

Audit Process Memorandum of Understanding (“MOU”)
Entered into on September 15, 2024 (“Effective Date”)
Between
First Nations Energy and Mining Council
 (“the FNEMC”)
and
Chief Auditor, Ministry of Energy, Mines and Low Carbon Innovation
 (“Chief Auditor”)
and
Ministry of Energy, Mines and Low Carbon Innovation
 (“Ministry”)

Whereas

- A. The FNEMC is a BC First Nations advocacy organization reporting to and operating under a mandate and directed by resolutions of the BC First Nations Leadership Council and the BC Chiefs in Assembly on energy and mining matters.
- B. The Chief Auditor is a statutory function set out under s. 2.1 of the *Mines Act*. This role was established in August 2020 through amendments to the *Mines Act*. The Chief Auditor, by way of the Mine Audits Unit (the “Audit Unit”), conducts audits that evaluate the effectiveness of the regulatory framework for mining in British Columbia and makes recommendations to Government for continuous improvement.
- C. Public confidence in the Chief Auditor’s conclusions and recommendations is dependent on the Audit Unit’s ability to produce conclusions and recommendations based on an independent and objective analysis of the provincial regulatory system for mining. The independence of the audit process must be maintained throughout the audit, with any real or perceived conflicts of interest managed appropriately to preserve the integrity of the audit process.
- D. The Ministry is responsible for regulating British Columbia’s mining and mineral exploration sectors through the *Mineral Tenure Act*, the *Mines Act*, and associated regulations. As part of the audit process, the Ministry may develop a response to audit reports and recommendations from the Chief Auditor, and the Ministry’s responses may be made publicly available.
- E. The BC *Declaration on the Rights of Indigenous Peoples Act* (“*Declaration Act*”) has among its purposes to affirm the application of the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration”), an international human rights instrument setting out minimum standards and protection for the world’s Indigenous peoples, to the laws of British Columbia, which includes the *Mineral Tenure Act*, the *Mines Act* and associated regulations, and to contribute to the implementation of the UN Declaration. The Government of Canada enacted similar legislation in 2021 titled the *United Nations Declaration on the Rights of Indigenous Peoples Act*.

- F. This MOU is new in substance and procedure for the FNEMC, the Chief Auditor and the Ministry in dealing with how Indigenous perspectives and interests are included in the Audit Unit's annual audit planning and individual audits and the Ministry's responses to Chief Auditor recommendations.
- G. This MOU sets out a framework whereby the Chief Auditor and the Ministry will each work with the FNEMC in a cooperative and collaborative manner regarding their audit related work as set out in this MOU. Indigenous input is an important part of audits and the FNEMC will gather and provide Indigenous perspectives on the work of the Audit Unit and the Ministry as set out in this MOU.

Therefore, the FNEMC, the Chief Auditor and the Ministry (the "Party" or "Parties" as the context requires) have reached the following understanding:

1. Purpose

- a. This MOU sets out:
 - i. The mutual commitment of the FNEMC and the Chief Auditor to engage in ongoing, regular bilateral dialogue regarding the work of the Audit Unit in order that Indigenous perspectives and interests may be considered and, where appropriate, incorporated into the work of the Audit Unit, including as it relates to:
 - The development of audit plans under s. 2.3 of the *Mines Act* and the development of reports under s. 2.6 of the *Mines Act*; and,
 - Audit Unit processes for annual planning and audits set out in Appendix A, in particular the described collaboration points.
 - ii. The mutual commitment of the FNEMC and the Ministry to engage on the Ministry's draft response to audit reports and recommendations from the Chief Auditor.

2. Constitutional Framework

Dialogue, engagement and collaboration between the Parties shall be grounded in the recognition of Aboriginal rights, treaty rights, Indigenous inherent rights, recognized and affirmed in section 35 of the *Constitution Act, 1982*, the UN Declaration, and the Truth and Reconciliation Commission Calls to Action.

