

## Energy Efficiency Agreement with Transport Fuel Retailers

1. This agreement dated 10 July 2009 (the “Agreement”) is between the Secretary of State for Transport and the transport fuel retailers in the United Kingdom listed in Schedule 2 to this Agreement (the “Fuel Retailers”). The purpose of this Agreement is to make available, and promote, energy audits and/or energy efficiency improvement measures to transport fuel customers in accordance with Article 6.2 (b) of the Energy End-Use and Energy Services Directive 2006/32/EC (“Energy Services Directive” or “the Directive”).

### Introduction

2. The Energy Services Directive requires Member States to aim to achieve energy savings of at least 9% by 2016 by way of energy services and other energy efficiency improvement measures. The UK’s National Energy Efficiency Action Plan 2007 sets out a range of measures that will achieve that target. This Agreement will contribute to meeting the target. The Directive also aims to remove existing market barriers that impede the efficient end use of energy and to create the conditions for a market for energy services and for the delivery of other energy efficiency improvement measures.
3. Article 6 of the Directive requires energy suppliers to: provide information to assist in the design and implementation of energy efficiency improvement programmes and promote and monitor energy services and other energy efficiency improvement measures (Article 6.1(a)); refrain from activities that might impede the demand and delivery of these services / measures (Article 6.1(b)); and to ensure the availability and promotion of energy services, energy audits or other energy efficiency measures to their customers (Article 6.2).
4. The information required in Article 6.1(a) is already provided by fuel suppliers to Government through the DUKES (Digest of United Kingdom energy statistics) system and other reporting systems already in place. This information is currently considered sufficient to develop and monitor energy efficiency improvement in transport, but will be reviewed in line with paragraph 21 of this Agreement to ensure this remains the case.
5. Article 6.2 provides several options including: whether action is sought via a mandatory or voluntary approach; the range of persons from which action is required; and the action to be taken by them. The Directive specifies that any voluntary agreement must have an effect equivalent to a mandatory approach. Following consultation, the Secretary of State for Transport has decided to implement Article 6.2 through this voluntary agreement.
6. Article 6.2(a) and (b) may apply to energy distributors, distribution system operators and/or retail energy sales companies. This Agreement applies to retail energy sales companies, defined in the Directive as “a natural or legal person that sells energy to final customers”, and referred to in this Agreement as Fuel Retailers. Retail energy sales companies may supply fuel to individual consumers or to businesses. This Agreement does not apply to energy distributors<sup>1</sup> except where such distributors also fall under the

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<sup>1</sup> Defined in the Directive as “a natural or legal person responsible for transporting energy with a view to its delivery to final customers and to distribution stations that sell energy to final customers. This definition excludes electricity and natural gas distribution system operators, covered in point(p)”

definition of a retail energy sales company. The definition of a distribution system operator does not apply to transport.

7. The action to be taken by Fuel Retailers is that set out in Article 6.2(a)(ii) relating to the availability and promotion of energy audits<sup>2</sup> and/or energy efficiency improvement measures<sup>3</sup>. In order to comply with this, the specific action agreed to by signatories to this Agreement is set out in paragraph 11 and Schedule 1 of this Agreement.

## **Objective**

8. The objective of this Agreement is for road transport Fuel Retailers to help to reduce UK road transport energy consumption by ensuring energy efficiency improvement measures and/or energy audits are available to their customers. These measures and/or audits must be supported by appropriate promotion and/or consumer education initiatives.

## **Parties**

9. The parties to this Agreement are:
  - a) the Secretary of State for Transport; and
  - b) the Fuel Retailers listed in Schedule 2 to this Agreement.

## **Duration**

10. This Agreement commences on 9 July 2009 and continues for five years (the "Term"), unless terminated earlier in accordance with paragraphs 25 to 28 of this Agreement.

## **Commitment**

11. Fuel Retailers agree to:
  - a) Make available to their final customers and promote energy efficiency improvement measures and/or energy audits directly or through third parties. The measures currently agreed as a minimum, although not an exhaustive or exclusive list, are detailed in paragraphs 8 and 17 of Schedule 1 to this Agreement respectively;
  - b) Provide the Secretary of State with an annual report in accordance with paragraph 12 of this Agreement containing details of the activities undertaken by the Fuel Retailer to meet the obligations set out in paragraph 11.a) above, and include, where available, the information set out in paragraph 13 of this Agreement; and
  - c) Work collaboratively and constructively with the Secretary of State for Transport and other relevant parties to facilitate the successful achievement of the objectives of this Agreement.

## **Reporting**

12. The first reporting period for the parties to this Agreement is from [date of this Agreement] to 31 March 2010. Reports on this period must be provided to the Secretary of State for Transport by 30 June 2010. Following this, the Fuel Retailers must report their activity on an annual basis. Annual reporting periods run from 1 April to 31 March and reports must be provided by 30 June.

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<sup>2</sup> Defined in the Directive as "a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, of an industrial operation and/or installation or of a private or public service, identify and quantify cost-effective energy savings opportunities, and report the findings"

<sup>3</sup> Defined in the Directive as "all actions that normally lead to verifiable and measurable or estimable energy efficiency improvement"

## **Reporting Requirements**

13. Fuel Retailers agree to provide an annual report which includes:
  - a) A summary of activity undertaken as part of this Agreement.
  - b) Where available, a geographic breakdown of activity undertaken in each of England, Scotland, Wales and Northern Ireland.
  - c) Where available, a description of measure(s) made available and, for each measure, the:
    - i) time period over which the measure was made available;
    - ii) number of locations at which the measure was made available; and
    - iii) actual (or estimated) number of consumers taking advantage of the measure.
  - d) Where available, a description of promotion activity undertaken including the:
    - i) time period over which the promotion took place;
    - ii) number of locations at which the promotion took place; and
    - iii) actual (or estimated) number of consumers exposed to the promotion.
14. The Secretary of State agrees to review reporting requirements from time to time.

## **Monitoring and disclosure**

15. The Secretary of State must monitor progress on an annual basis beginning on 30 June 2010.
16. The Secretary of State must make this Agreement available to the public by publishing it on the Department for Transport website at [www.dft.gov.uk](http://www.dft.gov.uk).
17. The Secretary of State must publish aggregate information on performance of the parties by 31 October every year beginning in October 2010. The Secretary of State may commission and publish independent research regarding retailers' performance against the provisions of this Agreement. The Secretary of State shall not publish or disclose any information on performance identifying any Fuel Retailer or Trade Association without their prior written consent.
18. For the purposes of Freedom of Information, if any retailer can show that any information provided to the Secretary of State is commercially confidential it should clearly label that information accordingly. This will allow for commercial confidentiality to be taken into account in the event that a request for disclosure is received under the Freedom of Information Act 2000 (the "FOIA") or the Environmental Information Regulations 2004 (the "EIR") and the balance of public interests has to be determined. The Secretary of State shall inform any Fuel Retailer affected that a request under FOIA or EIR has been made and the information it proposes to disclose as a result of the request, to allow the Fuel Retailer to comment on such disclosure.

## **New parties**

19. Fuel Retailers may sign up to this Agreement at any time during the Term of this Agreement.

20. Where a party signs this Agreement during the Term but after the date of this Agreement, the obligations on that party under this Agreement shall commence on the date that party signs the Agreement.

## **Review and variation**

21. The Secretary of State must review this Agreement for the first reporting period (9 July 2009 to 31 March 2010) on or after the reporting deadline of 30 June 2010 to ensure that it continues to deliver against the objectives and requirements of the Directive. Following this, the Secretary of State must review each subsequent annual reporting period (1 April to 31 March) on or after the reporting deadline (30 June) for the remainder of the Term.
22. Where, following a review under paragraph 21, the Secretary of State determines that this Agreement is failing to meet the objectives and requirements of the Directive, the Secretary of State may propose changes to this Agreement. The proposed changes must be circulated to all parties with a proposal explaining why the changes are being proposed and inviting the other parties to comment on the proposals by a date specified by the Secretary of State (the "Proposal").
23. Once the Secretary of State has considered the comments received, he or she shall notify the other parties in writing of the changes that he or she intends to make to the Agreement. The changes shall become effective on the publication of the amended Agreement on the DfT website at [www.dft.gov.uk](http://www.dft.gov.uk), which shall take place at least 7 days after the parties have been notified.
24. Any party that does not approve of any changes made to this Agreement may terminate their participation in accordance with paragraph 27 of this Agreement.

## **Termination**

25. The Secretary of State may terminate this Agreement by giving three months' notice in writing to the other parties in the following circumstances:
  - a) in response to changing legislative or policy frameworks or requirements;
  - b) in response to any assessment by the European Commission; or
  - c) with the written consent of all parties.
26. Any Fuel Retailer may terminate their participation in this Agreement by providing the Secretary of State for Transport with three months' notice in writing.
27. Where changes are made to the Agreement under paragraph 24 above to which any party does not approve that party may terminate their participation in this Agreement immediately by providing the Secretary of State for Transport with written notice of their decision.
28. Where any Fuel Retailer or group of Fuel Retailers chooses to terminate its participation in this Agreement, and as a result of that termination there is a significant reduction in the percentage of fuel throughput covered by the remaining Fuel Retailers, the Secretary of State may terminate this Agreement immediately and adopt a regulatory or statutory approach that applies to the entire road transport fuel supply industry.

## **Notices**

29. A notice given under this Agreement must be in writing and either delivered by hand or sent by facsimile, e-mail or registered post. The address of each party for the service of notices is set out in this Agreement, unless that address has been changed by notice given under this paragraph.
30. The address for service of the Secretary of State is Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR. The facsimile for service of the Secretary of State is 020 7944 2512. The addresses for service for the other parties to this agreement can be found in Schedule 2 of this Agreement.
31. A notice sent by registered post shall be treated as received 2 working days after the date of posting. A notice delivered by hand or sent by facsimile or e-mail shall be treated as received on the day it was delivered or sent, unless it was delivered or sent outside normal working hours of the recipient in which case it shall be treated as received on the next working day.

## **Counterparts**

32. This Agreement may be executed in any number of counterparts and this will have the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**Signature Page**

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Lord Adonis  
Secretary of State for Transport

Date

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For and on behalf of

Date

## **SCHEDULE 1**

### **Energy efficiency improvement potential**

1. There is significant potential to improve end-use energy efficiency in the transport sector through relatively small actions by end-users. The provision of measures such as tyre pressure gauges and air pumps, eco-driving lessons and vehicle maintenance checks, alongside their promotion and the provision of information, can lead to action resulting in verifiable energy efficiency improvements. Energy audits have also been shown to result in potentially significant improvements in energy efficiency.
2. In order to bring about these energy efficiency improvements it is important not only to provide the measures necessary for consumers to achieve them and to promote these measures to improve awareness, understanding and a willingness to undertake them.
3. This Schedule sets out the activities proposed to assist Fuel Retailers in meeting their commitments under this Agreement and aims to maximise the potential energy efficiency savings from end-user action.

### **Energy Efficiency improvement measures versus energy audits**

4. Article 6.2(a)(ii) allows Fuel Retailers to make a choice between the provision of energy efficiency improvement measures and/or energy audits. The Directive definitions of these terms highlight a difference in the type of consumer to which they apply when considered in relation to transport; energy audits apply to fuel consumers who run a service whereas energy efficiency improvement measures apply irrespective of whether the consumer runs a service. A consumer for whom an energy audit could be offered directly or via a third party might include, for example, a bus operator or haulage company.
5. This difference should be considered by Fuel Retailers when looking at their actions under this Agreement. In particular, Fuel Retailers should consider whether any energy efficiency improvement measures or energy audits put in place are appropriate for all their final consumers. For example, providing tyre pressure gauges and air pumps on forecourts may not adequately address the needs of consumers whose service may be run from a dedicated depot with a separate fuel supply. The offer of an energy audit might be more appropriate.
6. Fuel Retailers should consider the make-up of their consumers when considering whether to provide energy efficiency improvement measures, energy audits or both. Where energy audits are provided, Fuel Retailers must take account of the provision of Article 12 of the Directive which requires energy audits to be efficient, high-quality audits carried out in an independent manner. Article 12 allows for audits to be carried out through questionnaires and computer programmes made available on the internet and/or sent to customers by mail where the market sector has higher transaction costs and non-complex facilities.

