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UNLESS ADOPTED AND ISSUED BY A LICENSED INSURER.**

## **WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS MENLO REFERENCE FORM**

*Menlo Form MENLO-WC-01 is an original document authored by Menlo Insurance Services. It corresponds to coverage commonly written on form WC 00 03 13, which is referenced for identification only.*

Various provisions in this form restrict coverage. Read the entire form carefully to determine rights, duties, and what is and is not covered. Throughout this form, the words “you” and “your” refer to the named insured shown in the declarations of the issuing policy, and the words “we”, “us”, and “our” refer to the insurer that adopts and issues this form. Other words and phrases that appear in quotation marks have the meanings given in the Definitions section at the end of this form.

Throughout this endorsement, “we”, “us”, and “our” refer to the insurer that issues the workers compensation and employers liability policy of which this endorsement is a part. “You” and “your” refer to the employer named as the insured in the policy’s information page. Every other word or phrase that appears in double quotation marks has the meaning given in Section F. Definitions. The subject matter of this endorsement corresponds to the waiver modification commonly written on the standard waiver endorsement published by the National Council on Compensation Insurance (NCCI); it parallels that subject matter without reproducing it.

### **A. What This Endorsement Modifies**

1. This endorsement modifies the policy’s recovery provisions. When we pay benefits under the “workers compensation law” for an injury to your employee, and a third party is liable for that injury, the policy entitles us to recover our payments from that third party, standing in your place and in the place of anyone entitled to the benefits we paid.
2. Under the policy without this endorsement, no waiver of that recovery entitlement is effective, whether you grant it before or after an injury. This endorsement is the sole instrument by which the entitlement is waived, and it waives the entitlement only as Sections B. and C. state.
3. This endorsement modifies nothing else. Section D. states, as operative provisions, what remains unchanged.

### **B. Waiver of Recovery Rights**

1. **The waiver.** We will not assert, enforce, or pursue, against a “designated party”, any right we hold to recover payments we make under this policy for an injury to your employee, if each of the following conditions is satisfied:
  - a. a “written contract” between you and the “designated party”, or a “written contract” that otherwise obligates you in favor of the “designated party”, requires you to obtain this waiver;
  - b. the “written contract” was executed before the injury occurred;
  - c. the injury arises out of the work you perform under that “written contract”; and
  - d. the “designated party” is designated under Section C. as of the date of the injury.
2. **Extent of the waiver.** The waiver operates only to the extent the “written contract” requires it. If the “written contract” requires a waiver limited to particular operations, locations, or periods, the waiver this endorsement grants carries the same limits.
3. **No third party benefit.** The waiver runs to the “designated party” alone. No other person or organization gains any benefit, directly or indirectly, from this endorsement, and we retain every recovery right we hold against every person or organization that is not a “designated party”.

4. **Timing.** The waiver attaches when the conditions in B.1. are satisfied and applies only to injuries occurring on or after the date this endorsement takes effect. A request to add this endorsement, or to designate a party under it, that is made after an injury has occurred does not waive any right of recovery for that injury.
5. **Multiple liable parties.** If more than one party is liable for the same injury, the waiver applies only to the share of our payments attributable to the fault of the “designated party”. We retain full recovery rights for every other share, and we may pursue every liable party that is not a “designated party” without reduction because of this endorsement.
6. **State law limits.** If the “workers compensation law” of a state shown in the policy’s information page restricts a waiver of recovery rights, the waiver applies in that state only to the extent that law permits; if that law prohibits the waiver, the waiver does not apply in that state.

#### C. Designation of Protected Parties

1. **Scheduled designation.** A person or organization is a “designated party” if it is named or described in the “schedule” of this endorsement.
2. **Blanket designation.** If the “schedule” states that blanket designation applies, a person or organization is a “designated party”, without being named, if a “written contract” executed before the injury requires you to obtain this waiver in that person’s or organization’s favor.
3. **Construction of the “schedule”.** If the “schedule” limits designation to particular states, contracts, projects, or operations, a person or organization is a “designated party” only within those limits. If a person or organization qualifies under both C.1. and C.2., the broader designation applies.
4. **Duration of a designation.** A designation, once in force, governs every injury that occurs while it remains in force and satisfies Section B. A later amendment of the “schedule”, or a later removal of this endorsement, does not withdraw the waiver for an injury that occurred while the designation was in force.

