

# **The South African Distribution Code**

## **Governance Code**

**Version 6.2**

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**This document is approved by the National Energy Regulator of  
South Africa (NERSA)**

**Administered by:**

RSA Grid Code Secretariat

**Contact: Mr. Target Mchunu**

Eskom Transmission Division, System Operator

P.O Box 103, Germiston 1400

Tell: +27 (0)11 871 3076

Email: [mchunut@eskom.co.za](mailto:mchunut@eskom.co.za)

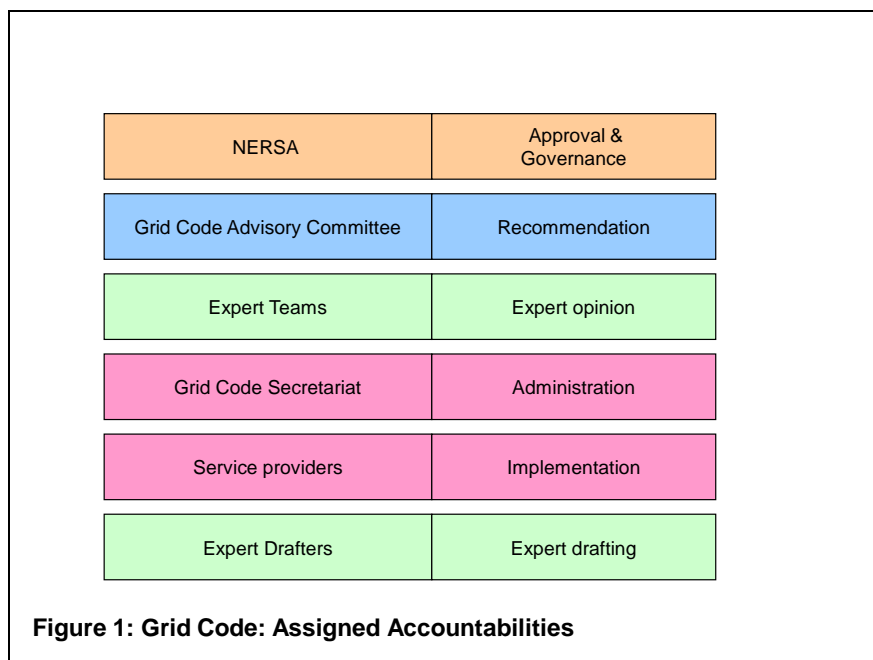
## Table of Contents

<u>Paragraph No./Title</u>	<u>Page Number</u>
1. Introduction .....	4
2. Administrative authority and the responsibilities of NERSA .....	4
3. The <i>Grid Code Advisory Committee (GCAC)</i> .....	5
3.1 Constitution of the <i>GCAC</i> .....	5
3.2 Functioning of the <i>GCAC</i> .....	6
3.3 <i>Expert teams</i> .....	7
3.4 The <i>Grid Code Secretariat</i> .....	7
4. Registration of <i>Distribution Code participants</i> .....	8
4.1 End-use <i>Customers</i> .....	8
4.2 Licensed entities.....	8
5. <i>Distribution Code</i> amendment, derogation or exemption procedure.....	8
5.1 Submissions to the <i>GCAC</i> .....	9
5.2 Recommendation to <i>NERSA</i> for approval .....	10
6. Dispute resolution and review mechanism .....	10
6.1 Complaints about the operations of the <i>Secretariat</i> or the <i>GCAC</i> .....	10
6.2 Objections about <i>NERSA</i> decisions .....	10
6.3 Complaints against Licensees.....	10
6.4 Submission of dispute to <i>NERSA</i> .....	11
7. Compliance .....	12
8. Code audits .....	12
9. Contracting .....	12
10. Limitation of Liability.....	13
11. Version control.....	14
Appendix 1: Approved exemptions .....	15

## 1. Introduction

(1) The governance code describes the provisions necessary for the overall administration and review of the various aspects of the *Distribution Code*. This code shall be read in conjunction with the relevant legislation, the licenses issued to *generators*, *transmission* companies and *distributors* and other *NERSA* adopted codes of conduct that relate to the *Electricity Supply Industry (ESI)*.