3. Objectives

- a. The FNEMC, the Chief Auditor and the Ministry are committed to the following objectives:
 - i. The FNEMC's participation in the Audit Unit processes for annual planning and audits set out in Appendix A.
 - ii. The Ministry's engagement with the FNEMC on the draft Ministry's responses to audit reports and recommendations from the Chief Auditor.
 - iii. The timely provision of sufficient capacity and resources to facilitate the FNEMC's participation and engagement.

4. Implementation: Audit Unit and Ministry Processes

4.1 Audit Unit Processes

4.1.1 Annual Planning

- a. Annual planning is the process by which the Audit Unit solicits and prioritizes audit topics for the Chief Auditor's consideration. The Annual Audit Plan sets the Audit Unit's priority work areas over a one-year period. Under s. 2.3 of the *Mines Act*, the Chief Auditor is required to develop the Annual Audit Plan and publish it on a publicly accessible website. See Appendix A for a more detailed description of the annual audit planning process and how the collaboration points fit within the process.
- b. The collaboration points discussed below are provided as a guide to ensure a general understanding of the objective and roles/responsibilities that will be used annually, rather than specific process steps. This approach is used to ensure flexibility in subsequent years to deal with unforeseen circumstances that may occur. Additionally, the Audit Unit is a new and evolving program area. Processes identified in this MOU are subject to change as the Audit Unit becomes more established.
- c. *Collaboration Point A1 - Identify Potential Topics:* The FNEMC will gather and submit potential audit topics from Indigenous groups to the Audit Unit on an annual basis, in accordance with annual audit planning process timelines. The Audit Unit will provide the FNEMC with information about the Audit Unit, its mandate, and timelines to assist the FNEMC in their efforts, as needed.
- d. *Collaboration Point A2 - Prioritization:* During the prioritization step, the Audit Unit and the FNEMC will seek consensus on a shortlist of priority audit topics for the Chief Auditor's consideration. The Chief Auditor may consider other topics outside of this shortlist and if consensus is not achieved, the FNEMC may

provide their perspectives in writing to the Chief Auditor for consideration prior to the Chief Auditor's decision.

- e. *Collaboration Point A3 – Final Annual Audit Plan:* Following the Chief Auditor's decision, the Audit Unit will share a copy of the final Annual Audit Plan with the FNEMC prior to public release for information. The Parties may develop a joint briefing note to inform their leadership of engagement and collaboration between the Audit Unit and the FNEMC prior to public release of the Annual Audit Plan.

4.1.2 Audits

- a. The audit process involves four distinct steps: Planning, Examination, Reporting, and Follow-up. Under s. 2.6 of the *Mines Act*, the Chief Auditor is required, upon completing an audit, to provide the Minister of Energy, Mines and Low Carbon Innovation with a report that includes the audit conclusions, with reasons, and any recommendations. The Chief Auditor is also required to release this report publicly. See Appendix A for a more detailed description of the audit process and how the collaboration points outlined below fit within the overall audit process.
- b. The process and collaboration points discussed below are provided as a guide to ensure a general understanding of the objective and roles/responsibilities that will be used for each audit, rather than specific process steps. This approach is used to ensure flexibility to deal with unforeseen circumstances that may occur in specific audits. Additionally, the Audit Unit is a new and evolving program area. Process identified in this MOU are subject to change as the Audit Unit becomes more established.
- c. *Collaboration Point B1—Planning:* The Audit Unit will engage with the FNEMC during audit planning to understand and ensure Indigenous perspectives and interests are considered in the development of the audit terms of reference.
- d. *Collaboration Point B2 – Examination:* The Audit Unit will provide briefings to the FNEMC to inform on audit progress and seek feedback on information shared. The Audit Unit will meaningfully consider and may incorporate the FNEMC feedback into examination.
- e. *Collaboration Point B3—Reporting:* The Audit Unit will engage with the FNEMC on the draft audit conclusion and recommendations for feedback. The Parties may develop a joint briefing note to inform their leadership of engagement and collaboration between the Audit Unit and the FNEMC prior to public release of the audit report.
- f. *Collaboration Point B4 – Follow-Up:* Prior to implementing the follow-up phase of the audit process, the Audit Unit will collaborate with the FNEMC to determine the nature of the FNEMC's participation.

