**FACILITY ACCESS AGREEMENT**

concluded on………………… in Ostrów Wielkopolski

between:

**Polski Tabor Szynowy - Wagon spółka z ograniczoną odpowiedzialnością with its registered office in Ostrów Wielkopolski,** ul. Wrocławska 93, 63-400 Ostrów Wielkopolski, registered in the Register of Entrepreneurs - National Court Register by the District Court Poznań - Nowe Miasto i Wilda in Poznań, 9th Commercial Division of the National Court Register under KRS number: 0000391105, with a share capital of PLN 150,011,500.00 , with NIP number: 9542727909, REGON number: 24257941000000, BDO 000559062, represented by:

1. ……………………………………

hereinafter referred to as the **"Operator", "OIU Operator", "PTS",**

and

……….... with its registered office in ………………………………..ul.……………………….no……………..,postal code………,post office…………, registered in the Register of Entrepreneurs - National Court Register by the District Court in ……………………………………Division ……………………..under KRS number:………………..share capital of PLN ………………….., with NIP number: ………………….., REGON number: …………………………….., represented by:

1………………………………………………………

2. …………………………………………………….

hereinafter referred to as the "**Carrier**", collectively hereinafter referred to as the "**Parties**", with the following content:

**§ 1.**

**Definitions**

1. For the purposes of this Agreement, the following terms are introduced:
2. **Carrier –** a railway carrier, an entrepreneur authorized to perform rail transport, including an entrepreneur providing only traction services, on the basis of a license and a single safety certificate, or an entrepreneur authorized to perform rail transport on the basis of a safety certificate (consolidated text: Journal of Laws of 2021, item 1984, as amended). The category of railway carrier also includes rolling stock operators (e.g. ROSCO).
3. **Contractor** – an entity that performs activities related to the repair, modernization or reconstruction of wagons provided by the Carrier at the service infrastructure facility or, on the basis of separate arrangements, provides services for which the facility is adapted.
4. **OIU (Service Infrastructure Facility)** - service infrastructure facility located on the railway siding of Polski Tabór Szynowy - Wagon sp. z o.o. in Ostrów Wielkopolski, intended in whole or in part to provide services specified in the OIU Regulations, together with access tracks to the facility, also referred to as the "**Facility**" or "**OIU**".
5. **Price list –** price list of fees for access to the facility, constituting an annex to the OIU Regulations and available on the https://polskitabor.pl/ website
6. **OIU Regulations –** Regulations of the Service Infrastructure Facility on the railway siding of Polski Tabor Szynowy - Wagon sp. z o.o. in Ostrów Wielkopolski
7. **Regulations on siding operation –** Operating regulations of the siding of Polski Rolling Stock - Wagon sp. z o.o. in Ostrów Wielkopolski, specifying the manner of traffic management on the railway siding on which the Facility is located and is developed by PTS in consultation with the railway infrastructure manager to which the siding is connected.
8. Terms other than those mentioned in section 1 a-f, which are defined in the OIU Regulations, have the meaning given to them in the OIU Regulations.

**§ 2**

**Preliminary provisions**

1. The Agreement specifies the rights and obligations of the Operator and the Carrier related to the Operator making the Service Infrastructure Facility available to the Carrier within the meaning of the Act of 28 March 2003 on railway transport (consolidated text: Journal of Laws of 2021, item 1984, as amended) hereinafter referred to as the "**Act**".
2. The contract is concluded as a result of the Operator's positive consideration of the Carrier's application, in accordance with the procedure specified in the OIU Regulations.
3. Detailed rules for access to the facility are specified in the OIU Regulations. In the event of discrepancies between the content of the Agreement and the content of the OIU Regulations, the provisions of the Agreement shall prevail.