(2) The accountabilities of various entities in the governance of the *Distribution Code* are sketched in figure 1.



## 2. Administrative authority and the responsibilities of NERSA

(1) *NERSA* is the administrative authority for the *Grid Code* in terms of section 15 of the Electricity Regulations Act, 2006 as amended. *NERSA* shall ensure that the *Grid Code* is compiled, implemented and complied with for the benefit of the industry.

(2) *NERSA* shall perform the following functions:

- constitute *GCAC* and review its membership on an annual basis
- upon receiving the *GCAC* submissions consider and respond to them within a reasonable period of time for approval
- publish *Grid Code* documentation
- chair all *GCAC* meetings in line with the requirement of this code
- fund the administrative activities of the *GCAC*
- registration of *participants*
- receive and capture exemptions, amendments and derogations applications and submit to the Secretariat
- upon receipt of the applications for exemptions, amendments and derogations, respond to the submitter within reasonable period of time as well as issue a reference number for the application
  - reference numbers will be issued in the format below:
    - for exemptions – 2010DCEX000 i.e. 2010 is a year of application, DCEX stands for Dx Code Exemption and 000 is a number of that application from 001 to 999

- for amendments – 2010DCAM000 i.e. 2010 is a year of application, DCAM stands for Dx Code Amendment and 000 is a number of that application from 001 to 999
  - for derogations - 2010DCDER000 i.e. 2010 is a year of application, DCDER stands for Dx Code Derogation and 000 is a number of that application from 001 to 999
- inform *participants* of the progress with applications for amendments or exemptions and derogations
  - inform parties who submitted exemptions, derogations or amendments of the status of their submission (i.e. approved or rejected and reasons thereof)
  - ensure procedures are developed and published in the website for the review of proposed amendments and exemptions by the GCAC
  - NERSA shall inform the applicant of the expected time frames for dealing with the submission.

### 3. The *Grid Code Advisory Committee (GCAC)*

(1) NERSA shall constitute the GCAC. Subsequent to its constitution NERSA shall ensure the proper functioning of the GCAC. The GCAC is established to:

- ensure a consultative stakeholder process is followed in the formulation and review of the *Distribution Code*
- review and make recommendations regarding proposals to amend the *Distribution Code*
- review and make recommendations regarding proposals for exemption to comply with the *Distribution Code*
- review and make recommendations regarding proposals for derogation from the requirements of the *Distribution Code*
- review and make recommendations regarding updating of the *Distribution Code to facilitate and align with the changing ESI in South Africa*
- facilitate the provision of expert technical advice to NERSA on matters related to the *Distribution Code*.

#### 3.1 Constitution of the GCAC

(1) The GCAC shall be a *stakeholder* representative panel, representing *participants*.

(2) Members of the GCAC shall ensure that they consult with their constituencies with respect to their role on the GCAC. Members shall ensure sufficient participation by their constituencies in the *expert teams*.

(3) NERSA shall annually review the composition of and constituencies represented by the GCAC to ensure that it is at all times reflective of the evolving industry. NERSA may decide to expand the composition of the GCAC as part of the membership review process in consultation with the GCAC. NERSA shall encourage that members on the GCAC are able to make meaningful contributions towards the review process. The GCAC of the Distribution Code shall consist of at least the following:

- One member representing the *System Operator with one vote*;
- One member representing *transmission network service providers (TNSPs)* with one vote;
- Two members representing conventional *generators* – Eskom and Independent Power Producers, each with one vote;
- Two members representing *distributors* – Eskom and Municipal Distributors, each with one vote;
- One member representing large *end-use customers with one vote*;
- One member representing NERSA with one vote;
- One member representing *Renewable Power Plant (RPP) generators* with one vote;
- One member representing Southern African Power Pool as an observer with no voting rights.

The members shall be identified as follows:

- If an industry association represents the larger part of the constituency, the association will be requested to make the nomination(s).
- If the constituency consists of more than one association and/or a relatively small number of entities, calls for nominations will be sent to all entities. *NERSA* may decide on the member if more than the required numbers of nominations are received.
- If there is no identifiable entity, a public call for nomination will be sent out by *NERSA*. *NERSA* may decide on the member if more than the required numbers of nominations are received.

