



AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

**SECTION 1
QUALIFICATION**

THIS AGREEMENT, made effective as of the effective date (as hereinafter defined) between ABSOLUTE UNDERGROUND, INC. ("Contractor"), and _____ ("Sub-Contractor").

WITNESSETH

WHEREAS, Contractor has entered into a construction contract (the "Contract") with _____ ("the Customer"), for the construction of telephony, cable television, premise wiring or maintenance located in or near ("the Territory").

NOW THEREFORE, in consideration of these premises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Agree / Disagree Initial(s): (C) _____ / (S) _____

**SECTION 2
SCOPE OF WORK**

Subcontractor shall perform such Work as is required by Contractor and only as specified on/in _____.

Agree / Disagree Initial(s): (C) _____ / (S) _____

**SECTION 3
PERFORMANCE OF THE WORK; INSPECTION**

Sub-Contractor shall furnish all labor, supervision, tools, equipment (including, without limitation, electronic communications equipment for adequate communication between Contractor and Sub-Contractor and its employees in the field), materials and supplies necessary for the performance of the Work in a proper, efficient and workmanlike manner. Sub-Contractor shall prosecute the Work in a prompt and diligent manner. Sub-Contractor shall, at its expense, as the Work progresses and upon completion of the Work, remove all waste materials and/or debris caused by the performance of the Work. Contractor and/or the Customer shall have the right at any time to inspect all Work performed by Sub-Contractor. Any Work not acceptable to and approved by the Contractor and/or the Customer in their sole but reasonable discretion shall immediately be corrected by Sub-Contractor at its own expense. Work shall be deemed accepted only upon receipt by Sub-Contractor of written notice of

acceptance by Contractor and Customer. This is not an exclusive contract. Contractor reserves the right to retain additional sub-contractors at any time to perform Work within the Territory.

Agree / Disagree Initial(s): (C) / (S)

SECTION 4
SAFETY

Sub-Contractor shall observe and comply with all applicable federal, state and local safety rules and regulation including, without limitation, the Occupational Safety and Health Act (“OSHA”). All vehicles utilized by Sub-Contractor in its performance of the Work (“Vehicles”) shall (I) be operated by only licensed operations, and (ii) shall meet standards as specified from time to time in writing by Contractor or the Customer, including without limitation, the following:

- i. Vehicles shall be of a type customarily used in the cable or telecommunications industry for the Work to be performed.
- ii. Vehicles shall meet all applicable federal, state and local motor vehicle laws, including without limitation, all statues, regulations, rules, codes and ordinances.
- iii. Vehicles shall be equipped with standard OSHA required safety devices including, without limitation, the following:
 - a. Four (4) fluorescent orange safety cones of at least thirty (30) inches in height,
 - b. One (1) approved vehicle fire extinguisher,
 - c. One (1) approved first aid kit, and
 - d. One (1) approved safety flare or reflector kit.
- iv. Vehicles shall be clearly identified as being operated by the Sub-Contractor by signs lettering on both front side door panels and other mutually acceptable locations on the Vehicles. Magnetic or other temporary signs may be used if previously approved in writing by Contractor and the Customer, and
- v. Contractor, for itself and on behalf of the Customer, hereby reserves the right to inspect any Vehicles and their contents on a routine basis at a mutually agreed upon central location and/or a random basis at sites where the Work is being performed.
- vi. Make, model, year, color and registration number of vehicles used by employee in performance of the Work,
- vii. Next of kin or person to notify in case of emergency, and
- viii. Sub-Contractor will attend Contractor weekly safety meetings or provide written documentation of weekly safety meetings to Contractor signed by all employees of Sub-Contractor.

Sub-Contractor agrees to indemnify and hold Contractor harmless from and against any and all loss, including, but not limited to, fines, penalties and corrective measures. Contractors may sustain by reason of Sub-Contractor’s failure to comply with laws, rules and regulations in connection with its performance of the Work and this Agreement.

