

Decarbonizing
New York City Offices

Guide to

Developing High- Performance Leases



Developing High-Performance Leases



for Commercial Tenants
and Building Owners

With the passage of Local Law 97 (LL97) in New York City and emerging interest in building performance standards around the country, leases must expand beyond the fundamentals established from earlier green leasing practices—which encourage building owners and tenants to include energy-aligned clauses on a voluntary basis—to incorporate terms into standard lease language that equitably mandate compliance with increasingly stringent energy and carbon emissions reduction requirements.

Purpose

This resource is intended as a starting point to understand how high-performance leases can be utilized to help comply with LL97 or other performance-based laws, regulations, or environmental reporting requirements. It offers guidance and key sample lease provisions for both landlords and tenants of commercial office spaces. The sample language throughout this guide is intended to provide context and should be customized to meet your organization’s needs.

When updating your new leases to incorporate performance-based clauses, you should also think about how they can be incorporated into existing leases, such as through an addendum or lease memo. Please note that “high-performance,” “energy-aligned,” and “green leases” are terms used interchangeably in this document to describe the same type of lease, as different organizations utilize the terminology that fits best within their culture.

This guide is part of a series of actionable resources developed for the [Decarbonizing New York City Offices](#) project, an initiative dedicated to reducing carbon emissions in leased commercial spaces.

Introducing High-Performance Leases

Under traditional office lease agreements, energy efficiency is not typically addressed, leaving one party—often the landlord—to carry the burden of investing in efficiency, while the other party—the tenant—benefits from the operational savings. This dichotomy is known as the split incentive. In these situations, the landlord has little motivation to provide capital for efficiency-related improvements, and the tenant has little motivation to make capital investments in their spaces to reduce energy consumption, since they don’t own the asset. This split-incentive problem often leads to excessive energy consumption and inefficiently operated buildings.

Traditional lease provisions tend to lock in inefficient procedures and impede efforts to reduce carbon emissions, e.g., with provisions that require landlords to provide heating and cooling even when leased spaces are unoccupied, permit inefficient tenant build-outs, hardwire lights to stay on 24/7, mandate excessive plug loads, etc.

Incorporating high-performance, energy-aligned terms into your standard lease language is a key strategy to reduce carbon emissions, reduce risk, and fight against the climate crisis. At the core of this pragmatic approach to advanced leasing practices is a mutual agreement of both tenants and landlords to collaborate and create shared benefits. This approach involves the following components:

1. Set the specific required building performance standard needed to meet LL97 and carbon reduction goals
2. Equitably distribute landlord and tenant responsibilities to meet building performance standards
3. Ensure landlord-tenant transparency and accountability by tracking energy use and implementing building performance goals
4. Offer continuous monitoring via periodic recommissioning studies and mitigating plans where necessary
5. Present remedies should either party fail to meet building performance goals

Cooperation, which is built into the lease, forms the basis for an ongoing partnership that can and should be leveraged over time by shared reporting on progress toward energy efficiency goals, emissions reduction targets, and other mutually beneficial outcomes.

Communication is key to successfully incorporate these lease clauses into your leases. All parties need to understand the importance of high-performance lease clauses and how they can benefit both tenants and landlords and generate win-win outcomes.

High Performance Lease Provisions

On the following pages you will find sample lease clauses for landlords and tenants. The clauses are organized by language applicable to landlords, tenants, or both parties. The following lease provisions cover key topics but are not intended to be an exhaustive list. You and your attorney may choose to modify the sample clauses here or create your own language to specifically address your organization's unique leasing situation.

Landlord & Tenant Collaboration: Setting Building Performance Goals and Requirements

The fundamental principle of high-performance leases is the prioritization of energy efficiency and carbon emissions reduction in building operations, which requires action from both the landlord and tenant. To accomplish this goal, a critical component of a high-performance lease is the establishment of Building Performance Standards that are designed to reduce energy used in building operations and reflect the requirements of LL97 in New York City. The Building Performance Standards should include the energy consumption goals for the building, the timeline and capital improvements that must be undertaken to meet the goals, and ways for both parties to share the costs of meeting these goals. The Building Performance Standards should also clarify the responsibilities of both the tenant and landlord in meeting the agreed upon goals and requirements, including review of landlord/tenant fit-out guides, to ensure an equitable win-win outcome is established.

Landlord & Tenant Sample Clauses

Definitions section: Define “Building Performance Standards,” “Energy Consumption Limit,” “Plug Load Standard,” “Premises Design Criteria” and “Retro-commissioning” as the standards and criteria set forth in relevant exhibits.

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“Operating Expenses” include the “costs to comply with Laws and governmental requirements of general applicability to the Building ... the purpose of which is to cause a reduction in greenhouse gas emissions or energy use intensity” and “the costs to comply with Building Performance Standards,” including the costs of recommissioning and implementation of resulting recommendations. To the extent any of the foregoing costs are treated as capital expenses, such costs shall be charged to Tenant on an amortized basis over the useful life of the relevant improvement.

