

IRU AND SERVICES AGREEMENT

THIS IRU AND SERVICES AGREEMENT (this "Agreement") is made and entered into as of the ____ day of January, 2010 (the "Effective Date"), by and between Rutherford County, a political subdivision of the State of North Carolina, having its principal office at 289 North Main Street, Rutherfordton, North Carolina 28139 (the "County") and e-Polk, Inc., a North Carolina nonprofit corporation, having its principal place of business at 301 North Trade Street, Suite 200, PO Box 340, Tryon, North Carolina 28782 ("PANGAEA").

RECITALS

WHEREAS, PANGAEA and the County have entered into that certain Memorandum of Understanding dated August 17, 2009 (the "MOU") summarizing and setting forth certain terms and conditions of an agreement between the parties whereby (i) the County will sell the multi-strand fiber optic cable included in that certain Public Safety Network described and defined in Attachment A hereto (the "County Network") to PANGAEA, (ii) PANGAEA will grant to the County an indefeasible right to use ("IRU") the County Network, and (iii) PANGAEA will provide network management, network operations and network maintenance services for the County Network; and

WHEREAS, this Agreement constitutes the "Definitive Agreement" between the parties as such term is defined and referenced in the MOU.

NOW, THEREFORE in consideration of the mutual promises, covenants, representations, warranties, and agreements contained in this Agreement and the mutual benefits to be derived therefrom, and in reliance upon the foregoing recitals of fact, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Delivery and Acceptance of County Network.

(a) The County has entered into a contract with a qualified contractor (the "Contractor") for the construction of the County Network, and the County is, and shall remain, solely responsible for construction of the County Network, including any and all costs, expenses, liabilities and engineering services associated therewith. On the Transfer Date (as defined below), the County Network shall meet the requirements of, and be in compliance with, all applicable governmental codes and regulations, utility company requirements, PANGAEA pole attachment agreements, and any and all other requirements and standards applicable to the construction, development and completion of the County Network (the "Construction Requirements"). To the extent allowed by law, County agrees to defend, indemnify and hold harmless PANGAEA from (i) any and all claims against PANGAEA for costs, debts, expenses, liabilities or obligations associated with the County Network arising prior to the Transfer Date, and (ii) any lien or claim filed or made by any third person or firm on account of alleged non-payment for labor, materials, or services furnished or performed as a part of the construction of the County Network. County will promptly discharge or remove any such lien or claim by bonding, payment or otherwise.

(b) Both parties' acknowledge that industry standard acceptable test plan requirements have been met and are acceptable to both parties as of the date hereof. The County will verify in writing that the fiber in the County Network meets all industry standard acceptable test requirements before signing the fiber acceptance notice from the Contractor, and PANGAEA agrees to review the final fiber test results and verify the same in writing.

(c) The County will not grant, create or suffer, and will promptly discharge at its sole expense, any lien, claim, right, security interest, encumbrance, expense or charge on any part of the County Network created by the County or applicable to the construction and completion of the County Network (collectively, "County Liens"), including, without limitation, any Construction Requirement or any lien arising out of any labor, service or material furnished or claimed to have been furnished on behalf of or at the County's direction by any person other than PANGAEA. In the event of any such County Liens on the County Network which are not resolved or otherwise satisfied by the County, PANGAEA may, upon written notice to the County, terminate the Agreement according the procedures set forth in Section 8 herein. To the extent allowed by law, the County shall indemnify, defend, and hold PANGAEA harmless from and against any and all claims, demands and costs (including reasonable attorney's fees), liabilities, causes of action or judgments arising out of or in any way related to the construction of the County Network, the Construction Requirements, any negligent act or intentional wrongful act or omission of the County (including, without limitation, any injuries or death to any persons, damages to any property or other claims, charges or costs), or any security interest, lien, encumbrance or legal process in or against the County Network arising from any action or omission of the County, or asserted by any creditor of the County.

(d) To the extent allowed by law, PANGAEA will indemnify and hold County harmless against any and all loss, liability, damage and expense (including reasonable attorneys fees) directly resulting from any demand, claim, suit or judgment for damages to any property or bodily injury to or death of any persons, including, without limitation, the patrons, County, agents and employees of either party hereto (including payment under any workers' compensation law or under any plan for employee disability and death benefits) which is caused by any negligent act or intentional wrongful act or omission of PANGAEA.

(e) PANGAEA will not grant, create or suffer, and will promptly discharge at its sole expense, any lien, claim, right, security interest, encumbrance, expense or charge on any part of the County Network created by PANGAEA or applicable to the operation of the County Network by PANGAEA, including, without limitation, any lien arising out of any labor, service or material furnished or claimed to have been furnished on behalf of or at PANGAEA's direction. To the extent allowed by law, PANGAEA shall indemnify, defend, and hold County harmless from and against any and all claims, demands and costs (including reasonable attorneys' fees), liabilities, causes of action or judgments arising out of or in any way related to any security interest, lien or encumbrance or legal process (collectively, "PANGAEA Liens") in or against the County Network arising from any action or omission of PANGAEA, or asserted by any creditor of PANGAEA. In the event of any such PANGAEA Liens on the County Network, the County may, upon written notice to PANGAEA, terminate the Agreement according the procedures set forth in Section 7(c) herein.

(f) To extent allowed by law, each party hereby indemnifies and holds harmless the other party against any and all liability or claims arising out of that party's lack of adequate regulatory or other authority or violation of any law, rule or regulation.

