

FERMI NATIONAL ACCELERATOR LABORATORY
LEGAL MANAGEMENT PLAN

1. PURPOSE

This Legal Management Plan for Fermi National Accelerator Laboratory (Fermilab) provides the policies and procedures to be applied in the utilization, selection, and oversight of retained legal counsel for the provision of legal support to Fermilab, and has been prepared to meet the requirements of 10 CFR Part 719, “Contractor Legal Management Requirements.” This Plan also includes policies and procedures to be followed by Fermilab to comply with the prime contract clause entitled “Insurance—Litigation and Claims.”

2. SCOPE

This Plan describes the policies and procedures to be used by Fermilab with respect to outside legal counsel retained to provide legal support services in matters covered by 10 CFR Part 719. Matters not covered by 10 CFR Part 719, and thus not subject to this Plan, are described in 10 CFR 719.6 and include the following:

- a. matters handled by counsel retained by an insurance carrier;
- b. routine intellectual property law support services;
- c. routine workers and unemployment compensation matters and labor arbitrations; and
- d. routine matters handled by counsel retained through a GSA supply schedule.

3. CORPORATE OBJECTIVES

Management objectives of Fermi Research Alliance, LLC (FRA), for the operation of Fermilab include:

- a. involving legal support resources in a timely fashion in the decisionmaking process in Fermilab projects and other significant activities;
- b. vigorously asserting Fermilab’s positions and defenses in matters in dispute or controversy, while regularly exploring the potential for resolving such matters efficiently and fairly through alternative means to protracted litigation; and
- c. timely and effectively coordinating with the DOE Contracting Officer and the Contracting Officer’s Representative (COR) for Legal Management on significant legal matters arising under the Fermilab prime contract.

4. MATTERS THAT MAY BE HANDLED BY RETAINED LEGAL COUNSEL

4.1 Based on its considerable experience with operating Fermilab and its familiarity with the number and nature of matters necessitating legal support which typically arise at Fermilab, FRA believes that legal support for the operation of Fermilab is most effectively and efficiently provided through a mix of in-house legal counsel, retained outside legal services, and legal services afforded through insurance carriers.

4.2 Staffing of the Fermilab Legal Office (currently two full-time in-house attorneys) reflects the mix viewed to be appropriate for Fermilab by FRA. The Fermilab Legal Office focuses on the provision of primary legal support to Fermilab management and staff in two areas that traditionally generate the bulk of legal support activity at Fermilab, *i.e.*, (1) procurement (including all aspects of subcontract solicitation, award, and administration), and (2) interpretation of and compliance with provisions of the prime contract with DOE and applicable DOE regulations and directives. The Fermilab Legal Office will also normally serve as the primary provider of legal support in general personnel matters (including personnel policies and practices, release of personal information, and conflict of interest evaluations), routine ES&H issues, site use questions, and the preparation or review of agreements and memoranda of understanding with other parties (primarily universities and research institutions) with whom Fermilab collaborates in the conduct of research.

4.3 On occasion, extreme time constraints or the unavailability of in-house legal resources may necessitate the referral to outside retained legal counsel of matters that normally would be handled by the Fermilab Legal Office. However, the typical areas or matters that would be referred to retained legal counsel involve specialized areas of the law and litigation. (Some of these areas are excluded from the coverage of this Plan under 10 CFR 719.6 and Section 2 above.)

4.3.1 Specialized Areas of the Law. Fermilab relies on the use of retained outside legal counsel for the provision of legal support for intellectual property (particularly patent and copyright) matters. Fermilab also seeks the assistance of retained legal counsel for personnel and labor law issues of a complex nature requiring specialized expertise (e.g., pension and other benefit plan matters, immigration questions, union and picketing activity, tax withholding and reporting, and EEO-related plans, reports, or complaints). Fermilab may also refer complex environmental matters (e.g., complex permitting or compliance issues) to retained legal counsel for review and for assistance in the preparation of applications and supporting documentation.

4.3.2 Litigation. The typically small volume of litigation involving Fermilab has not warranted the addition of in-house counsel resources dedicated primarily to the handling of litigation. Rather, litigation initiated by or against FRA involving Fermilab will normally be referred either to outside legal counsel retained by FRA or to insurance carriers for the representation of FRA. Such insurance carriers cover general liability (e.g., tort claims) and worker's compensation matters. Outside counsel

retained by FRA would normally be utilized in litigation related to personnel/labor matters and to significant subcontract claims.

5. SELECTION OF RETAINED LEGAL COUNSEL

5.1 FRA enters into one-year blanket purchase ordering agreements with several law firms which are based in the Chicago area, which have special expertise in matters pertinent to Fermilab operations, which have gained familiarity with Fermilab activities and management structure (including the nature of FRA's contractual relationship with and responsibilities to DOE), and which afford competitive (and preferably favorable) billing rates or fee structure for Fermilab work. These agreements allow specified Fermilab officials (attorneys in the Fermilab Legal Office and identified individuals from the Fermilab Directorate or other senior management) to refer individual questions or issues to the law firms for advice and counsel.

5.2 The annual blanket purchase ordering arrangement utilized by Fermilab provides the advantages of efficiency of administration, of fostering law firm familiarity with Fermilab operations, and of generating a sufficient work volume over the course of the term of the annual agreement so that Fermilab can be afforded favorable billing rates. This arrangement also enables Fermilab to perform regular evaluations of the legal performance and business practices of the law firm, particularly for the purpose of determining whether the arrangement with the firm should be renewed for another year.

5.3 The blanket purchase ordering agreements are entered into by the Fermilab Procurement Department utilizing DOE-approved procurement policies and procedures, and contain all standard provisions utilized for Fermilab services subcontracts as well as incorporate applicable provisions and other requirements from 10 CFR Part 719 (including, e.g., the requirement that the Fermilab Legal Office must obtain advance approval from the Department counsel before the categories of costs identified in 10 CFR 719.35 will be considered allowable). An engagement letter (see Section 6) may be used in conjunction with the underlying blanket purchase ordering agreement for individual matters referred to the law firm for which the legal expenses are expected to exceed \$25,000. The agreements provide for the performance of legal support by the firm at established rates (normally on an hourly basis) throughout the term of the agreement. A sample blanket purchase ordering agreement is at Attachment 1.

5.4 It is anticipated that the several firms with whom FRA has entered into blanket purchase ordering agreements will provide a sufficient base for the provision of all outside legal support required by Fermilab. In the event that FRA must obtain outside legal support elsewhere (due to, e.g., the specialized nature of the issue, the existence of a conflict of interest, or the remoteness of the jurisdiction involved), the Fermilab Legal Office in conjunction with the Fermilab Procurement Department would conduct a review of potentially available outside firms to provide the needed legal support. Depending on time constraints and the scope of the legal support that is needed, that review may be in the form of a survey of potentially interested firms or a more formal competition. The most important

factors in the evaluation are (1) particular expertise in the area(s) of law where support is needed, (2) demonstrated proficiency, and (3) competitive billing rates. Other factors may include (1) familiarity of the firm with Fermilab or similar operations, (2) location of the firm (if pertinent), (3) absence of conflicts of interest, and (4) where representation of Fermilab in a dispute or controversy is involved, demonstrated successful experience with alternative dispute resolution. Generally, selected firms are engaged on an hourly rate basis.

6. ENGAGEMENT LETTER

Pursuant to 10 CFR 719.20, the Fermilab General Counsel or Deputy General Counsel must submit an engagement letter addressing the elements described in 10 CFR 719.21 to the retained legal counsel in connection with each individual matter where the retained legal counsel is expected to provide \$25,000 or more in legal services over the life of the matter. To fulfill this requirement, an engagement letter utilizing the sample format set forth in Attachment 2 shall be submitted to the retained legal counsel which will represent FRA/Fermilab in matters in litigation. For non-litigation matters (e.g., a request for specialized legal support in a particular matter where expenditure of \$25,000 or more for support in that matter is expected), the format at Attachment 2 will be appropriately tailored. A copy of the engagement letter showing the confirmation of understanding and approval of conditions by the retained counsel will be provided to the COR for Legal Management. A sample engagement letter is appended to this plan at Addendum A.

