

MODEL LEASE CLAUSE

Make Tenant Responsible for Mold Monitoring, Inspections, and Remediation

The following model clause was drafted by Connecticut environmental attorneys Andrew N. Davis and Catherine K. Lin. Use it when a tenant that controls its space is responsible for monitoring, inspecting, and remediating mold-related hazards.

Paragraph a requires the tenant to monitor the space for mold and conditions that may induce mold growth. Paragraph b requires the tenant to inspect the space if monitoring raises

suspicious of mold or mold-inducing conditions. Paragraph c requires the tenant to remediate any mold or mold-inducing conditions found. Paragraph d lets you inspect the space after the tenant completes the mold remediation.

Show this clause to your attorney, and ask her or him to tailor it to reflect your particular building's conditions, needs, and objectives.

MONITORING, INSPECTING AND REMEDIATING MOLD

a. Monitoring of Premises. Tenant, at its sole cost and expense, shall:

- (i) Regularly monitor the Premises for the presence of mold or for any conditions that reasonably can be expected to give rise to mold (the "Mold Conditions"), including, but not limited to, observed or suspected instances of water damage, mold growth, repeated complaints of respiratory ailment or eye irritation by Tenant's employees or any other occupants in the Premises, or any notice from a governmental agency of complaints regarding the indoor air quality at the Premises; and
- (ii) Promptly notify Landlord in writing if it suspects mold or Mold Conditions at the Premises.

b. Inspection of Premises. In the event of suspected mold or Mold Conditions at the Premises, Tenant, at its sole cost and expense, shall promptly cause an inspection of the Premises to be conducted, during such time as Landlord may designate, to determine if mold or Mold Conditions are present at the Premises, and shall:

- (i) Notify Landlord, in writing, at least [insert #, e.g., 3] days prior to the inspection, of the date on which the inspection shall occur, and which portion of the Premises shall be subject to the inspection;
- (ii) Retain an industrial hygienist certified by the American Board of Industrial Hygienists ("CIH") or an otherwise qualified mold consultant (generally, "Mold Inspector") to conduct the inspection; and
- (iii) Cause such Mold Inspector to:
 - (A) Obtain or maintain errors and omissions insurance coverage with terms and limits customarily maintained by Mold Inspectors, adding Landlord as an additional insured with respect to Landlord's vicarious liability, and provide to Landlord evidence of such coverage and a copy of the endorsement granting Landlord additional insured status;
 - (B) Perform the inspection in a manner that is strictly confidential and consistent with the duty of care exercised by a Mold Inspector; and
 - (C) Prepare an inspection report, keep the results of the inspection report confidential, and promptly provide a copy to Landlord.

c. Remediation of Mold. In the event the inspection required by Paragraph b hereof determines that mold or Mold Conditions are present at the Premises, then

- (i) Tenant, at its sole cost and expense, shall promptly:
 - (A) Hire trained and experienced mold remediation contractors to prepare a remediation plan and to

remediate the mold or Mold Conditions at the Premises;

(B) Send Landlord notice, in writing, with a copy of the remediation plan, at least [insert #, e.g., 3 to 5] days prior to the mold remediation, stating:

- (1) The date on which the mold remediation shall start;
- (2) Which portion of the Premises shall be subject to the remediation;
- (3) The name, address, and telephone number of the certified mold remediation contractors performing the remediation;
- (4) The remediation procedures and standards to be used at the Premises;
- (5) The clearance criteria to be employed at the conclusion of the remediation; and
- (6) The date the remediation will conclude;

(C) Notify, in accordance with any applicable state or local health or safety requirements, its employees as well as occupants and visitors of the Premises of the nature, location, and schedule for the planned mold remediation;

(D) Ensure that the mold remediation is conducted in accordance with the relevant provisions of the document *Mold Remediation in Schools and Commercial Buildings* (EPA 402-K-01-001, March 2001) ("EPA Guidelines"), published by the U.S. Environmental Protection Agency, as may be amended or revised from time to time, or any other applicable, legally binding federal, state, or local laws, regulatory standards or guidelines; and

(E) Provide Landlord with a draft of the mold remediation report and give Landlord a reasonable opportunity to review and comment thereon, and when such report is finalized, promptly provide Landlord with a copy of the final remediation report.

d. Post-Remediation Inspection. Tenant acknowledges and agrees that Landlord shall have a reasonable opportunity to inspect the remediated portion of the Premises after the conclusion of the mold remediation. If the results of Landlord's inspection indicate that the remediation does not comply with the final remediation report or any other applicable federal, state, or local laws, regulatory standards or guidelines, including, without limitation, the EPA Guidelines, then Tenant, at its sole cost and expense, shall immediately take all further actions necessary to ensure such compliance.