(g) In all instances in which one party ("Indemnitor") is obligated to indemnify another ("Indemnitee") as provided for in this Agreement, (i) Indemnitee shall give Indemnitor written notice of all claims, damage, losses, suits, and any other event which is in any way related to or asserted by Indemnitee as a basis for such obligation, which notice shall be given immediately after Indemnitee becomes aware thereof, (ii) Indemnitor shall have the sole right to control the defense of such matter and the sole right to determine the disposition of such matter, (iii) Indemnitee shall furnish such available information and assistance as may be required by the Indemnitor to assist in the disposition of such matter and no disposition or settlement shall be made by Indemnitee of any matter for which a claim of indemnification or to be held harmless will be made, without the prior written consent of Indemnitor, which shall not be unreasonably withheld, delayed or denied.

(h) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH SUCH PARTY'S FAILURE TO PERFORM ITS RESPECTIVE OBLIGATIONS OR BREACH OF ITS RESPECTIVE REPRESENTATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, ANTICIPATORY PROFITS, COST OF CAPITAL, COST OF REPLACEMENT SERVICES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), IN EACH CASE WHETHER OCCASIONED BY ANY CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR OR MAINTENANCE PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY. ALL CLAIMS WITH RESPECT TO WHICH SUCH SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARE HEREBY SPECIFICALLY WAIVED. WITHOUT LIMITATION, ANY LIABILITY OF PANGAEA TO COUNTY ARISING FROM OR RELATED IN ANY MANNER TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR INTERRUPTIONS OR OUTAGES, SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF THE AFFECTED COUNTY NETWORK IN ACCORDANCE WITH THE TERMS OF THE MAINTENANCE AGREEMENT ATTACHED HERETO AS ATTACHMENT C, AND COUNTY EXPRESSLY WAIVES ANY RIGHT IT MIGHT HAVE TO ANY OTHER MEASURE OF DAMAGES, STATUTORY OR OTHERWISE. THE FOREGOING LIMITATIONS DO NOT APPLY TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN.

2. Sale of County Network. The County will sell and convey legal title of the County Network to PANGAEA, and PANGAEA will purchase the County Network, for the purchase price of \$10.00 on the Transfer Date. The "Transfer Date" shall be (i) January 20, 2010, so long

as the following listed events shall have occurred, or (ii) if such events have not occurred by January 20, 2010, then the date of the last occurrence of the following events: (1) completion of the County Network by the Contractor, (2) the County's signing of a written fiber acceptance notice that represents acceptance of the County Network from the Contractor (3) the execution and delivery by PANGAEA of a written agreement providing that PANGAEA has reviewed the fiber test results and verified that the fiber meets all industry standard acceptance test requirements and (4) the acceptance of this agreement by the Rutherford County Board of Commissioners and the advertisement of this transaction by the County as required by law. On the Transfer Date, the County will provide PANGAEA one (1) paper copy and one (1) electronic copy of "as-built" fiber maps for the County Network, including clearly marked locations of all underground and above ground fiber.

3. Grant of IRU.

(a) Immediately upon the Transfer Date, PANGAEA will sell, grant and convey to the County (i) an IRU in the County Network for \$10.00, including the right to connect equipment provided by or for the County to the County Network as provided herein; and (ii) upon the provision of at least 24 hours advance notice to PANGAEA, a non-exclusive right to use access points (such as handholes, manholes, splice enclosures, patch panels, and termination points) maintained by PANGAEA for purposes of accessing the County Network (collectively, the "Access Points"), subject to the physical availability of such Access Points. On the Transfer Date, PANGAEA will immediately begin managing, operating and maintaining the County Network under the terms and conditions of this Agreement. The terms of this Agreement are limited to the County Network only, and do not relate to or include any other network or customer equipment.

(b) Subject to all of the terms of this Agreement, during the IRU Term, the County shall have the exclusive right to utilize the County Network for any purpose deemed necessary and appropriate by the County, and the County shall be deemed the beneficial and equitable owner of the County Network. The County may sublicense the use of the County Network Fiber to third parties for commercial use or economic development reasons; provided, however, the County will give PANGAEA prior written notice before finalizing any sublicense agreement and PANGAEA shall have thirty days from said written notice to provide County with any comments or written counter proposal for the County's consideration. If County uses one or more fiber strands as described above to sublicense fiber and PANGAEA does not receive revenue from a third party other than the County related to the sub-licensure transaction, the County will pay PANGAEA a 10% increased maintenance and management fee for the specific fiber strand(s) and fiber route(s) used by the sub-licensee. By way of example: Section 5(a) states that the cost of services shall be \$127.50 per route mile of the fiber sheath. In the sublicensing scenario, the County would pay PANGAEA a pro rata monthly maintenance and management fee on such specific fiber strand(s) and fiber route(s), used by the sub-licensee at a rate of \$140.25 per month per fiber mile. If one strand of fiber in a one mile run containing a total of 24 fibers were subleased, then the County would pay $1/24 \times \$140.25 + 23/24 \times \127.50 or \$128.03 for that mile per month.

