

## **ROAD USE ENCROACHMENT AGREEMENT**

**THIS AGREEMENT** made in triplicate this \_\_\_\_ day of August 2018

**B E T W E E N:**

**THE CORPORATION OF THE TOWN OF KINGSVILLE**  
(hereinafter referred to as the "Town")

**OF THE FIRST PART**

**-AND-**

**2081967 ONTARIO LIMITED O/A**

**Thermo Energy Systems INC.**  
(hereinafter referred to as the "Owner")

**OF THE SECOND PART**

**WHEREAS** the Owner has requested the Town, insofar as it may lawfully do so, to authorize it to construct, use and maintain a Private Electrical Service Line from its property in the Town under, over or across a Road Allowance or Municipal Infrastructure under the jurisdiction of the Town;

**AND WHEREAS** the Owner has agreed to indemnify and save harmless the Town from all losses, costs and damages by reason thereof;

**NOW THEREFORE IN CONSIDERATION** of the undertakings and agreement hereinafter expressed and upon the terms hereinafter set forth, the Town and Owner mutually covenant and agree as follows:

1. In this Agreement the following words shall have the following meanings:
  - (a) "Municipal Infrastructure" means the basic physical and organizational structure and facilities ( e.g. buildings, roads, sanitary sewers, storm

sewers, water lines, municipal drains etc.) under the jurisdiction of the Town;

- (b) "Private Electrical Service Line" means the material medium or structure that forms all or part of a path from one place to another for directing the distribution of electricity from public property to an end use located on private property;
  - (c) "Town" means The Corporation of the Town of Kingsville;
  - (d) "Owner" means Thermo Energy Systems Inc. who is liable in connection with this Agreement and who owns the property legally described as CON 3 ED PT LOT 11 RD 307Kingsville, Ontario and known municipally as 2035 Spinks Dr. (Roll Number 340-00522).
  - (e) Reference Plan & Profile listed as Project No E16-056 prepared by N.J. Peralta Engineering Ltd attached hereto and marked as Schedule "A";
  - (f) "Director of Municipal Services" means the Director of Municipal Services for the Town, or designate;
  - (g) "Road" or "Road Allowance" means a municipal road allowance or public highway under the jurisdiction of the Town and shall include not only the travelled portion of a public highway but also shoulders, ditches, driveways, sidewalks and grassy areas forming part of the road allowance now or at any future time.
2. Upon the Director of Municipal Services providing written approval and agreeing in writing to the location of the proposed Private Electrical Service Line, permission to construct, reconstruct, maintain, remove or alter a

Private Electrical Service Line under Spinks Dr. is granted to the Owner subject to the terms and conditions contained within this Agreement.

3. The Private Electrical Service Line shall be constructed, reconstructed, maintained, removed or altered in accordance with good engineering and construction practices. In any event, the top of the Private Electrical Service Line shall be at least three (3') feet below the crown of the Road, but not more than five (5') in depth and shall not conflict with other utilities which may include watermain, natural gas plant, cable and telephone networks etc.
4. When constructed and completed, the Private Electrical Service Line shall not obstruct or interfere with or render more difficult or dangerous the use of the Road or Municipal Infrastructure and, in the event that as a result of the construction, reconstruction, maintenance, removal or alteration of the Private Electrical Service Line, an obstruction or interference is caused, then, in that event, the Owner shall do all things necessary, at its sole expense, to remove such obstruction or interference without delay.
5. The Owner, its successors in title or permitted assigns, shall repair the Road or municipal infrastructure and replace materials moved or removed therefrom, in as nearly the same condition as that in which they are found at the time of commencement of any work undertaken in connection with the said Private Electrical Service Line construction or reconstruction, or its future maintenance, alteration or removal. In the event of an open cut to the road or shoulder, all backfilling materials shall be of compacted granular material in accordance with the requirements of the Director of Municipal Services.
6. Except in cases of emergency, at least forty-eight (48) hours written notice shall be given by the Owner to the Director of Municipal Services of any

work to be undertaken in constructing, maintaining or repairing their Private Electrical Service Line under, over or across the Road Allowance or Municipal Infrastructure. Any maintenance or repair of an emergency nature shall be reported to the Director of Municipal Services or other appropriate official of the Town as soon as possible, with a written notice to follow detailing the nature of the emergency and the actions taken. Any damage to Municipal Infrastructure including but not limited to watermains, sanitary sewers, or storm sewers, and municipal drains shall be reported forthwith in writing to the Director of Municipal Services and shall be repaired, altered or relocated by Town forces, and all expenses and liabilities shall be the responsibility of the Owner and shall be assumed and paid by them forthwith on demand. Failure of the Owner to pay within thirty (30) days of demand will cause this Agreement to become voidable at the discretion of the Town.

7. The location, elevation and method of construction, reconstruction, maintenance or removal of the said Private Electrical Service Line under, over or across the Road Allowance or Municipal Infrastructure shall be subject, respectively, to the written approval of the Director of Municipal Services. The Owner shall provide to the Town, prior to construction, two (2) copies of construction drawings for the entire route of the Private Electrical Service Line and showing the materials to be used and the method by which the materials will be installed. Upon completion of works, two (2) hard copies and one (1) electronic copy of "As Constructed" drawings shall be provided to the Town.
8. A certified cheque or cash in the amount of Ten Thousand (\$10,000.00) Dollars shall be deposited by the Owner with the Town prior to construction each time the Owner submits a request to construct, reconstruct, replace, maintain or alter the Private Electrical Service Line. The monies deposited shall be held by the Town as security to ensure that the Owner satisfies the

conditions of this Agreement and rectifies any matters required by the Director of Municipal Services, acting reasonably. Each crossing of the Municipal Road or Municipal Infrastructure will be considered as a Private Electrical Service Line crossing and will require separate deposits. Any deposits held by the Town will be returned to the Owner within ninety (90) days of written notification by the Owner to the Town provided that the Director of Municipal Services, acting reasonably, is satisfied that all of the conditions of this Agreement have been fully satisfied.

9. It is understood and agreed that under the terms of this Agreement, the Owner shall be responsible for providing all necessary warning signs, safety devices and traffic diversion to adequately warn the public of construction in Road Allowance areas and the Owner hereby indemnifies and saves harmless the Town, its employees and agents, from and against all claims, liabilities, losses, costs, damages, or expenses of every kind, including legal fees, that may be incurred or suffered as a consequence of the Owner failing to place, maintain and operate such warning signs, protective devices and traffic diversion.
10. In the event that the Town, in pursuance of its statutory powers, deems it expedient to alter the construction of any Road or Municipal Infrastructure and in the course thereof, it becomes reasonably necessary that the location of the Private Electrical Service Line laid or operated under this Agreement should be altered at a specified point to facilitate the work of the Town, then upon reasonable notice in writing from the Town to the Owner specifying the alteration desired, the Private Electrical Service Line shall, at the Owner's expense, be altered or relocated to the point specified in accordance with the requirements of the Director of Municipal Services. The Owner shall have sixty (60) days from the date of written notice to complete the work as aforesaid. Thereafter, the Town may do the work and charge the cost of same against any outstanding deposit(s) held by it and if such deposit(s) is/are insufficient to pay the said costs, any deficiency shall

be paid by the Owner within thirty (30) days of written demand, otherwise this Agreement shall be voidable at the discretion of the Town.

11. When it is necessary for work to be done on the Private Electrical Service Line for any purpose, the Owner shall consult with the Director of Municipal Services so that service corridors may be readily located when the need arises. The Private Electrical Service Line shall be posted at the completion of its installation at the sole expense of the Owner.
12. Nothing in this Agreement shall relieve the Owner from compliance with the applicable federal or provincial legislation, or municipal by-laws.
13. Subject to the provisions rendering this Agreement voidable, this Agreement shall extend for a term of five (5) years from the date of the Agreement or until such time as an alternate electrical power supply is available and commissioned, and may be renewed for a further five (5) years on terms to be agreed upon by the Owner and the Town.
14. Upon termination of this Agreement (which shall include the Town exercising its right to void the Agreement as aforesaid) and/or abandonment of the Private Electrical Service Line, the Owner shall abandon the Private Electrical Service Line and all other obligations of the Owner shall continue under the provisions of this Agreement until all of such obligations have been complied with and completed in full to the satisfaction of the Director of Municipal Services, acting reasonably.
15. If the Owner should fail to abandon and remove the Private Electrical Service Line from the Road Allowance within one (1) year of abandonment or termination of this Agreement and the Town requires the removal of all or any part of the Private Electrical Service Line for the purpose of altering or improving the Road Allowance or Municipal Infrastructure in order to facilitate the construction of utility or other works, the Town may remove and dispose of so much of the Private Electrical Service Line as the Town

may require for such purposes and the Owner shall have no recourse against the Town for any losses, costs, expenses or damages occasioned thereby.

16. The Owner shall indemnify and save harmless the Town from and against all claims, liabilities, losses, costs, damages or other expenses of every kind including legal fees that the Town may incur or suffer as a consequence of or in connection with the placing, maintenance, operation, replacement or repair of the Private Electrical Service Line or any part thereof.
17. Forthwith upon execution of this Agreement, the Owner shall deliver to the Town, a certificate of a comprehensive liability policy of insurance with policy limits in the amount of not less than Five Million (\$5,000,000.00) Dollars, the form and content of which shall be satisfactory to the Town, and naming the Town as an additional insured. Such policy shall be kept in full force and effect by the Owner until such time as this Agreement is terminated.
18. During the term of this Agreement and any subsequent renewals thereof, the Owner shall be responsible for maintaining the Private Electrical Service Line and, where the same has to be repaired, altered, removed or relocated, the Owner shall return the Road Allowance or Municipal Infrastructure to its original condition to the satisfaction of the Director of Municipal Services acting reasonably.
19. If any dispute or controversy shall occur between the parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be appointed by agreement between the parties or, in default of such agreement, such arbitrator shall be appointed by a Judge of the Ontario Superior Court of Justice, upon the application of either of said parties and a Judge of the

Ontario Superior Court of Justice shall be entitled to act as such arbitrator if he or she so desires. The arbitration shall be held in the Town of Kingsville or such other location in Essex County that the parties and the arbitrator may agree upon. The procedure to be followed shall be agreed by the parties or, in default of an agreement, determined by the arbitrator. The arbitration shall proceed in accordance with the provisions of the Arbitration Act (Ontario), S.O. 1991, c.17. The arbitrator shall have the power to proceed with the arbitration and to deliver his or her award notwithstanding the default by either party in respect of any procedural order made by the arbitrator. It is further agreed that such arbitration shall be a condition precedent to the commencement of any action at law. The decision arrived at by the board or arbitration, howsoever constituted, shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

20. The Owner may not assign any part of this Agreement unless the Town consents in writing to such assignment, which consent which may not be unreasonably withheld provided that the Owner enters into a form of Agreement guaranteeing compliance with the terms of this Agreement by the assignee and such assignment shall be effective only upon execution of an Agreement binding the assignee to the terms of this Agreement.
21. Any notice to be given under the provisions of this Agreement may be effectually given to the Town by delivering same by registered mail, postage prepaid, addressed as follows:

To the Town:

Attention: Director of Municipal Services

The Corporation of the Town of Kingsville,

2021 Division Road North,

Kingsville, Ontario N9Y 2Y9



To the Owner:  
Thermo Energy Systems Inc.  
2035 Spinks Dr.  
Kingsville, Ontario N9Y 2E5

22. The notices as aforesaid shall be deemed to have been given and received on the 5<sup>th</sup> business day following the date it was mailed.
23. This Agreement shall ensure to and be binding upon the parties hereto, their successors and permitted assigns.

The balance of this page intentionally left blank.

**IN WITNESS WHEREOF** the parties hereto have duly executed these presents with effect from the day first written above.

**SIGNED, SEALED AND DELIVERED**  
in the presence of

**THE CORPORATION OF THE  
TOWN OF KINGSVILLE**

Per: \_\_\_\_\_  
**Nelson Santos**  
**Mayor**

Per \_\_\_\_\_  
**Jennifer Astrologo**  
**Director of Corporate Services / Clerk**

**THERMO ENERGY SYSTEMS  
INC.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_  
**I/We have the authority to bind  
the corporation**