

**LEASE AGREEMENT****EMSA**

BETWEEN:

**APL – Administração do Porto de Lisbon, S.A.**, with registered office at Rua da Junqueira, 94, 1349-026 Lisboa, Portugal, taxpayer nº 501 202 021, registered at the Lisbon Commercial Registry under that sole registration and tax number, with a share registered capital of € 60.000.000,

Members of the Board, with powers to bind the company, hereinafter designated as "APL";

And

**EUROPEAN MARITIME SAFETY AGENCY**, with its temporary seat at Avenida D.João II, Lote 1.06.2.5, in 1998-001 Lisbon, Portugal, taxpayer nº 507 685 326, represented by Mr. Willem de Ruiter, Executive Director, with powers to bind the Agency, hereinafter designated as "EMSA";

**WHEREAS**

- A) Following the Decision of the Council of the European Union of 13 December 2003, the Government of the Portuguese Republic entered into a protocol with EMSA on 28 July 2004 for the establishment of the EMSA headquarters in Lisbon, which was published as an Annex to Notice (*Aviso*) n.º 157/2004 of the Ministry of Foreign Affairs, published in the Official Gazette (*Diário da República*), on 22 September 2004 (the "Notice");
- B) Following the same Decision, the Government of the Portuguese Republic entered into a Memorandum of Understanding with EMSA and the European Monitoring Centre For Drugs and Drug Addiction (hereinafter referred to as EMCDDA) on 28 July 2004, published as an Annex to the Notice, for the establishment of EMSA and EMCDDA headquarters in Lisbon (the "MOU");

- C) In order to facilitate the relocation of EMSA to Lisbon an Additional Protocol to the Memorandum of Understanding between the Portuguese Government, APL and EMSA was signed on 14 July 2005 (the "Additional Protocol");
- D) Under the Additional Protocol, the parties agreed that APL would provide EMSA with temporary office space until the delivery of the EMSA Building, as defined below, to EMSA (the "Interim Period");
- E) APL and EMSA entered into a Services Agreement signed on 14 November 2005, under which EMSA was granted the right to use the building "Edifício do Mar Vermelho", located at Parque das Nações, Lisbon (the "Services Agreement");
- F) Pursuant to the MOU, the construction of the EMSA Building, as defined below, including the Conference Centre and related parking spaces has now been concluded. The building is ready to be occupied by EMSA having the License of use n.º314/UT/2008 been issued by the Municipality of Lisbon on October 28, 2008;
- G) The building project was notified by EMSA to the Budgetary Authority of the European Community on 28 January 2009 to consider the project under Article 18 (11) of the Regulation (EC) N.º 1406/2002 and Article 74 a of the EMSA Financial Regulation. The Budgetary Authority raised no objections.

HAS BEEN AGREED:

**Clause 1**  
**(Definitions)**

1. In this Lease Agreement, the words and expressions hereunder shall have the meaning set forth below, unless the contrary arises from the context:
  - a) "**Business Day**" means any day on which the Banks are open in Lisbon;
  - b) "**Commencement Date**" means [1 May 2009], from which this Lease Agreement is effective;
  - c) "**EMCDDA**" means European Monitoring Centre for Drugs and Drug Addiction;

- d) "**EMSA Building**" means the building where the EMSA headquarters will be installed, with a conference room and supporting facilities and an underground parking, built on the plot of land located between Cais do Sodré and Avenida Ribeira das Naus, in Lisbon, subject to the ownership regime of port-based public domain, under the jurisdiction of APL and identified in the plans attached to this Lease Agreement as Annexes
- e) "**Garden**" means the garden and open areas surrounding the EMSA Building and the Conference Facilities, where no constructions or buildings shall be permitted, now or in the future, ~~except for other buildings associated with the headquarters of EMSA and EMCDDA;~~
- f) "**Interim office**" means the temporary office space used by EMSA until the delivery of the EMSA Office Building to EMSA;
- g) "**Lease Agreement**" means this lease agreement and respective Annexes 1 to 13;
- h) "**Leased Premises**" means the EMSA Building, including the Conference Facilities and the allocated parking spaces;
- i) "**Party**" or "**Parties**" means each APL or EMSA, when referred to separately, or APL and EMSA when referred to jointly;
- j) "**Rent**" means the monthly global rent to be paid by EMSA under this Lease Agreement;
- k) "**Services**" means the services concerning the cleaning, security and janitor services of the Leased Premises;
- l) "**Regular user maintenance**" means the regular maintenance required to maintain the Leased Premises, including its equipment and special installations (notably water, gas, electricity and sewage system equipment, as well as elevators and AVAC) in good working order, save for the deterioration caused by normal wear and tear;
- m) "**Structural maintenance**" means the maintenance and repair works required:

- i) to ensure the integrity of the Leased Premises (notably roof, facades, walls, floors, foundations, protection against flooding and water ingress, etc.);
  - ii) to ensure the replacement of equipment and special installations (notably water, gas, electricity and sewage system equipment, as well as elevators and AVAC) once these have come to the end of their economic lifecycle, or have become dysfunctional due to normal wear and tear;
  - iii) as well as the maintenance required to keep the outdoor areas belonging to the Leased Premises i.e. the gardens, the pavements and the areas open to the public in general, as identified in the plans attached as Annexes in good condition, safe and clean.
- n) **"Surface evaluation"** means the evaluation of the gross lettable areas of the leased premises performed by an independent real estate company;
- o) **"Usable Area"** means the sum of the areas of all rooms, including halls, corridors, toilets and storerooms, measured by the internal perimeter of the external walls, excluding internal walls, partitions and technical shafts.
2. References to Clauses, paragraphs and Annexes shall be construed as references to clauses, paragraphs or annexes in this Lease Agreement.
3. Words in the singular form shall include the plural form and vice versa wherever the context so requires.
4. Titles are used merely for convenience purposes.

**Clause 2**  
**(Object)**

1. Under the terms of this Lease Agreement, APL leases to EMSA, and EMSA takes on lease from APL, the EMSA Building and the Conference Facilities, plus supporting areas, entirely unoccupied and not having ever been used (detailed calculation of all relevant areas attached as Annex).



2. Subject to the terms and conditions of this Agreement, APL also lets to EMSA and EMSA also takes on lease from APL 150 (one hundred and fifty) parking spaces of which 101 (one hundred and one) are located in the existing underground parking next to EMSA Building as identified in the plan attached as Annex 6, and 49 (forty-nine) in the surface parking in the area East of the EMSA Building as identified in the plan attached as Annex
3. APL undertakes to rent 49 (forty-nine) parking lots in the underground garage to be constructed between the EMSA building and Praça do Comércio as soon as it is completed. These parking spaces will be sublet to EMSA at the same rental price applicable to the underground parking in the EMSA compound. They shall replace the surface parking spaces as under the previous paragraph.
4. The EMSA Building and the Conference Facilities are fully furnished and equipped, with all cabling required for the proper functioning of the equipment to be installed, with due regard for grade A specifications of international offices, with individual and collective offices and meeting rooms, all with direct sunlight from the exterior and all satisfying prevailing Community norms and with the requirements set forth in Annex 1-A of the MOU.
5. Under this Agreement APL shall also grant the use by EMSA of the garden identified in Annex

**Clause 3**  
**(Additional Works)**

1. APL undertakes to carry out final adaptation works in the Leased Premises, in order to adjust the leased premises to the purpose of the lease, as described in Annex
2. The parties agree that EMSA shall pay a contribution to the cost of these adaptation works  
(excluding VAT, if applicable) following their completion and on production of a payment request.
3. APL shall cooperate with EMSA in the adoption and implementation of measures concerning an efficient energy use in the leased premises, including but not limited to the installation of solar collectors.

4. APL authorizes EMSA to install and use fixed or mobile aerials for satellite telecommunications and related equipment.
5. APL authorizes EMSA to install adequate sun protection covering the terraces of the EMSA office building and on top of the Conference Facilities after consultation of the architect.
6. The costs of installation and use of solar collectors, fixed or mobile aerials and sun protection installations shall be paid exclusively by EMSA, which shall have exclusive responsibility for the installation of such solar collectors and fixed or mobile aerials.

**Clause 4**  
**(Purpose)**

1. The EMSA Building shall only be used for the installation and operation of the headquarters of EMSA.
2. EMSA may not use the EMSA Building for any other purpose, notwithstanding clause 14, without prior written authorisation from APL, such consent not to be unreasonably withheld.
3. The Conference Facilities shall be for use by EMSA and EMCDDA. The conditions of use shall be subject to an agreement between the two Agencies. The Conference Facilities may also be made available to third parties on an occasional basis subject to availability and the payment of a usage fee.

**Clause 5**  
**(Term)**

1. This Lease Agreement shall be in effect for a period of 25 (twenty five) years, starting as of the Commencement Date, and shall be automatically renewed for equal periods of 25 years under the same terms and conditions, unless either Party opposes to its renewal.

