

SAVINGS GUARANTEE AGREEMENT

Between

TotalEnergies Distributed Generation USA, LLC

And

Contra Costa County, A California Municipality

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SAVINGS GUARANTEE AGREEMENT

THIS SAVINGS GUARANTEE AGREEMENT (“Agreement”) dated [_____] (“Effective Date”), is entered into by and between TotalEnergies Distributed Generation USA, LLC, a Delaware limited liability company (“TEDGUS”), with its principal place of business at 1414 Harbour Way South, Richmond, California 94804, and Contra Costa County (“Customer”), a California Municipality. In this Agreement, TEDGUS and Customer are referred to individually as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, TEDGUS’s affiliate SolarStorage Fund D, LLC (“Provider”) has separately entered into a Battery Services Agreement, dated [##] with Customer (the “BSA”) pursuant to which Customer will purchase from Provider the Solar Services and Storage Services from the System on Exhibit A (Site Information and ESS) at the site identified on Exhibit A (the “Site”);

WHEREAS, capitalized terms not otherwise defined in this Agreement shall have the meanings given such terms in the BSA

WHEREAS, the System is owned by the Provider;

WHEREAS, TEDGUS and Customer desire to enter into an agreement pursuant to which TEDGUS guarantees that the System will provide the Guaranteed Savings.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, TEDGUS and Customer agree as follows:

ARTICLE I. DEFINED TERMS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

Achieved Savings has the meaning set forth in Section 2.03.

Baseline Billing Cycle Energy Spread shall be equal to the values set forth in Exhibit B for each Billing Cycle.

Baseline Demand Charges shall mean the annual sum of demand charges paid by Customer at the Site before the installation of the System as set forth in Exhibit A.

Billing Cycle means the period, typically monthly, during which the Utility assesses an electricity bill, including demand charges, at the Site.

Billing Schedule shall mean the dates of (a) the Billing Cycles set by the Utility for the Site and (b) the schedule of the exact days of the year which shall be considered holidays by the utility for billing purposes.

Commercial Operation Date shall mean the date on which the ESS commences commercial operation after required permits, licenses, and interconnection agreement have been obtained.

Current Billing Cycle Energy Spread shall be equal to, for any Billing Cycle in a Guarantee Year, the difference between (a) the highest energy rate (in \$/kWh) effective under the Utility Tariff in that Billing Cycle and (b) the average, of Off Peak and Super Off Peak (when applicable) energy rates (in \$/kWh) effective under the Utility Tariff.

Consumption Meter shall mean a revenue-grade kWh meter at the Site's main utility meter, which shall measure the kWh consumption and grid export of the Site.

ESS Meter shall mean a revenue-grade kWh meter at the ESS inverter, which shall measure the kWh charge and discharge of the ESS.

ESS Energy Savings Percentage Contribution has the meaning set forth in Section 2.01.

Exclusion Event means one of the following events affecting any savings provided for herein:

- A Force Majeure Event;
- Any temporary or permanent quarantines, blockades, rules or regulations, enacted or imposed by governmental authorities causing any disruption to System energy generation or impedance to a Party's Site access;
- Changes in any law, ordinance, or regulation relating specifically to the design, construction, installation, interconnection or operation of the System which law is effective after the Effective Date of this Agreement that materially and adversely affects the ability of a Party to perform its obligations under this Agreement or under the BSA;
- Increase in external shading on the PV System over the Savings Guarantee Term;
- If Customer or any person other than TEDGUS or a subcontractor, affiliate, or predecessor-in-interest specifically approved by TEDGUS repairs, modifies or alters the System;
- Site access restrictions affecting TEDGUS's, its subcontractor's, affiliate's, or predecessor-in-interest's ability to access, maintain, or repair the System in a timely fashion as deemed necessary or advisable by TEDGUS;
- Customer is in breach of any Customer obligations under the BSA;
- Loss of telecommunications service to the System for reasons outside of TEDGUS's control;
- Any curtailment or operation of the System ordered by the Utility;
- Operation of the ESS in backup power or microgrid mode;