4.1.3 Timelines

Timelines for annual planning and audits may vary. The FNEMC and the Chief Auditor understand that it is important to ensure the timeliness of annual planning and the audit process. Wherever possible, the Audit Unit will provide the FNEMC with clear timelines at the outset of annual planning and individual audit projects to ensure meaningful discussion at the identified collaboration points and the FNEMC will endeavour to provide input in a timely manner.

4.1 Ministry Audit Recommendation Response Process

Consistent with standard performance auditing practices, the Ministry is provided a draft version of the audit report for review and comment as part of the Reporting phase of the audit. See Appendix A for more details on the audit process.

4.2.1 Ministry response to Chief Auditor recommendations

- a. Once the Ministry receives the draft report from the Chief Auditor, preparation of responses to audit recommendations may commence.
- b. *Collaboration Point C1*: Prior to finalizing its response to the Chief Auditor's report and recommendations, the Ministry will provide a draft copy of the response to the FNEMC for review and written comment, if one is developed. If requested by either Party, the Ministry and the FNEMC will meet to discuss the Ministry's draft response. Feedback received will be considered and may be incorporated into the Ministry's response. Once final, the Ministry's response may be released simultaneously with the audit report.
- c. Prior to public release of the Ministry's response to Chief Auditor recommendations, both the Ministry and the FNEMC may provide briefings to their respective leadership.

4.2.2 Timelines

Timelines for the development of the Ministry's response to audit recommendations may vary. The Ministry and the FNEMC understand that it is important to ensure the timeliness of completion of Ministry's responses to audit recommendations. Where possible, the Ministry will provide the FNEMC with clear timelines when it shares the draft response and the FNEMC will endeavour to provide input in a timely manner.

5. Confidentiality

- a. The Parties agree that they, including any of their representatives, employees, servants, or contractors, will treat as confidential any and all information and material shared as a result of this MOU that is marked or otherwise indicated to be confidential (the “Confidential Information”) and will not, without the prior written consent of the other Parties, except as required by applicable law, permit its disclosure.
- b. Party representatives who receive Confidential Information pursuant to this MOU will share that Confidential Information only with that Party’s representatives, employees, servants, or contractors who require access to the Confidential Information in order to fulfill the obligations of that Party under this MOU and such Party will ensure that such representatives, employees, servants, and contractors are aware of and agree that they are subject to the confidentiality requirements of this section. The Parties further acknowledge and agree that any disclosure of the Confidential Information contrary to this section may cause harm to other Parties.
- c. Any disclosure of Confidential Information by a Party, including by any of its representatives, employees, servants, or contractors, contrary to this section may result in the termination of the MOU by another Party.
- d. The commitment by the Parties to disclose or otherwise share information in accordance with this MOU is subject to applicable laws and to its rights as set out in paragraph (e). Nothing in this MOU will require a Party to disclose or otherwise share information where such disclosure or sharing is prohibited by law.
- e. The Chief Auditor and the Ministry reserve the right, from time to time and on a case by case basis, to require that individuals with whom Confidential Information is to be shared pursuant to this MOU, including representatives, employees, servants, or contractors of the FNEMC, enter into agreements or provide undertakings to preserve the confidentiality of the Confidential Information.
- f. The final signed MOU is a public document.

6. Term and Review

- a. This MOU replaces the Audit Process Memorandum of Understanding with an effective date of May 31, 2021 (“Initial MOU”). The Initial MOU shall terminate on September 15, 2024.
- b. The term of the MOU is five years from the Effective Date. The Parties may mutually agree to amend this agreement from time-to-time.

- c. Any Party may withdraw from this agreement with at least 60 days prior notice. If the Ministry withdraws from this MOU, the Chief Auditor and the FNEMC may remain Parties. Conversely, if the Chief Auditor withdraws, the FNEMC and the Ministry may remain Parties. However, if the FNEMC withdraws from this MOU, the MOU is terminated entirely.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS PROCESS MOU THIS 22 DAY OF August, 2024, IN THE PROVINCE OF BRITISH COLUMBIA

SIGNED ON BEHALF OF EMLI as represented by the Deputy Minister of Energy, Mines and Low Carbon Innovation