Agree / Disagree Initial(s): (C) / (S)

SECTION 5

INDEMNIFICATION AND INSURANCE

INDEMNIFICATION

The Subcontractor specifically obligates itself to the Contractor to pay for all materials furnished and work and labor performed under this Subcontract, and to indemnify the Contractor and the Owner against any claims, suits, or liens thereof by other than the Subcontractor; and to obtain and pay for all permits, licenses and official inspections made necessary by its work. The Subcontractor also warrants and guarantees the work and material covered by this Subcontract and agrees to make good, at its own expense, any defect in materials or workmanship which may occur or develop prior to the Contractor's release from responsibility to the Owner therefore. The Subcontractor shall indemnify Contractor and the Owner and save them harmless from all loss, damage, cost, expense expert witness fee, and attorney's fees incurred on account of any breach by Subcontractor. The Work performed by the Subcontractor shall be at the risk of the Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor's sole expense) and hold harmless Contractor, the Owner, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and expert and consultants' fees and costs)("Claims") which arise or are in any way connected with the Work performed, materials furnished, or services provided under this Agreement by Subcontractor or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Subcontractor, its employees or agents, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Subcontractor shall not be obligated to indemnify and defend Contractor or Owner for claims found to be due to the sole negligence. Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.

INSURANCE

- (a) The Contractor shall on its own behalf and, shall cause each of its Sub-Contractor to obtain and maintain throughout the term of this Agreement valid insurance for all states in which they Work with coverage and limits as follows:
- (i) **Workers' Compensation and Occupational Disease Insurance:** At statutory limits as provided by the state in which the Work is to be performed, and Employer's Liability Insurance at a limit of not less than Five Hundred Thousand (\$500,000.00) for all damages arising from each accident or occupational disease for each occurrence;
 - (ii) **Commercial General liability Insurance:** Covering Operations and Premises Liability; Contractor's Protective Liability; Completed Operations; Product Liability; Contractual Liability; Personal Injury; Property Damage caused by explosion, collapse and underground damage; and Broad-Form Property Damage Endorsement. The limits of such liability insurance shall be as follows:

Each Occurrence:	\$1,000,000
General Aggregate (Per Project):	\$2,000,000
Products and Completed Operations:	\$2,000,000
Personal Advertising Injury:	\$1,000,000

- (iii) **Commercial Automobile Liability Insurance**: Covering all owned, hired or non-owned vehicles, including the loading or unloading thereof, with limits no less than One Million Dollars (\$1,000,000.00) combined single limit of liability for Automobile Bodily Injury, Personal Liability and Automobile Property Damage for each occurrence; and
- (iv) **Umbrella Excess Liability**: Coverage in an amount no less than Five Million Dollars (\$5,000,000.00) for each occurrence.
- (b) The policies required under this Section 5 shall also comply with the following:
- (i) There shall be no exclusion for explosion, collapse or underground hazards in connection with the Sub-Contractors operations hereunder;
- (ii) Products and Completed Operations coverage will be provided for a period of two years after acceptance by the Contractor of the last Work to be performed under and Statement of Work. All Work completed by any Sub-Contractor prior to the acceptance by the Contractor of all Work to be performed under a Statement of Work shall be treated as "operations" not "completed operations" for the period between the completion of the Work by the Sub-Contractor and the acceptance of by the Contractor of all Work under such Statement of Work;
- (iii) Contractual Liability coverage is expressly extended to ensure the indemnification and hold harmless provisions of this Agreement for the Contractor, including, without limitation, all Affiliates of Absolute Underground, Inc., as additional insureds per combination of ISO CG2010 (or CG2033 or CG2038) and CG2037 forms with edition dates of 10/10 or 07/04 or 04/13 to provide ongoing and completed operations, and the following exclusions do not apply;
- (A) to bodily injury or property damages arising out of operations, within fifty feet of any railroad property, affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (B) to bodily injury or property damage included within the completed operations hazard or the products hazard; and
- (C) to property damage included within the explosion, collapse or underground hazards.
- (iv) The policy shall *not* include restrictive ISO Endorsement CG 24 26 or equivalent;
- (c) All insurance required herein shall be carried with companies satisfactory to the Contractor, licensed to do business in the jurisdiction where the Work hereunder is to be performed, and such policies shall name Absolute Underground, Inc. and all Affiliates of Absolute Underground, Inc., including, without limitation subsidiaries, officers, directors, employees and agents as additional insured parties. The Sub-Contractor's insurance, including without limitation, all of the Sub-Contractor's umbrella and excess coverage shall be primary and noncontributory.