(c) The term of the IRU shall be for thirty (30) years commencing with the Transfer Date (the “Initial IRU Term”). Upon the expiration of the Initial IRU Term, the Agreement will automatically renew for an additional fifteen (15) years (the “Renewal IRU Term”) unless the County provides written notice to PANGAEA no later than ninety (90) days prior to the expiration of the Initial IRU Term of the County’s desire that the term not renew, in which case the Agreement shall expire at the end of the Initial IRU Term. Upon expiration of the Renewal IRU Term, unless either party provides written notice to the other of its intent that the Agreement terminate at such expiration date, the IRU shall continue on a month-to-month basis unless sooner terminated as provided in this Agreement or by operation of law, or unless terminated at the end of any month in said month-to-month term on thirty (30) days notice from either party to the other (the Initial IRU Term and Renewal IRU Term and any month-to-month term are collectively, the “IRU Term”). Notwithstanding the foregoing, the IRU shall terminate (and the IRU Term shall expire) immediately upon the termination of this Agreement for any reason, including but not limited to, the termination or expiration of the Services Term, as provided in Section 7 below; provided, however, in such event the County Network shall be reconveyed to the County as provided in Section 7(f) below. If at any time after five (5) years from the Transfer Date, the County determines that the County Network has reached the end of its economical life, the County may abandon the IRU by providing PANGAEA ninety (90) days written notice, at which time this Agreement shall terminate in accordance with Section 7(f) below. Without limiting the foregoing, during the IRU Term, the IRU shall be considered a beneficial and equitable interest that shall run with the County Network and shall be binding upon and inure to the benefit of the parties, their respective successors, representatives and assigns.

4. PANGAEA Services.

(a) PANGAEA will incorporate the County Network and associated support functions, into its day to day operations and shall provide service on the County Network in a manner that is consistent with usual and customary industry practices and that is equal to similar services provided to other PANGAEA customers and services used to manage PANGAEA’s own fiber network. During the Services Term (defined below), subject to the terms hereof, PANGAEA will provide the services listed in Attachment B hereto (the “Services”), which shall include the following:

(1) Pole Attachments. PANGAEA will add all poles associated with the County Network to PANGAEA’s existing applicable pole attachment agreements (the “Pole Attachments”).

(2) Maintenance. PANGAEA will maintain the fiber, connectors, and any other PANGAEA owned assets utilized to operate the County Network. This will include meeting all obligations included in PANGAEA’s Service Level Agreement (“SLA”) dated February 11, 2009 and attached hereto as Attachment C, and the Maintenance Specifications set forth in Attachment D hereto. During the Services Term, PANGAEA shall provide routine maintenance, emergency restoration and locate services in accordance with the SLA for the fees described in section 5(a) herein. PANGAEA may utilize subcontractors to provide the Services but shall remain liable for performance of its obligations hereunder.

(3) Administration. PANGAEA will include the County Network in all PANGAEA administrative and professional services functions. Administrative functions include, but are not limited to, office space, supplies, postage, printing/copying, furniture, office equipment and telephone. Professional services functions include, but are not limited to, tax and corporate accounting, contract management and administration, and web site maintenance and development. PANGAEA will complete monthly, quarterly, and annual reporting to meet the requirements of all federal and state government agencies. However, the County will be responsible for all grant reporting for the project including, but not limited to, the requirements of the Golden LEAF Foundation and the North Carolina State Auditor.

(4) Operations. PANGAEA will perform operations management functions to address day to day planning, maintenance, and operational issues related to the County Network. PANGAEA's personnel will serve as the initial and primary technical point of contact for the County and any third party associated with the County Network. PANGAEA will track and document all network data including fiber assignment and fiber splicing data. PANGAEA will manage staffing requirements at a level that meets or exceeds all SLA metrics.

(5) Excluded Services. Services excluded from this Agreement include, but are not limited to, any service provided by PANGAEA prior to the Transfer Date; operating, maintaining or repairing any asset not owned by PANGAEA; or support to any customer not purchasing PANGAEA service. Also excluded is bandwidth or transport provided by PANGAEA to the County or any other customer.

(b) Limitation of Liability. PANGAEA's total liability for any maintenance and repair provided pursuant to the terms of this Agreement, except for maintenance and repair which is the direct result of the negligence of PANGAEA, its agents or employees, shall be limited to \$20,000 for the Initial Service Term (as defined in section 7(a) below) and for each successive 12 month term thereafter. Amounts in excess of \$20,000 will be allocated between the parties based upon the percentage of fiber strand miles in the County Network that each party has the right to use.

5. Monthly Service Fees, Pole Attachment Fees; Payment.

(a) Monthly Service Fees. The cost of the PANGAEA Services shall be \$127.50 per month per route mile of the fiber sheath of the County Network (the "Service Fees") as defined in Attachment A. Service Fees do not include Pole Attachment Fees.

(b) Pole Attachment Fees. The County agrees to reimburse PANGAEA semi-annually for all Pole Attachment lease and maintenance fees including make ready and survey costs associated with the County Network and charged to PANGAEA by the pole owners (the "Pole Attachment Fees") (provided that PANGAEA shall first provide the County with supporting documentation evidencing such actual cost and the calculations of such cost). At such time as PANGAEA obtains use of fiber strands in the County Network pursuant to paragraph 6(a), PANGAEA will be responsible for its pro-rata share of Pole Attachment Fees.

(c) Other Services. The fees for any work done outside of the scope of Services described in this Agreement will be negotiated between the parties, including an hourly rate for personnel costs.

(d) Fee Payments. Payments for the Service Fees will be due monthly, and PANGAEA will invoice in advance on the first of each month for that month's service. (For example, an invoice dated January 1 will cover the service period of January 1-31.) Payments for the Pole Attachment Fees will be invoiced by PANGAEA semi-annually. PANGAEA will not invoice the County for the Pole Attachment Fees until PANGAEA is invoiced by the pole owners. Payments for all services provided hereunder are due 30 days after the invoice date. Late payments will incur a 1.5% per month late payment fee.

