



Memorandum of Understanding between the NAO and the BBC

June 2017

Purpose of the Memorandum of Understanding

1 This Memorandum of Understanding (“Memorandum”) between the British Broadcasting Corporation (‘the BBC’) and the Comptroller and Auditor General (the “Comptroller”, and together with the BBC, the “Parties”):

- is drafted pursuant to clause 55(8) of the framework agreement dated 7 November 2016 (the “Framework Agreement”);
- documents the understanding underpinning the Royal Charter which received Royal Assent on 8 December 2016 (the “Charter”) and the Framework Agreement with regard to the Comptroller’s examinations in accordance with the National Audit Act 1983 into the economy, efficiency and effectiveness with which the BBC and its Relevant Subsidiaries (defined below) have used their resources in discharging their functions;
- balances the need to protect the BBC’s creative, journalistic and editorial independence with the importance of the Comptroller having discretion to determine which examinations should be carried out and how they are reported;
- recognises that the BBC’s commercial subsidiaries must carry out their work according to the commercial criteria, as defined by clause 23(5) of the Framework Agreement and recognises that different parts of the BBC operate in different contexts, including that the commercial subsidiaries operate in a competitive environment where they are expected to compete fairly in an open market of providers;
- describes how the BBC and the Comptroller expect to work together to ensure a collaborative and effective exchange of information and to minimise practical impediments to examinations by the Comptroller; and
- has the overall aim of ensuring the efficient and effective delivery of both the BBC’s and Comptroller’s functions.

2 In this Memorandum, wherever the context requires, references to the Comptroller include the National Audit Office (“NAO”) and its officials.

3 This Memorandum does not create contractual obligations.

The Comptroller’s power to conduct examinations

4 The Comptroller and Auditor General, as head of the NAO, helps Parliament to hold to account those responsible for the use of public resources. In order to perform this function effectively, the Comptroller has wide-ranging powers within a statutory framework that enshrines his or her independence and ability to exercise discretion in the choice and conduct of his or her work.

5 As set out in the Charter, the BBC must be independent in all matters concerning the fulfilment of its mission and the promotion of its public purposes, particularly as regards editorial and creative decisions, the

times and manner in which its output and services are supplied, and in the management of its affairs. The BBC must also observe high standards of openness and seek to maximise transparency and accountability.

6 The Charter and the Framework Agreement provide for the Comptroller to perform examinations into the economy, efficiency and effectiveness of the BBC and its relevant subsidiaries as defined in clause 75 of the Framework Agreement (the “Relevant Subsidiaries”).

7 The Framework Agreement confirms that the Comptroller is the financial auditor of the BBC and the Relevant Subsidiaries, triggering the Comptroller’s statutory examination powers under section 6 of the National Audit Act 1983. The audit arrangements for examinations of public bodies are designed to protect the Comptroller’s independence, including the ability to decide which examinations to undertake and the ability to report on those examinations.

8 Consistent with clauses 55(6) and 55(7) of the Framework Agreement, the Comptroller is not entitled to question the merits of the policy objectives of the BBC or a Relevant Subsidiary and the Comptroller’s functions do not include the activity of the BBC and the Relevant Subsidiaries of making editorial or creative judgments concerning output and services. This means that the Comptroller will not be entitled to question the merits of any editorial or creative judgement made by the BBC or the Relevant Subsidiaries.

9 In this Memorandum:

- “Policy Objective” shall mean, in relation to the BBC, any policy objective of the BBC Board, so far as relating to the functions of the BBC, including how its services are made and distributed; and
- “Policy Objective” shall mean, in relation to the Relevant Subsidiaries, any policy objective of the BBC Board or the Board of any Relevant Subsidiary; and
- the activity of making editorial and creative judgments includes such matters as are described in the Annex.

10 While the Comptroller will not examine the merits of policy objectives, the Comptroller may examine the efficiency and effectiveness with which the BBC or its Relevant Subsidiaries use resources to discharge their functions, including whether the capability maintained by the BBC to support policy processes and the evidence used to determine Policy Objectives are appropriate.

Relationship management

11 The BBC’s Director-General and Deputy Director-General (or equivalent position nominated by the Director-General) will have responsibility in the BBC for helping to ensure that practical impediments to the examination process are minimised as far as possible.

12 In carrying out examinations, the Comptroller will have due regard to minimising disruption to the day-to-day functions of the BBC and its Relevant Subsidiaries as far as possible.

13 The Comptroller will take account of the current and proposed work plans, reviews and reports of the BBC’s internal audit division, with the aim of avoiding unnecessary duplication.