- (i) No insurance policy shall be limited to liability arising from or caused by the sole negligence of the Sub-Contractor or any other limitation that is based upon the status or conduct of the Sub-Contractor.
- (ii) Each of the insurance policies in subsection (a) required hereby shall extend the same coverage to the additional insured that is offered the name insured. Without limiting the generality of the foregoing, the Sub-Contractor shall require each insurer to pay on behalf of each additional insured any and all expenses incurred by reason of the insured claim, including, without limitation, court costs and reasonable attorney's fees.
- (d) Each policy shall be endorsed to provide that it will not be canceled or amended without prior written notice in accordance with policy provisions to the Contractor, mailed to the address indicated herein, and the policy and policy endorsements shall contain the following endorsement: "It is hereby understood and agreed that any material change to this policy, cancellation of this policy, or the intention not to renew the policy shall not be effective unless prior written notice of such change, cancellation or non-renewal has been provided to Absolute Underground, Inc by registered mail."
- (e) The Sub-Contractor shall not commence Work under this Agreement until it has obtained all insurance required hereunder and certificates evidencing such insurance have been submitted to and approved by Contractor. Contractor shall not allow any Sub-Contractor to commence Work until such Sub-Contractor has obtained all insurance required under this Agreement, nor shall Contractor make any other arrangement with anyone for the performance of any Work contemplated hereby which does not embody the substance of these provisions concerning insurance protection for Contractor. Renewal certificates of insurance must be filed prior to policy expiration so that a current certificate is on file with company at all times during the term of this Agreement.
- (f) The Sub-Contractor agrees that the Contractor may, from time to time during the term of this Agreement, require that additional insurance be obtained and maintained in amounts reasonably related to the scope and the nature of the Work to be performed under this Agreement.
- (g) In the event of any cancellation or any policy change not acceptable to the Contractor, the Contractor reserves the right to provide replacement insurance coverage and to charge any premium expense therefore to the Sub-Contractor and to deduct such cost from any amounts due or to become due to the Sub-Contractor hereunder.
- (h) The liability of the Sub-Contractor shall not be limited by said insurance policies or the recovery of any amounts thereunder.
- (i) The Sub-Contractor acknowledges and agrees that Absolute Underground, Inc. and the Affiliates of Absolute Underground, Inc., including, without limitation, all entities set forth may be amended from time to time, are and will continue to be the "Contractor" for the purposes of this Agreement, including, without limitation, in Section 5.
- (j) The Sub-Contractor represents and warrants the (i) the Sub-Contractor has provided a copy of this Agreement, including, without limitation, to its insurance providers, and (ii) the Sub-Contractor has obtained all of the insurance required by this Agreement, including, Section 5, without limitation.

Agree / Disagree Initial(s): (C) _____ / (S) _____

SECTION 6
INDEPENDENT CONTRACTOR

Sub-Contractor is an independent contractor and not an employee, agent, joint venture or partner of Contractor. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Contractor and Sub-Contractor or any employees of Sub-Contractor. Both parties acknowledge that Sub-Contractor shall have the right, subject to the provision of Section 13, to perform services for others during the term of this Agreement. Sub-Contractor agrees to indemnify and hold Contractor harmless from and against any and all expenses and liabilities incurred under any OSHA regulations, unemployment compensation or withholding tax law in connection with employees of Sub-Contractor, including a sum equal to benefits paid to those who were Sub-Contractor’s employees, where such benefit payments are charged to Contractor under any merit plan or its individual reserve account pursuant to any state unemployment compensation statute.

