



INL USER FACILITIES

Regulation no. REG/BSR/001/0.0

Concerning the terms and conditions of Access to the International Iberian
Nanotechnology Laboratory User Facilities

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1. Preamble

The International Iberian Nanotechnology Laboratory (INL) is an intergovernmental organisation created to promote interdisciplinary research on nanotechnology and nanoscience. The INL's activities aim, among other purposes, at increasing the collaboration between universities and industries, as well as between public and private sectors, fostering the development of the scientific and technological cooperation. The INL has established the INL User Facilities, based on the NanoPhotonics, the Micro- and Nano-fabrication and the Advanced Electron Microscopy, Imaging and Spectroscopy flagships, with the aim of enabling trained users from non-Profit, academic Institutions and companies to use INL's research infrastructure to develop cutting edge science and technology.

2. Subject Matter and Scope

- 2.1. This Regulation lays down the terms and conditions concerning the Access to the INL User Facilities.
- 2.2. This Regulation shall apply to the Institutions and Facility Users seeking Access to the Equipment under the terms and conditions established herein.

3. Definitions

- (a) **Acceptance:** Acceptance of the Order through an Order Acknowledgment.
- (b) **Access:** The right of the Institution, through its Facility User(s), to access and use the Equipment in accordance with the types of Services during the Access Period under the terms and conditions of this Regulation.
- (c) **Access Period:** The period specified in the Statement of Work during which the Institution, through its Facility User(s), shall have Access to the Equipment.
- (d) **Commencement Date:** The date on which the Access Period is deemed to commence in accordance with Article 12 of this Regulation.
- (e) **Contract Manager:** A member of the personnel of INL responsible for managing all contractual matters related to the User Agreement.
- (f) **Deposit:** The deposit payable by the Institution to the INL, in accordance with Article 11 of this Regulation.
- (g) **Equipment:** The INL facilities, equipment and goods made available under the INL User Facilities.
- (h) **Facility Manager:** A member of the INL scientific staff who is responsible for managing all scientific and technical matters related to a User Facilities Request and a User Agreement.
- (i) **Facility Staff:** A team appointed to assist the Facility Manager on the performance of his or her assigned functions, including the Facility Manager.
- (j) **Facility User:** An employee or representative of the Institution who is appointed by the Institution to Access the Equipment.

- (k) **Fee:** The sum charged to the Institution in consideration of the Access to the Equipment during the Access Period, as set forth in Article 17.
- (l) **Force Majeure:** An event beyond the reasonable control of the INL including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (m) **INL User Facilities:** The service provided by INL based on the NanoPhotonics, the Micro- and Nano-fabrication and the Advanced Electron Microscopy, Imaging and Spectroscopy flagships, with the aim of enabling Institutions, through their Facility Users, to Access the Equipment under the terms and conditions set forth in this Regulation.
- (n) **Institution:** The entities referred to in Article 4.
- (o) **Intellectual Property ("IP"):** All patents, trademarks, service marks, drawings, utility models, design rights, business ideas, concepts, inventions, discoveries, breeders' rights, copyright (including the copyright in software in any code), database rights, computer programs, know-how, trade secrets and other confidential information, technology, business or trade names, goodwill and all other rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not, and including all applications and the right to apply for any of the foregoing rights.
- (p) **LIMS:** The INL Laboratory Information Management System software.
- (q) **Order:** A purchase order, order form or other order in such form or manner as understood and agreed between the Institution and the INL supplied by the Institution the purposes of Accessing the Equipment, as set forth in Article 9.
- (r) **Order Acknowledgment:** means an acknowledgment in any form issued by the INL to the Institution confirming Acceptance of an Order in accordance with Article 9.
- (s) **User Facilities Request:** The formal request from an Institution or a Facility User for Access to the Equipment available in the INL website.
- (t) **Services:** The services described in Article 6.
- (u) **Start Date:** The intended start date of the Access Period as specified in the Statement of Work.
- (v) **Statement of Work:** A description of the work approved by the Facility Manager and proposed to be performed at INL.
- (w) **User Agreement:** The terms and conditions under this Regulation, together with the documents referred to herein constitute the entire User Agreement between the INL and the Institution, pursuant to Article 9.

4. Beneficiaries

The following Institutions may have Access to the INL User Facilities:

- (a) Academic / Non-profit.
- (b) Companies.
- (c) Collaborations.

