



VARIATION AGREEMENT

DATE:

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND Kiwirail Holdings Limited company number 4045602, having its registered offices at Level 3, 8-14 Stanley Street, Parnell, Auckland, 1010 New Zealand (**Recipient**)

BACKGROUND

- A. The parties entered into a Funding Agreement for the upgrade of the Napier to Wairoa rail line which is dated 2 August 2018 (**Agreement**).
- B. The parties have negotiated and agreed variations to the terms of the Agreement relating to repair of the storm damage that occurred to part of the rail line in the Eskdale area on 8 March 2018, when the Esk River broke its banks as detailed in the attached Project Brief. The RED Ministers approved additional funding of up to \$1.2 million to carry out those repairs bringing the total project Funding to \$6.2 million.
- C. The parties have agreed to vary the Agreement on the terms and conditions set out in this variation agreement (**Variation**).

EXECUTION

Signed by the Sovereign in Right of New Zealand)
 acting by and through the Chief Executive of the)
 Ministry of Business, Innovation and Employment)
 or his or her authorised delegate:

Signature

Print Full Name

Print Title

Date: _____

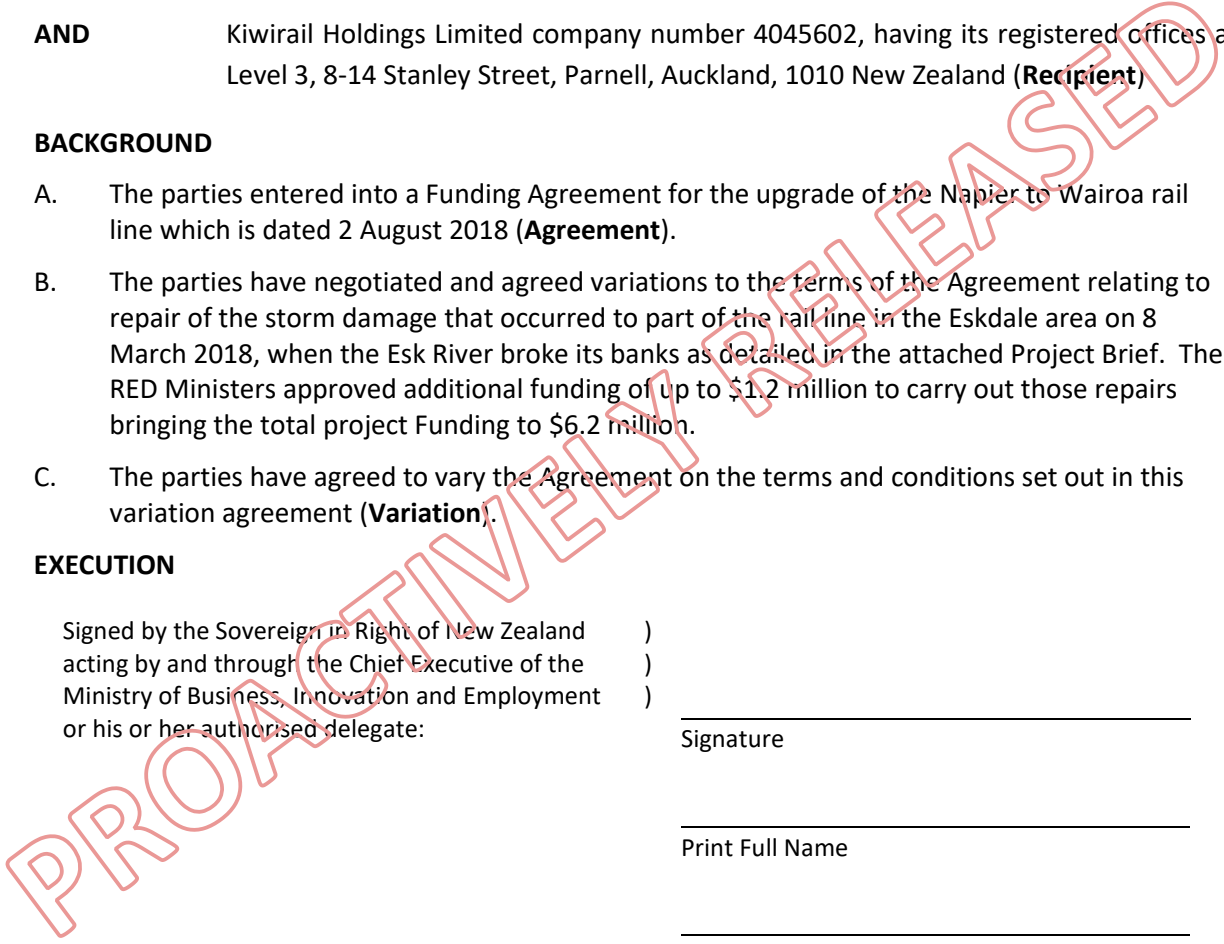
Signed for and on behalf of the Recipient by the)
 person named below, being a person duly)
 authorised to enter into obligations on behalf of
 the Recipient:

Signature

Print Full Name

Print Title

Date: _____





TERMS

1. Interpretation

- 1.1 In this Variation, unless the context requires otherwise:
- a. words and expressions have the meanings given to them in the Agreement and Part 3 of the Agreement applies to this Variation; and
 - b. references to clauses and schedules are to the clauses and the schedules of the Agreement.

2. Variation

- 2.1 With effect from the date on which this Variation is signed by both parties (the **Effective Date**), the terms set out in the Agreement are varied as follows:
- a. in item 7 of Part 1: by amending the table so that the amended table reads as follows:

Deliverable	Completion Date
First train of track ballast	Commercial Information
First worktrain to deliver sleepers	Commercial Information
Arrival of ballast tamper	Commercial Information
Complete first EM80 (track geometry car) track geometry test	Commercial Information
Non-destructive testing	Commercial Information
Final EM80 track geometry check AND All storm damage to rail line in Eskdale area repaired	Commercial Information
Project construction completed and handback Napier to Wairoa for ordinary service	Commercial Information
Reporting	At times as required by this Agreement

- b. in item 10 of Part 1: by amending the aggregate total Funding available under the Agreement from NZ\$5,000,000 excluding GST (if any) to NZ\$6,200,000 excluding GST (if any).
- 2.2 Subject to clause 1, all other terms and conditions contained in the Agreement will continue in full force and effect.
- 3. Governing law**
- 3.1 This Variation is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceedings relating to it.



4. Execution

- 4.1 This Variation may be executed in two or more counterparts (including electronic copies) each of which shall be deemed to be an original, but all of which together shall constitute one instrument. No counterpart is effective until each party has executed at least one counterpart.

PROACTIVELY RELEASED