ENCORE ELECTRIC, INC.

SHORT-FORM SUBCONTRACT AGREEMENT

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (the “Agreement”) shall apply to all work identified within the Proposal attached hereto (the “Proposal”) by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subcontractor”) for the benefit of Encore Electric, Inc. (“Encore”). Encore and Subcontractor are herein collectively referred to as the “Parties” or individually as “Party.” The terms of the Proposal are hereby incorporated by reference. In consideration of the mutual promises, agreements and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties stipulate and agree as follows:

1. The Work. Subcontractor is fully experienced and qualified to perform the work identified within the Proposal (collectively the “Work”) and shall provide all materials and shall execute the entire Work, except to the extent specifically indicated in the Proposal to be the responsibility of others, in a workmanlike manner and in accordance with the specifications and time frames set forth in the Proposal. Subcontractor shall commence the Work upon the receipt of notice to proceed from Encore and complete the work no later than \_\_\_\_\_\_\_\_\_\_, 20\_\_.
2. Payment. Encore agrees that, upon the completion of the Work and the submittal of the required lien releases, it will pay to Subcontractor the sum of $\_\_\_\_\_\_\_\_\_\_\_ (spell out amount here) (the “Price”) for the Work
3. Changes to the Work. Upon a change to the Work, an addition to the Work, or upon the discovery by Subcontractor of conditions that materially alter the nature or scope of the Work, the Parties shall mutually agree upon any adjustments to the Price.
4. Permits and Taxes. To the extent required, Subcontractor will obtain, at its own cost and expense, any necessary permits to perform the Work. However, Encore shall be responsible for paying any sales or use taxes resulting from the performance of the Work, including any taxes owed by Encore in addition to the Price.

1. Warranty. For a period of one (1) year from the date of completion of the Work, Subcontractor warrants to Encore that (i) the Work will be performed in a workmanlike manner and conform to the specifications set forth in the Proposal; (ii) that all materials and equipment furnished under the Proposal will be new and of good quality; and (iii) that the Work will be free from defects. Subcontractor agrees to immediately correct and make good any defective materials and/or workmanship upon notice from Encore.
2. Fees and Payment. Encore shall pay to Subcontractor, in current funds, the Price for Subcontractor’s performance of the Work. Payments to Subcontractor shall be due within 10 days from the date payment is received from Encore’s customer and an application for payment has been submitted to Encore and approved for payment by Encore. Subcontractor shall submit an application for progress payments no earlier than every 30 days in an amount equal to the percentage of work completed at the time of the invoice is submitted multiplied by the Price. Encore’s Sample Application and Certificate of Payment is attached hereto as Attachment “A.” A ten percent (10%) retention shall be held from Subcontractor on all applications for payment until project is accepted by Encore’s customer and Encore has received final payment from said customer. Encore may deduct from the amounts due Subcontractor an amount sufficient to protect Encore from loss on account of defective workmanship/materials, failure to prosecute work, failure to make payments to subcontractors/suppliers and/or the filing of liens and/or claims.
3. Indemnification. To the fullest extent permitted by Colorado law, the Parties agree to indemnify one another against any and all actions, damages, demands, liabilities, causes of action, and claims, including reasonable attorneys’ fees (“Claims”), to the extent such Claims arise out of or are caused by (i) the other Party’s (or its agents’/employees’) negligent acts or omissions in the performance of the Work; (ii) breaches of this Agreement or the terms of the Proposal; (iii) any hazards existing on the worksite that Subcontractor fails to adequately warn Encore about including, without limitation, the presence of any toxic or hazardous material on the worksite; or (iv) warranty and/or workmanship items that are not properly remedied.
4. Liens. Upon final payment, Subcontractor agrees to furnish Encore with a final release for claims for payments and waiver of liens, as may be requested by the Encore.
5. Clean Up. Subcontractor shall clean up and remove from the site all rubbish and waste resulting from the Work. Encore hereby permits Subcontractor to remove all such rubbish and waste to a dumpster provided by Encore or that is already in existence at the worksite.
6. Governing Law; Jurisdiction; and Attorneys’ Fees. This Agreement shall be governed by and construed under the laws of the State of Colorado. Any and all actions brought by the Parties shall be brought exclusively within the State of Colorado, County of Denver. In the event a Party brings an action to enforce the provisions hereof, the prevailing Party in such action shall be awarded its reasonable attorneys’ fees and costs from the non-prevailing Party.
7. Mutual Limitations on Damages.  Under no circumstances shall either Party assert, allege or be liable to the other Party for any lost profits or liquidated, special, indirect, or consequential damages.
8. Insurance. Subcontractor shall provide insurance coverage in accordance with the Subcontractor / Vendor Insurance Requirements listed in the sample insurance certificate attached hereto as Attachment “B.”
9. Successors/Assigns and Entirety. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective successors and assigns. This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations and/or agreements, either written or oral.
10. Instructions from Encore. Subcontractor acknowledges all orders, instructions, directives and determinations issued by General Contractor or Owner, pursuant to the terms and conditions of this Agreement, which require Subcontractor to take an action which may impact one of Subcontractor’s employees, even if Encore communicates the order, instruction, directive or determination to Subcontractor or its Sub-subcontractor on behalf of General Contractor or Owner, do not constitute a decision or a determination of Encore affecting the terms and conditions of the employment of Subcontractor’s employees.

In Witness whereof, the Parties have read this agreement and agree to be bound by all its terms.

CONTRACTOR SUBCONTRACTOR

ENCORE ELECTRIC, INC. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ It’s:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_