5. Management

- 5.1. The INL, through its Facility Manager(s) and Contract Manager(s), is responsible for managing the INL User Facilities.
- 5.2. All scientific and technical matters related to the User Facilities Request and the performance of the work under this Regulation shall be handled by the Facility Manager.
- 5.3. All contractual matters related to the User Agreement shall be handled by the Contract Manager.

6. Services

The INL User Facilities provides the following types of Services:

- (a) **Self Service:** Under this option, the Facility User has unaided Access to the Equipment, thus enabling him or her to work independently. The Access is mandatorily preceded by specific training required for the operation of the available tools and processes.
- (b) **Technical Assistance:** Under this option, the Facility User has assisted Access to the Equipment, thus benefiting from the technical assistance from the Facility Staff. Alternatively the Access to the Equipment may be carried out solely by the Facility Staff without the intervention of the Facility User.

7. User Facilities Request

- 7.1. At such time as the Institution intends to Access the Equipment, it shall submit a User Facilities Request form, through the INL User Facilities Platform.
- 7.2. The Institution shall ensure that the terms of the User Facilities Request and any relevant specifications are complete and accurate.

8. Assessment

- 8.1. The User Facilities Request will be assessed by the Facility Manager within 5 (five) working days.
- 8.2. The assessment comprises the technical feasibility of the User Facilities Request, the allocated capacity of the INL User Facilities, identifies whether the Access to the Equipment requires the execution of a Statement of Work and provides an estimate of the hours necessary for the completion of the service.

- 8.3. If necessary, the Facility Manager will contact the Institution in order to obtain further information to enable the assessment.
- 8.4. If the User Facilities Request is assessed positively, where applicable a Statement of Work will be agreed between the Institution and the INL.
- 8.5. No substantive deviation from said Statement of Work will be permitted during the Access Period unless agreed in writing by the INL.

9. Basis of Contract - User Agreement

- 9.1. The Institution shall be entitled to submit an Order to the INL for Accessing the Equipment, as detailed in the User Facilities Request and the Statement of Work, which shall imply full acceptance of the terms and conditions of this Regulation.
- 9.2. Following receipt of the Order, INL shall, in its entire discretion, confirm Acceptance of the Order to the INL by providing an Order Acknowledgment.
- 9.3. The Acceptance of an Order in accordance with the previous paragraph shall form a binding contract (User Agreement) governed by the terms and conditions of this Regulation.
- 9.4. For the purposes of the User Agreement, this Regulation shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Institution (including as detailed or referred to in any Order) or in any correspondence or elsewhere or otherwise implied by trade custom, practice or course of dealing between the Institution and the INL.
- 9.5. In the event of conflict between the terms of this Regulation and any applicable Statement of Work, the terms of the Statement of Work shall take precedence in respect of the Access of the Equipment detailed therein.

10. Internal Communication Flow

- 10.1. The Finance Unit, the Estate, Service and Conference Management Unit, the Department of Business and Strategic Relations and the LIMS administrators are notified of the Acceptance, receiving an automatic email with the hyperlink to the INL User Facilities Platform, in order to access the above mentioned documents.
- 10.2. The Department of Business and Strategic Relations appoints a Contract Manager.
- 10.3. The Finance Unit assigns the User Facilities Request a new project code and indicates it to the LIMS administrators.

11. Deposit

- 11.1. At INL's request, the Institution may be required to pay a Deposit, in such amount as may be prescribed, before the Commencement Date.

- 11.2. The purpose of the Deposit is to secure the INL against default by the Institution of payment of the Fee or any damage caused to the Equipment. If the Institution fails to pay the Fee or causes any damage to the Equipment, in whole or in part, the INL shall be entitled to apply the Deposit to cover such default.
- 11.3. The INL shall refund the Deposit, less any deductions made in accordance with Article 11.2, to the Institution within 10 (ten) working days of the end of the Access Period.

12. Access Period and Commencement Date

- 12.1. The Access Period shall commence on the earlier of:
 - (a) The Start Date specified on the Statement of Work;
 - (b) The time at which the Institution, through its Facility User(s) is granted Access to use the Equipment.
- 12.2. The Access Period shall commence on the Commencement Date, according to the previous paragraph, and continue for the duration of the Access Period as specified in the Statement of Work, subject to any adjustments to that period in accordance with the terms of this Regulation.
- 12.3. The Access Period may only be amended by the written agreement of the Institution and the INL.