2. The opposition to the renewal ("oposição à renovação") of this Lease Agreement by any of the Parties must be notified to the other Party with a prior written notice of 180 (one hundred and eighty) days before the end of its term.
3. The opposition to the renewal of this Lease Agreement pursuant to the previous paragraphs 1 and 2 of this Clause does not entitle any of the Parties to receive any compensation or be Indemnified by the other Party.
4. EMSA will be entitled to terminate the lease throughout the duration if its initial period or throughout the duration of any of its renewal periods with a prior notice of 180 (one hundred and eighty) days, in case the building becomes too small for EMSA, and can not be adequately extended, following an increase of staff, for example related to additional tasks the Agency may receive, or becomes otherwise unsuitable for the Agency, without entitling APL to claim any compensation or be indemnified from EMSA.
5. In case of a termination of this Lease Agreement by EMSA, APL undertakes to first offer the Leased Premises to be vacated on equal conditions to EMCDDA and vice versa before considering an alternative tenant.

#### **Clause 6**

##### **(Rent)**

1. The base rent per square meter per month was fixed at € 15.50 by the Memorandum of Understanding of 28 July 2004. This base rent included current maintenance, security and cleaning services. The parties agree that it would be beneficial if EMSA organises and directly contracts such services and that the base rent per month should accordingly be reduced

The

parties further agree that the base rent shall, in line with the provisions and spirit of the Memorandum of Understanding and the additional Protocol of 14 July 2005, be indexed according to the *coefficient for rent annual increase*, determined by

the National Statistics Institute ("Instituto Nacional de Estatística") from 1 January 2007 (the theoretical rent during the year 2006 to be equal to index 100<sup>1</sup>).

2. Following the above the calculated monthly base rent per month per square meter for the first year 2009 of occupation shall be                      The monthly rent for the internal parking lots shall be                      (price level 2009). The monthly rent for the external parking lots shall be                      it. The calculated monthly total rent at price level 2009 for the first year of occupation shall therefore be €
3. The first year of occupation of the leased premises is free of charge.
4. The rent shall be due from I (one) year after the Commencement date, the first rent to be paid on [1 May 2010], referring to the months of May and June 2010, and shall be paid in accordance with paragraphs 5 and 6 below.
5. The rent for the second year of occupation shall be updated by APL on each anniversary of the Lease Agreement, starting on the second anniversary of the Commencement Date, by applying the *coefficient for rent annual increase*, determined by the National Statistics Institute ("Instituto Nacional de Estatística") or any other index that may replace it in the future. For such purpose, APL shall notify EMSA in writing at least 60 (sixty) days before the beginning of the new rent, indicating the amount of the new rent and respective index.
6. The rent shall be paid in advance in bi-monthly instalments due on the first business day of each two month period by bank transfer to the bank account of APL with                      P or any other bank account notified by APL to EMSA in writing at least 60 (sixty) days before the envisaged change.
7. The rent shall be paid following a written and duly established payment request submitted by APL no later than 45 days before the due date as established above.

<sup>1</sup> For working purposes:

RdN: Rent calculation		
Year	Legal Index	Price/m <sup>2</sup>
2006	100	
2007	1.031	
2008	1.025	
2009	1.028	



In no case shall the rental payment be due before the expiry of 45 days following the receipt of a duly established payment request.

**Clause 7**  
**(Interest)**

If EMSA defaults in the payment when due of any sum payable under this Lease Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of EMSA shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (as well after as before judgement) at the legal rate for late payment.

**Clause 8**  
**(Maintenance and Services)**

1. APL shall be responsible for the structural maintenance of the Leased Premises to ensure the integrity of the buildings and the good working conditions of its installations. This shall include the replacement of elements of the building and its special installations at the end of their useful lifetime and any other maintenance required that goes beyond regular user maintenance.
2. EMSA shall be responsible for regular user maintenance of the Leased Premises. It shall thereto under its own responsibility enter into the relevant service agreements with competent specialised maintenance companies.
3. EMSA shall be responsible for the cleaning, security and janitor services required to ensure the proper functioning of the Leased Premises. It shall thereto under its own responsibility enter into the necessary service agreements with relevant service providers.
4. APL shall be responsible for the maintenance of the outdoor areas, such as gardens and pavements, which are open to the general public.
5. During the first year of the lease, as of the Commencement Date, APL shall provide to EMSA free of charge the services for security and regular user maintenance.

6. Should there be a need for maintenance works and the Parties do not agree whether this maintenance falls within the scope of responsibility of APL or EMSA, the dispute may be referred for arbitration to a civil engineering consultancy company appointed jointly by the Parties. In case of failure of the arbitration and persistence of the dispute, the matter may be referred to the Court of Lisbon.

