REGULATION NO REG/HR/009/1.0

Regulation concerning the implementation of a Respectful Workplace Policy and the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority within the International Iberian Nanotechnology Laboratory [INL Respectful Workplace Policy]

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1. Preamble

1.1. The International Iberian Nanotechnology Laboratory ('INL') is committed to providing a working environment which is free from any form of Discrimination, Harassment and Abuse of Authority, and ensuring all persons working at or for the INL are treated, and treat others, with dignity and respect.

1.2. Any form of Discrimination, Harassment, including Sexual Harassment, or Abuse of Authority, whether committed by colleagues, managers or third parties, is unacceptable, and is contrary to the interests of the INL.

2. Subject matter and scope

2.1. This Regulation lays down the terms and conditions concerning the Discrimination, Harassment, including Sexual Harassment, or Abuse of Authority which occurs at INL, not only at INL premises but also outside the INL premises such as duty travel and work-related events or functions.

2.2. This Regulation applies to Discrimination, Harassment, including Sexual Harassment, or Abuse of Authority by members of the personnel ('MP') and also to any external persons who work at or for the INL, such as consultants, contractors, suppliers, or visitors to INL premises.

3. Definitions

(a) Discrimination: any unfair treatment or arbitrary distinction based on a person's age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, language, social origin, social status, nationality, ethnic or national origin, religion or belief, gender identity, sex, or sexual orientation. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through Harassment or Abuse of Authority. Discrimination through harassment may include, but is not limited to, racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic or religious group or gender; (ii) outing or threatening to out someone on the grounds of their sexual orientation; (iii) mocking, mimicking or belittling a person's disability.

(b) Harassment: any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment, or which unreasonably interfere with a person's work or their ability to perform assigned duties. Harassment normally implies a series of incidents. Harassment usually includes, but is not limited to: (i) behaviour which is intended to be, or can reasonably be perceived as, inappropriate, offensive, intimidating, or hostile; (ii) vexatious assignments, requests or changes in duties or responsibilities; (iii) severe or persistent criticism which is either unjustified or expressed in such a manner that it harms the dignity of an individual or their reputation. Harassment can be exercised downwards (i.e. from supervisors on a subordinate) or upward (from a subordinate against a supervisor). Disagreement on work performance or on other work-related issues is normally not considered Harassment and is not dealt with under the provisions of this Regulation but in the context of performance assessment.

(c) Sexual Harassment: any unwelcome sexual advance or unwelcome verbal, written or physical conduct of a sexual nature that unreasonably interferes with or negatively impacts a person's work or sexual self-determination, or which creates an intimidating, hostile or humiliating work environment. Sexual Harassment includes, but is not limited to: (i) unsolicited displays of sexual images or the exhibition of materials of a sexually oriented nature or that could be perceived as offensice, including e-mails, text messages, video clips and images sent by mobile phone or posted on the internet; (ii) deliberate and unsolicited physical contact of an intimate or sexually suggestive nature; (iii) unwelcome use of obscene language or gestures, or the telling of obscene jokes; (iv) unsolicited requests for sexual favours; (v) requests for sexual favours explicitly or implicitly linked to access to employment, career development, or to continued employment, remuneration, or other benefit.

(d) Abuse of Authority: the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of Authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to: (i) the use of intimidation, threats, blackmail or coercion; (ii) overbearing and intimidating levels of supervision; (iii) inappropriate derogatory remarks about someone's performance. Legitimate, reasonable and constructive criticism of a worker's performance or behaviour, or reasonable instructions given to workers in the course of their employment, will not amount to bullying on their own. Discrimination and Harassment, including sexual harassment, are particularly serious when accompanied by Abuse of Authority.

(e) Prohibited Conduct: situations of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority shall collectively be referred to as Prohibited Conduct.

(f) Claimant: any person who is a victim of Prohibited Conduct and raises a formal complaint under this Regulation.

(g) Subject: any person who is alleged to have engaged in an act or acts of Prohibited Conduct.

4. Principles

4.1. Every MP has the right to be treated with dignity and respect, and to work in an environment free from Discrimination, Harassment and Abuse. Consequently, any form of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority is prohibited.

4.2. The INL has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect MP from exposure to any form of Prohibited Conduct, through preventive measures and the provision of effective remedies when prevention has failed.