ELECTRONIC COPY



Les MacLaren, Acting Deputy Minister

on behalf of Shannon Baskerville, Deputy Minister

SIGNED ON BEHALF OF THE CHIEF AUDITOR



Kevin Kirkland, Chief Auditor

SIGNED ON BEHALF OF THE FIRST NATIONS ENERGY AND MINING COUNCIL



Dave Porter, Chief Executive Officer

Appendix A

Audit Unit Processes for Annual Planning and Audit

1.0 BACKGROUND

The Chief Auditor is a statutory function set out under Section 2.1 of the *Mines Act*. This role was established in August 2020 through amendments to the *Mines Act*. The Chief Auditor, by way of the Mine Audits Unit (the Audit Unit), conducts audits that evaluate the effectiveness of the regulatory framework for mining in British Columbia and makes recommendations to Government for continuous improvement.

The Audit Unit uses a standard performance audit practice to guide this work, which includes a procedure for selecting audit topics for consideration by the Chief Auditor (i.e., annual planning) and a four-step process to guide the individual audits (i.e., Audit Planning, Examination, Reporting and Follow-up). Each audit focuses on an area of mining operations that is regulated by the Ministry of Energy, Mines and Low Carbon Innovation (the Ministry). In conducting an audit, the Audit Unit generally assesses the effectiveness of mining regulations across three lines of inquiry:

- Mining sector compliance, safety, and environmental performance
- Ministry policies, programs, practices, and actions
- Current regulatory requirements

The Audit Unit does not make decisions that directly impact policies, programs, or the regulatory system for mining in British Columbia. Nor does it make decisions about individual mine projects or mine sites. Rather, the recommendations and information provided by the Audit Unit can help inform decisions Government makes respecting the mining regulatory framework in B.C.

2.0 ANNUAL PLANNING PROCESS

The process for developing the Annual Audit Plan is outlined in Figure A (p. 4). While this process focuses on identifying and prioritizing new topic areas, future annual planning cycles may also include express steps to identify and prioritize audits that follow-up and assess the Ministry's progress against previous audit recommendations. Per the *Mines Act*, the Chief Auditor must publicly release an Audit Plan each year.

The steps outlined below provide additional detail on the annual planning process steps shown visually in Figure A.

Step 1 Identify Potential Topics

The Audit Unit relies on multiple information sources to identify potential audit topics, including trend data, monitoring for emerging or recurring issues, observations from Ministry staff, and previous audit findings. The Audit Unit will solicit topics from external parties and other Ministry staff to ensure broad coverage of interests, observances, and expertise. Each year, the Audit Unit will have a solicitation campaign until a specified date. Topics received after this date may be logged and considered during the next annual planning cycle.

Collaboration Point A1 (refer to section 4.1.1.c)

Step 2 Mandate Screening

The Audit Unit will screen topics to ensure they align with the Audit Unit's mandate. Topics unrelated to the Audit Unit's mandate will be screened out from further consideration. The Audit Unit will make every effort to redirect the screened-out topics to another program area or public body, where possible. The Audit Unit will archive topics that do not currently align with mandate (e.g., related to the work of other ministries) or require further investigation for consideration later. Potential topics aligned with the Audit Unit's mandate will move forward in the process.

Step 3 Subject-Matter Categorization

The Audit Unit will separate potential topics into categories, based on overarching themes, such as environmental effects or worker health and safety effects. Each category of topics will be evaluated and prioritized separately. This categorization will help ensure that the Annual Audit Plan includes a variety of topics and makes the most effective use of Audit Unit resources.

Step 4 Prioritization: Understand Topics

The Audit Unit undertakes research, including engagement with subject-matter experts (e.g., Ministry staff, Indigenous people, and industry), to understand the potential topics based on various prioritization factors, such as:

- Importance of the topic for a responsible and well-regulated mining sector.
- Relevance of the topic given current trends, incidents, observations, industry participation/compliance, Gender-Based Analysis+ factors, regulatory framework, etc.
- Level of interest within and across the Ministry, other provincial agencies, the government of the day, and stakeholders.