(4) *NERSA* shall publish changes in membership within 14 days, on the *NERSA* website.

(5) *GCAC* members shall serve a three-year term, after which they shall be eligible for re-appointment. Members may also be replaced by their constituency at any given time, provided 14 days' written notice is given to the *Secretariat* and *NERSA*. *NERSA* may request the replacement of members by their constituency upon recommendation of the *GCAC*, if they have not attended three consecutive meetings.

(6) Members shall nominate an alternative representative. Such nomination shall be made in writing to the *Secretariat*.

### **3.2 Functioning of the GCAC**

(1) The *GCAC* shall review all proposals for amendment of, derogations to or exemptions from the *Distribution Code*.

(2) The *GCAC* shall schedule at least quarterly review sessions. The format of a session may be determined by the *GCAC*, but should include a work session if proposed changes are of a substantive nature. Agenda items shall be circulated at least 14 days in advance of the review session.

(3) The *GCAC* shall determine its own meeting procedures and code of conduct subject to the constitutional provisions set out in this section. These procedures and code of conduct shall be published on the *NERSA* website.

(4) *NERSA* member shall chair the *GCAC* meetings. When the *NERSA* member or alternate is unable to attend the *GCAC* meeting, the members present at the meeting shall elect an alternative chairperson for the duration of the meeting.

(5) A quorum shall consist of 50% of members plus one member of the *GCAC*. Decisions by the *GCAC* shall be taken by means of a majority vote of the duly constituted *GCAC*.

(6) Alternate members shall be allowed to vote only when the main member is not available for voting.

(7) If a quorum is not present within 30 minutes of the stipulated starting time of the meeting, provided the secretariat gave proper notice, the meeting shall make the necessary recommendation and the *Secretariat* shall circulate this electronically to all *GCAC* members for decision within five work days, such decisions to be returned to the secretariat. Such decisions shall be immediately effective if voted on by a quorum. These decisions shall be minuted as confirmed at the next *GCAC* meeting where a quorum is present.

(8) Decisions of the *GCAC* shall be recorded together with dissenting views expressed by *GCAC* members.

(9) *NERSA* shall fund the administrative activities of the *GCAC*. Members shall be responsible for their own travel and subsistence expenditure.

### **3.3 Expert teams**

- (1) The GCAC shall establish *expert teams* with the purpose of allowing expert opinion to be obtained regarding submissions. Industry participation and consultation shall be encouraged in, and obtained through, the activities of these *expert teams*.
- (2) Membership of the expert teams shall be established in the following manner:
  - A call for nominations shall be made by the Secretariat as soon as a matter has been referred to an expert team by GCAC
  - GCAC members shall nominate experts to serve on the expert teams depending on the subject matter under discussion
  - Interested parties shall nominate themselves/individuals to participate on the basis of qualifications and/or level of expertise relating to the various aspects of the *Grid Code* (engineering, technical, legal, drafting, etc.).
- (3) The GCAC shall provide the *expert teams* with a full scope of work and an urgency indicator for each task referred to them.
- (4) The Secretariat shall chair all *expert team* meetings and also provide the venues for these meetings. Members shall be responsible for their own travel and subsistence expenditure.
- (5) The GCAC shall ensure that the *expert teams*
  - meet before the following GCAC meeting after a matter was referred to them
  - receive documentation at least seven days before any scheduled session
  - report, via the secretariat, in time for each GCAC meeting, on progress with all matters referred to them
  - strive to reach consensus on all matters, failing which all views shall be reported to the GCAC
  - allow full industry participation in the process by having open invitations to their meetings and providing the GCAC with membership and attendance lists for each meeting.