- The System is down for repairs that are the responsibility of an original equipment manufacturer (“OEM”) or otherwise not TEDGUS’s responsibility;
- Any curtailment or operation of the System ordered by the Utility;
- Externally caused outages of the System, including outages caused by:
 - a fluctuation in the Utility network parameters (e.g., a frequency or voltage variation) that disconnect the inverters or System from the utility network and prevented energy from being evacuated from the System;
 - a manufacturer of any third-party equipment’s inability or unwillingness to honor its product warranty to TEDGUS for the replacement of parts, despite TEDGUS’s commercially reasonable and good faith efforts to enforce such product warranty;
 - a failure or outage in the Utility distribution network that prevents energy from being evacuated from the System;
 - Disconnection of power or communication lines connected to the System, or activation of the Emergency Stop Button on the System, by anyone other than TEDGUS’s representatives, or the Customer or Customer representatives acting at the explicit direction of TEDGUS’s representatives; or
 - Customer.

Force Majeure Event means an event outside of the reasonable control of the implicated Party, despite the exercise by such Party of commercially reasonable efforts to overcome such event(s), including without limitation acts of God, fire, earthquake, wind, floods, water, storms, inclement weather, utility curtailments, power failures, mechanical or equipment failures, animal activity, explosions, war, pandemics, epidemics, civil disturbances, terrorism, vandalism, theft, governmental actions, embargoes, sanctions, shortages of equipment or supplies, unavailability of transportation, or acts or omissions of third parties.

Guaranteed Demand Savings shall be the amount set forth in Section 2.01.

Guaranteed ESS Energy Savings shall be the amount set forth in Section 2.01.

Guaranteed Savings shall be the amount set forth in Section 2.01.

Guarantee Year shall have the meaning set forth in Section 2.01.

In Compliance Letter shall have the meaning set forth in **Error! Reference source not found.**

Kilowatt-hour or kWh means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of a revenue-grade Meter.

Noncompliance Period shall have the meaning set forth in **Error! Reference source not found.**

Out of Compliance Letter shall have the meaning set forth in **Error! Reference source not found.**

BSA has the meaning set forth in the recitals.

PV Meter means a revenue-grade kilowatt-hour meter at the PV System, which shall measure the kWh output of the PV System on a continuous basis.

PV System means the photovoltaic system located on the Site and operated and maintained by TEDGUS or a subcontractor, affiliate, or predecessor-in-interest approved by TEDGUS.

Savings Guarantee Payment has the meaning set forth in Section 2.03c).

Savings Guarantee Term shall have the meaning set forth in Section 2.02.

Site means the site identified in Exhibit A.

Storage Services Commencement Date shall mean the first day of the first utility billing cycle after the later to occur of (a) the Commercial Operation Date, or (b) the date on which Provider shall have certified to Customer that the ESS is substantially complete and available for commercial operation.

Total Savings Percentage Contribution has the meaning set forth in Section 2.01.

Utility means the electric distribution company providing electrical service to the Site.

Utility Tariff means the tariff under which the Utility provides electrical service to the Site, which is the tariff as set forth in Exhibit A as of the Effective Date.

Utility Tariff Restructuring means a material change in the structure of the Utility Tariff. Such changes may include, but are not limited to: changes to time of use periods; the introduction of maximum demand charges, minimum demand charges or “ratchets”; changes to net energy metering affecting System eligibility or energy export valuation; changes to minimum bills or portions of bills; or the elimination of demand charges.

ARTICLE II. SAVINGS GUARANTEE

Section 2.01 Savings Guarantee

During the first twelve (12) complete Billing Cycles following the Storage Services Commencement Date, and for each set of twelve (12) complete Billing Cycles thereafter during the Savings Guarantee Term (each such period, a “Guarantee Year”), TEDGUS guarantees (the “Savings Guarantee”) to Customer that the Achieved Savings will be greater than or equal to the Guaranteed Savings, comprised of both the Guaranteed Demand Savings and the Guaranteed ESS Energy Savings, in each Guarantee Year, as set forth in the table below.