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The Landlord and Tenant agree to meet [insert frequency and forum] to discuss issues and progress related to the environmental performance of building operations and compliance with Local Law 97.

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During the Term, the Tenant agrees to execute a strategy for reducing its consumption of energy and water within the Premise in order to meet or exceed the Landlord’s Building Performance Standards. The Tenant will report its chosen initiatives to the Landlord in the [x] Forum. The Tenant shall use commercially reasonable efforts to evaluate and share with the Landlord annual energy consumption and carbon emissions with respect to its user behavior.

Landlord Sample Clauses

The Tenant, at its expense, shall comply with Landlord’s Building Performance Standards. The Tenant shall also comply with any federal, state, or local laws applicable to the reduction of greenhouse gasses or the use of sustainable materials, to the extent such laws are applicable to Tenant.

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Any future Tenant Alterations must comply with Landlord’s Building Performance Standards or Premises Design Criteria.

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The Landlord may withhold approval from any “Initial Improvements” that “fail to comply with the Building Performance Standards or Premises Design Criteria.”

Tenant Sample Clauses

Landlord shall pay to Tenant an “Energy Efficiency Bonus” equal to [_ _]% of Landlord’s Contribution, provided that, upon completion of the Initial Improvements, a qualified licensed professional engineer paid for by Tenant and reasonably acceptable to Landlord (the “Energy Efficiency Professional”) certifies to Landlord that the Initial Improvements have been substantially completed in a manner which meets or exceeds Landlord’s Building Performance Standards, which Energy Efficiency Bonus shall be amortized over the Term of the Lease and payable to Tenant as a credit against monthly installments of Base Rent commencing with the month immediately following the month in which the Retainage is due and owing to Tenant.

Data Tracking & Sharing: Landlord-Tenant Transparency and Accountability

High-performance leases should also ensure that landlords and tenants have equal access to information about tenant and building energy consumption. Oftentimes, each party has access to data that would benefit the other. For example, the tenant may have access to their own energy consumption data. By providing their data to the landlord, the landlord is able to aggregate and report the whole building's energy performance, which may be necessary for compliance with regulations like LL97 and also helps the tenant understand their own energy consumption in context of the whole building. This sharing of information enables all parties within the building to identify and address inefficiencies in energy usage, learn from each other, and foster a more collaborative relationship.

High-performance leases should require a submeter to be installed in each tenant space, with tenants billed according to their measured energy usage rather than estimates or other less reliable proxies. This arrangement makes tenants accountable for their actual energy consumption and able to benefit directly from conservation efforts. Similarly, to hold landlords accountable for optimizing building energy systems, high-performance leases should require:

- (i) Submetering in common areas to measure building-wide common area energy consumption; and
- (ii) Landlords to share this information with all tenants, their environmental, social, and governance (ESG) stakeholders, and other parties of legitimate interest.

High-performance leases should also require that the results of periodic recommissioning be shared between tenants and landlords to help ensure the building remains compliant, and that landlords share information about building-wide energy performance ratings with tenants.

Landlord & Tenant Sample Clauses

The Landlord shall provide energy use information [insert frequency and delivery method and forum] for all energy sources including electricity, natural gas, oil, steam, propane and district heating/cooling. Energy use information should flow both from Tenant to Landlord as well as from Landlord to Tenant.

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The Landlord and the Tenant will share the Environmental Performance Data they hold relating to the Premises and/or the Building. This Environmental Performance Data will be shared on a regular basis [but not less frequently than monthly/quarterly/annually] with each other, with the Managing Agent and with any third party who the Landlord and the Tenant agree needs to receive such data. Save where they are under a statutory obligation of disclosure, the Landlord and the Tenant will keep confidential the Environmental Performance Data shared under this clause, and will only use such data for the purposes of:

- (a) Monitoring and improving the Environmental Performance of the Premises and/or the Building and/or*
- (b) Measuring the Environmental Performance of the Premises and/or the Building against any agreed targets. The Landlord will procure that the Managing Agent is placed under a similar obligation to that set out in clause [] to keep any shared data confidential and to use it only for the purposes listed in that clause.*

Where the Landlord or Tenant discloses any shared data to a third party, they will procure that that third party is placed under a similar obligation to that set out in clause [insert page number of clauses outside of the lease document] to keep any shared data confidential and to use it only for the purposes listed in that clause.

Landlord Sample Clauses:

The Tenant's consumption of electrical energy at the Premises shall be measured by meters (capable of reading demand and KW hours to measure the demand and consumption of electric energy) installed at the Premises by Landlord at Tenant's sole cost and expense.