14 The BBC will appoint a relationship manager who will manage the progress of each examination on the BBC’s behalf.

15 The Comptroller will appoint a Director who will manage the progress of each examination on the Comptroller’s behalf.

Consultation

16 The Comptroller and the BBC will be open and collaborative in the way that they work together. The Comptroller's appointed Director will maintain regular contact with the BBC's appointed relationship managers, and will provide regular updates to the Deputy Director-General, the Director of Finance, and the BBC Audit and Risk Committee, attending the Committee from time to time. The Comptroller will also hold a meeting at least annually with the BBC Audit Committee to consider progress against the Comptroller's examinations. The Comptroller and the Director-General will meet at least annually to discuss the Comptroller's examinations.

17 The Comptroller will consult with and take account of the BBC's views on the scope, timing and planning of examinations, and will share his or her programme of work with the BBC in advance.

18 The Comptroller may decide to alter the planned programme at any stage after prior consultation with the BBC and having considered any views put forward by the BBC.

19 Before carrying out any examination the Comptroller will consult the BBC. The Comptroller will produce and share with the BBC a draft scope document for the proposed examination, to facilitate consultation. To help formulate a proposed examination, the Comptroller will typically hold discussions with relevant BBC staff and make limited data and document requests in accordance with this Memorandum. Consultation with the BBC may be performed by correspondence if waiting for a meeting would be likely to prevent the timely conduct of an examination.

20 Once any examination is underway, the Comptroller may change the focus of the work within the overarching scope of the examination, for instance because of information received during the early stages of the examination. If the Comptroller proposes to change the scope or timing of an examination, it may be necessary for the BBC to be re-consulted – depending on the extent of the original consultation and the materiality of the change. The Comptroller, or such member of the NAO as he or she will appoint, will inform the BBC of the proposed change to scope or timing and discuss with the Deputy Director-General (or equivalent position nominated by the Director-General) whether there is a need for formal re-consultation.

Editorial and creative judgments and Policy Objectives

21 The presumption in this section is that both sides will seek to address potential concerns informally before considering use of the written procedure outlined below.

22 In line with the Framework and the NAO's previous exercising of its duties, the Comptroller has no desire to question the merits of the BBC's editorial and creative judgements or the Policy Objectives it sets. However, if the BBC believes that an examination, or any part of it including the resulting report, may be concerned with the matters set out at paragraph 8 above, it has the right to notify the Comptroller giving reasons for its concern.

23 Following this, the Comptroller, or such member of the NAO as he or she will appoint, shall meet promptly with authorised representatives from the BBC to discuss the BBC's concerns.

24 If, promptly following such discussions, the BBC still considers that the relevant examination may be concerned with the matters set out at paragraph 8, it will notify the Comptroller in writing, giving reasons.

25 Promptly following receipt of the notice described in paragraph 24, the Comptroller will notify the BBC in writing whether, or the extent to which, he or she agrees or disagrees with the BBC's opinion, giving reasons and having regard to paragraph 8. The Comptroller retains the discretion about what should be included within the scope of an examination. After exercising his or her discretion on editorial, creative or policy judgements in this way, the Comptroller will, if requested, attend the next meeting of the BBC Board to

explain this decision and answer Board members' questions.

26 Following the process described in paragraphs 22 to 25 above, the BBC and the Comptroller may each publish their exchange of letters, and the Comptroller may publish the relevant report. A report published by the Comptroller following the examination to which any such exchange of letters relates will include the exchange of letters if either the BBC or the Comptroller so wish.

Commercially sensitive information

27 The presumption in this section is that both sides will seek to address potential concerns informally before considering use of the written procedure outlined below.

28 In clause 55(8) the Framework Agreement calls for this Memorandum to describe how sensitive information will normally be handled, including such commercial information as may be agreed to be sensitive.

29 The Comptroller is routinely in receipt of sensitive information from the bodies he or she audits, including commercially sensitive information. The Comptroller and his or her teams handle this sensitive information and report on it in ways that protect it from disclosure except where the needs of accountability and transparency mean that disclosure is necessary in the public interest. Accordingly, the Comptroller is committed to the careful handling of the BBC's commercial information. There may be occasions in the course of an examination when the BBC's commercial considerations have to be balanced against the needs of public accountability and transparency. These are matters for the Comptroller's discretion. However, if the BBC believes that an examination, or any part of it including the resulting report, may lead to the disclosure of commercially sensitive information, it has the right to notify the Comptroller giving reasons for its concern.

30 Following this, the Comptroller, or such member of the NAO as he or she will appoint, shall meet promptly with authorised representatives from the BBC to discuss the BBC's concerns.