6. Pricing Adjustments; Revenue Sharing.

(a) Use of County Network Fiber by PANGAEA.

(1) If PANGAEA determines that it has a business reason to utilize one or more fiber strands included in the County Network, PANGAEA may request use of such fiber strand(s) from the County. Upon the advance written consent and approval of the County for such use, the IRU will be deemed amended to exclude the specified fiber strand(s) and fiber route(s) from the IRU. In such an event, PANGAEA will then assume full responsibility for all costs covered by this Agreement for such specific fiber strand(s) and fiber route(s), and any future monthly costs and semi-annual costs included in this Agreement will then be reduced by a prorated amount.

(2) The reduction will be calculated based upon the number of leased fiber strand miles canceled compared to the original total leased fiber strand miles for the completed County Network as defined in Attachment A. (For example, if the total leased fiber strand miles included in the County Network equals 100 and the IRU lease is canceled for 5 fiber strand miles, then the future cost reduction in fees will equal 5%. If an IRU is subsequently canceled for 2 additional leased fiber strand miles, an additional 2% cost reduction adjustment will be applied to the future fees.)

(3) Canceled leased fiber miles described in Sections 6(a)(1) and 6(a)(2) will be calculated by multiplying the number of canceled fiber strands in the fiber sheath times the distance between the end points where PANGAEA interconnects its own fiber to the County Network (as specified in PANGAEA's fiber inventory database).

(b) Addition or Removal of Fiber or Locations. Upon agreement by PANGAEA and the County, Attachment A will be amended to add or remove fiber or locations. If fiber is added to or removed from the County Network, all future Monthly Service Fees and future Pole Attachment Fees will then be increased (if fiber is added) or decreased (if fiber is removed) by a prorated amount. The prorated adjustment will be calculated by the process described in Section 6(a) above.

(c) Revenue Sharing.

(1) If PANGAEA uses one or more fiber strands as described above to provide service to a customer, PANGAEA agrees to share with the County 10% of all future monthly service gross revenue collected from that customer. PANGAEA will pay the County semi-annually an amount that represents the total gross revenue sharing amount for all collected customer gross revenue for the prior six month period. PANGAEA shall provide to the County a semi-annual report which displays the gross revenue associated with said customer and the calculation of the 10% revenue amount.

(2) PANGAEA will not transfer, sell, sublicense, or otherwise assign any interest in the County Network and the fiber strands described in Attachment A without the advance express written consent of the County and any such attempted assignment without the County's consent will be void and of no effect. If, upon County's express written consent, a third party agrees to purchase fiber IRUs on PANGAEA's network and the IRU includes fiber included in the County Network, PANGAEA agrees to share any such IRU payment with the County. The County's pro rata share will equal the percentage of fiber strand miles included in Attachment A compared to the total fiber strand miles provided to the third party. (For example, if a third party purchases an IRU on 10 fiber strand miles for \$100,000 with 5 of those 10 fiber strand miles included in the fiber strand miles in Attachment A, the County would receive \$50,000.)

7. Term; Termination and Cancellation of Services.

(a) The initial term for the Services shall commence on the Transfer Date and end on November 5, 2010 (the "Initial Services Term"). After the Initial Services Term, the Services will automatically be renewed on a month-to-month basis unless either party has provided 90 days written notice of its intent to terminate prior to the end of the Initial Services Term or as provided in Section 7(c) below. (The Initial Services Term and any such month-to-month terms are collectively, the "Services Term").

(b) If the County cancels the Services during the Initial Services Term, the County shall pay PANGAEA a cancellation penalty equal to 50% of all remaining Monthly Service Fees and 50% of all remaining Pole Attachment Fees. The cancellation penalty will not apply if the cancellation is due to PANGAEA's recurring failure to meet the material service parameters described in the SLA or the Maintenance Specifications or if PANGAEA is in default of any of the material terms of this Agreement.

(c) At any time after the Initial Services Term, PANGAEA or the County may terminate the Services (and this Agreement) for any reason with 90 days advance written notice provided to the other party.

(d) If this Agreement is terminated as provided in Section 7(c) above, subject to the limitations set forth in this Section 7(d), PANGAEA will have the right to continue to utilize any portions of the County Network associated with any IRU lease cancellations as described in Section 6(a) above (the "PANGAEA Retained Portions"), so long as PANGAEA pays the County a prorated share of the actual cost to maintain and manage the PANGAEA Retained

Portions based upon the proration formula described in Section 6(a) above (provided that the County shall first provide PANGAEA with supporting documentation evidencing such actual cost and the calculations of such cost) and the County shares in the revenue for the PANGAEA Retained Portions as provided in section 6(c)(1) and (2) above. The County may terminate PANGAEA's right to all or any part of the PANGAEA Retained Portions by providing written notice of termination to PANGAEA, whereupon PANGAEA's right to such Retained Portions shall cease one (1) year from the date said notice is received by PANGAEA.

(e) This Agreement shall immediately terminate upon (i) the termination or cessation of the provision of the Services by PANGAEA for any reason, or (ii) the expiration or termination of the Services Term.

