emphasis on correcting the employee's performance and/or conduct through discussion and counselling. These must be formally recorded in written form. These must form part of an employee's personal file and kept as part of the employee's work record.

- 6.2. **A FORMAL PROCESS** — Final written warnings / Dismissal.

- 6.2.1. Should a verbal reprimand be inappropriate the formal process of the disciplinary process shall be invoked.

- 6.2.1. An investigating officer shall be appointed by the company, who shall investigate the matter.

- 6.2.2. The investigating officer shall determine the date and the place of the disciplinary enquiry which should take place within 14 days of the completion of the investigations and formulation of charges. The investigating officer shall complete a Notification Form advising the employee of the charges, which shall then be issued to the employee allowing for sufficient time for the parties to prepare. The employee should be requested to sign the notification form on receipt thereof.

- 6.2.3. The investigating officer shall advise the employee of the right to seek the assistance of an employee representative and of the right to the opportunity to make any representations and/or to call any witnesses and to cross examine the company's witnesses.

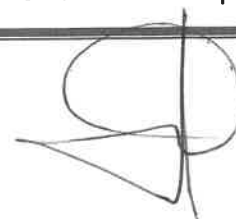
- 6.2.4. The disciplinary enquiry shall be chaired by a manager or supervisor who is impartial.

- 6.2.5. If circumstances warrant it, a chairperson may be selected from another operation within the company. The request for such an appointment must be reduced to writing by the relevant CEO together with the reasons for the request.

- 6.2.6. An employee may be suspended on full pay pending or during an investigation of an offence until a decision is issued if it is considered that:
- 6.2.7. the employee may tamper with the evidence that the allegations against him/her shall be based on; and/or
- 6.2.8. The employee may interfere with the witnesses; and/or May cause loss to the company; and/or
- 6.2.9. His/her presence may cause industrial unrest; and/or
- 6.2.10. Any other reason that, the company, deems justifiable.
- 6.2.11. The suspended employee shall be informed of the suspension in writing which should indicate the expected duration of the suspension, contact details, the anticipated date on which the employee may have to report at the workplace and the expected conduct of the employee during the suspension, e.g. the employee may only have authorized access to the workplace. The disciplinary enquiry shall be attended for the period necessary by the investigating officer, the Chairperson of the enquiry, the employee concerned, the employee's representative and any witnesses called to give evidence.

### **6.3. IOA REPRESENTATIVE OF THE CORPORATE SERVICES**

- 6.3.1. Department may attend the enquiry as an observer and shall make available to the Chairperson such details as may be released from the employee's personnel file and shall also provide advice to ensure that fairness prevails at the enquiry.
- 6.3.2. Should an employee refuse to attend the enquiry or for any reason not be present at the enquiry despite having been given adequate notification (48 hours or more) of the date, time and place of the enquiry, and if the employee has not notified the Chairperson of a valid reason for the absence, the Chairperson may proceed with the enquiry and make a decision in the absence of the employee.
- 6.3.3. If requested the employee shall be entitled to be assisted by an interpreter. Both the Chairperson and the employee or his representative must agree on the person to be appointed to act as interpreter. If agreement cannot be reached the Chairperson shall unilaterally appoint the interpreter. The Chairperson shall ensure that the interpreter understands the role to be played and adheres thereto.
- 6.3.4. Chairperson shall conduct the enquiry in accordance with the attached documentation. In particular, findings made by the Chairperson must be made on a balance of probabilities. Both the representative of the company and the employee and/or the employee representative shall be given the opportunity to present evidence and argument.
- 6.3.5. The investigating officer shall present the case and may call witnesses to testify and neither the investigating officer nor the witnesses shall be interrupted by the other party. The employee and the employee



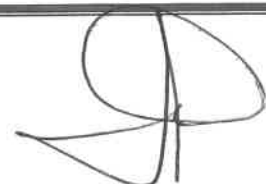


representative, if the employee is represented, shall present the employee's case, without interruption and call witnesses and cross examine witnesses of the company.