7. STRATEGIES FOR INTERACTION

7.1 Interactions with and Supervision of Retained Counsel. Normally, requests for legal services will be referred to retained law firms by an attorney in the Fermilab Legal Office in the manner provided by the terms of existing blanket ordering agreements that FRA/Fermilab has already entered into with those firms. The level of interactions with the retained counsel and supervision of their activities by the Fermilab Legal Office typically depends on the scale of outside legal support expected to be necessary and the presence of any potentially significant issues to Fermilab or DOE. In that vein, matters of smaller scale normally will simply be forwarded to the retained counsel with whatever guidance is deemed appropriate by the requesting Fermilab attorney. In matters of greater significance, the terms of the engagement letter (see Section 6) or any required Staffing and Resource Plan (see Section 8) will spell out many facets of the interactions or formal reporting requirements that will serve as the principal means by which the Fermilab Legal Office will oversee the activities of the retained counsel. The Litigation section of this Plan (see Section 10) outlines additional aspects of the process by which the Fermilab Legal Office will oversee, and in certain matters supervise or direct, the activities of retained counsel in its representation of FRA/Fermilab. In addition to such requirements involving coordination, the responsible Fermilab attorney will periodically consult with the retained counsel for an update on the status of proceedings and to ascertain whether any significant developments had occurred that would warrant, e.g., apprising the COR or revising staffing plans. Further, the review of billings from the retained counsel by the Fermilab General Counsel or Deputy General

Counsel provides an additional means to insure that the plans and guidance concerning the provision of legal services are being followed and to identify and correct any practices or activities which may be questionable or inappropriate. Finally, there may be instances where designated individuals (senior Laboratory management) may communicate directly with retained counsel and refer questions or issues of a specialized nature for matters not in litigation (questions dealing with e.g., a visa matter, the propriety of a proposed personnel or benefit practice, or the interpretation of an environmental requirement) for legal review. In such a situation, that Laboratory official should normally first consult with the Fermilab Legal Office in order to ascertain whether the Legal Office can provide the needed legal support or has access to other means of providing the review, or whether “significant issues” may be involved in the matter. Such consultation also allows the Fermilab General Counsel or Deputy General Counsel to be aware of the nature and scale of the legal support which should be appropriate when reviewing bills submitted for payment by the retained counsel.

7.2 Coordination with the DOE Contracting Officer and the COR for Legal Management. Coordination by the Fermilab Legal Office with the Contracting Officer and the COR occurs on both a formal and informal level. The provisions of 10 CFR Part 719, as implemented in many sections of this Plan, call for a considerable degree of coordination which takes the forms of various notifications, plans, reports, budgets, requests for approval, and copies of assorted documentation that must be submitted to the COR and/or the Contracting Officer. While these formal means will serve as the primary avenues of coordination, the Fermilab General Counsel or Deputy General Counsel shall regularly consult informally with the COR on the status of ongoing legal matters and developments in legal management policies, and shall promptly advise the COR of any significant developments in existing legal matters or of situations which could likely give rise to significant issues affecting DOE.

8. STAFFING AND RESOURCE PLAN

8.1 General. As provided in 10 CFR 719.15 and 719.16, outside legal counsel retained by FRA/Fermilab must prepare a staffing and resource plan where legal services are utilized for “significant matters,” i.e., matters where issues significant to DOE may be involved (particularly in litigation) and individual situations where the amount of outside legal costs is expected to exceed \$100,000 over the life of the matter. Significant issues in the case of Fermilab would typically involve class actions brought against FRA relating to the operation of Fermilab or situations where radiation or toxic substance exposure is alleged. Issues significant to DOE may also include matters having high visibility or sensitivity to DOE generally or having the potential to substantially affect Departmental operations. The Fermilab General Counsel or Deputy General Counsel shall evaluate all matters referred to outside counsel for support for the existence of such issues. In situations where it is unclear, the General Counsel or Deputy General Counsel shall consult with the COR for Legal Management and shall abide by the COR’s determination.