#### **Clause 9**

##### **(Effectiveness of the Maintenance Services)**

1. In the event that it becomes necessary to proceed with structural repairs and/or replacement of equipment and machinery installed in the Leased Premises, EMSA will notify APL, after becoming aware of such necessity by means of written notice by registered letter within 1 (one) month upon becoming aware thereof.
2. After receiving the written notice, APL undertakes to start perform the necessary works whenever possible within 60 (sixty) Business Days in order to ensure continuity of service. EMSA recognizes the fact that APL is obliged to observe procurement rules that in some circumstances require a longer preparation time. APL will cooperate with EMSA and do its utmost to ensure continuity of service under all circumstances, if necessary by reverting to adequate interim measures.
3. APL must indemnify EMSA against any damages, loss or liability incurred by EMSA as a result of not performing the necessary works.

#### **Clause 10**

##### **(Works)**

1. EMSA shall not carry out any works on the EMSA Building without the prior written approval of APL, such approval not to be unreasonably withheld, except for minor adaptations, such as changes to internal partitioning, cabling, lighting and similar which are hereby authorised by APL. The approved works will be the responsibility of EMSA and once they have been executed they shall become an integral part of the EMSA Building and EMSA waives any right of retention or claim for compensation.

2. EMSA shall deliver to APL plans of the envisaged works before the respective commencement, in order that the latter may approve the same and obtain the necessary permits for the works (municipal, administrative or other) and EMSA shall pay all costs incurred, regarding licence fees and administrative costs.

#### **Clause 11**

##### **(Logos, signs and flags)**

1. EMSA is authorised to install its logo and signs pursuant to what is customary for European Institutions at the entrance of the Building, the parking and at the exterior of the Building.
2. EMSA may also install flagpoles and flags on and/or next to the Building, as customary for European Institutions, subject to prior authorisation from APL, such consent not to be unreasonably withheld.

#### **Clause 12**

##### **(Insurance)**

1. EMSA shall keep an all-risk insurance policy, including civil liability, in respect of the contents of the Leased Premises, during the duration of the Lease Agreement.
2. APL shall keep the following insurance:
  - a) Patrimonial Damage insurance policy in respect of the structural elements of the Leased Premises which will include:
    - Seismic risk;
    - Fire, explosion and strike of lightning;
    - Storms, floods, tidal waves, water damage;
    - Landslide and subsidence;
  - b) General Third Party Liability policy in respect of claims arising from APL's Lender condition.
3. APL shall not be liable for any damages within the Leased Premises, unless the same result from structural elements.

**Clause 13****(Hand Back of the Leased Premises)**

1. At the end of the fixed term set forth in Clause 5 above or earlier termination of the Lease Agreement, EMSA shall hand back the Leased Premises in the same state and condition as it was in at the Commencement Date, excluding normal wear and tear, in accordance with the purpose of this Lease Agreement. EMSA is, however, not obliged to reinstate those parts of the Building that have been modified in line with the provisions of this Lease Agreement.
2. For the purposes of paragraph 1 above APL shall be entitled to review the state of the Leased Premises 60 (sixty) days prior to the termination of this Lease Agreement, and the Parties shall agree upon its condition and the works required, if any.
3. During the last sixty (60) days of the Lease Agreement APL, or a person appointed by APL, shall be allowed to enter the Leased Premises with third parties, as long as EMSA is notified forty eight (48) hours in advance.
4. EMSA will be liable for all damages caused within the Leased Premises resulting from gross negligence or default of any employee of EMSA or companies appointed by EMSA.

**Clause 14****(Subletting)**

EMSA shall be entitled to grant the use of the entire or part of the Leased Premises, notably by subletting to other European Institutions or bodies related to them with previous notification to APL.

**Clause 15****(Public Domain)**

In the event that EMSA so requests, APL will initiate all the necessary legal and administrative measures to remove the Leased Premises from the port-base public



domain regime in order to enter into and sign a lease-purchase contract regarding the Leased Premises.