#### D. Provisions Not Changed

1. **Statutory benefits.** We will pay the benefits the “workers compensation law” requires, in full and without regard to fault, exactly as the policy provides. This endorsement does not reduce, condition, or delay any benefit payable to your injured employee.
2. **Employee recovery rights.** This endorsement binds us; it does not bind your employee. It does not waive, reduce, or transfer any independent right of action your injured employee holds against any third party, including a “designated party”.
3. **Employers liability insurance.** The policy’s employers liability insurance continues to apply on its own terms, with its own limits. This endorsement is not an insuring agreement; it grants no defense, changes no limit, and adds no coverage under any part of the policy.
4. **Status of the “designated party”.** A “designated party” does not become an insured under the policy by reason of this endorsement. This endorsement does not satisfy any obligation the “designated party” has to maintain its own workers compensation insurance, and it does not extend any protection of this policy to the designated party’s own employees.
5. **Your duties.** Every duty the policy imposes on you remains in force, including your duties, when injury occurs, to:
  - a. provide immediately any medical or other services the “workers compensation law” requires;
  - b. give us prompt notice of the injury and forward to us every demand, notice, summons, and legal paper related to it;
  - c. cooperate with us in the investigation, settlement, or defense of any claim, proceeding, or suit;
  - d. make no payment, assume no obligation, and incur no expense without our consent, except at your own cost; and
  - e. do nothing after an injury to impair any recovery right we retain against a person or organization that is not a “designated party”.

- 6. Recoveries and premium history.** Amounts we would have recovered but for this endorsement remain part of the losses charged to your policy and enter any experience rating computation that applies to you. Nothing in this endorsement removes a waived recovery from your loss history.

#### E. Premium

1. We may charge additional premium for this endorsement. The charge, or the basis on which we compute it, is stated in the “schedule” or in our applicable rating documentation.
2. Unless the “schedule” states a different basis, we compute the charge against the premium attributable to the work you perform for the “designated party” under the “written contract”; for blanket designation under C.2., we may instead compute the charge against the total policy premium.
3. Any charge under this Section E. is part of the premium subject to the policy's audit provisions, and we will adjust it on the exposures your records actually show for the audit period. Any minimum charge stated in the “schedule” applies despite the audited exposures.

#### F. Definitions

1. “Designated party” means a person or organization that qualifies under Section C.
2. “Schedule” means the portion of this endorsement in which the persons or organizations, states, contracts, projects, operations, premium charges, and premium bases to which this endorsement applies are listed or described.
3. “Workers compensation law” means the workers compensation law and any occupational disease law of a state shown in the policy's information page. The term does not include any federal workers or workmen's compensation law, any federal occupational disease law, or any law providing nonoccupational disability benefits.
4. “Written contract” means a contract or agreement executed in writing by its parties, under which you are required to obtain from us the waiver this endorsement describes.

#### G. Effect on Other Policy Terms

This endorsement changes the policy only as stated above. Every other term, condition, exclusion, limit, and duty of the policy continues to apply, unaltered, to every claim, injury, and party, including every claim to which the waiver in Section B. applies.

#### Important Notice

This is Menlo Form MENLO-WC-01, an original document independently developed and authored by Menlo Insurance Services. It contains no material of, has not been reviewed or approved by, and is not affiliated with the National Council on Compensation Insurance, Inc. (NCCI). It is specimen model wording made available for review and for adoption by insurers on a manuscript basis. Unless and until adopted and issued by a licensed insurer, it is not an insurance policy, binder, or offer of coverage, does not amend or replace any policy, provides no coverage, and has not been filed with or approved by the California Department of Insurance or any other regulator. Form numbers of other organizations are referenced solely for identification, and this form parallels the subject matter of the referenced form only. All insurance policies contain exclusions and limitations, and actual coverage is subject to the terms, conditions, and exclusions of the policy as issued. Policy language dictates coverage. This document is not legal advice. Talk to a licensed broker about your specific exposures. Menlo Insurance Services, CA License No. 4563310.

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