- 6.3.6. The investigating officer shall be entitled to cross-examine the witnesses of the employee. After the enquiry and the presentation of all the evidence and testimony of the parties, the Chairperson shall make a finding as to the guilt or innocence of the employee.
- 6.3.7. Should the employee be found guilty of the charges, the employee and/or the employee representative shall thereafter be afforded the opportunity of advancing reasons in mitigation of any penalty imposed. Examples of mitigating circumstances include length of service, past disciplinary record, provocation, personal and economic circumstances, attitude, age, and remorse. The investigating officer may lead evidence in aggravation of any penalty. The Chairperson shall advise the parties of the penalty after the Chairperson has considered mitigation and/or aggravation.
- 6.3.8. The proceedings may be minuted and/or taped and copies shall be made available to the investigating officer and the employee. The decision regarding the disciplinary action to be taken shall be conveyed to the employee either at the enquiry or within 3 days of its conclusion. The Chairperson shall forward a copy of the findings, together with any disciplinary action taken to the Corporate Services Department and the information shall be placed in the personnel file of the employee.
- 6.3.9. Should the employee deny that he committed the offence or wish to challenge the outcome of the enquiry, the employee may invoke the Appeal Process within the time allowed.

### **6.3. APPEAL PROCESS**

- 6.3.10. An employee who wishes to appeal against the outcome of a disciplinary action shall complete the appeal form. The employee shall then hand the appeal form to the Corporate Services Department within at least 14 days of being informed of the disciplinary action outcome. The appeal form shall be signed and dated by the employee.
- 6.3.11. Where an employee has lodged an appeal, the Corporate Services Department shall notify the appropriate manager of the appeal and the grounds thereof. The next level of management above the Chairperson of the disciplinary enquiry shall normally deal with the appeal.
- 6.3.12. The appeal Chairperson shall decide whether the disciplinary action and process was fair. The Chairperson shall record the decision and inform the employee of this decision within a reasonable period. If the decision is to cancel or amend the initial disciplinary action, the appeal Chairperson shall ensure that the appropriate action is taken without delay.



6.3.13. An appeal against disciplinary action taken against an employee at a disciplinary enquiry shall end in terms of this Disciplinary Code and Procedure after a decision on the appeal has been taken by the appeal Chairperson.

## **7. CODE OF CONDUCT**

### **CODE OF CONDUCT FOR MUNICIPAL ENTITY STAFF MEMBERS**

**[Sch. 2 amended by s. 29 of Act No. 44 of 2003.] Wording of Sections**

#### **7.1. GENERAL CONDUCT**

A staff member of the municipal entity must always—

- (a) loyally execute the lawful policies of the board of directors of the agency;
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) act in such a way that the spirit, purport, and objects of section 50 are promoted;
- (d) act in the best interest of the agency and in such a way that the credibility and integrity of the agency are not compromised; and
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.

#### **7.2. COMMITMENT TO SERVING THE PUBLIC INTEREST**

A staff member of the agency is a public servant in a developmental local system, and must accordingly—

- implement the provisions of section 50 (2);
- foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- obtain copies of or information about the agency's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- participate in the overall performance management system for the agency, as well as the staff member's individual performance appraisal and reward system, if such exists, to maximize the ability of the agency as a whole to achieve its objectives and improve the quality of life of its residents.

### **7.3. PERSONAL GAIN**

7.3.1. A staff member of the agency may not—

- use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
- take a decision on behalf of the agency concerning a matter in which that staff member, or that staff member's spouse, partner, or business associate, has a direct or indirect personal or private business interest.
- Except with the prior consent of the board members of the agency a staff member of the agency may not—
  - (a) be a party to a contract for—
    - (i) the provision of goods or services to the agency; or
    - (ii) the performance of any work for the agency otherwise than as a staff member;
  - (b) obtain a financial interest in any business of the agency; or
  - (c) be engaged in any business, trade, or profession other than the work of the agency.

### **7.4. DISCLOSURE OF BENEFITS**

7.4.1. A staff member of the agency who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the agency, must disclose in writing full particulars of the benefit to the board members.