(f) Upon termination of this Agreement for any reason, (i) the County's IRU shall immediately terminate, (ii) PANGAEA will sell and convey full ownership of the County Network to the County for the price of \$10.00, (iii) PANGAEA will provide the County with all network information in its possession regarding the fiber strands sold back to the County including but not limited to fiber allocations and mapping, pole attachment data, and splicing data, (iv) all of PANGAEA's duties and obligations with respect to the County Network and the Services shall cease, and (v) PANGAEA shall immediately remove all poles associated with the County Network from the PANGAEA pole attachment agreements. In the event of the termination of this Agreement, each party agrees to promptly execute such instruments and documents and take such further actions as may be necessary and appropriate to give full legal effect to this termination and reconveyance provision.

(g) Subject to the provisions of applicable law, compliance with PANGAEA's Articles of Incorporation, and the terms of that certain Dark Fiber IRU and Connectivity Services Agreement between the parties dated November 5, 2007, in the event that PANGAEA shall cease doing business, full ownership of the County Network described in Attachment A shall transfer automatically to the County without payment of additional consideration for use in connection with public purposes. At the County's request, PANGAEA agrees to promptly execute such instruments and documents and take such further actions as may be necessary and appropriate to give full legal effect to this provision.

8. DEFAULT. Neither party shall be in default under this Agreement unless and until it has been given written notice of such default by the other party and shall have failed to cure such default within thirty (30) days after receipt of such notice, except for default in any payment by County in which case County shall cure such default in payment within ten (10) business days after notice by PANGAEA. Where a default other than for payment cannot reasonably be cured within a thirty (30) day period, if the defaulting party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such cure. Upon the failure to cure any such default within thirty (30) days after notice thereof or within thirty (30) days plus the extension for curing with due diligence as set forth above, the party giving notice of the default may thereupon terminate this Agreement by providing written notice of termination. Subject to the above, upon default by either party, the non-defaulting party shall have the right to pursue any or all remedies available at law and/or equity. In addition to the promises and covenants of

the parties stated herein, PANGAEA will be in default under this Agreement if: (a) PANGAEA files a voluntary petition in bankruptcy or if any proceedings based on the insolvency of PANGAEA or relating to bankruptcy proceedings, a receiver or trustee shall be appointed for PANGAEA, or (b) PANGAEA acknowledges in writing its inability to pay its obligations generally as they become due. In event of a party's default, the non-defaulting party may, in addition to any other remedies permitted hereunder, terminate this Agreement pursuant to the procedures and rights outlined under Section 7(c) on thirty (30) days' notice to the defaulting party.

9. INSURANCE.

(a) During the term of this Agreement, the parties shall each obtain and maintain not less than the following insurance:

(1) Commercial General Liability Insurance with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence and in the aggregate.

(2) Worker's Compensation Insurance in amounts required by applicable law and Employers Liability Insurance with limits not less than \$500,000 each accident.

(3) Automobile Liability Insurance with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence, to include coverage for all owned, non-owned, and hired vehicles.

(4) Umbrella Liability policy with a combined single limit of \$5,000,000 for bodily injury and property damage per occurrence and in the aggregate.

The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

(b) Unless otherwise agreed, each party's insurance policies required above shall be obtained and maintained with companies rated A- or better by Best's Key Rating Guide or a similar rating by another generally recognized rating agency and the other party, its Affiliates, officers, directors, and employees, and any other party entitled to indemnification hereunder shall be named as additional insureds to the extent of such indemnification. Upon request, each party shall provide the other party with an insurance certificate confirming compliance with the insurance requirements of this Article. The insurance certificate shall indicate that the other party shall be notified not less than thirty (30) days prior to any cancellation or material change in coverage.

(c) If either party provides any of the foregoing coverages through a claims made policy basis, that party shall cause such policy or policies to be maintained for at least three (3) years beyond the expiration of this Agreement.

(d) The parties shall each obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, Affiliates, assignees,

officers, directors, and employees or any other party entitled to indemnity under this Agreement to the extent of such indemnity.

(e) Nothing in this Agreement shall be construed to prevent either party from satisfying its insurance obligations pursuant to this Agreement under an umbrella policy or policies of insurance that meet or exceed the requirements of this Article.

10. MISCELLANEOUS.

(a) Relationship of the Parties. Nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between PANGAEA and the County for any purposes, including but not limited to, federal income tax purposes.

(b) Severability. All rights and restrictions herein apply only to the extent they do not violate applicable law and are limited to the extent necessary to be enforceable. 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.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Assignment and Subletting. The County may not assign its rights or obligations under this Agreement without the prior written consent of PANGAEA. PANGAEA may not assign or sublease its rights or obligations under this Agreement (including without limitation its rights with respect to the County Network) without the prior written consent of the County. This Agreement shall be binding upon the parties and their respective successors and assigns.

(e) Cumulative Remedies. All rights and remedies in this Agreement are cumulative, and the exercise of any right or remedy should not be construed as an election of remedies and preclude the right to exercise any other right or remedy.

(f) Notice. Any notice required or permitted to be given with regard to this Agreement shall be in writing and shall be deemed given five (5) days after delivery to Federal Express, or other express delivery service, charges prepaid, addressed to the Executive Director in the case of any notice to PANGAEA, and to the County Manager in the case of the County, at their respective addresses first written above, or to such other representative at such other address as either party may designate by written notice as provided herein. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

(g) Construction. Headings at the beginning of any section, subsection, or subpart are solely for the convenience of the parties and are not a part of, and shall not be used to interpret, this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties. Unless otherwise indicated, all references to sections and subsections are to this

Agreement. References to sections include all subparts and subsections of the referenced section. All Attachments and Exhibits referred to in this Agreement are attached and incorporated by this reference.