Guaranteed Demand Savings:	\$[52,000]
Guaranteed Energy Savings:	\$[33,000]
Guaranteed Savings	\$[85,000]

Exhibit B provides the expected percentage of Guaranteed Savings for each Billing Cycle in a Guarantee Year at the Site (for each month, the “Total Savings Percentage Contribution”) and the expected percentage of Guaranteed ESS Energy Savings for each Billing Cycle in a Guarantee Year at the Site (the “ESS Energy Savings Percentage Contribution”).

Section 2.02 Savings Guarantee Term

The savings guarantee term shall commence on the Storage Services Commencement Date and terminate on the earlier to occur of (a) the end of the tenth/ 10th Guarantee Year following the Storage Services Commencement Date, or (b) the termination of the BSA (the “Savings Guarantee Term”).

Section 2.03 Calculation of Achieved Savings

For each Billing Cycle in each Guarantee Year during the Savings Guarantee Term, TEDGUS will calculate the following:

a) Demand Charge Savings

- 1) “Gross Demand Charges” which shall be equal to the demand charges that would have been assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by Consumption Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the ESS Meter, plus (c) the PV System’s generation as measured by the PV Meter;
- 2) “Net Demand Charges” which shall be equal to the demand charges assessed at the Site based on the demand charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage as measured by the Consumption Meter; and
- 3) “Achieved Demand Savings” which shall be equal to the sum, for each and all Billings Cycles in a Guarantee Year, of the difference between the Gross Demand Charges and the Net Demand Charges.

b) ESS Energy Savings

- 1) The “Post-PV Energy Charges” which shall be equal to the energy charges that would have been assessed at the Site based on energy prices in the Utility Tariff in effect during that Billing Cycle and an energy usage profile equal to the sum of (a) the Site’s energy usage measured by the Consumption Meter, plus or minus (b) the charge (minus) or discharge (plus) of the ESS as measured by the Storage Meter;
- 2) The “Net Energy Charges” which shall be equal to the energy charges assessed at the Site based on the energy charges in the Utility Tariff in effect during that Billing Cycle and the Site’s energy usage measured by the Consumption Meter; and
- 3) The “Achieved ESS Energy Savings” which shall be equal to the sum, for each and all Billing Cycles in a Guarantee Year, of the difference between the Post-PV Energy Charges and the Net Energy Charges.

- c) **Achieved Savings.** The “Achieved Savings”, which shall be equal to the sum of the Achieved Demand Savings and the Achieved ESS Energy Savings for each Guarantee Year.

Section 2.04 Savings Guarantee Payment

If in any Guarantee Year, the Achieved Savings are less than the Guaranteed Savings and such shortfall is not excused in this Agreement, TEDGUS shall pay Customer an amount equal to the Guaranteed Savings minus the Achieved Savings (the “Savings Guarantee Payment”), *provided that* the total Savings Guarantee Payment in any Guarantee Year shall not exceed the Storage Services Fees (as defined in the BSA) paid by Customer under the BSA in that Guarantee Year.

If the Achieved Savings for any Guarantee Year is greater than the Guaranteed Savings (an “Excess Savings Amount”), the Excess Savings Amount shall be credited towards calculation of the Achieved Savings in the subsequent Guarantee Year.

TEDGUS shall pay Customer the Savings Guarantee Payment, if any is payable, as a lump sum, no later than 60 days after the end of the applicable Guarantee Year.

Section 2.05 Utility Billing Period

The Achieved Savings will initially be based on the Billing Schedule effective as of the Storage Services Commencement Date. The Billing Schedule used to calculate the Achieved Savings may be updated on ten (10) day’s written notice from Customer to TEDGUS.

Section 2.06 Savings Guarantee Adjustments.