Agree / Disagree Initial(s): (C) _____ / (S) _____

SECTION 7
TERM

Subject to the provisions of Section 12, the term of this Agreement shall commence on _____, _____.

Agree / Disagree Initial(s): (C) _____ / (S) _____

SECTION 8
TERMINATION

- A. This Agreement shall automatically terminate on the occurrence of any of the following events:
 - i. The bankruptcy or insolvency of either party,
 - ii. The death of any party that is a natural person, or,
 - iii. The dissolution of any party that is a corporation, partnership, limited liability company or other such entity.

- B. Should Sub-Contractor fail to satisfactorily perform, in Contractor’s sole but reasonable judgement, its obligations hereunder or otherwise default in the performance of this Agreement, Contractor, at its sole option, may terminate this agreement upon written notice to Sub-Contractor. Default under this agreement, defective workmanship, failure to complete work timely, or abandonment of the work shall result in Sub-Contractor’s loss of retainage. Should Contractor fail to pay all or any portion of the compensation due and owing to Sub-Contractor pursuant to the terms of this Agreement after having received 30 days prior written notice of such failure, Sub-Contractor at its sole option, may terminate this Agreement upon written notice to Contractor.

Agree / Disagree Initial(s): (C) _____ / (S) _____

SECTION 9

NON-COMPETE

Covenants of Non-Competition

Due to the significance and materiality of the consideration provided by Contractor, and in consideration of the benefits received by the Sub-Contractor, the sufficiency of which is hereby acknowledged, Sub-Contractor agrees that within the states and district borders of Maryland, Delaware, Virginia, District of Columbia, and for a period of (3) years, Sub-Contractor shall not directly or indirectly own, manage, operate, or conduit any business engaged in the underground construction business or any other business consisting of the furnishing of underground construction services to the Contractors current customers, unless written consent is obtained by the Contractor. In the event the Sub-Contractor should contact the Contractors current customers, either directly or indirectly, without prior written consent, 35% of the proposed price of the job shall be payable to the Contractor.

Reasonableness of Restrictions

- (a) Sub-Contractor has read and understood the provisions of this Agreement. Sub-Contractor agrees with restrictions set forth herein, and agrees that the time period and geographic location restrictions are fair, reasonable and legitimately necessary for the protection of Contractors interests, as well as the interests of Contractors officers, directors, shareholders and other employees.
- (b) If any part of the provisions in this agreement shall be held unenforceable or invalid, the remaining parts thereof shall continue to be enforceable and valid. In the event a court of competent jurisdiction declares the time period or geographic location restrictions are unreasonable and/or have exceeded the maximum time period and/or area, Contractor and Sub-Contractor shall request the court to fix a reasonable time period and/or geographic location restriction, and the court specified time period and/or area of restriction shall then become and thereafter be the maximum time period and/or geographic area which the court deems reasonable and enforceable.

Benefit and Burden

The agreement shall be binding upon, and shall inure to the benefit of, Contractor and Sub-Contractor, and their respective heirs, personal and legal representatives, successors and assigns.

Severability

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

Notices

Any notices to be given to either party may be effected by either personal delivery in writing or by mail, registered and certified, postage prepaid with return receipt requested. Mailed notices shall be address to the Contractor at 1234 Old Dorsey Road Harmans, Maryland 21077, and to Sub-Contractor at _____, or at any other address as provided from one party to the other by written notice.

Entire Agreement

This agreement contains the entire agreement and understanding by and between Contractor and Sub-Contractor with respect to the covenant against competition here referred to, and no understandings, promises, agreements or representations, written or oral, not herein contained, shall have any force or effect. To be valid or binding, any change or modification of the terms or provisions herein must be in writing and signed by the party to be bound.

Headings

The headings used herein are for the convenience of the parties only and shall not be used to define, enlarge, or limit any term of this Agreement.