(h) Third Parties. Nothing contained herein, express or implied, is intended to confer upon any person, other than the parties hereto and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

(i) Survival. The provisions of sections 7, 8 and 10 hereof, and any other provisions of this Agreement to be performed after such expiration or termination, shall survive the expiration or termination of this Agreement regardless of cause.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and taken together shall constitute one and the same instrument.

(k) Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.

(l) Acknowledgement of Prior Agreement. The parties hereto acknowledge that they are the parties to a Dark Fiber IRU and Connectivity Services Agreement dated November 5, 2007, which agreement remains in full force and effect and is not altered or amended by this Agreement.

(m) Limited Warranty. County warrants to PANGAEA that the County Network on the Transfer Date will conform to and meet the Construction Requirements and all industry standard acceptable test requirements. **EXCEPT AS SPECIFICALLY STATED HEREIN, COUNTY MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE COUNTY NETWORK.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

E-POLK, INC. d/b/a PANGAEA

RUTHERFORD COUNTY

By: _____

By: _____

Name: Ron Walters

Name: _____

Title: Executive Director

Title: _____

ATTACHMENT A

<u>Route mi. Location</u>	<u>Address</u>	<u>From Point</u>	<u># of Fibers</u>
0.10 Bostic EMS	207 N Main St	Street to EMS Bldg with lateral pulled thru to fire sta.	12F
0.10 Bostic Station	181 N Main St	See Above	12F
0.10 Ellenboro Station	175 Depot St	Street	12F
0.10 Hudlow Station	2910 Hudlow Road	Street	12F
0.10 Sandy Mush Station	557 US Hwy 221A	Street	12F
0.10 Danieltown SDO Station	115 Toms Lake Road	Street	12F
0.50 Ruutherfordon Station	144 N Mitchell St	Street	12F
0.20 Spindale Station	103 Reveley St	Street	12F
2.30 Cherry Mountain Station	5841 Bostic Sunshine Hwy	Intersection of Toney Rd and Bostic Sunshine Hwy.	72F
1.30 Cliffside Station	4600 US Hwy 221A	Cliffside Elementary	48F
3.20 Union Mills Station	6791 Hudlow Rd	Gilkey School/Painters Gap Intersection	72F
0.10 Green Hill	2711 US Hwy 64/74A	Street	12F
5.00 Shingle Hollow Station	2621 Cove Road	Green Hill	24F
13.88 Hickory Nut Gorge EMS\Library	Intersection of 64/74 & Bills Creek Rd.	RC COMM CENTER	144F
1.80 Bills Creek Station	1118 Bills Creek Rd	Hickory Nut Gorge EMS\Library	24F
1.90 Fairfield Station	1415 Buffalo Creek Rd	Bills Creek Station	24F
1.90 Lake Lure Town Station	622 Memorial Highway	Hickory Nut Gorge EMS\Library	24F
5.40 Chimney Rock Station	109 Terrace Dr	Lake Lure Fire Station	24F
0.50 Haynes Library	N. Main/ Church Street, Henrietta	400' from Intersection of Church St. and S. Pea Ridge Rd.	24F
38.58 Total Mileage			

Definition of County Network: The County Network is defined as all fiber components that make up the fiber network infrastructure detailed in Attachment A including fiber optic cable runs, support strand, innerducts, enclosures, manholes, handholes, and all other hardware required to support and secure fiber installation whether aerial or buried.

ATTACHMENT B

Rutherford County Public Safety Fiber Network

Job Functions Provided By PANGAEA Internet Personnel:

- Insurance Policy Analysis and Management
 - Property and Business Liability
 - Workers Compensation
 - Umbrella Liability
 - Directors and Officers Liability
 - Smartnet - Columbus
 - Smartnet – Rutherfordton

- Pole Attachment Contract Negotiation, Analysis and Management
 - AT&T
 - Northland Cable
 - REMC
 - Duke Energy

- Network Operations (includes PANGAEA owned fiber optic cable, network equipment, power equipment, connectors and monitoring equipment – excludes any functions related to customer specific lateral fiber drops or customer equipment.)
 - Network Planning
 - Diversity/Survivability Analysis/Planning
 - Fiber Demand and Growth Strategy
 - Fiber Route Analysis
 - Network Mapping
 - Fiber Routes
 - Fiber Allocations
 - Diversity/Survivability
 - Engineering
 - Traffic Routing and Usage Evaluation
 - Network Performance Evaluation
 - Maintenance
 - Fiber Inspection/Evaluation (Quarterly)
 - Equipment Evaluation and Upgrades
 - Repair
 - 24X7 On Call
 - Meet All SLA/QoS Requirements
 - Outage Notifications
 - Network Vendor Management
 - IP Consultants
 - Equipment

- Fiber
 - Smartnet
 - Installation
- Regulatory Affairs and Reporting
 - FCC Form 499Q
 - FCC Form 499A
 - FCC CPNI Filing
 - NCUC Form RF
 - FCC Form 477
 - USAC/eRate
- Financial Reporting
 - NC-5
 - IRS 941
 - NC3M
 - 1096/1099
 - W-2/W-3
 - NC E-585
 - IRS 990
 - NC E-500
- Public Advocacy and Relations
- Business Planning
- Budget Development, Tracking and Management
- Business Contract Negotiation and Relationship Management
 - CPA
 - Legal
 - Rutherford County Government
 - Polk County Government
 - Rutherford County Schools
 - Polk County Schools
 - DukeNet Communications
 - Foothills Connect
 - Town of Rutherfordton
 - Town of Forest City
 - Carolina Cable
 - ITS
 - MCNC
- Pricing and Product Strategy
 - Bandwidth
 - Transport