31 If, promptly following such discussions, the BBC still considers that the relevant examination may lead to the unnecessary disclosure of commercially sensitive information, it will notify the Comptroller in writing, giving reasons.

32 Promptly following receipt of the notice described in paragraph 31, the Comptroller will notify the BBC in writing whether, or the extent to which, he or she agrees or disagrees with the BBC's opinion, giving reasons. The Comptroller has final discretion about what information to publish.

33 For the avoidance of doubt, the Comptroller will not disclose the information in question until he or she has notified the BBC in writing as set out in paragraph 32, and the BBC will not withhold, or delay the provision of, information requested by the Comptroller because it disagrees with the Comptroller's decision, or pending that decision.

34 If, having followed the procedure set out in paragraphs 29 to 32 above, the BBC still objects to the Comptroller's investigation or report (either in whole or in part) on the grounds that it could lead to the unnecessary disclosure of commercially sensitive information, either the BBC or the Comptroller may issue a statement, at the time that the Comptroller's report is published, giving a general, non-sensitive description of the subject of the disagreement.

35 Outside the context of examinations, the Comptroller may from time to time receive correspondence from Members of Parliament or third parties on the subject of his or her work on the BBC. Often such correspondence will be covered by Freedom of Information regulations. Where it is not, the Comptroller will follow a suitable clearance process with the BBC's Director of Finance (similar to that set out in paragraphs 44 to 46) to ensure the accuracy of any proposed reply to correspondence and to highlight any sensitivities (including commercial sensitivities). The Comptroller will give careful consideration to the BBC's

representations before issuing a reply.

Access to information

36 Under clause 55 of the Framework Agreement and the National Audit Act 1983, the Comptroller has a right of access at all reasonable times to all such documents and information as he or she may reasonable require from the BBC and the Relevant Subsidiaries for carrying out examinations, along with such assistance, information or explanation which the Comptroller reasonably requires in relation to any of those documents. Such documents include:

- Those held or controlled by a person who is or has been in receipt of a grant from the BBC or a Relevant Subsidiary and which relate to the grant paid;
- Those held or controlled by a person who has or had a contractual obligation to supply goods or services to the BBC or a Relevant Subsidiary either directly or under a subcontract in relation to a main contract with the BBC or a Relevant Subsidiary, and which relate to the contractual obligation.

For the avoidance of doubt, this clause applies to suppliers which receive payment from the BBC or a Relevant Subsidiary (including payment in kind) and not to customers or co-investors which do not receive payment (for instance co-investors in co-productions). With regard to the BBC's relationship with such co-investors, the Comptroller will have a right of access (as described above) to all information that the BBC or its Relevant Subsidiaries hold. In the unlikely event of a difference of opinion, the Comptroller retains the discretion to decide whether a third party is a supplier or a co-investor. In normal circumstances, requests for documents, information, assistance, or explanation from third party suppliers will initially be channelled through the BBC and its Relevant Subsidiaries, although to avoid inefficiency the Comptroller may contact third party suppliers directly thereafter.

37 The Comptroller and the BBC shall use reasonable endeavours to agree in advance how such information as may be agreed to be sensitive will be accessed, used, secured and destroyed. Such procedures may include the use of named staff, set times, data rooms, passwords and other such controls.

38 The Comptroller will request data only for the performance of examinations into the economy, efficiency and effectiveness of the BBC and its Relevant Subsidiaries or for determining what the programme and scope of examinations should be.

39 Where the Comptroller requests information from the BBC, the Comptroller will ensure the request is specific and relevant to the examination. The BBC will consider the request promptly, and will pro-actively consider whether it has additional information relating to the request that it could also helpfully share.

40 The Comptroller and the BBC will endeavour to resolve promptly any disagreements about the provision of information, including by escalation within their respective organisations, as appropriate. During any period when the Comptroller and the BBC are engaged in the processes set out at paras. 21 to 33 above (to determine editorial, creative, policy or commercial matters), the normal flow of information to the Comptroller, outside the specific matters in dispute, is to continue.

41 The Comptroller may request information that the BBC considers touches on an editorial or creative judgment or Policy Objective to allow him or her to reach judgements about the BBC's economy, efficiency and effectiveness. The making of such requests will not be interpreted by the BBC as an intention on the Comptroller's part to comment on the merits of editorial or creative judgements, or Policy Objectives. Likewise, the Comptroller will not interpret the receipt of such information as conferring a right to comment on such matters. On the occasions that the Comptroller's requests for data touch on information relating to editorial or creative judgments or Policy Objectives, the request will be authorised by a senior NAO employee, usually the Director leading the examination.

