



## PERFORMANCE BOND/SECURITY FORMAT

The format and wording of the Performance Bond/Security to be provided (unless otherwise instructed in writing by PRASA) in favour of PRASA is provided below and shall not be amended by a Bidder save for the wording highlighted in yellow:

**Passenger Rail Agency of South Africa**  
**Umjantshi House, 30 Wolmarans Street, Braamfontein, 2001**  
**("the Beneficiary")**

### PERFORMANCE BOND/SECURITY

Performance Bond/Security Reference Number: \_\_\_\_\_

1. The Passenger Rail Agency of South Africa ("**PRASA**") situated at Umjantshi House, 30 Wolmarans Street, Braamfontein, 2001 ("**the Beneficiary**") will enter or has entered into a written Contract with Insert Applicant's Full Legal Name And Company Registration Number ("**the Applicant**") for THE PLANNING, DESIGN, SUPPLY, CONSTRUCTION, INSTALLATION, TESTING, COMMISSIONING AND MAINTENANCE OF A NEW FULLY INTEGRATED, FUNCTIONAL, COMPLETE AND FUTURE-PROOFED PRASA TRAIN CONTROL SYSTEM ("PTCS") IN PRASA'S KWAZULU-NATAL ("KZN") SERVICE REGION ("**THE PROJECT**") in relation to the Request for Proposals Number Insert PRASA Bid/Tender Number ("**the RFP**") and under PRASA Contract Number Insert PRASA Contract Number ("**the Contract**") in terms of which the Applicant is required to furnish PRASA with a guarantee in the form of a payment-on-demand Performance Bond/Security, from a South African Bank whose primary place of business operations is South Africa, in the minimum amount of ZARInsert Amount In Figures (Insert Amount In Words Rand) ("**the Performance Bond/Security**").
2. We, Insert Bank's Full Legal Name And Company Registration Number being a South African Bank whose primary place of business operations is South Africa and situated at Insert Bank's domicilium citandi et executandi In South Africa ("**the Bank**"), hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank to pay PRASA, without objection or argument, amounts up to a minimum aggregate amount of ZARInsert Amount In Figures (Insert Amount In Words) ("**the Performance Bond/Security Amount**") upon receipt of the first written demand by PRASA at Insert Bank's domicilium citandi et executandi In South Africa and addressed for the attention of Insert Bank Authorised Official's Full Legal Name and South African Identity Number declaring (at PRASA's sole

discretion and without any obligation for PRASA substantiation) that the Applicant fails and/or failed to fulfil any or all of the Applicant's obligations under the RFP and/or an agreement and or the Contract including, but not limited to, either of the following events:

- a) Applicant made any misrepresentation(s) in the Applicant's Bid that the Applicant submitted to PRASA in response to the RFP (**"the Applicant's Bid"**); and/or
  - b) Applicant or any of its advisors, officers, employees or agents engaged or is engaging in collusive action with respect to the RFP processes and/or PRASA's procurement processes and/or the Contract; and/or
  - c) Applicant or any of its advisors, officers, employees or agents engaged or is engaging in illegal or fraudulent activities in relation to the RFP processes and/or PRASA's procurement processes and/or the Contract; and/or
  - d) Applicant fails and/or failed to achieve completion of Validation (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA) to the absolute satisfaction of PRASA for which the Key Date is fixed as the 548<sup>th</sup> calendar day after the Commencement Date (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA); and/or
  - e) Applicant, in PRASA's opinion, fails and/or failed to comply with any Conditions of an agreement and/or the Contract and/or an agreement instruction and/or Contract instruction respectively; and/or
  - f) Applicant, in PRASA's opinion, fails and/or failed to perform any obligations and/or liabilities and/or comply with an agreement and/or the Contract and/or an agreement instruction and/or a Contract instruction respectively; and/or
  - g) PRASA, in PRASA's opinion, is entitled to amounts recoverable from the Bidder for any reason whatsoever.
3. The Bank's liability under this Performance Bond/Security is principal in nature and is not subject to any agreement and/or contract. The Bank's liability shall not be reduced, or in any way be affected by any alteration of the terms of the RFP

- or any other arrangements between the Applicant and PRASA, whether oral or in writing.
4. The Bank will pay PRASA within 14 (fourteen) calendar days upon receipt of a written demand and will not determine the validity of the demand or become party to any claim or dispute of any nature which any party may allege.
  5. Any demand for payment together with this Performance Bond/Security shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional proceedings instituted against the Bank in any court of law having jurisdiction.
  6. This Performance Bond/Security exists independently of any agreement and/or contract (or any amendment, variation or novation thereof) between the Applicant and PRASA.
  7. This Performance Bond/Security is neither negotiable nor transferable and cannot be ceded or assigned by PRASA, or otherwise dealt with in any manner whatsoever which has or may have the effect of transferring or encumbering or alienating PRASA's rights hereunder.
  8. The demand for payment together with this Performance Bond/Security shall constitute prima facie proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional proceedings instituted against the Bank in any court of law having jurisdiction.
  9. This Performance Bond/Security Amount shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the jurisdiction of the South African courts.
  10. The Bank accepts that the Beneficiary's address reflected above is the Beneficiary's domicilium citandi et executandi for all purposes in connection with this Performance Bond/Security.
  11. This Performance Bond/Security shall remain valid notwithstanding the insolvency, winding-up, liquidation, judicial management, dissolution or deregistration whether provisionally or finally of the Applicant.
  12. This Performance Bond/Security shall expire at 17h00 (Central Africa Time "**CAT**") on the 365<sup>th</sup> calendar day after the later of the following 2 dates ("**the Expiry**"):

- a) The planned date of issuance of the Performance Certificate by PRASA for the whole of the Works (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA); or
  - b) The actual date of issuance of the Performance Certificate by PRASA for the whole of the Works (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA).
13. The Bank (in consultation with the Applicant and PRASA) shall ensure that this Performance Bond/Security is always equal to 10% of the Total Contract Price (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA). The Bank (in consultation with the Applicant and PRASA) shall therefore at a minimum, submit an original updated Performance Bond/Security to PRASA every 300 days from the Commencement Date (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA) and against the same terms and conditions of this Performance Bond/Security. The Bank shall use the Total Contract Price (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA) as reflected in the latest Payment Certificate (as defined in the RFP and Contract and for which the definition shall remain at the discretion of PRASA) issued by PRASA, at the time that an updated Performance Bond/Security is due, to calculate the value of the updated Performance Bond/Security that shall be provided. Failure of the Bank to provide any original updated Performance Bond/Security to PRASA as per this clause shall not nullify and/or void any existing Performance Bond/Security that is in place.
14. The Bank confirms that the Bank is duly represented by **Insert Bank Authorised Representative's Full Legal Name and South African Identity Number** being duly authorized sign this Performance Bond/Security and incur obligations in the name of the Bank under and in terms of a Resolution of the Board of Directors and/or Power of Attorney of the Bank, a certified copy of which is annexed hereto.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_  
Name of Bank Representative

\_\_\_\_\_  
Signature of Bank Representative duly

authorized thereto

\_\_\_\_\_  
**Name of Bank**  
\_\_\_\_\_

\_\_\_\_\_  
**Address of Bank**  
\_\_\_\_\_

\_\_\_\_\_  
**Date**

Witnesses:

1. \_\_\_\_\_

For: **Bank**

Duly represented by

Full Name:

Capacity:

2. \_\_\_\_\_

For: **Bank**

Duly represented by

Full Name:

Capacity: