

Licensee must meet the insurance requirements specified in the Agreement and this Manual, unless specifically indicated to the contrary. Insurance requirements are split into two areas: those required during construction or significant renovation, and those required during operation.

3.12. **INSURANCE REQUIRED DURING CONSTRUCTION**

- 3.12.1. If the hotel is under construction or major renovations, the following insurance requirements apply. This insurance must be effective prior to the start of construction or renovation.
- 3.12.2. General Contractor Insurance. Any and all contractors and subcontractors (collectively, "**Contractors**") performing work on or about the hotel must be contractually assigned responsibility for job site safety and for all claims for injury or damage arising out of Contractors' operations to the greatest extent permitted by law. Licensee must provide or negotiate requirements for sufficient insurance on the part of the general contractor, which at a minimum must include:
 - (a) Occupational Injury Insurance as required by law or custom, including statutory Workers' Compensation insurance and Employers' Liability, wherever applicable, in an amount not less than \$1,000,000 each accident, \$ 1,000,000 Disease -Policy Limit, and \$1,000,000 Disease - Each Employee. (Refer to 3.13 (c) for additional clarification.)
 - (b) Commercial General or Public Liability Insurance ("**CGL**"). Coverage limits in the minimum amount of \$10,000,000 per occurrence. If the CGL policy contains a general aggregate limit, it must apply separately to the hotel project. Coverage must include products-completed operations, personal and advertising injury, protective liability, independent contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) on an "occurrence basis". This insurance may not have any restrictions, modifications or exclusions for explosion, collapse, underground property damage, earth movement or damage to work performed by a subcontractor. Contractor must carry completed operations insurance for a period of not less than 5 years after the completion of the project. This requirement may be reviewed and modified in recognition of the local insurance marketplace.

- (c) Automobile/Motor Liability Insurance. Coverage limits in the minimum amount of \$2,000,000 each accident combined single limit for any automobile (including, but not limited to, owned, scheduled, hired and non-owned vehicles).
- (d) Excess and Umbrella. Contractors' insurance requirements may be satisfied with a combination of primary, umbrella and/or excess policies.
- (e) Builder's Risk. Licensee must purchase or cause to be purchased Builder's Risk insurance covering the entire work at the jobsite. This insurance must be on a 100% completed value (replacement cost) form. For renovation projects, the 100% completed value may be achieved through a combination of Property and/or Builder's Risk insurance. This insurance must include the perils covered under a special causes of loss ("all-risks") form and include the following:
 - (i) cold testing, windstorm, and collapse, including collapse resulting from design error.
 - (ii) This insurance must apply to property intended for incorporation into the work for the entire duration of the contract including: property in the course of construction, reconstruction, or repair; property while in transport to the site; property stored at the site or off premises; scaffolding, staging, shoring, formwork, fences, false work, and temporary buildings and any similar items commonly referred to as construction equipment located at the site; furniture, fixtures, and other personal property typical to a hotel located on premises or in storage or at any other temporary location.
 - (iii) The policy must cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any applicable law, ordinance or regulation.
 - (iv) Permission to occupy or a partial occupancy clause or definition must be included and allow occupancy without qualification.
 - (v) This insurance must include Business Interruption coverage including Promus's interest for full recovery of net profits and continuing expenses of the hotel projected for 12 months following a covered loss (including Rental Value and payments which would

have been owed Promus in the absence of a loss). Such limit must be sufficient to avoid a coinsurance penalty.

- (vi) This insurance must be maintained in effect until the earliest of either the date on which all persons and organizations who are insured under the policy agree that it may be terminated or as provided for in the contract documents.
 - (vii) This insurance must name all owners of the premises, agents of the owner, and Contractors of any tier as insureds. The policy must include a waiver of subrogation which states that all owners and Contractors waive their rights of subrogation against one another with respect to losses covered by this policy.
- (f) Flood Insurance. Flood Insurance with a limit as close to the amount of the Builder's Risk as is reasonably available must be obtained. Coverage must include business interruption. This requirement is subject to review and modification in recognition of changes in the insurance marketplace.

If the hotel is designated as a USA hotel, this requirement only applies if the location is in the special flood hazard areas of Zones A (A, A1-A30, AE, AH, AO, A99, AR and any combination of zones such as AR/AE, AR/AH, AR, AO, etc.) and Zones V (V30, VE, and VO). Licensee should contact FEMA map service at 1-877-336-2627 or visit the following websites to determine the hotel's zone:

<http://www.msc.fema.gov/>

<http://www.floodsmart.gov/floodsmart/pages/faq.jsp>.