42 The Comptroller will not require the BBC to provide access to or disclose information where the BBC can demonstrate that doing so would conflict with the public interest in maintaining the confidentiality of journalistic sources and material. Should the Comptroller receive information from the BBC relating to confidential journalistic sources or material, he or she will only disclose it to others when required to by law, for instance the Proceeds of Crime Act.

43 Where information must be disclosed by law (other than the National Audit Act 1983), the Comptroller will release it only to those legally entitled to receive it and only after having notified the BBC where such notification is in accordance with applicable law. The Comptroller will notify the BBC of such requests in a timely manner and the BBC will provide any written representations in the same manner. The Comptroller will consider such representations prior to disclosure.

Preparing the report for publication

44 The Comptroller will report on examinations of the BBC in the same way as he or she reports on other bodies, with standalone reports published by the NAO and laid in Parliament. The Comptroller will follow a clearance process to ensure the accuracy of any examination's report.

45 The clearance process is intended to focus on the factual accuracy of the report, and to highlight any sensitivities (including commercial sensitivities), but the BBC may also provide comments on the presentation of the findings.

46 The Comptroller will give the BBC advance notice of the timetable for clearance of each report; the timetable will typically be similar to that which the Comptroller uses for similar reports on other public bodies. Clearance will typically include an emerging findings meeting between the NAO and the BBC.

47 Prior to publication, the Comptroller will provide a copy of any report to the BBC's Director of Finance. Having discussed the relevant report with this individual, and having had due regard to their comments, the Comptroller shall provide a further near-final copy of the relevant report (as amended, as the case may be) jointly to the BBC's Director-General and Deputy Director-General (or equivalent position nominated by the Director-General). Within the time available to them, as set out in paragraph 46 above, the BBC Director-General and Deputy Director-General may discuss the relevant report with the BBC Board. The Comptroller shall likewise have due regard to any comments relating to a report provided by the BBC's Director-General and Deputy Director-General.

48 Except with the consent of those concerned, and in accordance with applicable data protection law, a report by the Comptroller will not name any individual engaged by the BBC, its commercial subsidiaries, suppliers or co-investors below the level of senior management.

49 Where third parties are referred to in the draft report, or can be identified from what is said, they will be given a formal opportunity to comment on those aspects of the draft that relate to them prior to the report being published and the Comptroller shall have due regard to any such comments.

50 The Comptroller has final discretion over the report's content. The conclusions and recommendations in the final report, particularly any value for money conclusion, remain at the discretion of the Comptroller.

51 The Comptroller has the discretion to issue a report with which the BBC disagrees. In such circumstances the BBC will be given an opportunity to write to the Comptroller setting out the nature of the disagreement in advance of the Comptroller issuing the report. The Comptroller will set out the nature of the disagreement within the report and use best endeavours to agree this for factual accuracy and completeness with the BBC prior to the report being published. Should the BBC not be content with the description of the disagreement in the report, it reserves the right to publish its original letter of disagreement.

Date of publication

52 The Comptroller will notify the BBC at the earliest opportunity of the date on which he or she proposes to publish a report, giving the BBC the opportunity to make representations about the timing of the publication, in particular as to any difficulties that could arise with publishing the report on that date. Where practicable, the Comptroller will accommodate any concerns raised by the BBC about the date of publication.

53 The BBC and the Comptroller will each share in draft any press notices intended for publication alongside the report.

Review

54 This Memorandum may be amended at any time by agreement in writing between the BBC and the Comptroller.

Conflicts

55 If there is any conflict between the terms of this Memorandum and those of the Framework Agreement, the terms of the Framework Agreement shall apply.

Signed:

Director-General, BBC ...Lord Tony Hall.....

Date ...4 July 2017.....

Comptroller and Auditor General ...Sir Amyas Morse.....

Date ...4 July 2017.....

Annex

In this Memorandum, the activity of making editorial or creative judgments concerning the BBC's or any Relevant Subsidiary's output includes the making of any decisions of the following kinds:

- (a) what services should comprise the UK public services (as set out in Schedule 1 of the Framework Agreement), the editorial objectives of each such service and the level of resources allocated to each such service;
- (b) whether a particular item of content should be created, the editorial objectives of that item and the judgement as to which supplier is best placed to meet those objectives;
- (c) whether to include any particular item of content in [the UK Public Services], when to include it, and in which service or services to include it;
- (d) any judgment as to which news stories should be investigated and/or covered by the BBC, how each story is covered, including the resources used, and how the news is presented to audiences; and
- (e) the selection of any individual (such as a director, producer, presenter or actor) considered necessary to achieve a particular editorial or creative outcome (except where there is a need to examine a potential conflict of interest).