13. LIMS Registration and Booking

- 13.1. Following the acceptance of the User Facilities Request, the Facility User(s) is (are) registered as LIMS user(s), receiving the account access credentials.
- 13.2. Once granted access to LIMS, the Facility User(s) must follow the LIMS Management Procedure to request Access licenses and book Equipment. Only the Equipment required for the execution of the User Agreement shall be booked by the Facility User(s).

14. Samples

The Institution and Facility User(s) are responsible for ensuring that all samples arrive in a form ready to use, including but not limited to transport, mounting and preparation, compliance with ethical rules and local and export regulations.

15. Access and Institution's Obligations During the Access Period

- 15.1. In consideration of the Fee, the Institution, through its Facility User(s), shall be entitled to Access the Equipment during the Access Period.

15.2. Facility Users.

- 15.2.1 The Institution will appoint one or more Facility Users, as specified in the Statement of Work.
- 15.2.2 The Facility User(s) must satisfactorily complete INL's training relating to the access and use of the Equipment and safety procedures.
- 15.2.3 The Facility User(s) is (are) the only person(s) authorised to Access the Equipment on the Institution's behalf.
- 15.2.4 Each Facility User will be subject to the technical supervision and control of the INL, through its Facility Manager(s) and Facility Staff.
- 15.2.5 Each Facility User will be subject to, and required to comply with, all applicable INL's rules, regulations, policies and procedures with regard to admission to and use of the Equipment, including, but not limited to, safety, operating and health procedures, environmental protection, access to information, security, hours of work and conduct. Each Facility User shall execute all documents that may be required by the INL acknowledging and agreeing to comply with the aforementioned rules under the terms of this Regulation. A Facility User's Access to the Equipment may be revoked at any time by INL in case of non-compliance with the aforementioned obligations.
- 15.2.6 Facility User(s)' activities must be limited to activities conducted on behalf of the Institution as specified in the User Agreement, and in particular in the Statement of Work. Facility Users may not participate in any of INL's activities, including, without limitation, INL research programmes, without prior written consent of the INL and the Institution legal representatives.

15.3. Damage.

- 15.3.1 The Institution shall immediately notify the INL in writing of any loss or damage to the Equipment or other material matters relating to the Equipment occurring during its operation and shall not attempt any repair without a prior written consent of the INL.
- 15.3.2 In the event that the Equipment needs repair or re-calibration as a result of negligence of its Facility User(s), and/or a breach of the obligations under Article 15.2, the Institution shall be responsible for the entire cost of any repair and/or re-calibration, including all related delivery charges. If such repair and/or re-calibration is not completed within the specified Access Period, the Access Period shall be deemed to continue and the Institution will remain liable to pay the Fee in respect of such extended Access Period until the Equipment is fully repaired and/or re-calibrated to the INL's reasonable satisfaction.

16. INL's Obligations

The INL shall:

- 16.1. Provide appropriate training, as well as specific written and/or practical instructions, relating to the operation of the Equipment, which the Institution, through its Facility User(s) shall follow during the Access Period.
- 16.2. Use reasonable endeavours to repair or replace Equipment which becomes defective during the Access Period through no fault of the Institution or its Facility User(s).

17. Financial provisions

- 17.1. The Fee is calculated according to the INL User Facilities Price List, as amended from time to time, and it is based on the type of Services, the number of hours of use of each Equipment by the Facility User(s) according to data from the LIMS booking system and the number of working hours of the allocated Facility Staff, if applicable. All hours booked by the Facility Users in the LIMS booking system shall be taken into consideration for this purpose except if the Equipment is not available for use due to technical reasons which are attributed to the INL.
- 17.2. The Fee may also include additional charges for specific consumables and raw materials.
- 17.3. The Institution fully accepts the Fee calculated according to the aforementioned under 17.1 and 17.2.
- 17.4. The INL shall invoice the Institution for the Fee and any other applicable costs that may be charged under the terms of this Regulation, and the Institution shall pay the invoice in full within 45 (forty five) days of receipt. INL will issue the proper invoices on a monthly basis in arrears and upon the end of the Access Period.
- 17.5. At INL's request, the Institution may be required to make an advance payment, partially or in full, of the Fee.
- 17.6. The Institution shall pay all amounts due under this Regulation in full without any deduction or withholding and the Institution shall not be entitled to assert any credit, set-off or counterclaim against the INL in order to justify withholding payment of any such amount in whole or in part. The INL may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Institution against any amount payable by the INL to the Institution.
- 17.7. The Fee is exclusive of amounts in respect of value added tax ("VAT"), which may be chargeable. If VAT becomes chargeable, the Institution shall, on receipt of a valid VAT invoice from the INL, pay to the INL such additional amounts in respect of VAT as are chargeable by law.