Information may also be obtained through the hotel's local community planning board or building permit department.

- (g) Earthquake Insurance. The Builder's Risk must also include earthquake coverage with a limit as close to 75% of the builder's risk limit as is reasonably available. Coverage must include business interruption. This requirement is subject to review and modification in recognition of changes in the insurance marketplace.

If the hotel is designated as a USA hotel, this requirement only applies if the location is in a zone with a hazard rating of 24 or higher according to the 1996 US Geological Survey Shaking Hazard maps. Visit

<http://earthquake.usgs.gov/hazmaps/haz101/hazmaps.html>

to determine the hotel's Zone. For locations in zones 16-24

earthquake coverage with a limit as close to 50% of the builder's risk is required.

- (h) Pollution Insurance. If a pollution exposure exists during renovation or construction, Licensee must require Contractor's Pollution Legal Liability in an amount not less than \$1,000,000 per occurrence. If the contractor's pollution legal liability coverage is written on a claims-made policy form, the retroactive date of the policy must be shown on the certificate of insurance and must be on or before the date of the commencement of services by Contractor. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after completion of the work. If the coverage is canceled or not renewed, and it is not replaced with another policy with a retroactive date that precedes the date of Contractor's agreement, the Contractor must provide extended reporting coverage for a minimum of 3 years after completion of the work on the former policy.

3.12.3 Miscellaneous.

- (a) Licensee must indemnify and hold Hilton Hotels Corporation ("HHC") and their subsidiaries and affiliates now or hereafter existing, harmless from any and all damages or claims arising out of the failure of any Contractor, supplier or vendor doing business with the hotel to maintain adequate insurance. Contractors should not be allowed on the site or within the premises until the stated insurance requirements are evidenced.
- (b) Contractor's insurance, with the exception of Workers' Compensation must name Licensee, Hilton Inns, Inc., Promus Hotels, Inc. HHC, and their subsidiaries and affiliates (including their respective directors, officers and employees), now or hereafter existing as additional insureds on terms no less broad than forms ISO CG 20 10 11 85 or a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 04 (or a substitute form providing equivalent coverage), and copies of these endorsements or their equivalent must be provided to Licensee and Promus.
- (c) Licensee, at its option, may purchase an "owner controlled insurance program" or "wrap up" insurance program to comply with the coverage requirements in this Section 3.12.

RESOURCES/REFERENCES:

3 ADMINISTRATION/INDIRECT EXPERIENCE

KEY AREA: Risk Management

3.13. INSURANCE REQUIRED OF LICENSEE DURING OPERATIONS

- 3.13.1. The insurance required of Licensee below in this Section 3.13.1 must be effective at the commencement of any operations related to the hotel.
- (a) For hotels in the USA: Commercial General (Public) Liability insurance ("CGL"). (Non-USA hotels should refer to 3.13.2). Licensee must purchase Commercial General (Public) Liability insurance on an occurrence form including defense costs arising out of or connected with hotel operations. Coverage limits must be at least \$10,000,000 per occurrence, and may be satisfied with a combination of primary, umbrella, and/or excess insurance policies. The CGL insurance must include coverage for the following risks:
- (i) Damage to property of others and bodily injury including sickness, disease and death.
 - (ii) Personal and advertising injury covering liability for false arrest, libel, slander, defamation, false imprisonment, unlawful detention, wrongful or malicious prosecution or invasion of privacy.
 - (iii) Innkeeper's Liability insuring loss or damage to guests' property (up to statutory requirements). This can be satisfied by any combination of CGL or Crime coverage.
 - (iv) Liquor Liability insuring Licensee's liability arising out of the sale or serving of alcoholic beverages, if the hotel serves or sells beer, wine or spirits.
 - (v) Contractual Liability insuring liability arising out of oral, written or incidental agreements, including, but not limited to, hold harmless agreements and the Indemnity Paragraph of the Agreement.
 - (vi) Independent Contractors insuring liability Licensee may incur arising out of operations performed for Licensee by persons other than Licensee's own employees.