- Administration
 - Office Management
 - Rent
 - Supplies
 - Postage
 - Printing/Copying
 - Furniture
 - Equipment
 - Telephone
 - Employee Management
 - Hiring
 - Evaluations
 - Training
 - Payroll
 - W-2
 - 1099
 - Professional Services
 - Bookkeeping
 - Accounts Payable
 - Accounts Receivable
 - Collections
 - Invoicing
 - Accruals
 - End of Period Reports
 - Tax Accounting
 - Legal
 - Network (IP) Consulting

ATTACHMENT C

PANGAEA Service Level Agreement

1. Service Levels

Installation: PANGAEA will exercise commercially reasonable efforts to install any PANGAEA service on or before the Customer Commit Date. This installation service level does not apply to Customer Orders that contain incorrect information supplied by Customer or Customer Orders that are altered at Customer's request after submission and acceptance by PANGAEA. In the event PANGAEA does not meet this Installation Service Level for a particular PANGAEA service for reasons other than an Excused Outage, Customer will be entitled to a service credit for each day of delay equal to the charges for one (1) day of the allocated monthly recurring cost for the affected service, up to a monthly maximum credit of ten (10) days.

Network Availability: PANGAEA's goal is to maintain 100% network availability and PANGAEA commits to maintain an average monthly availability of greater than 98.5%. Network downtime will exist when Customer is unable to transmit or receive data over the PANGAEA network. Network downtime is measured from the time the PANGAEA Operations Director becomes aware of the downtime to the time Customer can again transmit and receive data. When the per occurrence downtime is greater than four hours, Customer is entitled to a service credit for that occurrence. That credit will equal 1/30 of the total monthly recurring cost for each hour of network outage in excess of four hours.

Mean Time to Repair: PANGAEA's goal is to deliver a Mean Time to Repair of four hours from the first report of trouble. Mean Time to Repair is measured based on the total time it takes to restore service interruptions. Customer will be entitled to a service credit equal to 10% of the total monthly recurring cost paid by Customer during the calendar month in which the Mean Time to Repair goal is not met. This calculation will average all service outages for the month.

Maintenance: PANGAEA or designee will provide seven (7) days notice of any scheduled network maintenance activities. Eight (8) hours notice will be provided for items that require network maintenance and cannot wait until the normal maintenance window. PANGAEA or designee will perform maintenance activities between 9 PM and 6 AM unless otherwise required.

Support/Monitoring: PANGAEA or partner designee will be available 24/7 for monitoring, support and repair. PANGAEA's Operations Director will be the point of contact for all service related issues. An escalation list is provided in this document. All PANGAEA network equipment is monitored 24/7 so that the Operations Director will be notified immediately of any outages or other problems.

Restoration: Personnel will be on site for emergency unscheduled maintenance within four hours of becoming aware of an event.

2. Customer Responsibilities

The Customer will provide surge protected power and sufficient computer room space for all equipment needed to interconnect with the PANGAEA network. PANGAEA or designee and Customer will work together to identify any network issues that do not have a clearly defined responsible party. The cost of catastrophic repairs will be shared among customers on a pro-rata basis based upon strand count in the impacted sheath. Although rare, service interruptions do occur. Therefore, PANGAEA recommends that the Customer maintains a backup service.

3. Excused Outages

PANGAEA will not be responsible for outages caused by Customer neglect, equipment not owned or controlled by PANGAEA, catastrophic damages, or instances of Force Majeure.

4. Credit Exceptions

In the event Customer is entitled to multiple credits arising from the same event, the credits will not be cumulative and Customer will receive the maximum single credit available for that event.

5. Limits of Liability

PANGAEA's total maximum liability per event is equivalent to one month's recurring cost for the PANGAEA service.

6. Escalation List

1st Level

Stu Davidson (Operations Director)

Cell: 828-817-2919
Emergency Only: 864-457-5239
stu@e-polk.org or davidsons@charter.net (home)

2nd Level

Ron Walters (Executive Director)

Cell: 828-817-0863
Emergency Only: 864-877-5658
ronw@e-polk.org

3rd Level

Jeff Byrd (President – Board of Directors)

Office: 828- 859-2737 x106
Cell: 828- 817-0012
jbyrd@tryondailybulletin.com

Attachment D

MAINTENANCE SPECIFICATIONS

1. Routine Maintenance

In general, Maintenance Services shall be performed pursuant to standard industry engineering practices. PANGAEA shall perform the work and provide the services set forth in the following paragraphs A through E as Routine Maintenance:

A. NOC Functions. PANGAEA shall operate a manned Network Operations Center (“NOC”) twenty-four (24) hours a day, seven (7) days a week that monitors the fiber network by means of remote surveillance and alarm monitoring equipment and dispatches maintenance and repair personnel to handle and repair problems detected by the NOC or reported by County or other parties. County shall use the phone number provided by PANGAEA to report problems to the NOC.

B. Cable Maintenance. PANGAEA shall perform appropriate routine maintenance on the fiber network in accordance with PANGAEA’s then-current preventative maintenance procedures. Such preventative maintenance procedures shall not substantially deviate from industry practice.