8.2 Contents. The staffing and resource plan required under 10 CFR 719.15 shall include a discussion of the following elements:

- (1) major phases likely to be involved in handling the matter;
- (2) timing and sequence of such phases;
- (3) projected cost for each phase of the representation or support; and
- (4) numbers and mix of resources (to the extent applicable) that the retained counsel intends to devote to the matter.

In addition to the foregoing (and in addition to the generalized annual budget that may be required under 10 CFR 719.17), for significant matters in litigation the staffing and resource plan prepared by retained legal counsel must include a budget, broken down by phases, which at a minimum includes the following elements:

- (5) matter assessment, development, and administration;
- (6) pretrial pleadings and motions;
- (7) discovery;
- (8) trial preparation and trial; and
- (9) appeal.

8.3 Procedures. Under 10 CFR 719.16, the staffing and resource plan must be submitted to the COR for Legal Management – (1) in the case of litigation, within 30 days after the filing of an answer or a dispositive motion in lieu of an answer, or 30 days after a determination that outside legal costs are expected to exceed \$100,000; or (2) in a significant legal services matter, within 30 days following the execution of an engagement letter. In those situations where unusual circumstances adversely affect the ability to submit a comprehensive plan within the above timeframes, the Fermilab General Counsel or Deputy General Counsel shall so apprise the COR and attempt to obtain agreement on an interim or partial authorization to proceed. Updates to existing staffing and resource plans must be provided to the COR on an annual basis (or sooner if significant changes occur in the matter). Finally, as provided in 10 CFR 719.16(e), the COR may state objections within 30 days of the submission or a plan or its update. If a formal objection is lodged to any aspect of the plan, the Fermilab General Counsel or Deputy General Counsel shall, within 30 days of the lodging of the objection, satisfy the objection or dispute the objection in a letter to the DOE General Counsel. In the event of such a dispute, the Fermilab General Counsel or Deputy General Counsel shall attempt to reach agreement with the COR on how to proceed on an interim basis with the provision of outside legal support.

9. REVIEW AND PAYMENT OF INVOICES

Billing statements from outside law firms retained by FRA for legal services to Fermilab are sent to the Fermilab Legal Office. The Fermilab General Counsel or Deputy General Counsel initiates a review of the statements promptly upon their submission, which includes circulating the statements to other affected Fermilab officials for their review and approval. The Fermilab General Counsel or Deputy General Counsel shall review each billing statement for any charge which may not be allocable to the Fermilab account, for potentially unreasonable practices for the work performed, for entries which are not sufficiently

explained to permit an evaluation as to their allocability or allowability, and for compliance with the procedures, principles, policies, cost limitations, and other requirements which are applicable to the particular legal matter (e.g., the applicable provisions of 10 CFR Part 719). Apparent violations or discrepancies will be brought to the attention of the law firm, who will be advised that the billing statement may not be submitted to Fermilab finance officials for payment (or questioned cost items will not be further processed for payment) until such time as acceptable explanations or corrections are provided to the Fermilab General Counsel or Deputy General Counsel. In the cases of legal services (1) for litigation and (2) for individual matters expected to exceed \$25,000 in legal costs, prior to authorizing Laboratory finance officials to remit payment to the law firm, the Fermilab General Counsel or Deputy General Counsel shall forward the following material to the COR for Legal Management for review and approval for payment —

- (i) a copy of the billing statement (normally monthly) from the law firm;
- (ii) copies of such other documentation as 10 CFR Part 719 or other DOE direction may require (e.g., the signed certification statement from the law firm in the format prescribed by 10 CFR Part 719); and
- (iii) a “checklist” or other formal documentation acceptable to the COR which evidences that the costs set forth in the billing statement from the law firm have undergone a compliance review by the Fermilab General Counsel. This Checklist is appended to the plan at Addendum B.