The Parties agree that the Savings Guarantee shall be adjusted in the following circumstances :

- a) If, in any Guarantee Year, the total Gross Demand Charges in that Guarantee Year are less than 90% of the Baseline Demand Charges, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed Demand Savings for that Guarantee Year, times, (2) one minus a fraction equal to (i) the Gross Demand Charges observed in that Guarantee Year, divided by (ii) Baseline Demand Charges. See Exhibit C for a sample calculation.
- b) If, for more than 10 days in any Billing Cycle of any Guarantee Year, the Current Billing Cycle Energy Spread, is less than 90% of the Baseline Billing Cycle Energy Spread for that Billing Cycle, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by an amount equal to the product of (1) Guaranteed ESS Energy Savings for that Guarantee Year, times, (2) the applicable ESS Energy Savings Percentage Contribution, times (3) one minus a fraction equal to (i) the Current Billing Cycle Energy Spread for that Billing Cycle, divided by (ii) the Baseline Billing Cycle Energy Spread for that Billing Cycle as listed in Exhibit B. See Exhibit C for a sample calculation.

- c) If one or more Exclusion Events occur during a Guarantee Year, the Guaranteed Savings to be used in calculating the Savings Guarantee Payment applicable to such Guarantee Year shall be reduced by the product of (1) the Guaranteed Savings for that Guarantee Year, times (2) the sum of the Total Savings Percentage Contributions set forth in Exhibit B for the Billing Cycle(s) during which the Exclusion Event(s) occurs. See Exhibit D for a sample calculation.
- d) In the event net energy metering credits received by Customer from the Utility exceed the Site's total annual energy charges, such that the customer does not receive full retail credit for energy exported from the Site by the ESS, the Guaranteed Energy Savings will be equitably adjusted to account for the lower value received by Customer for exported energy from the ESS.
- e) If (a) the Utility Tariff under which the Site receives electrical service from the Utility ceases to be the tariff set forth in Exhibit A hereto, (b) a Utility Tariff Restructuring occurs, or (c) the Parties agree to move the PV System or ESS from the Site to another location, the Parties will negotiate in good faith an adjustment to the Guaranteed Savings, provided that TEDGUS shall not owe Customer any Savings Guarantee Payment in a Guarantee Year to the extent such payment is owed due to the Utility Tariff at the Site ceasing to be the tariff identified in Exhibit A, a Utility Tariff Restructuring, or the PV System or ESS being removed from the Site.
- f) The Parties acknowledge and agree that the Guaranteed Savings as set forth in this Agreement are subject to change by TEDGUS prior to the Storage Services Commencement Date in the event that the (a) PV System or ESS as constructed and installed differs from the initial PV System or ESS designed and specified in the BSA.

ARTICLE III. CUSTOMER RESPONSIBILITIES

Section 3.01 Designated Contacts.

Customer hereby designates an individual as "Primary Contact" and another individual as "Secondary Contact," each of whom shall be authorized to represent Customer in the administration of this Agreement:

Primary Contact:

Name: Brendan Havenar-Daughton
Work Phone: 925-957-2473
Cell Phone: 925-812-7703
Mailing address: 40 Muir Rd Martinez, CA 94553
Fax: 510-540-0552
Email: Brendan.Havenar-Daughton@pw.cccounty.us

Secondary Contact:

Name: Warren Lai
Work Phone: 925-313-2180

Mailing address: 40 Muir Rd Martinez, CA 94553
Fax: 510-540-0552
Email: warren.lai@pw.cccounty.us

ARTICLE IV. MISCELLANEOUS PROVISIONS.

Section 4.01 Limitation of Liability.

Neither Party shall be liable under this Agreement for any indirect, consequential or punitive damages, including, without limitation, loss of profits, loss of revenue, or loss of use of any equipment or facilities. In no event shall TEDGUS's liability hereunder exceed any payment obligations arising under Section 2.03c).

Section 4.02 Technical Disputes.