Tenant Sample Clauses:

The Landlord shall provide energy use information [insert frequency and delivery method and forum] for all energy sources including electricity, natural gas, oil, steam, propane and district heating/cooling. Energy use information should flow both from Tenant to Landlord as well as from Landlord to Tenant.

Recommissioning / Retro-commissioning

Periodic and ongoing recommissioning—of both tenant space systems and landlord base building systems—and the sharing of related results/reports is crucial to ensure that Building Performance Standards are consistently met over time. High-performance leases should require recommissioning of the tenant space/common area either on an ongoing basis, such as real-time energy monitoring (RTEM), or periodically, such as every three to five years, and include an evaluation of plug load consumption, water consumption, and operating hours; the tenant/landlord to perform a biannual “night audit” to ensure that no unnecessary energy is being consumed overnight; and if the energy consumption limit and/or plug load standard is exceeded in any given year, the lease should authorize the space to be recommissioned ahead of the standard timeline.

Lastly, high-performance leases should address the consequences of noncompliance with Building Performance Standards. High-performance leases should consider requiring the landlord to meet with noncompliant building tenants and review their energy use data, recommissioning results and recommendations, and the effectiveness of current efficiency programs. In this scenario, the landlord and tenant would then work together to establish an energy optimization plan, which includes crafting an energy management plan and identifying cost-savings opportunities for the building and each tenant space. This will help mitigate the risk of noncompliance and likely save both the tenant and landlord from paying costly penalties.

Landlord Sample Clauses

Prior to the recommissioning every [3] calendar years, Landlord will work with a Tenant point of contact to issue a survey to all occupants of the Premises to evaluate thermal comfort, functionality, [transportation methods], health and productivity, and Tenant operations, including the type of equipment used, lighting systems, plug load management, and hours of operations. Survey results will be used to inform recommissioning to improve the functionality and comfort of the Premises. Surveys shall be coordinated through the designated Tenant point of contact and shall not occur more than once per calendar year. Interviews may be used to supplement the surveys, pending approval from the Tenant point of contact.

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In order to maintain and enhance performance toward the Building Performance Standard, the Landlord will recommission the Building Systems, including, but not limited to, base building systems and common areas, once every [3] calendar years. The cost of recommissioning will be billed to all tenants of the Building as an Operating Expense. Each recommissioning will comply with ASHRAE Guideline 0.2 (for initial commissioning and retro-commissioning of base building systems) or ASHRAE Guideline 202 (for new commissioning of tenant fit-out equipment). The Landlord will evaluate specific commissioning standards at each [3 year] interval, and update the standards as appropriate. At a minimum, recommissioning will address heating, ventilating, air conditioning and refrigeration (HVAC&R) systems and associated controls, lighting and lighting controls, plug loads, and domestic hot water systems.

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The Landlord shall share the results of the recommissioning with the Tenant. The recommendations of the recommissioning will be promptly undertaken by Landlord as an Operating Expense.

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If the Building Performance Standard is not achieved, Landlord will meet with all tenants and review energy use data, recommissioning outputs and recommendations, and the effectiveness of efficiency programs and mutually establish an energy optimization plan (“Energy Optimization Plan”), including energy management and cost-effective savings opportunities for the Building and each premises therein. The cost of any changes or alterations to the base building HVAC or lighting systems and their controls due to the recommissioning will be borne by Landlord and billed as an Operating Expense.

Tenant Sample Clauses:

The Tenant shall perform a recommissioning study of all systems that consume energy, including, but not limited to all equipment (including plug loads) installed at the leased premises; all systems that consume water; and tenant space operating hours every [3–5] years. Within [2–3] months after the conclusion of the recommissioning study, the Tenant shall start to implement

recommendations identified by the recommissioning study that are deemed cost effective. For purposes of this section, the term “cost effective” means an improvement that will result in material operational cost savings by reducing electricity or fossil fuel consumption, water, or other utility costs and where such operational cost saving over the then-remaining Term of this lease (or some other period of time that is mutually acceptable) is sufficient to pay the incremental additional costs of making the improvements.

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The Tenant shall perform an audit at night or during off hours at least 2 times per year, once in the summer and once in the winter, to check temperature set points, equipment that should be powered down after business hours, night load, and lighting.

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If the Tenant’s consumption of energy exclusively serving the Premises exceeds the energy usage limit equitably allocated to the Premises as set forth in Exhibit [], or if the Tenant’s Plug Load Maximum set forth in Exhibit [] is exceeded, Landlord will arrange for the Premises to be recommissioned, and cost of any changes or alterations to the Premises or equipment and its controls due to the recommissioning will be promptly done by Tenant at its sole cost.

Penalties

High-performance leases should also codify how potential LL97 fines will be shared between a landlord and tenant if a tenant exceeds its designated energy consumption limit. Both landlords and tenants should work with their representatives, including their brokers and engineers, to determine a fair, equitable, and appropriate cost sharing approach and an appropriate tenant energy consumption limit.