7.4.2. This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the agency.

### **7.5. UNAUTHORIZED DISCLOSURE OF INFORMATION**

7.5.1. A staff member of the agency may not without permission disclose any privileged or confidential information obtained as a staff member of the agency to an unauthorized person.

7.5.2. the purpose of this item "privileged or confidential information" includes any information—

- (a) determined by the board of directors of the agency or any structure or functionary of the agency to be privileged or confidential;
- (b) discussed in closed session by the board members or a committee of the board;
- (c) disclosure of which would violate a person's right to privacy; or
- (d) declared to be privileged, confidential, or secret in terms of any law.

- (e) This item does not derogate from a person's right of access to information in terms of national legislation.

## **7.6. UNDUE INFLUENCE**

- 7.6.1. A staff member of the agency may not—
- (a) unduly influence or attempt to influence the board members of the agency, or a structure or functionary of the board of directors, or a member of the board, with a view to obtaining any appointment, promotion, privilege, advantage, or benefit, or for a family member, friend, or associate;
  - (b) mislead or attempt to mislead the board members, or a structure or functionary of the board of directors, in its consideration of any matter; or
  - (c) be involved in a business venture with a member of the board without the prior written consent of the board members of the agency.

## **7.7. REWARDS, GIFTS, AND FAVORS**

- 7.7.1. A staff member of the agency may not request, solicit, or accept any reward, gift, or favor for —
- (d) Persuading the board members of the agency, or any structure or functionary of the board members, regarding the exercise of any power or the performance of any duty;
  - (e) Making a representation to the board members, or any structure or functionary of the board members;
  - (f) Disclosing any privileged or confidential information; or
  - (g) Doing or not doing anything within that staff member's powers or duties.
- 7.7.2. A staff member must without delay report to a superior official or to the chairperson of the board members any offer, which if accepted by the staff member, would constitute a breach of sub item (1).

## **7.8. AGENCY PROPERTY**

- 7.8.1. A staff member of the agency may not use, take, acquire, or benefit from any property or asset owned, controlled, or managed by the agency to which that staff member has no right.

## **7.9. PAYMENT OF ARREARS**

- 7.9.1. A staff member of the agency may not be in arrears to the agency for rates and service charges for a period longer than 3 months, and the agency may deduct any outstanding amounts from a staff member's salary after this period.

**8. AMENDMENTS**

8.1 The company reserves the right to amend the Disciplinary and Code of Conduct Policy at any time as and whenever necessary to take account of new and other developments.


**9. COMMENCEMENT**

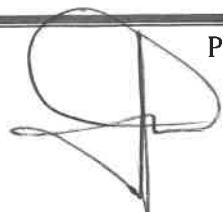
9.1 This Policy will come into effect on the date of adoption by the Board of Directors of the Harry Gwala Development Agency (Pty) Ltd.

**10. POLICY ADOPTION**

10.1 This Policy needs to be considered and approved by the HGDA Board.

**APPROVED BY:**

NAME	SIGNATURE	DESIGNATION	DATE
Ms ACR Whyte		Chief Executive Officer	25 April 2024



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NOTICE TO ATTEND DISCIPLINARY ENQUIRY

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Name:

Empl. No.

\_\_\_\_\_

\_\_\_\_\_

Date:

Time:

\_\_\_\_\_

\_\_\_\_\_

You are hereby notified to attend a Disciplinary Enquiry to be held at  
on

\_\_\_\_\_

\_\_\_\_\_

Time:

\_\_\_\_\_

To answer to the following allegation/s:

1.

\_\_\_\_\_

2.

\_\_\_\_\_

3.

4.

You have the rights to:

- 1 An employee representative present at the enquiry.
- 2 An interpreter.
- 3 Produce any evidence, document, or call in any witness.
- 4 Make a written statement in response to the allegation/s.

Please be advised that it is your responsibility to arrange for the presence of your representative, should you elect to have one. It is also your responsibility to inform the writer hereof of your need to have an interpreter, in good time, for one to be arranged.

Issued by:

Date:

\_\_\_\_\_

\_\_\_\_\_

Receipt of notice

Signature:

Date:

\_\_\_\_\_

\_\_\_\_\_