4.3. In their interactions with others, MP are expected to act with tolerance, sensitivity and respect for differences. Any form of Prohibited Conduct in the workplace or in connection with work is a violation of these principles and may lead to disciplinary action, whether the Prohibited Conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace.

5. Responsibility

5.1. The Director-General ('DG') has overall responsibility for the effective operation of this Regulation but will delegate day-to-day responsibility for overseeing its implementation to an Auditor, who shall perform this role for a period to be determined subject to a maximum term of 2 years.

5.2. All supervisors and responsible for functional units have a specific responsibility to operate within the boundaries of this Regulation, to ensure that all MP or external persons understand the standards of behaviour expected of them and to take action when behaviour falls below its requirements.

5.3. MP and external persons must disclose any instances of Prohibited Conduct of which they become aware to the Auditor.

5.4. Any questions about this Regulation and requests for information on dealing with Prohibited Conducts should be directed to the Auditor.

5.5. The Auditor has responsibility for ensuring that any person who may be involved with investigations or administrative tasks carried out under this Regulation receive regular and appropriate training to assist them with these duties.

6. Informal steps

6.1. Any person who believes is a victim of Prohibited Conduct should consider whether they feel able to raise the problem informally with the person responsible. They should explain clearly to them that their behaviour is not welcome or makes them uncomfortable. If this is too difficult or embarrassing, such person should speak to the Human Resources Unit, who can provide confidential advice and assistance in resolving the issue formally or informally.

6.2. If persons are not certain whether an incident or series of incidents amounts to Prohibited Conduct, they should initially contact the Human Resources Unit, informally for confidential advice.

6.3. If informal steps are not appropriate, or have been unsuccessful, such persons should follow the formal procedure set out below.

7. Raising a formal complaint

7.1. A person wishing to make a formal complaint about Prohibited Conduct should submit it in writing to the Auditor, whose role is to achieve a solution wherever possible and to respect the confidentiality of all concerned. If the matter concerns the Auditor, the formal complaint should be referred to the Director-General. If the matter concerns a person appointed by the Council the Auditor shall refer the matter to the Council.

7.2. The written complaint should set out full details of the conduct in question, including the name of the Subject, the nature of the Prohibited Conduct, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken so far to attempt to stop it from occurring.

7.3. As a general principle, the decision whether to progress a complaint is up to the Claimant. However, INL has a duty to protect all MP and may pursue the matter independently if, in all the circumstances, INL considers it appropriate to do so.

8. Formal investigations

8.1. INL will investigate complaints in a timely and confidential manner. Individuals not involved in the complaint or the investigation must not be told about it.

8.2. The investigation will be conducted by a panel of at least two persons with no prior involvement in the complaint ('the Panel') and in accordance with the standards set out in Annex 1. The investigation should be thorough, impartial and objective, and carried out with sensitivity and due respect for the rights of all parties concerned. The members of the Panel shall be appointed by the Director-General from among a pool of officials with an indefinite contract of employment, who shall have appropriate seniority and experience in investigating allegations of Prohibited Conduct.

8.3. The Panel will arrange a meeting with the Claimant so that they can give their account of events. Such person is entitled to be accompanied by a colleague of their choice, who must respect the confidentiality of the investigation. The Panel will arrange further meetings with such person as appropriate throughout the investigation.

8.4. Where the complaint is about an MP, the Auditor may consider suspending them on full pay or making other temporary changes to working arrangements pending the outcome of the investigation, if circumstances require.

8.5. The Panel will also meet with the Subject to hear their account of events. The panel shall inform the Subject of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the investigation or result in intimidation or retaliation shall not be disclosed to the Subject at that point. This may include the names of witnesses or particular details of incidents.

8.6. Where the complaint is about someone other than an MP, such as a contractor, supplier or visitor, the INL will consider what action may be appropriate to protect the person making the formal complaint and anyone involved pending the outcome of the investigation, bearing in mind the reasonable needs of the business and the rights of that person. Where appropriate, INL will attempt to discuss the matter with the third party.

8.7. INL will also seriously consider any request for changes to a person's own working arrangements during the investigation. For example, a Claimant may ask for changes to their duties or working hours so as to avoid or minimise contact with the Subject.

8.8. It may be necessary to interview witnesses to any of the incidents mentioned in a complaint. If so, the importance of confidentiality will be emphasised to them.