- (vii) Premises/Operation insuring liability arising out of work performed on the premises.
 - (viii) Products and Completed Operations
 - (ix) Worldwide jurisdiction covering lawsuits brought anywhere in the world from occurrences arising out of the hotel or the operations connected with the hotel (per form ISO CG2422 10 01 or equivalent).
 - (x) Aggregate limits, if any, must be aggregated on no less than a “per location” basis for the underlying general liability as well as the umbrella/excess coverage (per form CG 2504 or equivalent).
 - (xi) Named perils pollution including coverage for liability arising out of heat, smoke or fumes from a hostile fire, or smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water.
- (b) Automobile/Motor Liability. (Non-USA hotels should also refer to 3.13.2) Commercial Automobile/Motor Liability insurance with coverage limits of at least \$10,000,000 each accident/combined single limit, which may be satisfied with a combination of primary, umbrella, and/or excess insurance policies. Coverage must include:
- (i) Coverage for any automobile including, but not limited to, all owned, non-owned, leased, and hired automobiles used in the operation of the hotel.
 - (ii) Garage-Keeper's Liability, if the hotel's operations include parking operations, with a limit adequate to cover the full actual value of all automobiles that are in Licensee's care, custody, and control at any one time.
- (c) Occupational Injury Insurance as required by law or custom, including Workers' Compensation insurance wherever applicable. Occupational Injury insurance must be in force prior to the hiring of any employees. Employers Liability coverage must also be obtained in the minimum amounts of \$1,000,000 each accident, \$1,000,000 Disease-Policy Limit, and \$1,000,000 Disease-Each Employee, or such amounts as are required by law or custom. The Employers Liability limits can be satisfied by any combination of Workers' Compensation, Employers Liability, and/or Excess/Umbrella policies. However, the certificate of insurance must clearly indicate that

Excess/Umbrella liability insurance affords coverage for Employers Liability.

If the hotel is designated as a USA hotel, and Workers' Compensation Insurance is required by law, such coverage must be extended to cover "All States", Voluntary Workers' Compensation, and Longshoreman's and Harbor-worker's Act on an "if any" basis, unless the hotel is insured under a state operated fund.

If the hotel is designated as a USA hotel, participation in a U.S. state's insurance fund shall satisfy the requirements hereunder. If the hotel self-insures Workers' Compensation, a copy of the license granting authority to self-insure must be furnished to Promus. If the hotel participates in a state fund or self-insures for Workers' Compensation, stopgap coverage or an endorsement to the commercial general liability policy is required in an amount not less than \$1,000,000 per claim. For the State of Texas, participation as a Non-Subscriber must be evidenced by submitting to Promus a copy of the Annual Notice of DWCC Non-Subscriber status (Form DWCC-5), and an ERISA-compliant occupational injury benefit plan that covers substantially the same work-related injuries as Workers' Compensation. Nonsubscribers must carry Employers Liability insurance with limits of no less than \$5,000,000.

- (d) Commercial Property Insurance. Property Damage and Business Interruption insurance on a special causes of loss policy form ("all-risks"), covering 100% of the insurable replacement value of the building and its contents, and for full recovery of the net profits and continuing expenses of the hotel (including rental value) for a 12 month period must be carried. Such limit must be sufficient to avoid a co-insurance penalty, if applicable. Continuing expenses must specifically include royalty/license fees and other fees payable to Promus, its subsidiaries and affiliates. The policy must include coverage for the peril of windstorm and for ordinance and law. Hilton Inns, Inc., Promus Hotels, Inc., HHC and their subsidiaries and affiliates now or hereafter existing must be included as an additional insured under the Commercial Property and Business Interruption insurance.
- (e) Flood Insurance. Flood Insurance with a limit as close to the full replacement cost of the building as is reasonably available. Coverage must include business interruption. This requirement is subject to modification based on

conditions in the local insurance market and reasonableness of premium.

If the hotel is designated as a USA hotel, this requirement shall only apply if the location is in the special flood hazard areas of Zones A (A, A1-A30, AE, AH, AO, A99, AR and any combination of Zones such as AR/AE, AR/AH, AR/AO, etc) and Zones V (V30, VE and VO). Licensee should contact the FEMA map service at 1/877/336-2627 or visit the following websites to determine the hotel's zone:

<http://www.msc.fema.gov/>

<http://www.floodsmart.gov/floodsmart/pages/faq.jsp>

Information may also be obtained through the hotel's local community planning board or building permit department.

- (f) Earthquake Insurance. Earthquake coverage with a limit not less than 75% of the replacement cost of the hotel must be provided. Coverage must include business interruption.

If the hotel is designated as a USA hotel, this requirement shall only apply if the location is in a zone with a hazard rating of 24 or higher according to the 1966 US Geological Survey Shaking Hazard maps available at

<http://earthquake.usgs.gov/hazmaps/haz101/hazmaps.html>. For locations in zones 16-24 earthquake coverage with a limit as close to 50% of the replacement cost of the hotel must be obtained. This requirement is subject to modification based on conditions in the local insurance market and reasonableness of premium.

