



EGERTON UNIVERSITY

LEASING POLICY

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UNIVERSITY VISION, MISSION, PHILOSOPHY AND CORE VALUES

Vision:

To be a world class University for the advancement of humanity.

Mission:

Generate knowledge and offer exemplary education and training to society for national and global development.

Philosophy

Egerton University innovatively influences human development through generation, acquisition, preservation and dissemination of knowledge and skills in Agriculture and related disciplines guided by the core values.

Core Values

The University's activities and decisions are guided by the following core values:

- i. National unity and Social Fairness
- ii. Integrity, Transparency and Accountability
- iii. Professionalism
- iv. Internationalism
- v. Passion for Excellence and Devotion to Duty
- vi. Teamwork
- vii. Passion for Environmental Conservation

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1.0 PREAMBLE

Egerton University is the oldest institution of higher learning in Kenya. It was founded as a Farm School in 1939. In 1950 it was upgraded to an Agricultural College and in 1986 Egerton Agricultural College was gazetted as a constituent college of the University of Nairobi. In 1987 it was established as Egerton University through an Act of Parliament. It was awarded a new Charter in 2013 following the repealing of the Egerton University Act, Cap 214, and the enactment of the Universities Act No. 42 of 2012.

As an Institution of Higher Learning, Egerton envisions „to be a world class University for the advancement of humanity“. For this to be achieved, the University has to utilize its resources in a transparent, efficient, effective and accountable manner and in accordance with other relevant existing Laws.

In addition to The Egerton University statutes, The State Corporations Act Chapter 446 and other policies, this policy provides guidelines for leasing in property by the University from third parties (referred to as "lease-ins") and for the leasing out of university property to third parties (referred to as "lease-outs").

2.0 PURPOSE OF LEASING POLICY

This policy outlines provisions for leasing of property by or from Egerton University. The policy provides a framework to ensure the following:

- i. That property owned and/or leased by the University is used to provide facilities in support of the University's mission;
- ii. To minimize financial risk, clarify legal responsibility and uphold the University's reputation;
- iii. To enhance accountability and transparency in leasing.

3.0 DEFINITION OF TERMS

Lessee: This is the person who holds the lease of a property

Lessor: This is a person who leases or lets a property to another

Lease: A lease is an implied or written agreement specifying the conditions under which a lessor

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(Property owner) accepts to let out a property to be used by a lessee (Tenant). The agreement promises the lessee the use of the property for an agreed length of time while the owner is assured of consistent payment over the agreed period. Both parties are bound by the terms of the contract, and there is a consequence if either fails to meet their contractual obligations.

Lease agreement: A lease agreement is a legal contract designed to protect both the person leasing the asset (“lessee”) and the owner of the asset (“lessor”). A lease agreement is an arrangement, made between two parties that allow one of the parties to use an asset belonging to the owner. Typically, lease agreements are used for rental properties, but they can also be used for rentals of vehicles, household appliances, construction equipment, and other items.

Warranty of habitability: An implied warranty of habitability is an unstated guarantee that a rental property is in compliance with basic living and safety standards. In this regard, landlords are required to keep rental premises liveable.

4.0 SCOPE OF THE POLICY

The policy shall cover leases or rental of property, including but not limited to any interest in land, buildings, equipment, water, vehicles and other natural resources among others.

5.0 COMPLIANCE MEASURES

The policy outlines the following compliance measures:

- i. Any agreement which does not comply with the terms of this Policy and Procedures shall not be binding upon Egerton University unless approved by the University Council.
- ii. Request for lease-ins or lease-outs, extension or renewal of a lease for University purposes must be submitted to the Vice Chancellor.
- iii. Property leases may be entered to support academic, research, Public Service University or other activities of the University when no land or facility owned by the University or an affiliated organization is available.
- iv. Deviations from the stated lease provisions shall require review and approval by the University Council.
- v. The Vice Chancellor is responsible for securing of all leased property for the University

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(referred to as "lease-ins"). The Vice Chancellor is also responsible for the renting out and leasing of University land and other properties (referred to as "lease-outs").

6.0 PRINCIPLES OF LEASING

The acquisition of property to lease must be justified by University needs and the decision on whether to lease or to purchase must be determined by the most economical and beneficial means for fulfilling the identified need. This requires a thorough assessment of the associated costs, risks and benefits. Whenever leasing is proposed, the following principles shall apply:

- i. Leasing should impose no greater cost than outright purchase. Any exceptions must clearly identify tangible benefits arising from the lease that offset the additional cost and any inherent risks borne by the University.
- ii. Leased property shall meet acceptable standards for design, construction, and maintenance as defined by the University.
- iii. Leased property shall be efficient and cost effective as defined by the University and shall meet any other specific requirements and standards (e.g. environmental) as may be provided.
- iv. A premium shall be acceptable only if leasing creates tangible benefits sufficient to offset any additional costs.
- v. All lease-outs should accord to the university maximum possible benefits.
- vi. All lease-ins and lease-outs shall be entered into according to the provisions of the Public Procurement and Asset Disposals Act 2015 and Public Procurement and Asset Disposals Regulations 2020 and any other applicable laws.