18. Intellectual Property

- 18.1. IP conceived, first reduced to practice, developed, produced or composed solely by the Institution or its Facility User(s) in connection with the Access to the Equipment under this Regulation will be owned by the Institution ("Institution's IP").
- 18.2. IP conceived, first reduced to practice, developed, produced or composed jointly by the Institution or its Facility User(s) and the INL through its Facility Staff in connection with the Access to the Equipment under this Regulation will be jointly owned by the Institution and the INL ("Joint IP").
- 18.3. The INL and the Institution are entitled to use the Joint IP for their own scientific, research and development activities, both internally and with third parties, on a non-exclusive and royalty free basis and without requiring the prior consent of the other joint owner. All forms of commercial exploitation of Joint IP shall require an agreement between the INL and the Institution.

19. Publications

- 19.1. All reports and publications based on work done at INL under this Regulation must include acknowledgment of the use of the INL User Facilities, as follows: "This work was carried out in part through the use of the INL User Facilities."
- 19.2. Furthermore, if INL Facility Staff provides significant experimental design, data interpretation, or other scientific or intellectual contribution, said persons must also be included as co-authors in any reports or publications that may be released.

20. Liability

- 20.1. The INL and the Institution shall individually be liable to comply with the terms and conditions of this Regulation.
- 20.2. The Equipment and the results of the use thereof are provided on an "as is" and "where is" basis, and the INL disclaims all warranties of any kind, express or implied, including warranties of merchantability, fitness for a particular purpose, title and non-infringement. The Institution and the Facility User(s) assume the entire risk that any Equipment, does not satisfy the Institution's or the Facility User's needs or expectations in any respect, unless any defect or deficiency is caused in whole by INL's gross negligence or willful misconduct. Although the INL provides general safety courses and training on the safe use of specific equipment, the Facility User(s) assume responsibility to plan and perform work in such a way as to ensure their own personal safety as well as the safety of others in the INL User Facilities.
- 20.3. Facility Users. The Institution shall bear sole and exclusive liability for all such damage as may be occasioned to third persons or things as a result of its Access to the Equipment or any works performed by the Facility User(s). Its liability shall extend to the actions and omissions of the Facility User(s) and any other persons

who may have accessed the INL Premises due to their relationship with the Institution.

- 20.4. Excluded Liabilities. To the extent permitted by law, neither the INL nor the Institution shall be liable towards each other for any indirect or consequential loss or similar damage such as, but not limited to, loss of business or profit, loss of revenue or loss of contracts.
- 20.5. Financial Limit on Liability. The total aggregate liability of the INL or the Institution in respect of all losses arising under the provisions of this Article shall not exceed the greater of:
 - 20.5.1 The full replacement value of the Equipment, where the damage is caused by the Institution.
 - 20.5.2 The total Fee paid or payable by the Institution to the INL under the terms and conditions of this Regulation, where the damage is caused by the INL.
- 20.6. Exceptions. The exclusions and limitations stated in Articles 20.4 and 20.5 above shall not apply in respect of any: fraud; death, injury to natural persons or damage to real or immovable property caused by the gross negligence or willful act of the Institution or the INL, its directors, employees, agents or representatives or by the willful misconduct, gross negligence or willful breach of any obligation under this Regulation or in so far as any mandatory applicable law overrides such exclusions and limitations.
- 20.7. Damaged caused to third parties. The Institution shall indemnify, defend and hold harmless the INL from and against any and all claims, liabilities, actions, losses, damages, costs, and expenses of whatever nature or kind, including but not limited to property damage or destruction, or personal injury or death, which may arise, directly or indirectly, from the Institution's Access to the Equipment or due to the Institution's wrongful acts of negligence.
- 20.8. Insurance.
 - 20.8.1 The Institution shall ensure that, through itself or directly by its Facility User(s), there shall at all times during the Access Period be insurance cover against professional accidents or equivalent valid in Portugal, and against disability and death resulting from professional illness and accidents of the Facility User(s). The Institution shall be liable to INL for any cost or expense resulting from the situation where any part of such insurance cover is not in place.
 - 20.8.2 At INL's request, the Institution may be required to arrange, at the Institution's cost, for comprehensive liability insurance, which shall provide protection against the Institution's liabilities under this Article. The existence of said insurance shall not affect the obligations of the Institution, even if they are not covered by the insurance or have a limited coverage.