8.9. If, during the course of the investigation, the Subject makes admissions of Prohibited Conduct, the Panel shall reassess the scope of the investigation in the light of the context in which those admissions are made. The Panel shall therefore carefully consider, among others, the following aspects: (i) if there is any doubt as to the Subject's motives or the truthfulness of the admissions; or (ii) if their confession implicates others; or (iii) if the employee concerned may be particularly vulnerable; or (iv) if there are any extenuating circumstances that require additional investigation; or (v) if there remain any matters or if there are new matters that should be further investigated; or (vi) if in the context of the admissions, it is reasonable not to make any further investigations.

8.10. Subjects shall be presumed to be innocent throughout the formal investigation and until such a time as a decision has been taken on whether a Prohibited Conduct has occurred. They shall have the right to defend themselves against the allegations and to present evidence in their defense.

8.11. At the end of the investigation, the Panel will submit a detailed report to the Auditor, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence.

9. Action following the investigation

9.1. On the basis of the report, the Auditor shall take one of the following courses of action:

(a) If the report indicates that no Prohibited Conduct took place, to recommend to close the case;

(b) If the report indicates that there was a factual basis for the allegations, to uphold the complaint and recommend the HR unit to take actions deemed appropriate.

9.2. Before taking a final recommendation, the Auditor shall hear the Claimant and the Subject to: (i) inform them of the planned course of action, (ii) make them aware of the grounds for such planned course of action and (iii) give them the opportunity to comment on the planned course of action. The Auditor will decide whether the hearing is oral or in written form. If the first option is chosen, separate meetings will be arranged with the persons concerned, and the persons concerned shall be entitled to bring a colleague of their choice. If the hearing is in written form, the Auditor will inform the persons concerned of the planned course of action and will invite them to express their views in writing.

9.3. The Auditor will submit its recommendation to the HR Unit upon the hearing and inform the persons concerned accordingly. The final decision will take due consideration of the observations expressed in the hearing.

9.4. Upon receiving the communication from the Auditor, HR will recommend to the Director-General the appropriate actions, which may include the following:

(a) Managerial action, such as mandatory training, reprimand, change or removal of functions or responsibilities, counselling or other appropriate corrective measures.

(b) Disciplinary action in accordance with the Staff Rules, including suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question.

9.5. The hearing set out in Article 9.2. may be omitted when the Claimant or the Subject agree to waive the hearing.

9.6. Should the report indicate that the allegations of Prohibited Conduct were unfounded and based on malicious intent, the Auditor shall refer the matter to the Human Resources Unit, who shall decide whether disciplinary or other appropriate action should be initiated against the Claimant.

9.7. Whether or not the complaint is upheld, INL will consider how best to manage the ongoing working relationship between the persons concerned. It may be appropriate to arrange some form of mediation and/or counselling, in accordance with the INL Rules and Regulations, or to change the duties, working location or reporting lines of one or both parties.

10. Appeals

10.1. Decisions of the Director-General pursuant to Article 9.4. shall be considered a decision within the meaning of Article 252 of the Staff Rules and may be challenged in accordance with the procedure laid down therein.

11. Protection and support for those involved

11.1. MP who make complaints or who participate in good faith in any investigation must not suffer any form of retaliation or victimisation as a result. Anyone found to have retaliated against or victimised someone in this way will be subject to disciplinary action under the INL Staff Rules.

11.2. If an MP believes they have suffered any such treatment they should inform the Human Resources unit. If the matter is not remedied the MP should raise it formally using to the Auditor using this procedure if appropriate.

11.3. INL offers access to confidential counselling, which is available on request for anyone affected by, or accused of, Prohibited Conduct. The details are available in confidence from the Human Resources Unit.

12. Confidentiality and record-keeping

12.1. Confidentiality is an important part of the procedures provided under this Regulation. Details of the investigation and the names of the Claimant and the Subject must only be disclosed on a "need to know" basis. Breach of confidentiality may give rise to disciplinary action under the INL Staff Rules.

12.2. Information about a complaint by or about an MP may be placed on the MP's personnel file, along with a record of the outcome and of any notes or other documents compiled during the process.