Actual payment of the billing statements in these cases normally should not be made until such time as approval by the COR has been communicated to the Fermilab Legal Office.

10. LITIGATION

10.1 Litigation Policy. It is FRA policy that litigation involving Fermilab be conducted in a vigorous and efficient manner, and in accordance with the policies and requirements set forth in the “Insurance—Litigation and Claims” clause of the prime contract, in 10 CFR Part 719, and in such directions and guidance as may be provided by the DOE Contracting Officer or the COR for Legal Management. The DOE Contracting Officer and the COR for Legal Management shall be (1) provided copies of all significant documents pertinent to the litigation, (2) regularly apprised of developments in individual lawsuits (including the provision of quarterly reports on the status of litigation), and (3) fully coordinated with at significant points in the litigation where decisions on such matters as strategy and settlement are made. The Fermilab General Counsel or Deputy General Counsel shall oversee the conduct and progress of litigation involving Fermilab, making appropriate and efficient use of available in-house resources, retained outside counsel having special experience and expertise in matters under litigation, and defense resources provided through insurance or indemnification coverage. The Fermilab Legal Office shall coordinate as appropriate with Fermilab management, FRA corporate counsel, and representatives of DOE. Outside counsel retained to represent FRA shall be required to (1) coordinate regularly with the Fermilab Legal Office on the progress of litigation, (2) apprise the Legal Office of the parameters of legal resources necessary to conduct the litigation, (3) provide assessments of

the case to, and participate in discussions of strategy and use of resources with, representatives of the Fermilab Legal Office and the DOE Contracting Officer, and (4) abide by such requirements pertaining to allowable costs, reporting, record keeping, and other litigation-related procedures and policies as may be set forth in 10 CFR Part 719 or in other direction and guidance from the DOE Contracting Officer or the COR. In the event that settlement or defense of litigation involving FRA/Fermilab is undertaken by the Federal Government pursuant to the “Insurance—Litigation and Claims” clause, Fermilab management and staff (including the Fermilab Legal Office) shall furnish all reasonable assistance as requested by the Government in effecting settlement or conducting the defense, with the understanding that such assistance shall constitute allowable costs under the prime contract.

10.2 Notice to DOE of Litigation Against FRA/Fermilab.

10.2.1 Under the “Insurance—Litigation and Claims” clause of the prime contract, FRA is to provide notice in writing to the DOE Contracting Officer of any litigation brought against FRA, the costs and expenses of which are allowable under the prime contract. To fulfill this requirement, the Fermilab General Counsel or Deputy General Counsel shall, upon being apprised of the service upon FRA of the summons and complaint, promptly forward copies of such documents to the DOE Contracting Officer and the COR for Legal Management. These documents shall normally be forwarded under cover of a letter which includes a summary of whatever information may be readily available concerning the circumstances of the case (e.g., the case name and number, the parties, the forum, the relief sought, the nature of the action, and the names, addresses, and telephone and fax numbers of counsel), an explanation of whether the case is covered by a policy of insurance or of the proposed manner of handling the defense of the litigation (through, e.g., outside counsel, in-house resources, or a combination thereof), an identification of any issues which may be of special interest to DOE or the Federal Government (e.g., radiation or toxic chemical exposure, human experimentation, or class actions involving DOE activities), and requests for whatever DOE authorization to proceed with the defense of the case or other approvals concerning retention of outside counsel may be necessary.

10.2.2 In cases which involve issues of significant interest to DOE or where immediate notification is necessary to expedite required coordination with or approvals by the DOE Contracting Officer or the COR, the formal written notice to DOE may be preceded by telephonic notice to the COR, and by the facsimile transmission or hand delivery of copies of pertinent litigation documents.

10.2.3 In any case where it appears that, under Fermilab’s accounting system or cost accounting standards, any settlement or adverse judgment must be charged to a particular funding program, such should promptly be communicated to the DOE Contracting Officer and the COR. Such preferably should be included in the initial notice of litigation prepared by the Fermilab General Counsel or Deputy General Counsel.