Prioritization: The Audit Unit will assess the topics to determine topic auditability (i.e., a practical assessment of whether the Audit Unit can complete the audit given available resources, including expertise and data) and the potential to add value and promote change in mining regulatory oversight. With respect to adding value and promoting change, the Audit Unit will consider timing and duplication of efforts. As such, the Audit Unit will assess whether the Ministry is currently working on any of the proposed topics and/or the length of time since the introduction or amendment of relevant regulatory requirements.

Prioritization: Based on the aforementioned factors, the Audit Unit will develop a shortlist of priority audit topics for the Chief Auditor’s consideration

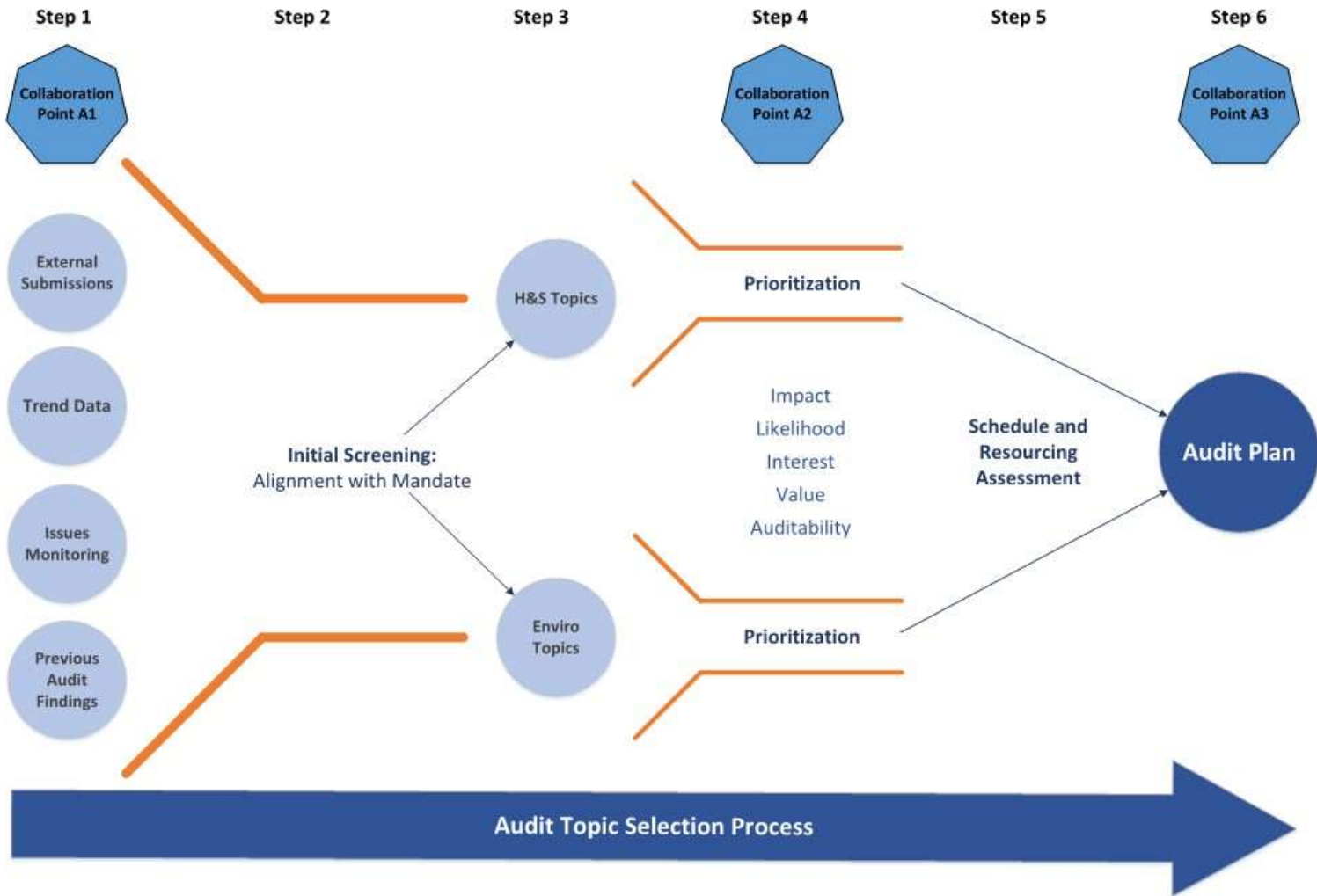
Collaboration Point A2 (refer to 4.1.1.d)

Step 5 Chief Auditor Decision The Chief Auditor will decide on the topics to include in the Annual Audit Plan, with consideration of the priority topics generated during Step 4. The Audit Unit will preserve any topics that are not included in the Annual Audit Plan for consideration in later years.