13. Omissions and revision

13.1. Any situations not foreseen under this Regulation shall be decided by the Director-General.

13.2. This Regulation may be revised and updated at regular intervals.

14. Entry into force

14.1. This Regulation shall enter into force on the date of its adoption.

Annex 1 | Standards for conducting investigations

I. Confidentiality and anonymity

(1) Pursuant to Articles 8.1. and 12.1. of the INL Anti-Harassment Policy, investigations of Prohibited Conduct must be conducted in a confidential manner, therefore details of the investigation, including names of the Claimants and the Subject must only be disclosed on a 'need to know' basis.

(2) The Investigation Panel shall take into due consideration the sensitivity of the matters under investigation and any concerns expressed by witnesses regarding overlapping fears from retaliation, persecution or even worry about continuation of their employment at INL, in case their identity would be revealed or if evidence collected from witness statement might be used in such a way that it would make it possible to identify specific persons.

(3) In such cases, if the Investigation Panel considers that such fears and concerns are well founded, it shall implement additional measures to protect people who have been required to collaborate with the investigation from being identified.

(4) Consequently, the Investigation Panel may decide that the identity of witnesses shall remain strictly confidential throughout the investigation and reference to witness statements in the Investigation Report will be made in an anonymised manner. If an exceptional ground is provided and positively assessed, only redacted copies of witness statements shall be made available and in a way that prevents witnesses from being identified.

II. Standard of proof

(1) Taking into consideration the Staff Rules, namely Article 276, the Investigation Panel shall apply the case law of the Administrative Tribunal of the International Labour Organisation (ILOAT).

(2) Concerning the burden of proof (evidential burden), the case law on the investigation of harassment, mobbing or abuse of authority allegations states the following principles:

(a) Evidence related to subjective elements, such as intent on the part of the alleged perpetrator is not required from the part of the Claimant or the INL to establish Harassment or other Prohibited Conduct under this Policy.

(b) The burden of proof is therefore limited to evidence related to specific behaviours of the Subject that may fall under the definition of Prohibited Conduct (as set out in this Policy).

(c) However, behaviour will not be characterised as Prohibited Conduct if the Subject provides evidence that there is a reasonable explanation for the conduct in question.

(d) On the other hand, such explanation which may be *prima facie* reasonable shall be rejected if there is evidence of ill will or prejudice or if the behaviour in question is disproportionate to the matter which is said to have prompted the course taken.

(3) Concerning the standard of proof (legal burden) to be applied, the case law states that the applicable standard of proof for a finding of harassment is not the standard of

'beyond a reasonable doubt' but a less onerous standard – the balance of probability standard. This means that:

(a) The Investigation Panel is bound to analyse information objectively, impartially, fairly and with the highest degree of integrity and to determine thereupon whether there is sufficient information to substantiate a complaint on a balance of probabilities, examining both inculpatory and exculpatory information; and

(b) An event shall be considered to have occurred if the Investigation Panel considers, on the evidence, the occurrence of the event was more likely than not.

(c) Consequently, in the event of two conflicting views or accounts of the same event this shall not necessarily lead the Investigation Panel to conclude that the allegations would not be founded. Rather, each account must be carefully assessed in light of all of the other information and evidence collected, and all the objective circumstances surrounding the acts complained of; and the Investigation Panel must be able to account for and explain the different weight allotted to the evidence collected.

III. Witness evidence. Principles for assessing credibility of statements

(4) The assessment of the credibility of statements provided by the Claimant, the Subject and witnesses shall be made taking into account the following common principles accepted in the case law of the ILOAT:

(a) Corroboration by contemporaneous evidence, either through statements from other persons or through physical or documentary evidence;

(b) External consistency with any admitted or incontrovertible facts;

(c) Internal consistency of the person's own statement;

(d) Inherent probability: to determine whether the statement is believable on its face, if it is inherently probable, and also based on inferences drawn from the documentary evidence and known or probable facts.

(e) Opportunity to observe: to determine if the person providing the statement had enough information to make an informed observation;

(f) Demeanour: to determine whether the person providing the statement appears to be telling the truth as he or she now believes it to be;

(g) Motives: to determine the motives of the person in providing the statement, particularly if they had any reason or special motive to lie.

(5) The above factors are not per se determinative as to credibility. The Investigation Panel shall duly consider them in the assessment of each part of the statements and taking into account the specific circumstances in which each interviewed person provided their statement.