**Contractual Liability**

You may have a contractual liability provision in a contract presented to you. You may also choose to include a contractual liability provision in a contract you present to others.

**Definition of contractual liability:** This insurance protects the insured in the event a loss occurs for which he has assumed liability, express or implied, under a written contract.

For example, under most construction agreements with a municipality, the contractor agrees to "hold the municipality harmless" for any accidents arising out of the job. Contractual Liability Insurance would thus protect the contractor from any loss for which the municipality would be liable in connection with the construction.

The IRFFNC General Liability coverage form excludes contractual liability as follows:

2. **Exclusions.**

   This insurance does not apply to:

   b. **Contractual Liability**

   "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

   (1) That the insured would have in the absence of the contract or agreement; or

   (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

So basically contractual liability is excluded unless the agreement falls under the definition of an "insured contract".
The definition of an “insured contract” reads as follows:

11. "Insured contract" means:

   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;

   b. A sidetrack agreement;

   c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

   d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

   e. An elevator maintenance agreement;

   f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

   Paragraph f. does not include that part of any contract or agreement:

   (1) That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;

   (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

      (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders or drawings, designs or specifications; or

      (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

   (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failing to render professional services, including those listed in (2) above and supervisory, inspection architectural or engineering services;
Paragraph f. states that any other contract under which you assume the tort liability of a third party is also considered an “insured contract” and therefore would not be excluded from coverage under the IRFFNC general liability coverage form. **This is a very broad definition and would include most contracts unless it involved assumption of liability from an engineer, architect, or surveyor or contractor working within 50 feet of a railroad.**

The contract presented to you may read as follows:

*Insurance Requirements:*

(1) *Commercial General Liability Insurance, including blanket contractual liability* - $5,000,000 per occurrence limit.

The *contractual liability* coverage shall insure the performance of all obligations assumed hereunder, including specifically, but without limitation, the indemnity provisions in this agreement.

The third party presenting you with this contract wants to make sure that your insurance coverage will cover you for the obligations you are assuming under this contract.

In most cases the IRFFNC General Liability policy will cover most contractual liability as long as it meets the definition of an “insured contract”. The GL policy would not provide “blanket contractual liability” as is being required in the example above.

Please allow the NCLM Underwriting department to review this portion of the contract to determine if the contract meets the criteria needed to satisfy the insurance requirements.