**§ 3**

**Declarations of the Parties**

1. The Carrier declares that:
2. as at the date of conclusion of this Agreement, it has a valid license and a safety certificate / single safety certificate issued for a railway carrier or a safety certificate issued in accordance with the principles referred to in Art. 17e sections 2 and 3 of the Act,
3. all rail vehicles that will be used to perform the Agreement will meet the conditions specified in the Act and the implementing regulations issued on its basis,
4. will employ, in the implementation of the Agreement, only persons who meet the conditions specified in the Act and the implementing regulations issued on its basis, including specific conditions that should be met by persons employed in positions directly related to traffic management on railway lines,
5. will use the OIU in accordance with the principles set out in this Agreement, the relevant OIU Regulations and the siding Regulations,
6. bears full responsibility for events and incidents that occur in the railway infrastructure facility with its participation or entities performing activities on its behalf,
7. has financial resources to settle liabilities towards the OIU Operator under the implementation of this Agreement,
8. no bankruptcy, liquidation, restructuring or arrangement proceedings are being conducted in relation to it,
9. has a valid insurance policy No.……..in…………., containing civil liability insurance for damage caused to third parties in connection with the business conducted and in connection with the movement of vehicles delivered to the facility as part of making the facility available for the needs of these vehicles , in an amount not lower than…..,
10. will immediately inform the Operator in writing about changes, suspension or withdrawal of the license / single safety certificate / safety certificate referred to in § 3 section 1 point a of this Agreement.
11. In the case of an entity using OIU that is an administrator of rolling stock, the provisions of section 1 shall apply accordingly.
12. The Operator consents to the access and use of the OIU on the dates specified in the Application by the Carrier on the terms specified in the Agreement, the OIU Regulations and the siding operation regulations.

**§ 4**

**OIU operating conditions**

1. The carrier uses the service infrastructure facility for its own needs or those of contractors. The scope of services provided and the technical parameters of the OIU are specified in the OIU Regulations and the Regulations on the operation of the siding.
2. The detailed scope of technical and operational work is organized and carried out in accordance with the provisions of the Regulations on siding operation.
3. When using the facility, access restrictions may occur, as referred to in the OIU Regulations.
4. The Parties undertake to perform with due diligence the obligations arising from the content of the Agreement and the OIU Regulations.
5. The operator is responsible for the technical condition, i.e. for the proper maintenance of tracks, turnouts, crossings, trestles and other railway facilities and devices, as well as for the installation and constant maintenance of boards and indicators marked on the schematic plan.
6. The Operator allows access to service infrastructure facilities only to the Carrier's employees performing activities arising from this Agreement. Other people may stay on the siding after each written agreement with the Operator.
7. The carrier undertakes, before allowing employees to independently perform duties on the siding on which the service infrastructure facility is located, to familiarize them with the provisions of the Regulations, the Railway Siding Operating Regulations and internal regulations to the extent appropriate for a specific job position, which should be confirmed by signing the the content of the railway siding operation regulations.
8. The Parties are responsible for the actions and omissions of their own employees and persons they use to perform the Agreement.
9. The Carrier undertakes to perform activities arising from this Agreement in a manner that does not hinder other carriers from using the OIU.

**§ 5**

**OIU service**

1. Railway vehicles will be delivered to and from the OIU using the Carrier's locomotive during the hours specified in the Application, only after obtaining consent from the Operator based on the application, the template of which is an annex to the OIU Regulations.
2. Each time before the entry and exit of railway vehicles from the OIU, the carrier is obliged to obtain written consent to enter or leave, in accordance with the Regulations on siding operation.
3. Applications should be submitted at least 14 days before the planned date of access to the facility.
4. The application should be submitted in writing (sent in person or by post to the address [•] or electronically (to the e-mail address [•]). It is possible to submit the application in oral or telephone form, which, in order to be valid, must be confirmed in writing or electronically.
5. The Operator will process the application within 14 days from the date of receipt of a complete and correct application. Positive consideration of the application will be confirmed by a signature.
6. The Operator has the right to refuse to process the application on the terms specified in the OIU Regulations.
7. The rules for resolving conflicts between applications are specified in the OIU Regulations.
8. The carrier has the right to resign from the granted access or part of it. Resignation is made in writing/e-mail. In this case, the Operator has the right to charge a fee of 30% of the fee calculated for the parking time specified in the application
9. Application for consent referred to in section 1 and 2, may be submitted on behalf of the Carrier by a representative of the Contractor authorized in writing by him.
10. Documentation of the waiting time on parking tracks or access tracks used as parking will be based on the list of railway vehicles in the train, in which the Parties confirm the actual time of entry and exit of the vehicles from the OIU. Documenting the number of vehicles traveling on the access tracks will be based on the list of railway vehicles in the train..