Step 6 Publish the Annual Audit Plan Under the direction of the Chief Auditor, the Audit Unit will prepare the Annual Audit Plan, which will identify the audit topics for the year. The Chief Auditor will publish the Annual Audit Plan on the Audit Unit website, in accordance with Section 2.3(b) of the *Mines Act*. The Chief Auditor may engage with interested parties prior to public release of the Annual Audit Plan.

Collaboration Point A3 (refer to 4.1.1.e)

FIGURE A: ANNUAL PLANNING PROCESS



3.0 AUDIT PROCESS

The process diagram for individual audits is outlined in Figure B. While each audit is unique, every audit will generally include the following four iterative phases:

- **Planning** – Establish a comprehensive understanding of the audit topic and develop the design for examination.
- **Examination** – Using the approved Terms of Reference, collect and analyze data for the purposes of establishing findings and developing conclusions in response to the audit objective(s).
- **Reporting** – Develop and release a report summarizing key audit findings, conclusions, and recommendations.
- **Follow-up** – Monitor and report out on the Ministry’s progress against commitments made in relation to previous audit recommendations.

3.1 Planning Phase

During the planning phase, background information is gathered to determine the specific objective, scope, and design of the audit.

At the outset of the planning phase, the audit scope is usually defined in very broad terms. The Audit Team conducts high-level research (i.e., knowledge of business) to understand current context of the audit topic within B.C. Generally, knowledge of business will involve a more detailed assessment of the information gathered in Step 4 of annual planning (e.g., trends, incidents, observations, industry participation/compliance, Gender-Based Analysis+ factors). This research is used to select the most crucial aspects of the topic for focus within the audit and develop the objective (i.e., purpose) and scope of the audit. In doing so, audit resources can be devoted to a few key areas that can add value and promote positive change in the regulatory system. Audit criteria (i.e., expectations for a well-functioning system) and accompanying audit questions are developed for use during examination to determine regulatory effectiveness. The criteria and questions form the basis for determining the data and information needs in examination and designing the methods for collecting and analyzing the data and information. The planning phase concludes with the public release of the Terms of Reference for the audit, which are approved by the Chief Auditor.

The Audit Unit engages with the Ministry throughout the Planning Phase, particularly during knowledge of business and development of criteria, to ensure the Audit Unit understands the BC context and the Ministry’s understanding of the topics.

Collaboration Point B1 (refer to section 4.1.2.c)

3.2 Examination Phase

The examination phase is the point of the audit in which data and information are collected and analysed to answer the audit questions. Generally, this involves analysing a variety of data sources, including observations from site visits, results from interviews and surveys, and information from other jurisdictions, literature, and internal databases. These analyses will produce findings in relation to the audit criteria, which in turn will inform the development of a conclusion(s) in response to the audit objective(s). Findings should be based on an objective assessment of the evidence produced through examination. As such, the Audit Team should remain independent to conduct the studies during examination.

Collaboration Point B2 (refer to section 4.1.2.d)

3.3 Reporting Phase

The Audit Unit produces a final report for the consideration and approval by the Chief Auditor. The Chief Auditor must provide the report to the Minister and release it publicly. The final report outlines the findings and conclusion for the audit, and includes recommendations, if any. Recommendations are suggestions to the Ministry for continuous improvement related to the audit topic as identified during examination. Prior to releasing the final report, the Audit Unit provides a detailed briefing to the Ministry to help them understand the recommendations for the purpose of developing an informed response and action plan. There may be engagement with stakeholders and Indigenous partners who were involved in the audit or who may be affected by the audit results.