This Agreement is entered into on _____, _____, _____, in the City of: Harmans, County of: Anne Arundel, State of: Maryland.

Agree / Disagree Initial(s): (C) _____ / (S) _____

**SECTION 10
ASSIGNMENT**

Notwithstanding any provision of this Agreement to the contrary, the rights and duties created by this Agreement shall not be assigned or delegated by Sub-Contractor, not may Sub-Contractor employ or contract with additional sub-contractors for performance of the Work without the prior written consent of Contractor.

Agree / Disagree Initial(s): (C) _____ / (S) _____

**SECTION 11
PAYABLE TERMS**

Payable terms are Net 30 days, from date of receipt of invoice.

Retention Agreement

I, _____, ("Sub-Contractor"), authorize Absolute Underground, Inc. ("Contractor") to hold 10% retention on each and every invoice I submit for payment. I understand that it will be released to me after 90 days, should I maintain a clean record, regarding customer cuts/repairs and utility hits. After 90 days, I understand that it is my responsibility to re-invoice Absolute Underground, Inc. for the retention that is being held and that it will be paid 30 days from receipt. (*Note: Please reference the original invoice #, from which the retention was held.)

Agree / Disagree Initial(s): (C) _____ / (S) _____

**SECTION 12
MISCELLANEOUS**

- A. This Agreement constitutes the entire understanding of the parties and supersedes any previous written or verbal agreement and may not be changed or amended except by another instrument in writing signed by both parties.

- B. This Agreement shall be construed and governed in accordance with the laws of the State of Maryland.
- C. In connection with any litigation, appeal, other proceeding, or any other effort (including efforts in bankruptcy or creditors' reorganization proceedings or probate and estate administrative proceedings), to enforce or interpret this Agreement, the parties agree that the prevailing party shall recover its attorneys' fees, legal assistants' fees, and costs and expenses of litigation, in addition to any other relief.
- D. Any notice or demand which must or may be given under this Agreement or by law shall be written and shall be deemed to have been given (i) when physically receive by personal, or (ii) when deposited in United States certified or registered mail, return receipt requested, postage prepaid, or (iii) when deposited with a nationally known commercial courier services (such as Federal Express) addressed to the parties at their respective set forth their signatures.
- E. Any condition or right of termination, cancellation, rescission granted by the Agreement to the Contractor or the Sub-Contractor may be waived by such party, provided such waiver is in writing.
- F. As used herein, the term "Effective Date" shall mean the date the last of Contractor and Sub-Contractor execute this Agreement as evidenced by the date below their respective signatures.
- G. Sub-Contractor agrees to be bound by all terms, conditions and provisions of Contractor's agreement with Customer and with all applicable local, state and federal ordinances and statutes covering the work.
- H. Sub-Contractor warrants that ALL workmanship will be free from defects for a period of one (1) year after Sub-Contractor's substantial completing of the work (the "Warranty Term"). Should defective work be discovered during the Warranty Terms, Sub-Contractor shall repair and/or replace such defective Work upon receipt of written notice.

Agree / Disagree Initial(s): (C) _____ / (S) _____

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed in their representative, in duplicate the day and year first above written.

CONTRACTOR:

Contractor Address:

Signature: _____

By (Print): Karen L. Richardson

Title: Owner

Date: _____

1234 Old Dorsey Road

Harmans, Maryland 21077

Witness:

SUB-CONTRACTOR:

Sub-Contractor Address:

Signature: _____

By (Print): _____

Title: _____

Date: _____

Witness:

ABSOLUTE Underground Inc.

Your signature below acknowledges that ABSOLUTE UNDERGROUND INC will issue magnetic signs which must be displayed on vehicles on jobsites when work is being done under our Comcast contract. Sub-contractor is also to display proper “**Contracting for Comcast**” signage.

In the event these signs are lost, damaged, or stolen you agree to replace them at the current replacement cost, which is now **\$75.00** per magnet.

Sub-Contractor (PRINT NAME)

Date

Sub-Contractor (Signature)