### **3.4 The Grid Code Secretariat**

- (1) The *System Operator* is appointed as the *Grid Code Secretariat*. This decision may be reviewed by NERSA from time to time. The *Secretariat* is accountable to the GCAC for its activities.
- (2) The *Secretariat* shall perform the following functions:
  - ensure procedures are developed for the review of proposed amendments and exemptions by the GCAC
  - provide standard submission forms to NERSA for participants
  - assist, when requested, in the preparation of submissions to the GCAC
  - prepare amendment and exemption proposals for submission to the NERSA following review by the GCAC
  - manage *Distribution Code* documentation
  - disseminate relevant information
  - co-ordinate the activities of the GCAC
  - keep and circulate minutes of meetings and documentation of proceedings of the GCAC
  - function as a formal communication channel for the GCAC
  - submit documentation, as required by NERSA, to be published on the NERSA website
  - maintains a register with all submissions from *participants*, with a record of decisions
- (3) The *Secretariat* shall make the latest version of the *Distribution Code* available electronically to NERSA for requesting parties. The *Secretariat* shall notify *participants* of approved amendments, derogation or exemptions within the reasonable time after approval by NERSA.

(4) The *Secretariat* shall make hard copies of the latest version of the *Grid Code* available to requesting entities, for which a nominal fee may be charged to recover reproduction costs.

## **4. Registration of *Distribution Code* participants**

### **4.1 End-use Customers**

(1) *Distributors* shall ensure that distribution agreements concluded with end-use customers after the implementation of the *Distribution Code* shall include an obligation on customers to comply with the *Distribution Code* requirements

### **4.2 Licensed entities**

(1) *NERSA* shall monitor compliance with the *Distribution Code* requirements by Licensees and take appropriate steps where there are non-compliances.

## **5. *Distribution Code* amendment, derogation or exemption procedure**

(1) *NERSA* is the approval authority for the *Distribution Code*. Any amendments to, derogation to or exemptions from the *Distribution Code* shall therefore be approved only by *NERSA* as guided by the *GCAC*.

(2) Any *participant*, member of the *GCAC* or *NERSA* may propose amendments to the *Distribution Code*.

(3) Any *participant* can apply for an exemption or derogation to the *Distribution Code* requirement. Exemption and derogation from complying with provisions of the *Distribution Code* may be granted by *NERSA* for the following reasons:

- to provide for existing equipment that has not been designed with consideration for the provisions of the *Distribution Code*
- to facilitate transition through interim arrangements
- to facilitate temporary conditions necessitating exemption

(4) All exemption applications should clearly indicate the following:

- the reason for the non-compliance,
- the current capability (even if this is less than what the code specifies)
- the duration of the exemptions
- action plan put in place to fix the non-compliance and
- any other information that can be used to justify why the exemption should be granted.

(5) All derogation applications should clearly state the following:

- the reason for the non-compliance,
- the current capability (even if this is less than what the code specifies)
- The suspensive condition upon which the validity and the duration of the derogation depends
- any other information that can be used to justify why the derogation should be granted.

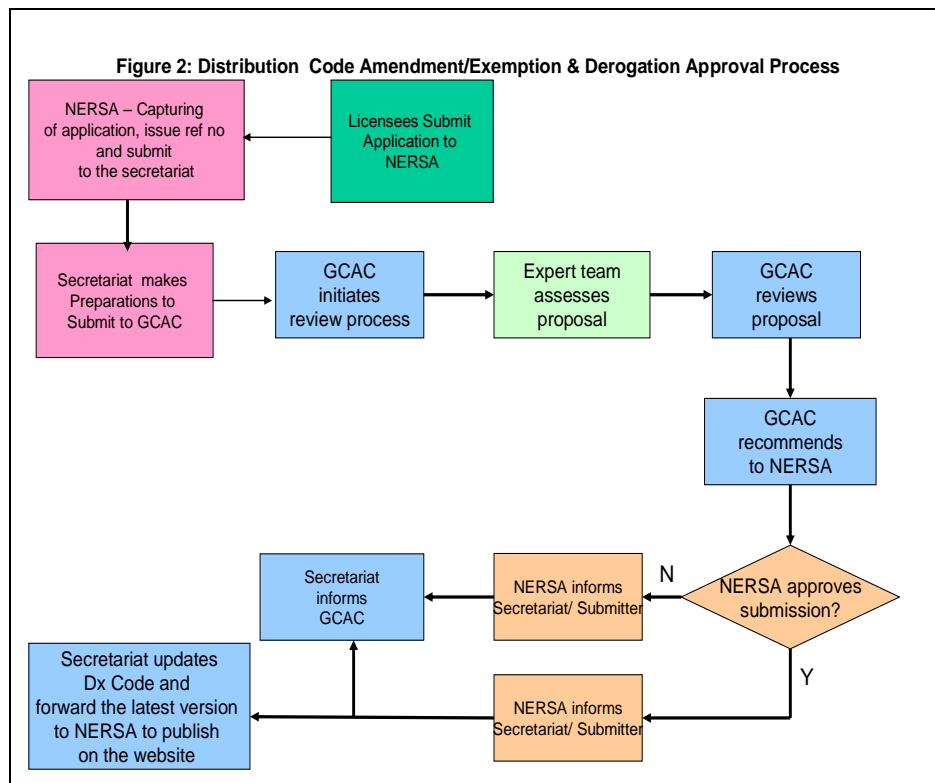
(6) All amendment applications should clearly state the following:

- the current clause to be amended
- proposed changes
- the reason why the code should be amended
- any other information that can be used to justify why the code amendment is necessary.



(7) Appendix 1 shall contain a list of exemptions that have been approved, with the relevant expiry date. The reference number shall refer to the applicable paragraph in the *Grid Code*.

(8) The procedure for amendment, exemption or derogation is sketched in figure 2.



## 5.1 Submissions to the GCAC

(1) The *Secretariat* shall submit to NERSA a list of *GCAC* quarterly meetings for each year by November of the preceding year for these to be published, on the *NERSA* website,. *Participants* shall submit amendments, derogations and / or exemptions applications to NERSA, at least 21 days before the *GCAC* meeting.

(2) Urgent submissions shall be dealt with at ad hoc meetings of the *GCAC* as decided by the chairman upon advice from the *Secretariat*.

(3) The *Secretariat* shall issue guidelines for submissions to the *GCAC*. The guidelines shall be published together with the submission dates on the *NERSA* website.

(4) All applications for an amendment or exemption shall be submitted, in accordance with the guidelines, to the *Secretariat*. The applicant shall state the relevant clauses of the *Distribution Code* and give reasons for the application.

(5) The *GCAC* shall consider the application without delay and shall

- firstly ensure that the submission is referred to an *expert team(s)* for detailed assessment, clarification, reformulation and/or recommendation
- finally forward the recommendation to *NERSA* for consideration once it has been finalised.

(6) The *GCAC* shall take the complexity and importance of the amendment/exemption into account in deciding on the composition of the *expert team* that will deal with the submission.

(7) The applicant shall be allowed to make representation to the *expert team* sessions and/or the *GCAC* prior to the formulation or finalisation of the *GCAC* recommendation to the *NERSA*.

## **5.2 Recommendation to *NERSA* for approval**

(1) Once the *GCAC* has reviewed submissions, the *Secretariat* shall prepare the formal recommendation to *NERSA* on all proposed amendments, derogations and exemptions to the *Distribution Code*. The recommendation to *NERSA* shall also include a clear expression of divergent views on such proposals.

(2) The chairperson of the *GCAC* and one member nominated by the *GCAC* shall attend the presentation to *NERSA*.

(3) The *Secretariat* through *NERSA* shall give sufficient notice to the applicant of the relevant *NERSA* meeting that will hear *Distribution Code* submissions.

(4) An applicant may attend *NERSA* meeting considering his or her application if the *GCAC* does not unanimously recommend the proposal, and is entitled to make representations to such *NERSA* meeting.

(5) Full or partial exemption from complying with a certain provision of the *Distribution Code* may be granted to *participants*. All exemptions granted shall prevail over the relevant section of the *Grid Code*.

(6) Amendments and exemptions shall have a date of approval stipulated by *NERSA*.

(7) *NERSA* shall give notice to the *Secretariat* of the decisions reached. The *Secretariat* through *NERSA* is responsible for communicating these decisions to *participants*.

(8) The *Secretariat* shall update the *Distribution Code* with the approved amendments and exemptions.

(9) Should *NERSA* approval be subject to certain changes made by *NERSA* to the original submission, those changes will have to be communicated to both the *GCAC* and the applicant for discussion and consensus before implementation. The applicant reserves the right to appeal the amended application.

