

MODEL CLAUSE

Set Out Rights to Sue Foreign Tenant or Foreign Guarantor Locally

The following clause was drafted by New York City attorney Jeffrey A. Moerdler. You should include this clause when you sign a lease with a foreign tenant or get a guaranty from a foreign guarantor. Also, add this clause to the lease of a nonforeign tenant when the guarantor is foreign. But first modify it to require the tenant to include the clause in its guaranty from a foreign guarantor.

Paragraph a says that the foreign tenant or foreign guarantor agrees to come to a court in the city and county that you've

named in the lease or the guaranty to settle any dispute. Paragraph b names local agents authorized to get legal documents on the foreign tenant's or foreign guarantor's behalf. Paragraph c lets you serve legal documents on the agents by any method set out in the lease or in law. Paragraph d says that this clause will survive the end of the lease.

Show this clause to your attorney before putting it into your lease. **CLLI0077**

CONSENT TO JURISDICTION AND SERVICE

- a. Consent to Jurisdiction.** [Tenant/Guarantor] irrevocably submits to the jurisdiction of any competent [insert name of state, e.g., New York State] or Federal court sitting in [insert name of city and county where premises are located, e.g., City of New York, County of New York], and [insert name of city and county where your office is located, e.g., City of Glen Cove, County of Nassau], in Landlord's discretion, in any suit, action, or proceeding arising out of or relating to this [Lease/Guaranty]. [Tenant/Guarantor] irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the setting of the venue of any such suit, action, or proceeding brought in such court(s) and any claim that any such suit, action, or proceeding brought in such court has been brought in an inconvenient forum. A final judgment in any such suit, action, or proceeding brought in such court shall be conclusive and binding upon [Tenant/Guarantor].
- b. [Tenant's/Guarantor's] Agents.** [Tenant/Guarantor] hereby irrevocably appoints (i) [insert name of agent] having an office at [insert address] and (ii) [insert name of agent] having an office at [insert address] (such parties and any replacement agents appointed pursuant to this Paragraph constituting, individually, an "Agent" and, collectively, the "Agents"), as its authorized agents to accept and acknowledge on [Tenant's/Guarantor's] behalf, service of any and all process which may be served in any suit, action, or proceeding of the nature referred to above.
- (i) Each of the Agents:
- (A) Has executed this [Lease/Guaranty] to acknowledge that [he/it] has irrevocably agreed to accept such appointment; and
- (B) Agrees not to cease to so act unless and until the party for whom [he/it] is so acting has irrevocably designated and appointed another such Agent reasonably satisfactory to the Landlord and having an office in [insert city] and until such replacement Agent has accepted such appointment in accordance with this Paragraph.
- (ii) [Tenant/Guarantor] and each of the Agents are simultaneously herewith executing, acknowledging, and delivering to Landlord duplicate originals of an Appointment of Agent for Service of Process in the form of Schedule [insert #] hereto for filing in the Office of the Clerk of [insert county], in the State of [insert name of state].
- (iii) [Tenant/Guarantor] and each of the Agents covenants and agrees to:
- (A) Renew the Appointment of Agent for Service of Process immediately upon expiration thereof, through and including the date which is [insert #, e.g., 6] months after the expiration or earlier termination of [this/the] Lease; and
- (B) Upon any assignment of Landlord's interest in this [Lease/Guaranty] to promptly execute and deliver a new Appointment of Agent for Service of Process and all renewals thereof in favor of such assignee.
- c. Service of Process.** Process may be served upon [Tenant/Guarantor] (and/or any Agent) in any suit, action, or proceeding arising out of this [Lease/Guaranty] in accordance with any of the methods for giving notice as set forth in Clause [insert # of notice clause] of this Lease. Such service shall be deemed in every respect effective service of process upon any such party in any such suit, action, or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the respective party. Nothing in this Paragraph shall affect the right of any party to serve process in any other manner permitted by law.
- d. Survival.** The provisions of this Clause shall survive the expiration or earlier termination of this [Lease/Guaranty].