### **Potential options for ensuring the availability of energy efficiency improvement measures**

7. Fuel Retailers must ensure the availability, either directly or indirectly, of energy efficiency improvement measures to their customers.

8. Fuel Retailers may choose to provide any of the energy efficiency improvement measures listed below, or may identify other similar measures that meet the Directive definitions and requirements.
  - a) The provision of eco-driving lessons which focus on those driving practices that improve fuel efficiency; and/or
  - b) The provision of vehicle maintenance checks which focus on measures that improve fuel efficiency; and/or
  - c) The provision of accurate and appropriately maintained tyre pressure gauges and air pumps on forecourts; and/or
  - d) The provision of low rolling resistance tyres; and/or
  - e) The offer of fuel efficiency audits which include tailored advice on consumer actions to improve fuel efficiency; and/or
  - f) The provision of advanced fuels with proven fuel efficiency benefits; and/or
  - g) The provision of high performance lubricants with proven fuel efficiency benefits; and/or
  - h) The sale of tyre pressure gauges and air pumps.
9. The chosen measure(s) must be implemented for at least 4 weeks every year. The measure(s) does not have to be provided free of charge.
10. Any measure(s) implemented by a Fuel Retailer that is not listed under paragraph 8 of this Schedule should be included in the reports required under paragraphs 14 to 16 of this Agreement.

### **Promotion of energy efficiency improvement measures**

11. Fuel Retailers agree to promote the energy efficiency improvement measures it puts in place to meet the requirements of this agreement and may choose to promote further measures.
12. Fuel Retailers may choose to promote the energy efficiency improvement measures by working with Government communications campaigns. However, where a Government campaign ends for any reason, the Fuel Retailer must continue to promote the energy efficiency improvement measures.
13. Where a Fuel Retailer agrees to work with a Government campaign, it agrees to do so in line with the campaign's key messages, guidelines and working practices on material where the Act on CO2 logo is used. Fuel Retailers may work with Government campaigns to develop bespoke campaigns or tailored generic artwork, or may obtain promotional and marketing items from a suite of items (referred to as a "Toolkit").
14. Details of how to obtain Toolkit items will be published on the Department for Transport website at [www.dft.gov.uk](http://www.dft.gov.uk). The Secretary of State has no obligation to provide the Toolkit items where the Government campaigns under which they are supplied have ended. Toolkit items may be unavailable or only available in limited numbers where high demand has depleted or exhausted stocks.
15. In order to ensure that messages received by the public are refreshed from time to time, where provision under this Agreement is linked to a Government campaign, the supplier should, as soon as is reasonably possible, act on changes made to that campaign as it develops over time. Where there is no such linkage the Fuel Retailer should endeavour to make changes over time to ensure a refreshed message is publicised. These changes must be reported to the Secretary of State as part of the annual report.

## **Potential Options for ensuring the availability of energy audits**

16. Fuel Retailers must ensure the availability, either directly or indirectly, and promotion of energy audits to relevant customers (see paragraphs 4 to 6 of this Schedule for details on the application of energy audits).
17. Fuel Retailers may choose from one or more of the energy audits listed below, or may develop other similar energy audits that meet the Directive definitions and requirements:
  - a) independent on-site energy audits to their customers which systematically assess current fuel use and identify and quantify cost-effective fuel saving opportunities; and/or
  - b) independent on-line or paper-based energy audits to their customers which assess current fuel use, identify and quantify cost-effective fuel saving opportunities based on the information provided.
18. Fuel Retailers may fulfil their obligation to promote energy audits, where offered, by providing clear information directing consumers to these services, which may be included on, inter alia, invoices, till receipts, posters or other media readily accessible by the consumer.
19. The chosen audit type(s) must be implemented and promoted for at least 4 weeks every year. The audit(s) does not have to be provided free of charge.

## **SCHEDULE 2**

**Fuel Retailers that have signed up to this Agreement:**