- (g) Boiler and Machinery/Equipment Breakdown Insurance. Broad form Boiler and Machinery insurance, including business interruption coverage, against loss from accidental damage to, or from the explosion of, boilers, air conditioning systems, including refrigeration and heating apparatus, pressure vessels and pressure pipes in an amount equal to 100% of the actual replacement value of such items (without taking into account any depreciation) plus full recovery of the net profits and continuing expenses of the hotel. Continuing expenses must specifically include royalty/license fees and other fees payable to Promus.

- (h) Crime Insurance. Crime insurance with the following coverages and limits of insurance (per occurrence):

- (i) Employee Dishonesty \$ 100,000

- (ii) Forgery & Alteration \$ 50,000

- (i) Money & Securities (Inside) \$ 50,000
- (ii) Money & Securities (Outside) \$ 50,000
- (iii) Robbery & Safe Burglary of Property
other than money and securities \$ 50,000
- (iv) Computer Fraud \$ 50,000
- (v) Counterfeit paper currency \$ 50,000
- (i) Terrorism. Terrorism coverage shall be obtained and maintained for both first party damage and third party liability either stand-alone, through a government operated or mandated pool, or as part of the General/Third Party Public Liability coverage and the Property Damage/Business Interruption coverage. This requirement is subject to modification based on conditions in the local insurance market and reasonableness of premium.
- (j) Watercraft. Watercraft liability coverage to the extent that hotel operations include watercraft activities. Please contact Hilton Risk Management for requirements on limits of liability.
- (k) Aircraft Liability. Refer questions concerning coverage requirements to Hilton Risk Management if applicable.

3.13.2. Licensee must comply with Section 3.13.2 if it is designated as other than a USA hotel.

- (a) General/Public Liability. Promus or its designee will, at Licensee's cost, procure upon the commencement of operation of the hotel and maintain at all times during the term of the Agreement, if available on terms and conditions commensurate with the risk, third party General/Public liability insurance in such amounts as Promus may deem necessary. Licensee will be named as an additional or co-insured. All policies will contain both severability and cross-liability clauses and a waiver of the right of subrogation in favor of Licensee.

All policies may contain such deductibles or retentions as Promus considers reasonable. Promus may elect to maintain all or part of such policies under an arrangement insuring one or more hotels operated by Promus or its affiliates or subsidiaries, in which event the cost of such insurance to Licensee will be allocated by Promus on a reasonable basis.

If Promus cannot obtain coverage using reasonable effort, Licensee must comply with the terms of 3.13.1 (a).

- (b) Property Owner's Liability. Licensee must procure and maintain Property Owners Liability fully protecting Licensee for liability arising out of its ownership, possession and use of the Hotel.
- (c) Auto/Motor Liability. Licensee must procure and maintain Auto/Motor liability insurance in accordance with any local law or statute and per the terms of 3.13.1 (b) above. Notwithstanding, Licensee need only procure a limit of insurance sufficient to meet local custom or law if Promus provides excess public liability insurance under (a) above.
- (d) All policies purchased by Licensee must name Promus, Hilton Inns, Inc., Promus Hotels, Inc., as an additional or co-insured. All policies must contain both severability and cross-liability clauses and a waiver of the right of subrogation in favor of Promus.