## **6. Dispute resolution and review mechanism**

### **6.1 Complaints about the operations of the *Secretariat* or the *GCAC***

(1) Any complaint regarding the operation of the *Secretariat* or the *GCAC* shall firstly be addressed in writing to the *Secretariat*. The *GCAC* shall attend to such complaints at or before the next session. If the complaint is not resolved, the matter shall be referred to *NERSA* as a dispute as described in section 6.4.

### **6.2 Objections about *NERSA* decisions**

a) Any disputes will be dealt with by the National Energy Regulator Act (Act 40 of 2004) and the Electricity Regulation Act, 2006 (Act No. 4 of 2006).

(1)

### **6.3 Complaints against Licensees**

(1) Each *Licensee* shall establish a formal process for accepting and processing complaints arising under the *Distribution Code*.

- (2) The complaints-handling process shall:
  - a. Provide the complainant with a reference by which the complaint may be tracked.
  - b. make provision for the escalation of unresolved claims within the governance structure of the *Licensee*.
- (3) *Licensees* shall communicate the details of their complaints-handling process to their *Customers*.
- (4) Complainants shall use the appropriate *Licensee's* complaints-handling process to lodge complaints and to track complaint resolution.
- (5) After receiving a complaint, the *Licensee* against which the complaint has been levelled shall provide the complainant with a reasonable explanation and, if appropriate, indicate what action will be taken to address the complaint. The *Parties* shall agree on the proposed plan of action.

## 6.4 Submission of dispute to NERSA

Disputes are unresolved complaints between *Parties* that require intervention. Any *party* may submit a dispute to NERSA provided the required process of 6.1, 6.2 or 6.3 has been followed. The intent is to have a document process in place to facilitate resolution of a complaint before a dispute is submitted to NERSA.

- (1) The *party* shall state its request for either mediation or arbitration to *NERSA*.
- (2) When a dispute is raised with *NERSA*, *parties* shall provide the following information:
  - Full history of the complaint/dispute, including detailed background information
  - Written report from each *participants* detailing the reason for not being able to close out the complaint.
- (3) If a dispute is referred to *NERSA* without having followed the process described in 6.1, 6.2 or 6.3, *NERSA* may request that the *Parties* first attempt to resolve the issues in terms of the process described above. .
- (4) Should *NERSA* elect to intervene, it shall decide whether to mediate or arbitrate by considering the following:
  - How effective the complaint resolution management system was (how the problem was addressed at each stage before a dispute was declared)
  - How thoroughly the problem has been studied by both *parties*
  - What action has already been taken (contractually or otherwise)
  - The actual cost impact, environmental impact or other impact on the parties
  - Whether the complaint is reasonable
  - Whether or not a time frame can be agreed for closing out an *Non Conformance Reports*
- (5) In the event of *NERSA* acting as an arbitrator, the decision of *NERSA* shall be final and binding on the *parties*.
- (6) When considering a ruling in its role as arbitrator, *NERSA* may choose to consult any recognised person or body.
- (7) *NERSA* may appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action by or decision of the *NERSA*.
- (8) The following shall be considered, amongst other things, during the arbitration process:
  - Existing and historical performance trends or practices
  - Reference standards
  - Appropriate network design or operation standards
  - Precedents with similar events

- Historical agreements between the participants
- Total cost impact

(9) A ruling by *NERSA* shall include a time frame.

(11) *NERSA* shall develop a database of disputes resolved to assist in the resolution of future disputes.

Where the outcome of a dispute resolution proceeding would require or imply an amendment to the *Grid Code*, *NERSA* shall first consult with the *GCAC*.

## 7. Compliance

(1) All *parties* shall comply with the *Distribution Code* as updated via *NERSA* decisions from time to time.

(2) *Participants* shall inform *NERSA* of any non-conformance report of a material nature that has been submitted to another participant in accordance with section 6.3.2.

(3) The *NERSA* may require a *participant* to provide *NERSA* with information that it deems necessary for the proper administration of the *Distribution Code*. This information shall, upon request, be treated as confidential.

(4) Upon a report or suspicion of non-compliance *NERSA* may seek to

- resolve the issue through negotiation
- take action in terms of the procedures for handling licensing contraventions
- consider an application for amendment
- consider an application for exemption.