**Clause 16**  
**(Sale of the Buildings)**

1. Notwithstanding the previous Clause and the provisions included in the following paragraphs of this clause, APL undertakes to sell to EMSA and/or EMCDDA the buildings built on the built on the plot of land located between Cais do Sodré and Avenida Ribeira das Naus, in Lisbon, subject to the ownership regime of port-based public domain, under the jurisdiction of APL and to transfer full ownership of such Buildings, free from any mortgage, lien, charge and any other right of third parties, except for the existing leases with EMSA and/or EMCDDA.
2. Such right of EMSA and of EMCDDA to purchase may be exercised at any time during the Lease Agreement provided the Portuguese Government has removed the Buildings from the public domain as per Clause 15 hereinabove, and the remaining conditions for such purpose described in this Clause are fulfilled.
3. The right to purchase all the Buildings may, alternatively, be exercised (i) jointly by EMSA and EMCDDA; or (ii) each of EMSA and EMCDDA concerning each of the Buildings leased by such Agencies, or (iii) solely by either EMSA or EMCDDA in case the other Agency is not interested in such purchase;
4. The purchase price to be paid for the Buildings shall be subject of negotiations between the Parties, taking into consideration the economic and financial balance of the investment according to the following factors:
  - i) the market price of the buildings and of the concerned area of the plot of land at the time of the expected sale ;
  - ii) the total investment and the financial costs carried out by APL;
  - iii) the depreciation of the total investment.
  - iv) the maintenance and insurance costs;
  - v) the rents received until then by APL from the relevant purchaser party;
5. If the right to purchase the Buildings is exercised by EMSA and/or EMCDDA in accordance with the previous paragraphs, and if necessary, APL undertakes to

legally structure the EMSA Building, the EMCDDA Building, the Relógio Building and the Conference Centre into 4 different autonomous and saleable real estate units, one per each Building ("propriedade horizontal" under articles 1414 to 1438-A of the Portuguese Civil Code), provided that such structure complies with the relevant legal requirements and that all the necessary approvals, permits and licenses from the competent authorities for such structure are obtained.

**Clause 17**  
**(Variation)**

No variation of this Lease Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

**Clause 18**  
**(Fees and Expenses)**

1. Save as expressly provided otherwise in this Lease Agreement or by Law, each of the Parties shall bear all its own legal, accountancy and other costs and expenses incurred in connection with this Lease Agreement.
2. APL shall pay the stamp duty fees concerning this Lease Agreement, if any.

**Clause 19**  
**(Notices)**

1. Any notice or other communication required to be given or served under or in connection with this Lease Agreement shall be in writing and shall be deemed to be given or served if delivered or sent:

(i) In the case of APL to:

APL – Administração do Porto de Lisboa, S.A.  
Rua da Junqueira, nº 94,  
1349-026 Lisboa  
Fax : 21 361 10 76

(ii) In the case of EMSA to:

European Maritime Safety Agency  
Av. da Ribeira das Naus, n.º XX, Lisbon  
Fax: 21 1209 212  
Att: Mr Willem de Ruiter

2. Any such notice or other communication shall be delivered by fax, by hand or post with acknowledgment of receipt. If sent by courier or post such notice or communication shall conclusively be deemed to have been given or served on the date identified in the acknowledgment of receipt. If sent by fax, such notice or communication shall conclusively be deemed to have been given or served on the date identified in the respective confirmation report provided that the fax is received up to 6 p.m. or otherwise on the Immediately following Business Day.
3. Any changes in the above mentioned addresses or fax numbers must be previously communicated to the other Parties, and the notification is considered given or served if the new address or fax numbers were communicated to the other Party.

**Clause 20**  
**(Severance)**

If any term or provision in this Lease Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Lease Agreement but the enforceability of the remainder of this Lease Agreement shall not be affected, unless the Parties would not have entered into this Lease Agreement should they have been aware of such illegality or unenforceability.

**Clause 21**  
**(Applicable law and disputes)**

1. This Lease Agreement and the obligations undertaken by the Parties shall be governed by and construed in accordance with Portuguese law.
2. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, or the legal relationships established by this Agreement, shall be submit to the exclusive jurisdiction of the Court of Lisbon.

3. This Lease Agreement is executed and in force in English and Portuguese. The Parties agree that both versions are equally valid.

**Clause 22**  
**(Termination of Services Agreement)**

The Services Agreement signed on 14 November 2005 covering the use of EMSA of its interim offices in the EXPO area is terminated with effect from [1 July 2009]. EMSA will authorise APL in writing to give notice of termination of the Lease Agreement to the owner of the building within 10 (ten) days after the actual commencement of occupation by EMSA of the EMSA Building.

**Clause 23**  
**(Final Provisions)**

1. This Lease Agreement was negotiated and concluded in English. A Portuguese version of this Agreement has been agreed between the Parties. Both versions are equally valid.
2. This Lease Agreement was concluded in Lisbon, on [1 May 2009] in three original documents of equal legal force one for each party, and the third to be delivered to the competent tax authorities.

**Clause 24**  
**(Annexes)**

The following Annexes are attached to this Lease Agreement, and form an integral part thereof:

- Annex 1 to 5 – Plans
- Annex 6 – Plans
- Annex 7 to 9 – Plans
- Annex 10 –
- Annex 11 –
- Annex 12 –
- Annex 13 –