In case of any technical dispute between the Parties in a matter related to the calculation of the Achieved Savings, Customer has the right to request the appointment of a technical expert (the "Expert") for the solution of the issue. The Expert shall finally determine the technical matter at issue in accordance with the provisions of this Contract, acting as arbitrator. The Expert shall deliver its determination to the Parties in writing, including an explanation of the underlying reasons, within thirty (30) calendar days after the acceptance of the mandate. The Expert's determination shall be final and binding upon the Parties. The costs of the determination, including fees and expenses of the Expert, shall be borne by the Party the Expert deems is in the wrong.

Section 4.03 Notices.

All notices or other communications given, delivered or made under this Agreement by either Party to the other Party shall be in writing and shall be delivered personally, by first-class mail, by reputable overnight delivery company, or by facsimile (with reasonable proof of successful transmission). All such notices or communications to a party shall be mailed, delivered or faxed to such party at its address shown below or to such other address as the party may designate by ten (10) days' prior notice:

If to Customer:

Contra Costa County Public Works Dept.
Capital Projects Management Division
Attn: Energy Manager
40 Muir Rd Martinez, CA 94553
Phone: 925-957-2473
Email: Brendan.Havenar-Daughton@pw.cccounty.us
Fax: 510-540-0552

If to TEDGUS:

TotalEnergies Distributed Generation USA
Alex Dey
Director, Asset Management
(512) 735-0168
alex.dey@totalenergies.com

With copy to:

TotalEnergies Distributed Generation USA
Attn: Managing Counsel - Distributed Generation
1201 Louisiana Street, Suite 1800
Houston, TX 77002
legalnoticedegus@totalenergies.com

For Emergency and/or Repair Notification:
Scott Gray
Director Commercial O&M Services
(512) 735-0110
Email: jefferson.gray@totalenergies.com

Section 4.04 Entire Agreement.

This Agreement and referenced Exhibits or other attachments hereto constitute the entire agreement regarding the subject matter of this Agreement and supersede all prior agreements and understandings between the Parties relating to the subject matter of this Agreement.

Section 4.05 Amendments.

This Agreement may not be amended, supplemented or otherwise modified except by a written instrument specifically referring to this Agreement and signed by both Parties, or as specifically allowed under the terms and conditions outlined in this Agreement

Section 4.06 No Waiver.

Failure or delay by a party to exercise any right or remedy under this Agreement shall not constitute a waiver thereof. A waiver of breach or default shall not operate as a waiver of any other breach or default, a waiver of the provision itself, or of the same type of breach or default on a future occasion. No waiver shall be effective unless explicitly set forth in writing and executed by the party making the waiver.

Section 4.07 Successors and Assigns.

Except as provided herein, no Party may assign this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Either Party may

assign this Agreement without consent to a parent or subsidiary, an acquirer of assets, or a successor by merger. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the Parties. Notwithstanding anything herein to the contrary, TEDGUS may assign all of its rights and obligations under this Agreement to an assignee that has comparable experience in operating and maintaining photovoltaic solar and storage systems comparable to the System and providing services comparable to the solar and storage Services.

Section 4.08 Severability.

If any part of this Agreement shall be invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the enforceability of any other part hereof.

Section 4.09 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 4.10 Applicable Law.

This Agreement shall be governed in all respects by the laws of the State of California, in each case without application of conflict of laws principles and without regard to the actual place or places of residence or business of the parties or the actual place or places of negotiation, execution or delivery of this Agreement.

Section 4.11 Interpretation.

Each party agrees that this Agreement will be interpreted fairly to carry out its purpose and intent. Each party waives any statute or rule of construction or interpretation, which would require that any ambiguity be interpreted against any party.

Section 4.12 No Cross-Default or Right of Offset.

For the avoidance of doubt, each Party agrees that (i) this Agreement does not create any right to terminate the BSA, and (ii) any failure of either Party to perform any obligations hereunder will not create any rights to offset any amounts owed under the BSA.

IN WITNESS WHEREOF, TEDGUS and Customer have executed this Agreement.

