Memorandum of Understanding Among the
Departments of State, Defense, Commerce, Interior and the Intelligence Community
Concerning the Licensing of Private Remote Sensing Satellite Systems

AUTHORITIES: This MOU is undertaken pursuant to the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 et seq. (the Act), and Presidential Decision Directive 23 (NSC/PDD-23).

PURPOSE: The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Act. The Act also grants to the Secretaries of State and Defense the authority to determine conditions necessary to protect international obligations, foreign policy concerns, and national security concerns. The purpose of this MOU is to establish interagency procedures concerning the process for handling remote sensing licensing actions, and consultation regarding interruption of normal commercial operations pursuant to PDD-23.

POLICY: In consultation with affected agencies, constraints on commercial remote sensing systems will be imposed by the Secretary of Commerce when necessary to meet international obligations and national security and foreign policy concerns and will be in accord with the determinations of the Secretary of Defense and the Secretary of State and with applicable law. Procedures for implementing this policy are set out below.

PROCEDURES:

A. Consultation during Review of Licensing Actions. Pursuant to section 5621 (c) of the Act, the Secretary of Commerce shall review any application and make a determination thereon within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. Copies of requests for licensing actions received by the Department of Commerce (DOC) will be provided by DOC to the Department of State (DOS), the Department of Defense (DOD), the Department of the Interior (DOI), and the Intelligence Community (IC) within 3 working days.

DOC will defer its decision on such licensing actions until the other Parties concerned have had a reasonable time to review them, as provided in this section.

(1) Within 10 working days of receipt, DOS, DOD, DOI, or IC shall notify the Department of Commerce, in writing, of any additional information it believes is necessary to properly evaluate the licensing action, or notify DOC in writing of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought.

(2) After receiving a complete license package or the information requested in paragraph (1), DOS, DOD, DOI, and IC will complete their review of the license package within 30 days or notify DOC in writing of additional time necessary to complete the review. If DOS, DOD, or

IC conclude that imposition of conditions on the actions being reviewed may be necessary to protect international obligations, foreign policy concerns, or national security concerns, the agency identifying the concern will promptly notify DOC in writing with a copy to other interested agencies. Such notification shall: (i) describe the national security interests, or the international obligations or specific foreign policies at risk if the applicant's system is approved as proposed; (ii) set forth in detail the basis for the conclusion that operation of the applicant's system as proposed will not preserve the national security interests or the international obligations or specific foreign policies identified; and (iii) specify the additional conditions necessary to preserve the relevant United States interests or set forth in detail why denial is required to preserve such interests.

(3) Within 10 days of sending this notification, representatives of DOS, DOD, DOC, DOI, and IC will meet to discuss and resolve any issues with regard to these proposed conditions.

(4) If, after such discussions, DOS or DOD conclude that such conditions are necessary but DOC does not concur, the Secretary of State or the Secretary of Defense may make such a determination of necessary conditions in writing. This function may not be delegated below the acting Secretary or the Deputy Secretary. Such determinations will be promptly forwarded to DOC and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) Upon notification of such a determination, DOC will suspend any further action on the license that would be inconsistent with the DOS or DOD determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, the Secretary of Commerce or Deputy Secretary shall then consult with his or her counterpart in the relevant department within 10 days regarding any unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will so notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve a consensus within the interagency, or failing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

B. Consultation Regarding Interruption of Normal Commercial Operations.

(1) This section establishes the process for requiring the licensee to limit data collection and/or distribution by the system during periods when national security or international obligations and/or foreign policies may be compromised, as determined by the Secretary of Defense or the Secretary of State. DOC will provide to the other Parties copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the national security, international obligations, or foreign policy concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered such as

delaying the transmission or distribution of data, restricting the field of view of the system, encryption of the data if available, or other means to control the use of the data.

(3) Except where urgency precludes it, DOS, DOD, DOC and IC will consult to attempt to come to an agreement concerning appropriate conditions, if any, to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be constructed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State or the Secretary of Defense, as appropriate, prior to the issuance of a determination by the Secretary of State or the Secretary of Defense in accordance with (4) below. That function shall not be delegated below the acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State or the Secretary of Defense, shall determine the conditions necessary to meet international obligations, significant foreign policy concerns, or significant national security concerns, especially where those interests identified in the National Security Strategy would be put at risk. This function shall not be delegated below the acting Secretary. The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce his or her determination regarding the conditions required to be imposed on the licensee. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensee of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(5) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification of, and imposition of such conditions on, the licensee, so notify the Secretary of Defense or the Secretary of State, as appropriate, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, will initiate as soon as possible a Principals-level consultative process to achieve a consensus within the interagency, or, failing that, refer the matter to the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Coordination before Release of Information Provided or Generated by Other Agencies. Before releasing any information provided or generated by another agency to a licensee or potential licensee, to the public, or to an administrative law judge, each agency agrees to consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged because it is classified, pre-decisional, deliberative, contain proprietary information, or is protected for other

reasons. No information shall be released without the approval of the agency that provided or generated it unless required by law.

D. No legal rights or remedies, or legally enforceable causes of action, are created or intended to be created by this Memorandum of Understanding.

Madeleine Albright

Madeleine K. Albright
Secretary of State

Date: January 4, 2000

William M. Daley
Secretary of Commerce

Date: NOV 23 1999

George J. Tenet
Director Central Intelligence

Date: Nov 17 1999

William S. Cohen
Secretary of Defense

Date: DEC 20 1999

Bruce Babbitt
Secretary of Interior

Date: DEC 8 1999