**§ 6**

**Liability rules**

1. In the event of losses incurred in the Operator's property as a result of violations of the Agreement by the Carrier, the Carrier will cover all financial expenses incurred necessary to remove damage to the Operator's property constituting direct consequences of a given violation, as well as provided that the loss is not related to the violation of the Agreement by the Operator.
2. The Parties to the Agreement are not liable for the effects resulting from Force Majeure, which the Parties consider under this Agreement to be such extraordinary and external events that occurred or became known to the Party after concluding the Agreement and which the party could not have foreseen at the time of concluding it, or which the Party could not avoid in any way, which are beyond the Parties' control, but which prevent full performance of the obligations arising from the Agreement.
3. The Parties are responsible for the actions and omissions of their own employees and persons they use to perform the Agreement.
4. The Operator is not responsible for the condition of shipments and vehicles that entered the OIU to perform activities carried out by the Contractor.

**§ 7**

**Special conditions**

1. Coordination and supervision over access to and use of the OIU is performed by [•]
2. Maneuvers on the siding where the service infrastructure facility is located are performed under the supervision of an employee appointed by the Carrier with appropriate qualifications.
3. Performing additional shunting work, apart from the entry and exit of railway vehicles from the OIU based on the obtained Entry/Exit Consent, is subject to a fee in accordance with the Price List.
4. In the event of a special situation caused by, for example, a natural disaster, a state of emergency, etc., the Operator reserves the right to suspend the provision of OIU to the Carrier for the duration of the use of the Facility for its own needs or the needs of relevant state services, after notifying the Carrier in advance. In the event of a threat to the safety of railway traffic and restrictions on the organization of OIU work, an authorized employee of the Operator has the right to interrupt the Carrier's work and issue an order to release the track.
5. The Carrier undertakes to collect railway vehicles from the Facility immediately after reporting readiness for collection.
6. The Carrier undertakes to collect railway vehicles from the Facility immediately after reporting readiness for collection.
7. The rates given in the Price List are increased to three times the rate after three months of using the Service Infrastructure Facilities.
8. In the case of using the service provided at the technical support point, the Carrier may use the parking tracks free of charge, but no longer than 30 days before the agreed date of commencement of the provision of services at the technical support point and 30 days after the end of the provision of this service.
9. Fee under section 6 will not apply if the Carrier commissions another carrier to perform maneuvering work in order to make the OIU available to another carrier within the agreed period.

**§ 8**

**Fees for access to the OIU**

1. In connection with access to the service infrastructure facility, the Operator charges the Carrier a fee in the amount specified in the Price List, which constitutes an annex to the Regulations.
2. The amount of the fee for access to parking tracks is determined as the product of the unit fee rate specified in the price list and the duration of parking time.
3. VAT invoices will be sent to the address of the Carrier's registered office. If invoices are to be sent to a different address, the Carrier is obliged to inform the Operator in writing.
4. Due VAT is added to the fees in the amount in accordance with applicable law.
5. The deadline for payment of amounts due under a VAT invoice for services covered by this Agreement is 14 days from the date of issuance of the invoice. The deadline is deemed met if the receivables resulting from the invoice are transferred to the Operator's bank account indicated in the invoice no later than on the last day of the payment deadline.
6. Failure to settle the amount due to the Operator within the agreed deadline results in charging statutory interest for delays in commercial transactions.
7. The Carrier cannot deduct its own receivables from the receivables due to the Operator without obtaining the Operator's prior written consent.

**§ 9**

**Duration of the Agreement**

1. The agreement is valid from……….. until …………
2. The contract expires if the Parties lose the documents referred to in § 3 section 1 point a. (if applicable). The Agreement expires without the need for the Parties to submit additional declarations.
3. The Operator is entitled to terminate the Agreement without notice in the following cases:
4. failure of the Carrier to pay, in whole or in part, the fees due to the Operator, referred to in the preceding paragraph, within the deadline specified in accordance with the provisions of § 8 section 5, after the Operator has set an additional 14-day deadline for settling the amount due.
5. gross violation of the provisions of the Agreement by the Carrier, in particular regarding safety requirements.

