

SRS FFA

II. DEFINITIONS

- E. Annual Budget Allotment shall mean the initial Fiscal Year *Advice of Allotment* and the accompanying *Approved Funding Program*, which authorizes expenditure of funds for the current fiscal year.

XXXIX. FUNDING

- A. **It is the expectation of the Parties that all obligations of DOE arising under this Agreement will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Agreement, including, but not limited to, the submission of timely budget requests.**
- B. In accordance with Section 120 (e)(5)(B) of CERCLA, 42 U.S.C. § 9620(a)(5)(B), DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.
- C. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
- D. If appropriated funds are not available to fulfill DOE's obligations under this Agreement, EPA and SCDHEC reserve the right to initiate any other action which would be appropriate absent this Agreement.

XX. TIMETABLES AND DEADLINES

- A. Commitments for FY+1 and FY+2 are contained in Appendix E to this Agreement. Enforceable timetables and deadlines for current FY commitments are contained in Appendix D to this Agreement. Appendix D shall contain timetables and deadlines from the previous FY+1 Appendix E commitments. **To the extent that DOE has diligently sought but did not receive appropriation from Congress for the previous FY+1 Appendix E commitments,** the current FY timetables and deadlines in Appendix D are subject to modification in accordance with Section XLIII (Modification of Agreement) and will be amended each year according to Subsection B, herein.
- B. Within five (5) business days of receipt of its annual budget allotment from DOE-HQ, DOE-SR shall provide written notification to EPA and SCDHEC of such receipt. Also, within thirty (30) business days after DOE-SR receives its annual budget allotment, the DOE-SR shall submit a Revision.0 Appendix D which reflects the work activities established through the provisions of Section XIX.D (Scoping Work Priorities) which have received appropriations. EPA and SCDHEC shall review and comment on the Revision.0 Appendix D within fifteen (15) business days of receipt. Within fifteen (15) days of receipt of EPA and SCDHEC comments, DOE will revise, if necessary, the Revision.0 Appendix D and submit a Revision.1 Appendix D. The Parties agree to finalize Appendix D in accordance with the provisions of Subsection I of Section XXII (Review/Comment on Documents) to this Agreement.

XLII. FORCE MAJEURE

- A. A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligations under this Agreement, including, but not limited to:
1. Acts of God; fire; war; insurrection; civil disturbance; or explosion;
 2. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
 3. Adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation;
 4. Restraint by court order or order of public authority;
 5. Inability to obtain, at reasonable cost and after exercise of reasonable diligence, all necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than DOE;
 6. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and
 7. **For EPA and DOE only, insufficient availability of appropriated funds which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to DOE, the DOE shall have made timely efforts to obtain such funds as part of the budgetary process set forth in Section XXXIX (Funding) of this Agreement.**
- B. A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.
- C. The DOE and SCDHEC agree that Subsection A.2 (entirely), Subsection A.3 (“delay in transportation”), Subsection A.4 (“order of public authority”), Subsection A.5 (“at reasonable cost”), and Subsection A.6 (entirely) above, do not create any presumptions that such events arise from causes beyond the control of a Party. The SCDHEC specifically reserves the right to withhold its concurrence to any extensions which are based on such events which are not entirely beyond the control of DOE pursuant to the terms of Section XXXI (Extensions), or to contend that such events do not constitute Force Majeure in any action to enforce this Agreement.