Landlord & Tenant Sample Clauses

The Tenant shall ... comply with (i) Landlord's Building Performance Standards set forth in Exhibit [] and (ii) all Laws ... with respect to the Premises, including, without limitation, (i) any improvements or Alterations in the Premises and Tenant's occupancy, use and manner of use of the Premises and (ii) the payment of any portion of the penalties or excess emissions charges incurred by Landlord under Local Law 97 equitably attributable to Tenant's consumption of energy exclusively serving the Premises in excess of the energy use limit equitably allocated to the Premises as set forth in Exhibit [] based on the Building's emissions limit in the aggregate which causes Landlord to exceed the annual building emissions limit Landlord is required to comply with under such Local Law 97 for such calendar year in question (taking into consideration any and all credits with respect to such limit obtained by Landlord, if the cost of such credit is included in Operating Expenses); provided however, in connection with the foregoing, Landlord shall have the burden to demonstrate to Tenant, through means and methods reasonably acceptable to Tenant, that any such liability of Tenant under this Section, or elsewhere in this Lease in connection with Local Law 97, is equitably attributable to Tenant's consumption of energy; and provided, further, that, Landlord shall be solely responsible, and shall not hold Tenant accountable, for any portion of any penalties or charges levied upon the Building under Local Law 97 due to (i) the failure of Landlord to timely or duly meet reporting obligations under Local Law 97, (ii) to the consumption of utilities by any other tenant or occupant of the Building, (iii) any extraordinary use of Building Systems in the Common Areas during periods outside of a Business Day, or (iv) Landlord's failure to operate and maintain the Building Systems in accordance with the standards from time to time prevailing for comparable office buildings.

Landlord Sample Clauses

The Tenant use of electrical service shall not exceed the Building usage, per square foot, as reasonably determined by Landlord, based upon the Building Performance Standard and electrical design load. Landlord shall have the right to measure electrical usage by commonly accepted methods, including the installation of measuring devices such as submeters and check meters. If it is determined that Tenant is using electricity in such quantities or during such periods as to cause the total cost of Tenant's electrical use, on a monthly, per-rentable-square-foot basis, to exceed that which Landlord reasonably deems to be standard for the Building, Tenant shall pay Landlord Additional Rent for the cost of such excess electrical use and, if applicable, for the cost of [insert measures necessary to reduce excess energy use (equipment, consultants, etc.)]

Key Findings from

[*The Great Energy Disconnect: Lessons Learned from the Pandemic on Commercial Office Energy Use*](#)

Lease Modifications

The pandemic has highlighted that status quo leasing practices lock in inefficiencies and impede efforts to reduce carbon emissions. Several modifications should be considered to facilitate whole-building energy reduction in commercial offices. These clauses have a goal of motivating landlords and tenants to actively collaborate in reducing whole-building energy use by making reasonable accommodations to minimize energy consumption and demand from base-building systems and tenant premises.

- 1. Long-term Low Occupancy Provision for Building Services Lease Clause** that defines the rights and responsibilities of the landlord and the tenant in the event of an extended period of very low occupancy in the building or in the tenant's premises.
- 2. Thermal Comfort Standards / Clauses** that would allow for modifications to heating and cooling temperature requirements. For example, allowing ambient temperatures to be 74°F in the cooling season and 70°F in the heating season, as opposed to a prescribed 72°F year round.
- 3. Standards for Server Rooms** that would allow the standard temperature for IT rooms and data centers, which are 10-100 times more energy intensive than typical office space, to be safely raised from the typical mid-60°F.
- 4. Landlord-Tenant Operations and Maintenance (O&M) Plans** that would compel landlords and tenants to adopt joint O&M plans to optimize building energy savings, that include periodic coordination meetings codified in the lease.
- 5. Hybrid Workplace Clauses** that would allow tenants to employ hybrid workplace best practices, including: a) clustering employees into the fewest possible HVAC zones, b) installing vacancy sensors to limit HVAC supply air and turn off lighting in unoccupied HVAC zones, and c) ensure that electrical equipment in unoccupied HVAC zones is turned off to minimize plug load.

Learn more: [Strategies to Maximize Whole-Building Energy Savings](#)

Next Steps

After reviewing this guide, the following actions are recommended:

- Connect with the stakeholders who are involved in your organization's leasing process to discuss the provisions in this guide and determine which ones are applicable and will help you meet your building performance goals and standards.
- Ensure that lease clauses are included throughout the entire leasing process, including the Letter of Intent, so they are not a last-minute surprise to the negotiating party.
- Refer back to this guide throughout the leasing process, particularly as you are starting to utilize these performance-based provisions.
- Share this guide with your tenants/landlord and use it as a conversation starter.