(5) *Customers* may apply for exemption from changes to the *Distribution Code* under section 5.

## 8. Code audits

(1) A *customer* may request from the *service provider*, or a *service provider* may request from a *customer*, any material in the possession or control of that *participant* relating to compliance with a section of the *Distribution Code*. The requesting *participant* may not request such information in relation to a particular section of the *Distribution Code* within six months of a previous request made under this clause in relation to the relevant section.

(2) A request under this clause shall include the following information:

- Nature of the request
- Name of the representative appointed by the requesting *participant* to conduct the investigation
- The time or times at which the information is required

(3) The relevant *participant* may not unreasonably withhold any relevant information requested. It shall provide a representative of the requesting *participant* with such access to all relevant documentation, data and records (including computer records or systems) as is reasonably requested. This information shall be treated as confidential if requested. Any request or investigation shall be conducted without undue disruption to the business of the participant.

## 9. Contracting

(1) The *Distribution Code* shall comprise one of the standard documents that form part of the contract between *service providers* and each of their *customers*.

(2) *Service providers* shall contract with *customers* for any services specified in the *Distribution Code*.

- (3) *Service providers* shall ensure that a non-discriminatory procedure is developed and implemented for the allocation of QOS parameters at the *PCCs*.
- (4) *Customers* shall enter into a connection contract and an operating agreement with the *TSNP* in advance of construction of the connection facilities.
- (5) *Customers* shall enter into a Use-of-System contract with the *NTC* before commencement of energy transactions over the TS.
- (6) *Customers* shall enter into an *ancillary services* contract with the *NTC* before commencement of *ancillary services* delivery to the *NTC*.
- (7) If the contracting parties are both Eskom divisions, the requirement shall be for a Service Level Agreement between the respective divisions.

## 10. Limitation of Liability

- (1) This section contains the general principles to address liability as a result of negligence caused either by the *Distributor* to the *Participant*, the *Participant* to the *Distributor* or the *Participant* to another *Participant* where both are connected to the *Distribution System*.
- (2) This section shall at all times be subject to the provisions of the Electricity Regulation Act, 2006 as amended.
- (3) The aim is not to encourage litigation but to promote co-operation and commitment to maintaining acceptable standards in the operation of the *Distribution System* and management of plants connected to the *Distribution System*.
- (4) This section shall not override any existing terms and conditions on liability contained in the contractual relationship for supply of electricity and the connection of the *Participants* to the *Distribution System*.
- (5) In the event of damage caused by the *Distributor* to the *Participant*, or, the *Participant* to the *Distributor*, or multiple *Distributors* to a *Participant* or multiple *Participants* to a *Distributors* the matter shall be dealt with in terms of the provisions relating to negligence and limitation of liability in the contract between the parties.
- (6) In the event of damage to plant or injury to person/s caused by one *Participant* to another *Participant*, the *Distributor* shall make available, to both *Participants*, relevant information pertaining to the incident that has been duly approved for release in terms of applicable legislation to such affected parties. Where more than two *Participants* are involved, the *Distributor* shall make approved information available to all affected *Participants*.
- (7) In the event of damage or injury caused by one *Participant* to another *Participant*, liability shall be for the damage or injury caused to the plant or person.
- (8) In the event of damage or injury caused by one *Customer* to another *Customer*, the *Distributor* shall make available, to both *Customers*, for release to such affected parties, relevant information pertaining to the incident that has been duly approved in terms of the applicable legislation. Where more than two *Customers* are involved, the *Distributor* shall make approved information available to all affected *Customers*.
- (9) Given that it may not always be possible to determine the cause or source of the problem that resulted in damage to plant or injury to person/s, the *Distributor* may be tasked by the

*Participant/s* or *Customer/s* to form a joint committee to investigate the possible causes and solutions.

(10) The *participants* and the *Distributor* shall at all times endeavour to resolve issues timeously and co-operatively.

## **11. Version control**

(1) The *Distribution Code* will evolve as the electricity supply industry in South Africa evolves.

(2) Each of the sections and codes that collectively form the South African *Distribution Code* shall have separate version control and approvals.

(3) The *Secretariat* shall be responsible for version control.

**Appendix 1: Approved exemptions**