3 ADMINISTRATION/INDIRECT EXPERIENCE

KEY AREA: Risk Management

3.14. INSURANCE – GENERAL REQUIREMENTS.

- 3.14.1. Except as noted under Section 3.13.2. (a), all policies must name the Licensee as named insured and, with the exception of Workers' Compensation, must name Hilton Inns, Inc., Promus Hotels, Inc., HHC and their subsidiaries and affiliates now or hereafter existing as additional insureds, including their employees, officers and directors. For Commercial General/Public Liability, additional insured endorsement form ISO CG 20 10 11 85 or equivalent for construction and renovation, and form ISO CG 2029 11 85 or equivalent during operations must be used to satisfy this requirement. Such forms may be requested from Hilton's Risk Management Department or obtained from Hilton's intranet site.
- 3.14.2. All required insurance must be purchased from insurance companies with a financial rating acceptable to Hilton, which shall be no less than A- VII if rated by the company A.M. Best.
- 3.14.3. All policies of Licensee must be endorsed to be primary insurance with no recourse to or contribution from any other similar insurance, if any, which may be carried by Hilton Inns, Inc., Promus Hotels, Inc., HHC or their subsidiaries or affiliates now or hereafter existing, except as provided for in 3.13.2. Evidence of such must be supplied to Promus. Advance notice of cancellation, termination or modification of any policy must be given in writing no less than thirty days prior. If a certificate states that the Insurer will "endeavor to," these words must be stricken from the certificate. Notice must be sent to the certificate holder, which is "Hilton Hotels Corporation, attention Risk Management, 9336 Civic Center Drive, Beverly Hills, CA 90210." Phone (310) 205-4512, Fax (866) 305 2520 and E-mail "HiltonCertificates@ConfirmNet.com".
- 3.14.4. Licensee must deliver or cause to be delivered certificates of insurance or other acceptable proof evidencing the insurance required in this Manual, including applicable endorsements, to Promus at the address above no later than 15 days after the expiration of any policy. Each certificate must specifically identify insured location(s) by name and address.
- 3.14.5. Failure of Promus to demand evidence of compliance with the insurance requirements in this Manual or failure of Promus to

identify a deficiency from evidence that is provided shall not be construed as a waiver of Licensee's obligation to maintain such insurance.

- 3.14.6. Along with the certificates of insurance Licensee must deliver or cause to be delivered the following items to Promus at the address above:
- (a) A signed letter written in or translated to English from the insurance agent or broker who placed the required insurance affirming that he or she has read and understood the insurance requirements contained in this Manual. This letter must specifically address whether the insurance the agent or broker has placed complies with the insurance requirements set forth in this Manual.
 - (b) A signed checklist from the insurance agent or broker indicating whether there is coverage for each of the minimum requirements set forth in this Manual.

For samples of these letters and checklists, as well as sample certificates and evidence of property insurance, please refer to:

OnQ Insider / HHC Departments / Finance Corporate / Risk Management / Risk Management & Finance / Proof of Insurance

or request a copy from HHC Risk Management at Risk.Management@hilton.com.

- 3.14.7. At the request of Promus, Licensee must deliver a copy of each policy bearing certification of the insurance company underwriter(s), that the policy is a complete copy of the policy issued with all endorsements to Promus.
- 3.14.8. Promus may increase or decrease the minimum amount of insurance, require additional or different types of insurance, or otherwise change the requirements to make them comparable to the amount and kinds of insurance carried by other properties or hotels, taking into account the size and location of the hotel and changing circumstances in the law and insurance marketplace.
- 3.14.9. Any deductibles or self-insured retentions above \$50,000 or 5% of the replacement cost of the hotel must be declared to and approved by Hilton's Risk Management Department, at 9336 Civic Center Drive, Beverly Hills, CA 90210, Phone (310) 205-4512, Fax (310) 205-7863, Email Risk.Management@Hilton.com.

- 3.14.10. All certificates or other documents evidencing insurance must be provided in English with currency indicated in US dollars. Limits required in this standard may be satisfied in the local currency equivalent at the time the policy is purchased.
- 3.14.11. Licensee must obtain and maintain any other insurance required by local or national statute or law.

RESOURCES/REFERENCES:

3 ADMINISTRATION/INDIRECT EXPERIENCE

KEY AREA: Risk Management

3.15. ADEQUACY OF INSURANCE

- 3.15.1. Promus makes no representation, implied or express, that the foregoing insurance requirements are adequate to protect Licensee.
- 3.15.2. The insurance coverage requirements contained in this Manual are only minimum requirements. These requirements do not relieve Licensee from responsibility for any loss or claim for damages arising out of the Agreement. Licensee must indemnify Promus for any claim for damages due to failure of Licensee or any Contractor, supplier, or vendor doing business with Licensee to maintain adequate insurance.
- 3.15.3. To ensure compliance, Promus strongly recommends that Licensee reproduce all insurance sections in this Manual in full and submit it to an agent or broker experienced in writing insurance for hotels.
- 3.15.4. If Licensee does not obtain or maintain the required insurance or policy limits, Promus can (but is not obligated to) obtain and maintain the insurance for Licensee without first giving Licensee notice. If Promus does so, then Licensee must immediately pay Promus upon request the premiums and costs incurred by Promus.

RESOURCES/REFERENCES:

OnQ Insider:

http://hiltonnet.hilton.com/Departments/FinanceCorporate/RiskMgmt/RiskMgmtAndFinance/FranchiseInsurance/franchise_hilton.htm