<p>TEDGUS:</p> <p>TotalEnergies Distributed Generation USA, LLC</p> <p>By: _____ Name: _____ Title: _____</p>	<p>CUSTOMER:</p> <p>Contra Costa County</p> <p>By: _____ Name: _____ Title: _____</p>
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EXHIBIT A: SITE INFORMATION, PV SYSTEM & ESS

Site Name: Contra Costa County 5555 Giant Hwy

Site Address: 5555 Giant Hwy Richmond, CA 94806

Estimated PV System Size: 1,426.8 kWdc / 1,316 kWac

Estimated ESS Size: 448.8 kW / 1795.3 kWh

Utility Providing Electrical Service: Pacific Gas & Electric

Utility Tariff: PG&E B-19 Option S Primary

Baseline Demand Charges: \$119,095

EXHIBIT B: TOTAL SAVINGS PERCENTAGE CONTRIBUTION, ESS ENERGY SAVINGS CONTRIBUTION AND BASELINE BILLING CYCLE ENERGY SPREADS

Billing Cycle¹	Total Savings Percentage Contribution	ESS Energy Savings Percentage Contribution	Off Peak / Super Off Peak energy price²	Peak Energy Price	Baseline Billing Cycle Energy Spread
January	5%	1%	\$0.1397	\$0.1774	\$0.0377
February	5%	2%	\$0.1397	\$0.1774	\$0.0377
March	6%	4%	\$0.1039	\$0.1774	\$0.0735
April	6%	4%	\$0.1039	\$0.1774	\$0.0735
May	7%	6%	\$0.1039	\$0.1774	\$0.0735
June	15%	21%	\$0.1569	\$0.3887	\$0.2318
July	15%	20%	\$0.1569	\$0.3887	\$0.2318
August	14%	20%	\$0.1569	\$0.3887	\$0.2318
September	14%	19%	\$0.1569	\$0.3887	\$0.2318
October	5%	2%	\$0.1397	\$0.1774	\$0.0377
November	5%	1%	\$0.1397	\$0.1774	\$0.0377
December	3%	0%	\$0.1397	\$0.1774	\$0.0377

¹ The months shown in the table above refer to the calendar month during which the majority of a Billing Cycle occurs. For example, a Billing Cycle covering the dates from January 3 – February 2 would correspond to the row labeled January in the table above.

² Represents the average of the Off Peak and Super Off Peak energy price. If there are no Super Off Peak Energy prices during a billing period, the value represented is the Off Peak energy price.

EXHIBIT C: SAMPLE ADJUSTMENTS TO GUARANTEED SAVINGS UNDER SECTION 2.06 (A) AND (B)

Section 2.06 (a)

Gross Demand Charges (a)	\$83,367
Baseline Demand Charges (b)	\$119,095
Adjustment Factor $(1 - (a / b)) = (c)$	30.0%
Guaranteed Demand Savings (d)	\$52,000
Guaranteed Demand Savings Adjustment $(c * d) = (e)$	\$15,600
Guaranteed Savings (f)	\$85,000
Adjusted Guaranteed Savings $(f - e)$	\$69,400

Section 2.06 (b)

Adjustment Month(s)	July
Current Billing Cycle Energy Spread (a)	\$0.185
Baseline Billing Cycle Energy Spread (b)	\$0.232
Adjustment Factor $(1 - (a / b)) = (c)$	20.0%
Guaranteed ESS Energy Savings (d)	\$33,000
ESS Energy Savings Percentage Contribution (e)	20%
Guaranteed ESS Energy Savings Adjustment $(c * d * e) = (f)$	\$1,320
Guaranteed Savings (g)	\$85,000
Adjusted Guaranteed Savings $(g - f)$	\$83,680

EXHIBIT D: SAMPLE ADJUSTMENT TO GUARANTEED SAVINGS UNDER SECTION 2.06 (C)

Guaranteed Savings (a)	\$85,000
Billing Cycle(s) During which Exclusion Event Occurs	July
Sum of Total Savings Percentage Contributions in Excluded Billing Cycle(s) (b)	15%
Guaranteed Savings Adjustment (a) * (b) = (c)	\$12,750
Adjusted Guaranteed Savings (a – c)	\$72,250