**§ 10**

**Confidentiality policy**

1. The content of the Agreement, as well as all information obtained by the Parties in connection with its negotiation and implementation, unless it is publicly known and relates directly or indirectly to the Parties to the Agreement or entities cooperating with them or having personal or capital links, are treated as confidential. The Parties are obliged to maintain strict secrecy and not to transfer, disclose or use information constituting the trade secret of the other Party. The transfer or disclosure of this data to entities other than those related personally or by capital to the Website requires the written consent of the Parties.
2. For the purposes of this Agreement, the Parties agree that the confidential information referred to in section 1, constitute a business secret within the meaning of the Act of 16 April 1993 on combating unfair competition.
3. The Parties will take all measures to protect the data indicated above against access by third parties.
4. The obligations specified in this paragraph are binding on the Parties for an unlimited period of time, also after the expiry or termination of the Agreement. This does not apply to situations in which the information loses its confidential nature due to its publication, which will not be contrary to the obligation of confidentiality.
5. Providing information in accordance with applicable law or in accordance with a final court judgment or a valid administrative decision, as well as providing it to a state administration body, insurer, bank, as well as a professional advisor of the obligated entity, in particular advisors, does not constitute a violation of the obligations specified in this paragraph. financial, legal, tax or technical entities, entities related personally or by capital, provided that these persons are obliged to maintain secrecy in accordance with the principles set out in this paragraph.
6. In the event of a breach of the confidentiality obligation by either Party, the other Party may impose a contractual penalty of PLN 20,000 (twenty thousand zlotys) for each individual breach. Payment of the above Contractual Penalty does not exclude the possibility of claiming compensation on general principles provided for by law.

**§ 11**

**Indication of contact persons**

1. Entitled to ongoing contact regarding the implementation of this Agreement from the Operator side are:
2. Regarding the conduct of railway traffic, including in cases of events that are important for maintaining the safety of persons, property or the environment: ……………………………………., tel.:………………………….e-mail:………………………………….
3. In the scope of mutual benefits arising from the Agreement, including settlements between the parties:……………………………,tel.:…………………….., e-mail………………
4. On the part of the Carrier, the organizational units authorized for ongoing contact regarding the implementation of this Agreement are:
5. Regarding the conduct of railway traffic, including in cases of events that are important for maintaining the safety of persons, property or the environment: ……………………………………., tel.:………………………….e-mail:………………………………….
6. In the scope of mutual benefits arising from the Agreement, including settlements between the parties:……………………………,tel.………………….., e-mail………………
7. The parties' correspondence addresses are the addresses indicated in the Agreement. In the event of a change of address, the party is obliged to notify the other party of this fact within 7 days of the change. In the absence of notification, correspondence sent to the last known address will be deemed delivered.
8. Change of units referred to in section 1 and 2 does not constitute an amendment to the Agreement.

**§ 12**

**Personal data protection**

1. Each party to the Agreement declares that it is the Controller of personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as "GDPR", in relation to the personal data of its employees and the employees of the other Party, indicated in the Agreement as contact persons (so-called contact details). The personal data provided for the purposes of the implementation of the Agreement are ordinary data and include, in particular, name, surname, position held and place of work, business telephone number, business e-mail address.
2. Personal data of the persons referred to in section 1, will be processed by the Parties pursuant to Art. 6 section 1 letter f) GDPR (i.e. processing is necessary for purposes arising from legitimate interests pursued by data controllers) only for the purpose and scope necessary to perform tasks related to the implementation of the concluded Agreement.
3. The Parties undertake to protect personal data shared with each other in connection with the performance of the Agreement, including the implementation and application of technical and organizational measures ensuring an appropriate level of security of personal data in accordance with the provisions of law, in particular the provisions of the GDPR.

**§ 13**

**Final Provisions**

1. Neither Party to this Agreement is entitled to transfer the rights and obligations arising from the Agreement to third parties without the written consent of the other Party.
2. The Operator declares that he falls into the category of a large entrepreneur, within the meaning of Annex I to Regulation No. 651/2014.
3. The Carrier declares that he/she **is/is not included** in the category of a large entrepreneur, within the meaning of Annex No. I of Regulation No. 651/2014.
4. Any changes to this Agreement and declarations regarding its termination must be made in writing under pain of nullity.
5. In the event of any disputes, the Parties to the Agreement first undertake to seek an amicable solution by agreement. In the event of no agreement despite taking the above actions, the Parties agree that the court competent to resolve these disputes is the court having jurisdiction over the Operator's registered office.
6. This Agreement has been drawn up in two identical copies, of which one copy for the Operator and one for the Carrier.

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Polski Tabor Szynowy - Wagon Sp. z o.o. Carrier