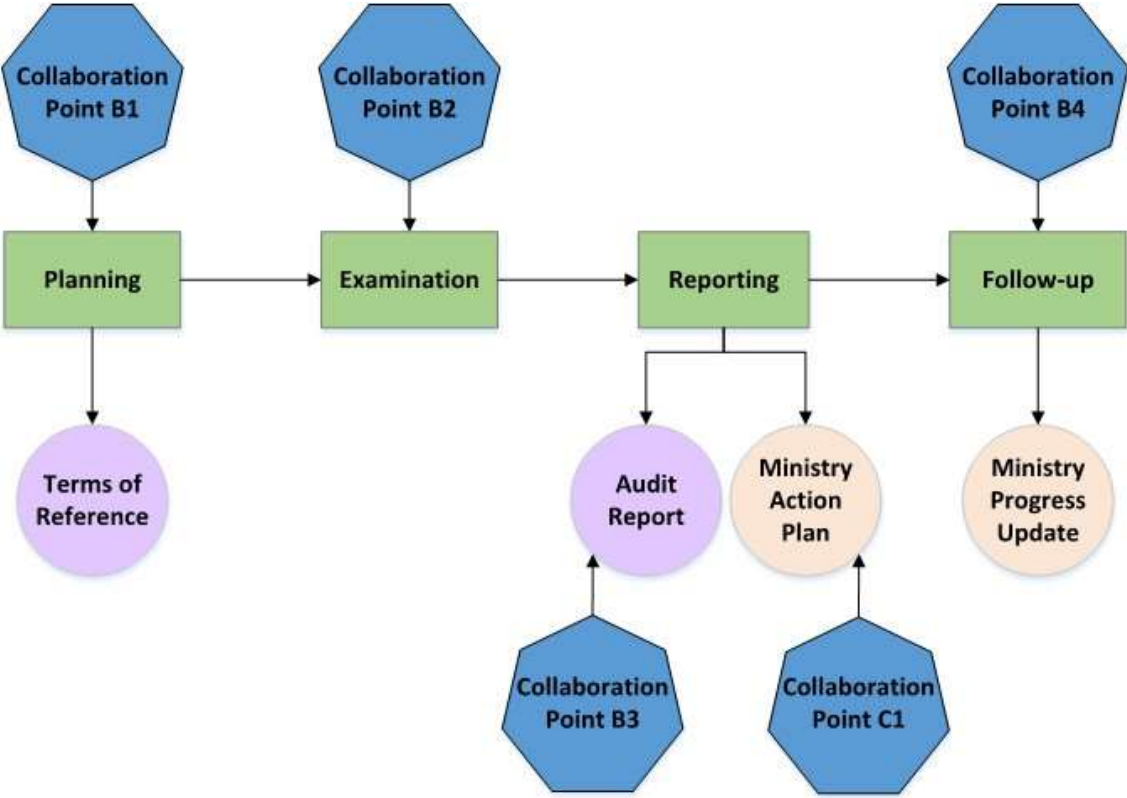
Collaboration Point B3 (refer to section 4.1.2.e)

3.4 Follow-up Phase

The final phase of an audit, follow-up, is a standard part of audit process best practice that follows the release of the Chief Auditors report and the associated Ministry response and action plan, if one is prepared. During this phase, the Audit Unit assesses and measures the Ministry's progress against the Chief Auditor's recommendations and the Ministry's committed actions, if provided. This is a necessary element in the cycle of accountability to improve regulatory effectiveness. Follow-up is generally a multi-year process as it can take time to fully implement actions in relation to the recommendations of any given audit. The Audit Unit has not yet developed processes for this phase.

Collaboration Point B4 (refer to section 4.1.1.f)

Figure B: AUDIT PROCESS



4.0 AUDIT Response

As consistent with standard performance audit practices, the Ministry is provided a draft version of the audit report, including any recommendations, for review and comment as part of the Reporting phase of the audit. Once the Ministry receives the draft report, response preparation may commence. The response may include an action plan intended to address any recommendations put forth by the Chief Auditor.

The Ministry's response may be made publicly available.

Collaboration Point C1 (refer to section 4.2.1.b)