7.0 Types of Leases

This policy shall cover the following types of leases, where any such lease arrangement have been entered into:

7.1 Absolute Net Lease

In an absolute net lease, the university shall take care of the entire burden, including insurance, taxes, and maintenance. In this regard, since most of the burden shall be on

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the university (lessee), the university is expected to negotiate for lower monthly rates from the proprietor (lessor).

7.2 Triple Net Lease (NNN)

The triple net lease comes with three expense categories associated with it: insurance, maintenance, and property taxes which the property owner is likely to pass them all to the University in the form of rent excesses.

7.3 Single tenant lease

Under a single-tenant lease, the University pays the property taxes and shall exert control over landscaping and exterior maintenance. This means that the University shall decide what the property looks like as long as the tenancy is in effect.

7.4 Modified Gross Lease

The modified gross lease transfers the entire burden onto the property owner. Based on the terms, the Lessor pays all the insurance, property taxes, as well as the common area maintenance. On the other hand, the University would shoulder janitorial, utility, and interior maintenance costs.

The tenancy arrangement would also stipulate that the roof and other structural aspects of the building are the owner's responsibility. However, because the owner takes care of a large portion of the tenancy's costs, the monthly rates are expected to be higher compared to other types of leases.

The modified lease type would be advantageous to the University because the lessor/owner takes care of associated risks such as operating costs. Unfortunately, the owner may choose to charge a premium each month to cater for the cost of managing the building.

7.5 Full Service Lease

The property owner/lessor takes care of most of the cost of operating a building. These include common area maintenance, taxes, interior, insurance, utility, and janitorial costs. As a result, the monthly rate is slightly high, and such leases are common in

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huge multi-tenant units where it is impractical to partition a building into smaller spaces.

Such an arrangement would be advantageous to the University because there are no extra costs over and above the usual monthly rate. The disadvantage is that the owner may decide to charge a little premium on top of the monthly rate to cover the cost of the tenancy. Most proprietors prefer the full service arrangement because it allows total control over a building's overall appearance.

8.0 ROLES AND RESPONSIBILITIES

Parties to a lease arrangement shall have responsibilities as follows:

8.1 Role of University Council

University Council shall be responsible for:

- i. Approval of the policy
- ii. Approval and monitor the University budget in so far as the outsourced service is concerned
- iii. Approval and oversight of the procurement Plan

8.2 Departments/Requesting Unit

- i. 8.2.1 Whenever any university unit or department requires a leased property, they shall submit a request in writing to the Vice Chancellor, providing a clear justification for the request.
- ii. 8.2.2 The requesting department/unit shall be responsible for identifying its requirements (needs assessment) in order to enable delivery of University and services consistent with Egerton University Space Allocation Standards.
- iii. 8.2.3 Upon receipt of lease-in request from a university department/unit, the Vice-Chancellor shall constitute a leasing committee to carry out a detailed needs analysis and cost/benefit analysis. The membership of the committee shall be drawn from heads of the following departments:

– Deputy Vice Chancellor (Administration, Planning & Development) -
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Chairman

- User Department
- Finance Department
- Dean, Faculty of Commerce
- Procurement department
- Estates department
- Legal Officer
- Any other relevant department/person

8.3 Leasing Committee

There shall be an Ad hoc committee whose functions shall include analyzing the existing leases. Some of the functions and responsibilities of the committee, covering both Lease-ins and Lease-outs, shall be as follows:

- a. To carry out a detailed user needs analysis
- b. To conduct a thorough cost-benefit analysis of the proposed lease arrangement
- c. To conduct due diligence prior to leasing:
 - i. **Physical Inspection:** The Committee must visit the premises and confirm its physical features such as its size, location, parking spaces, water source, electrical fittings, etc.
 - ii. **Search on the Title:** The committee must obtain a copy of the land title for purposes of carrying out a search.
 - iii. **Due diligence on Landlord:** Where the landlord is a company, the committee must carry out a search at the Registrar of Companies to confirm the ownership details. If the Landlord is an individual, the committee must make oral enquiries from existing tenants or the caretaker of the premises to confirm the identity of the Landlord.
- d. The report from the committee shall inform whether to negotiate the terms of engagement with the lessee and/or lessor as may be the case.
- e. Any other matters relevant to the lease.

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- f. To submit a report to the Vice Chancellor.
- g. To report on outstanding leasing matters periodically.

8.4 Owner (Lessor's) Responsibility

The lessor shall have the following responsibilities:

- i. To deliver the leased property to the lessee in good condition
- ii. To reimburse the lessee for any necessary and reasonable expenses incurred by the lessee in the preservation of the leased property
- iii. In case the leased property is not delivered in the condition suitable for use, the lease may terminate the contract.
- iv. The owner of the leased property shall have an obligation to keep the leased property habitable.
- v. The owner shall be responsible for payment of all applicable property taxes, utilities, property maintenance and any other statutory requirements.
- vi. From a compliance standpoint the owner is also responsible for following all applicable laws and regulations.