10.3 Utilization of Retained Counsel.

10.3.1 The present level of staffing of the Fermilab Legal Office is a significant limiting factor on the ability of or extent to which in-house counsel is available to conduct the defense in litigation against FRA. Consequently, in those matters not already covered by policies of insurance, the determination by the Fermilab General Counsel or Deputy General Counsel normally will be that the matter should be referred to an appropriate outside firm or attorney who has already been retained in part for the purpose of handling litigation in certain areas. The Fermilab General Counsel or Deputy General Counsel shall nevertheless undertake an evaluation in each lawsuit brought against FRA of the availability and ability of existing in-house legal resources to handle the litigation its own or to actively participate in its handling in conjunction with outside counsel. Factors in such an evaluation would include the anticipated scope or scale of the litigation, the estimated amount of time or resources necessary to handle it, the number and complexity of the issues involved, current workload of existing in-house resources, and the location of the court involved, of the other litigating parties and their legal representatives, and of potential witnesses and evidence.

10.3.2 The formal written notice to DOE of litigation that has been brought against FRA shall include an explanation of the determination by the Fermilab General Counsel or Deputy General Counsel that the matter should be referred to outside counsel or can be handled in whole or in part with in-house resources. That explanation should be in sufficient detail to enable the COR to review the reasonableness of that determination. If the Fermilab General Counsel or Deputy General Counsel has determined that the matter should be referred to outside counsel, the case normally will not be so referred until such time as the Department counsel has had a reasonable opportunity to review the notice letter and any other available information and provide the Laboratory with express authorization to proceed with defense of the case and to refer the matter to the identified outside counsel. There may, however, be instances where immediate representation of FRA is required. In such cases, the Fermilab General Counsel or Deputy General Counsel will initially refer the matter to the appropriate outside counsel for the handling of the necessary representation and will so advise DOE in the notice letter. In such instances, the Fermilab General Counsel or Deputy General Counsel should also attempt to coordinate telephonically with the COR on the urgency of the need for immediate referral for representation.

10.3.3 A copy of the engagement letter (see Section 6) which has been executed by the retained outside counsel shall be promptly provided to the COR.

10.4 Supervision of Litigation. Upon referral of the litigation to the retained outside counsel which will represent FRA, the Fermilab General Counsel or Deputy General Counsel will provide any necessary instructions to the outside counsel on such matters as the role that in-house counsel will play in the conduct of the litigation, the types of litigation documents which should be submitted to the Fermilab Legal Office for review prior to filing, and any other conditions pertaining to the firm's representation of FRA in that case. Outside counsel

will also be instructed to provide the Fermilab Legal Office and any appropriate member of Laboratory management an assessment of the case not later than the close of pleadings, and a comprehensive analysis of the case, including any recommendations for settlement, at the end of discovery. Outside counsel may be instructed to provide additional analyses or assessments of the case at such other points as are deemed appropriate. In cases involving issues of significance to DOE or where the amount of legal costs for the representation of FRA is anticipated to exceed \$100,000, preparation by retained counsel of a “Staffing and Resource Plan” (10 CFR 719.15) for the conduct of the litigation is also required. That Plan is discussed in greater detail in Section 8.