20.9. Force Majeure

- 20.9.1 Neither the Institution nor the INL shall be considered to be in breach of the provisions under this Article if it is prevented from fulfilling its obligations under these Regulation by Force Majeure.
- 20.9.2 The Institution and the INL will notify each other of any Force Majeure without undue delay.

21. Warranties

By submitting the Order, the Institution represents and warrants to the INL that:

- (a) The Facility Users shall at all times during their stay at INL remain employees or representatives of the Institution and are acting within the scope of their duties;
- (b) The Institution has the full power and authority to Access the Equipment under the terms and conditions of this Regulation.

22. Termination

The following shall be grounds for termination of the User Agreement:

- (a) Mutual agreement by the INL and the Institution;
- (b) The dissolution of the Institution or if it ceases or otherwise terminates its official activities, or
- (c) The breach of obligations by the Institution, unless it remedies the breach within not more than 30 (thirty) days once duly notified of the breach by the INL.

23. Data protection

- 23.1. Pursuant to the provisions of the INL regulations of Personal Data Protection the Institution's and Facility Users' data shall be included on a filing system controlled by the INL, the purpose of which is to maintain, comply with, implement, control and perform the provisions of this Regulation under which such data have been provided.
- 23.2. The Institution and the Facility Users may at any time exercise their right to access, rectify, cancel and object to the data processing, where appropriate, by sending an e-mail to INL.

24. Confidentiality

- 24.1. The Institution and Facility User(s) are solely responsible for securing and maintaining the confidentiality of any Institution's or Facility User(s)'s proprietary information possessed or used at the INL under the scope of this Regulation.

24.2. Sharing of the Institution's confidential information with the INL will require a Non-Disclosure Agreement.

25. No representation, partnership or agency

No party on the User Agreement shall be entitled to act or to make legally binding declarations on behalf of the other party. Nothing in the User Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping, or any other kind of formal business grouping or entity between the Institution and the INL.

26. Notices

26.1. All notices and other communications in respect of this Regulation shall only be validly communicated when delivered in person or sent by letter, e-mail or fax with acknowledgement of receipt, or sent by registered mail or recorded delivery with advice of receipt, or delivered by an approved courier service.

26.2. Notices and communications will be deemed to have been made on the date of their receipt at the addressee's office.

26.3. Notices shall be sent to the Institution at its address and for the attention of the individual specified in the User Facilities Request or in the Order, provided that the Institution may change its notice details of giving notice to the INL of the change in accordance with this Article.

27. Assignment

The Institution may not assign or transfer its rights or obligations under this Regulation without the prior written consent of the other Party.

28. Dispute resolution

28.1. The Institution and the INL shall co-operate in an amicable manner with a view to achieving the successful resolution of any disagreements or disputes arising in connection with this Regulation or the use of the Equipment by the Institution.

28.2. If however no settlement of any disagreement or dispute has been possible to achieve after the Institution and the INL reasonable endeavours to settle such disputes amicably within 30 (thirty) days of the beginning of the discussions, the matter shall be referred to and find a resolved by arbitration, under the Portuguese Law on Voluntary Arbitration (Law 63/2011, dated 14th December).

28.3. The number of arbitrators shall be 1 (one).

28.4. The arbitrator shall render his decisions in accordance with this Regulation.

28.5. The place of arbitration shall be the city of Braga (Portugal).

28.6. The language to be used in the arbitral proceedings shall be English.

29. Omissions and Revision

- 29.1. Any situations not foreseen under this Regulation shall be decided by the Director-General of the INL.
- 29.2. This Regulation may be revised and updated by the Director-General at regular intervals.

30. Entry into Force

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