C. Transmission Site Maintenance. PANGAEA shall perform appropriate routine maintenance on regenerator, optical amplifier, and junction buildings, including the DC power plant, HVAC equipment, and basic building safety equipment including alarms and emergency generators in accordance with PANGAEA’s then current preventative maintenance procedures. PANGAEA’s maintenance procedures shall not substantially deviate from industry practice.

D. Route Patrol. PANGAEA shall patrol the below ground portions of the fiber network on a reasonable, routine basis and shall perform all required cable locates. PANGAEA shall belong to a state or regional one-call (call-before you dig) center when available.

E. Spare Cable. PANGAEA shall maintain an inventory of spare cable, together with other maintenance equipment, at strategic locations to facilitate timely restoration.

2. Planned Network Maintenance Activity

A. Timing. Except as set forth in the following sentence, PANGAEA shall perform all maintenance between 0001-0600 Eastern time, Monday through Friday, inclusive, that will have a disruptive impact on the continuity or performance level of the County Network. However, the preceding sentence does not apply to restoration of continuity to a severed or partially severed fiber optic cable, restoration of dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions. Furthermore, PANGAEA agrees to use commercially reasonable efforts to ensure that all maintenance work, when performed, will only affect one side of the IRU Fibers to allow for the redundant path to continue functioning.

B. Notice. PANGAEA shall provide County with telephone, facsimile, or written notice of all non-emergency planned network maintenance (a) no later than three (3) business days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting County’s traffic for up to 50 milliseconds, and (b) no later than ten (10) business days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting County’s traffic for more than 50 milliseconds. If PANGAEA’s planned activity is canceled or delayed, PANGAEA shall promptly notify County and shall comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Unplanned Maintenance

Unplanned Maintenance is non-routine maintenance and repair of the fiber network which is not included as Scheduled Maintenance. Unscheduled Maintenance will commence on the Transfer Date and shall consist of Unscheduled Maintenance in response to: (i) an alarm identification, receipt of notification by PANGAEA or any third party of any failure, interruption or impairment in the operation of the network, or any event imminently likely to cause the failure, interruption or impairment in the operation of the network; or (ii) any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the network, each to the extent same is not included in the definition of Scheduled Maintenance.

PANGAEA will use reasonable efforts to keep and maintain the fiber network in good condition and repair and perform all repairs and replacements thereto, including coordination of any repairs to local access facilities with local exchange carriers as shall be materially consistent with other common carrier industry standards, governmental requirements, and sound business practices.

4. Fiber and Cable

A. Emergency Repair. PANGAEA shall correct or repair cable discontinuity or damage. PANGAEA shall use best efforts to repair cable traffic discontinuity within the following times:
Dispatch of personnel to problem area – within one (1) hour of learning of discontinuity
Arrival of first maintenance employee on site – within four (4) hours of learning of discontinuity
Restoration of Cable continuity – continuity of at least one fiber shall be established within six (6) hours of learning of discontinuity; restoration shall continue until all in-service fibers are restored

B. Permanent Repair. Within twenty-four (24) hours after completion of an emergency repair, PANGAEA shall commence its planning for permanent repair, shall notify County of such plans, and shall implement such permanent repair within an appropriate time thereafter in any event not to exceed forty-eight (48) hours.

C. Cut Fiber. When restoring a cut fiber, PANGAEA agrees to work to restore all traffic as quickly as possible. PANGAEA, promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the fiber and shall begin restoration efforts. PANGAEA will splice fibers tube by tube rotating between tubes operated by the separate parties having an interest in the County Network (“Interest Holders”) in accordance with the priority and rotation mechanics (described below), however: (i) lit fibers in all buffer tubes shall have priority over any dark fibers in order to allow transmission systems to come back on line; and (ii) the performing party will continue such restoration efforts until all lit fibers in all buffer tubes are spliced and all traffic is restored. In general, priority among Interest Holders affected by a cut shall be determined on a rotating restoration-by-restoration basis, to provide fair and equitable restoration priority to all Interest Holders, subject only to such restoration priority to which PANGAEA is contractually obligated. Except as otherwise required, PANGAEA will use all reasonable efforts to implement a network rotation mechanism so that the initial rotation order of the Interest Holders is varied (from earlier to later in the order), such that as restorations occur, each Interest Holder has approximately equivalent rotation order positions across the performing party’s portion of the Network.

5. Miscellaneous

A. Full-Time Dispatch Capability. PANGAEA’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. PANGAEA shall make best efforts to have

its first maintenance employee at the site requiring an emergency maintenance activity within four (4) hours from the time of alarm identification by PANGAEA's NOC or notification by County, whichever occurs first. Emergency maintenance is defined as any service-affecting situations requiring an immediate response.

B. Standard of Care; Cooperation. In performing its services hereunder, PANGAEA shall take workmanlike care and make commercially reasonable efforts to prevent impairment to the signal continuity and performance of the County Network. In addition, PANGAEA shall reasonably cooperate with County in sharing information and analyzing the disturbances regarding the cable and/or fiber facilities.

C. County Equipment. Nothing contained herein shall make PANGAEA responsible for equipment that is not included in the County Network as described in Attachment A.

D. Escalation List. PANGAEA shall, at County's request, provide County an operations escalation list for use in reporting and seeking redress of exceptions noted in PANGAEA's performance of Routine Maintenance and Non-Routine Maintenance.