10.5 Settlement. The “Insurance—Litigation and Claims” clause of the prime contract provides that to the extent not in conflict with any applicable policy of insurance, FRA may, with DOE Contracting Officer approval, settle litigation brought against it arising out of the performance of the contract. Accordingly, the Fermilab General Counsel or Deputy General Counsel should assess the feasibility and appropriateness of settlement as early as practical in the proceedings, and should continue to assess settlement prospects as the litigation develops. In connection with such periodic assessment of settlement possibilities, the Fermilab General Counsel or Deputy General Counsel should also consider the appropriateness of resolution of the case through Alternative Dispute Resolution (ADR) measures (e.g., third-party arbitration or mediation). As part of the settlement assessment process, the Fermilab General Counsel or Deputy General Counsel or Fermilab Legal Office attorney assigned to oversee the litigation should consult with appropriate Laboratory management and with the COR for Legal Management. Such consultations should occur at a minimum at all significant stages of the litigation (e.g., the outset of the litigation, the close of pleadings, and close of discovery). The DOE Contracting Officer and the COR shall be provided assessments in such formality and detail as they request, and outside counsel shall be instructed to assist in the preparation and presentation of such assessments to the degree necessary. Outside counsel will be instructed to forward any settlement offer or ADR proposal made by opposing parties to the Fermilab Legal Office with an analysis of its merits and recommendations as to its acceptability and as to a possible counteroffer or proposal. The Fermilab General Counsel or Deputy General Counsel, after appropriate coordination with Laboratory management, shall forward the proposal or offer to the DOE Contracting Officer and the COR, together with FRA recommendations with respect to a response to the opposing parties. Where it appears that settlement discussions or negotiations with opposing parties will occur, the Fermilab General Counsel or Deputy General Counsel should attempt to obtain DOE Contracting Officer approval of a range of specific monetary and other appropriate limits within which settlement is authorized. While proposed settlement agreements which are within such limits do not require additional DOE Contracting Officer approval, the Fermilab General Counsel or Deputy General Counsel should provide a copy of the proposed agreement to the DOE Contracting Officer and the COR for a reasonable opportunity to review the agreement prior to its execution. Where an authorized settlement agreement has been negotiated, outside counsel will be instructed to proceed with effecting the settlement and the dismissal of the case, and to obtain all appropriate releases of FRA and the Federal Government.

10.6 Joint Defense Groups. There may be instances where referral of the defense of litigation to one of the retained firms may not represent the most efficient or cost-effective means of providing fully satisfactory representation of the interests of FRA and DOE. Such a situation could arise where FRA finds itself one of many defendants in the same or similar lawsuits where the defendants face common issues. Joint defense groups are often formed to provide all such defendants with full appearance and representation services for flat assessments that reflect the spreading of costs for otherwise duplicate services over many parties. If the Fermilab Legal Office becomes aware of the existence of such a joint defense arrangement which would provide fully satisfactory and significantly more cost-effective representation of the interests of FRA and DOE under terms that appear acceptable, the Fermilab General Counsel or Deputy General Counsel should so advise DOE and seek authorization for FRA to become a member of the group. At a minimum, the terms of the arrangement should provide for periodic updates to be provided to FRA on developments in the litigation, and for the timely provision of copies of litigation documents that have been filed on FRA's behalf.

10.7 Initiation of Litigation. Under the "Insurance—Litigation and Claims" clause of the prime contract, FRA may, with the authorization of the DOE Contracting Officer, and shall, upon the request of the Federal Government, initiate litigation against third parties, including appeals from adverse decisions. In cases where FRA believes that the initiation of litigation is warranted and the costs of which are allowable under the contract, the Fermilab General Counsel or Deputy General Counsel should normally first coordinate with the COR in order to evaluate the merits of pursuing litigation and to ascertain the nature of information and conditions which DOE would require. Formal requests for authorization should, at a minimum, include the following elements:

- (1) identification of the proposed parties;
- (2) nature of the proposed action;
- (3) relief sought;
- (4) venue;
- (5) proposed representation (including reason for selection);
- (6) analysis of the issues involved and the likelihood of success (and any time constraints or limitations involving the request for authorization);
- (7) estimated costs of pursuing the litigation (including whether retained counsel has agreed to a contingent fee arrangement);
- (8) whether FRA will assume any part of the costs;
- (9) description of any attempts to resolve the matter through some means of alternative dispute resolution; and
- (10) discussion of why initiating the litigation would prove beneficial to FRA and the Government.

In the event certain of the above information cannot be provided within the time required for the litigation or appeal to be initiated, as much information as possible should be initially provided to DOE, with the additional information provided as soon as practicable. Where authorization is granted or a Federal Government request is received for the initiation of litigation, the Fermilab General Counsel or Deputy General Counsel shall supervise the

conduct of the litigation in a manner which is consistent with procedures and policies covering the defense of litigation, and which is in accordance with the terms of the authorization provided by the DOE Contracting Officer or of the request from the Federal Government.