8.5 Lessee's Responsibilities

The lessee has responsibility to:

- i. Pay the applicable rent on the due dates.
- ii. To take care of the leased property in good condition and carry out ordinary repairs.
- iii. Use the leased property according to the provisions of the lease contract
- iv. Allow the lessor or his/her agent to inspect the property from time to time
- v. Not make alterations of the leased property without the consent of the lessor
- vi. The lessee is liable for any loss or damage to the leased property by his/her own fault except for losses resulting from property use.
- vii. The lessee is liable to the lessor for any injury resulting from delay occasioned by his failure to inform the lessor of any need for repairs, needed preventive measure for avoiding danger or if a third party encroaches on the leased property.

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9.0 RISKS ASSOCIATED WITH LEASING

Below are some of the underlying risks associated with lease arrangements and how this policy requires them to be mitigated:

9.1 Rent Fluctuations

- i. Rents can fluctuate during the life of a lease arrangement. At the onset, the market shall set the rent payable when the lease is signed. In this regard, the university shall review its lease every THREE (3) years.
- ii. The university shall not accept rent escalation clauses that are tied to the Consumer Price Index since these can be very risky. If the CPI escalator isn't subject to an annual cap, rents could skyrocket in times of high inflation.

9.2 Co-tenancy Conflicts

- i. The University may have little or no ability to influence which other tenants the owner of the building signs leases with. As such, the university can end up sharing a building with a night club or a liquor store.
- ii. The lease contract shall provide that co-tenants shall not engage in activities that are in conflict with the objectives of the university. The leasing committee shall negotiate this condition with the landlord up front.

9.3 Inability to Renew Tenancy

- i. The University may run the risk of being unable to renew their spaces if they want to stay in the building beyond the expiration of their leases. In some cases, renewals become impossible because the market rent has increased so much as to be unaffordable. In others, the landlord simply decides to lease the space to another tenant.
- ii. The university shall enter into tenant-controlled renewal options to help to alleviate the risk of the landlord deciding to let out space to another tenant i.e. there shall be a negotiated clause at the inception of the lease which enables the university to exercise the first enforceable interest in the property at the expiry of the lease.
- iii. The contract agreement shall provide for sufficient notice by either party regarding

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renewal of the contract at its expiry.

9.4 Penalty on Lease Termination

The lease agreement shall provide for sufficient notice period should either party decide to terminate the lease before its full time period, with clear penalties accruing if such a notice is not given.

9.5 Other potential risks

Other risks such as environmental liabilities, obsolescence, or uninsured damage also may be transferred to the University depending on the specific lease terms. The lease agreement shall be so structured as to fully protect the university against all these other risks.

10.0 LEASE DURATION

The duration of the lease and termination thereof should be as per the terms provided for in the lease contract. Possible terms of termination are as follows:

10.1 Lease Duration

The length of the lease term is a key factor and this must be clearly stated. While a longterm lease (usually over 5 years) may offer certain savings and incentives for an established business, this policy recommends shorter term lease periods. This shall allow the university to terminate or renegotiate after a certain period of time, in the event that its business needs change.

10.2 Lease Renewal

A lease contract may provide for automatic renewals or renewal on notice. This policy recommends that sufficient notice period be provided for in the contract and that there shall be no automatic renewal of leases. Any renewal of leases will be reviewed on need basis.

11.0 LEASE TERMINATION

Lease termination should be as per the terms provided for in the lease contract. Possible terms of termination are as follows:

11.1 Break Clauses

A break clause gives an option to both the lessee and the lessor to terminate a lease at least once

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during the term. Such clauses can be written to provide a termination option either earlier or later in the lease term and are exercisable if certain conditions are met (e.g., all rent has been paid to date and proper notice is provided). This shall be in cases of uncertainties that can affect either party to the lease contract.

11.2 Bailout Clauses:

A bailout provision allows the university to be released from the lease if its business does not reach a predetermined level. This shall be applicable where the university is starting business operations in a leased property.

11.3 Termination Penalty

- i. Including provisions in the lease agreement that address a termination penalty upfront avoids negotiations at the time of termination when the University may have less leverage and therefore have no choice but to accept a higher penalty.
- ii. Although changes to the lease or a termination settlement can be negotiated at any time, it is important for the university to anticipate such issues at the outset of the lease and to include provisions such as these in order to best prepare for the uncertain future of its business.

12.0 CONFLICT RESOLUTION

The following processes shall be considered when resolving any emerging conflict:

- i. All lease contracts shall contain a clause on the manner in which any conflicts arising shall be resolved.
- ii. The Legal Officer together with the Head of procurement function shall be designated as Grievance Redressed Officer for lease contract.
- iii. Any grievance raised by the grievance redressal officer shall be in writing.
- iv. The designated officer shall ensure that genuine grievances are addressed promptly and remedial action taken in line with the provisions of the contract.

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13.0 REVIEW OF THE LEASING POLICY

This Leasing Policy shall be reviewed within every FIVE (5) years or when necessary.

14.0 EFFECTIVE DATE

This leasing policy shall be effective from date of approval by the University Council.