11. ALTERNATIVE DISPUTE RESOLUTION (ADR)

11.1 As stated previously, it is the policy of FRA to assert vigorously Fermilab's legal positions and defenses in matters in dispute or controversy. But consistent with the policy of DOE and the Federal Government generally, it is also FRA policy to consider and, if appropriate, to explore with other party the potential for resolving each such matter efficiently and fairly through settlement discussions between the parties or referral to a mutually acceptable means of ADR. In the situation where litigation has already been initiated, the Fermilab Legal Office—utilizing discussions with retained outside legal counsel representing FRA and with the COR for Legal Management—shall consider the potential for settlement of the matter, including resolution of the matter through ADR, at appropriate stages of the proceedings. Although such consideration may occur at any time during the proceedings, such consideration normally will occur in connection with preparation of the answer to the complaint (presuming sufficient information concerning the matter in litigation is known at that time). Such consideration should also occur after legal counsel representing FRA has completed discovery. Each consideration of the potential for resolution through ADR of a matter in litigation shall be documented by the Fermilab Legal Office.

11.2 The efficacy of ADR is not limited to matters already in litigation. ADR may also present an efficient and fair method to resolve disagreements or controversies at much earlier stages and thus forestall potentially protracted and expensive litigation. At Fermilab, such disagreements more typically arise in personnel actions and in procurement dealings with subcontractors and vendors. The Fermilab Legal Office will encourage Fermilab management officials in those areas to consider establishing ADR processes to which such disagreements may be referred, and to give serious consideration (with coordination with the Fermilab Legal Office) to ADR proposals presented by the other parties to matters in controversy.

12. STATUS REPORTS

In addition to the plans, reports, and copies of documents called for elsewhere in the Legal Management Plan, the Fermilab General Counsel or Deputy General Counsel shall provide quarterly status reports to the DOE Contracting Officer and the COR for Legal Management. These reports will show the status of all ongoing litigation involving Fermilab as a March 31, June 30, September 30, and December 31 of each year. Each such status report will be completed in sufficient time to be received by the COR by the 15th of the month following the quarter covered by the report.

13. SUBCONTRACTOR LEGAL COSTS

As a matter of practice, FRA/Fermilab utilizes only variations of firm fixed-price arrangements in its subcontracting of work for the operation of the Laboratory. Consequently, there traditionally have been no subcontracting situations where subcontractor legal expenses have been separate, directly chargeable costs. However, as FRA/Fermilab is not precluded from using a cost-type subcontract arrangement where such costs would be directly chargeable, any such subcontract for legal services shall include express requirements that (1) cost allowance will be governed by applicable principles and policies set forth in 10 CFR Part 719 and 48 CFR 931.205-33, (2) advance approval for any category of cost described in 10 CFR 719.35 must be obtained from the Fermilab Legal Office, and (3) for any matter for which subcontractor legal costs may reach \$100,000, a plan substantially in the nature of the staffing and resource plan described in 10 CFR 719.16 must be submitted to the Fermilab Legal Office for review and approval. The plan must provide the Fermilab Legal Office sufficient information to review the reasonableness of the subcontractor's legal management practices and to monitor the progress of the matter in order to be responsive to questions raised by DOE concerning the matter. Subcontractor invoices that include requests for reimbursement of legal expenses must be reviewed and approved by the Fermilab Legal Office, and information copies of such invoices which have been approved for payment shall be provided to the COR for Legal Management.

14. OTHER CONSIDERATIONS

14.1 Should FRA believe that DOE's review of any documents, books, or records referred to in this Plan might result in the inappropriate loss of a privilege or release pursuant to the Freedom of Information Act, such concerns will be raised with the COR for Legal Management and attempts to reach an appropriate resolution or accommodation of those concerns will be made.

14.2 Changes to this Plan which involve other than internal Fermilab administrative matters may be made only upon the review and approval of the COR for Legal Management.