

ORIGINAL

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

IN RE:	)	CHAPTER 11
LIGHTYEAR HOLDINGS, INC., ET AL.,	)	CASE NO. 02-32257
DEBTORS.	)	JOINTLY ADMINISTERED
	)	HON. DAVID T. STOSBERG
	)	REQUESTED HEARING DATE AND TIME:
	)	AUGUST 4, 2003 AT 11:00 A.M.

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**MOTION OF THE DEBTORS FOR ORDER APPROVING SETTLEMENT  
AGREEMENT BETWEEN THE DEBTORS AND VARTEC TELECOM, INC.  
PURSUANT TO FED. R. BANKR. P. 9019**

LIGHTYEAR HOLDINGS, INC., LIGHTYEAR COMMUNICATIONS, INC., LIGHTYEAR TELECOMMUNICATIONS LLC AND LIGHTYEAR COMMUNICATIONS OF VIRGINIA, INC., debtor and debtor in possession in the above captioned chapter 11 cases (collectively, the "Debtors"), by their attorneys, FROST BROWN TODD LLC, respectfully request that this Court enter an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving the terms of a settlement agreement and release (the "Settlement Agreement and Release") between the Debtors and VarTec Telecom, Inc. ("VarTec"). In support of this Motion, the Debtors respectfully state:

BACKGROUND

1. Lightyear Holdings, Inc. ("Holdings") was the subject of an involuntary chapter 7 petition filed on April 10, 2002 (the "Involuntary Petition Date"). Since the Involuntary Petition Date, Holdings has continued to operate its business and manage its properties in the ordinary course of business. On the Petition Date (hereafter defined), Holdings filed a motion to convert its involuntary chapter 7 case to a voluntary chapter 11 case under title 11 of the United States Code (the "Bankruptcy Code").

2. On April 29, 2002 (the "Petition Date"), Lightyear Communications, Inc. ("Communications"), Lightyear Telecommunications LLC ("Telecommunications") and Lightyear Communications of Virginia, Inc. ("Virginia") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On April 30, 2002, this Court entered an order converting Holdings' chapter 7 case to a case under chapter 11 of the Bankruptcy Code. On May 22, 2002, this Court entered an order consolidating these chapter 11 cases for procedural purposes only.

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3. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On June 3, 2002, the United States Trustee appointed the Committee of Creditors Holding Unsecured Claims in the Holdings case (the "Committee").

5. Holdings is a corporation organized under the laws of Delaware. Holdings owns 100% of the issued and outstanding stock of Communications, a corporation organized under the laws of Kentucky, and is the sole member of Telecommunications, a Delaware limited liability company. Communications owns 100% of the issued and outstanding stock of Virginia.

#### JURISDICTION

6. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

#### CURRENT STATUS OF THE DEBTORS' CASES

7. Following several months of negotiations, on June 12, 2003, the Debtors and LY Acquisition LLC, a Kentucky limited liability company ("LY Acquisition"), entered into a term sheet (the "Term Sheet") for the sale (the "Sale") of substantially all of the assets of the Debtors (the "Purchased Assets") and the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases (the "Assumed Contracts and Leases").

8. On June 20, 2003, the Debtors filed a Motion for Order: (A) Establishing Auction Procedures to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain of the Debtor's Executory Contracts and Unexpired Leases; (B) Setting Sale Hearing Date; and (C) Approving Form of Notice (the "Bid Procedures Motion") and Debtors' Motion for Order: (A) Authorizing the Sale of Substantially All of the Debtors' Assets Pursuant to 11 U.S.C. § 363(b), (f) and (m) and (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365 (the "Sale Motion"). The Bid Procedures Motion is scheduled to be heard by this Court on August 4, 2003.

9. Notwithstanding the progress made by the Debtors in these chapter 11 cases, the Debtors have continued to face ongoing external market pressures due to the persistence of a weak telecommunications industry. After significant analysis and review by the Debtors and their chief

restructuring manager, the Debtors determined that a stand-alone reorganization of the Debtors' businesses in these chapter 11 cases would not be possible. The Debtors concluded, therefore, that a sale of substantially all of the Debtors' assets, as a going concern, will maximize the value of the Debtors' assets and preserve the Debtors' businesses as a going concern. The Debtors believe that such a sale of substantially all of the Debtors' assets is in the best interests of the Debtors, their estates and creditors, as well as other parties in interest and should be approved by this Court.

10. As part of the proposed sale of their assets to LY Acquisition, the Debtors intend to file a plan of reorganization and complete the administration of these chapter 11 cases. The Debtors have sought to identify and resolve possible claims by and against their estates with the goal of eliminating or expunging those claims for the benefit of all creditors. One such claim involves claims asserted by the Debtors against VarTec and claims asserted by VarTec against the Debtors.

#### THE VARTEC TRANSACTIONS

11. The Debtors' and VarTec's relationship began in late 1999 when J. Sherman Henderson III ("Henderson"), Chief Executive Officer of the Debtors, and A. Joe Mitchell, Jr. ("Mitchell"), President of VarTec, first met. At that initial meeting and at subsequent meetings, representatives of the Debtors and VarTec discussed the Debtors' financial position and the Debtors' need for additional financing. The Debtors informed VarTec that the Debtors were pursuing financing from alternate sources, including venture capitalists, but that the Debtors had not yet secured the financing they needed. Prior to their discussions with VarTec, the Debtors had been extended several lines of credit by two principal banks, including Firststar Bank, now U.S. Bank, and Deutsche Bank (collectively, the "Banks"), but those lines of credit were not sufficient to provide for all of the financing needed by the Debtors.

12. Beginning in 1999, the Debtors attempted to raise capital in order to finance: (1) a data network with reduced operating costs; and (2) operating needs which were necessary to take the Debtors public through an initial public offering of common stock. Given market conditions at that time for internet-based and telecommunications companies, it was difficult for the Debtors to find sufficient investors.

13. Certain venture capital firms offered the Debtors financing in the first quarter of 2000, but the terms of that financing were not acceptable to the Debtors. Accordingly, the Debtors approached VarTec and explained the Debtors' need for financing. The parties' discussions culminated in Henderson and Mitchell, on March 21, 2000 and on behalf of their respective companies, signing a Letter of Intent

that set out the terms of a proposed merger between the Debtors and VarTec (the "Proposed Transaction"). Among other things, the terms included certain interim financing that VarTec would provide to the Debtors, and VarTec and the Debtors signed a Note Purchase Agreement dated April 4, 2000, whereby VarTec loaned \$25,000,000 to the Debtors and the Debtors issued VarTec a \$25,000,000 subordinated convertible note.

14. In June 2000, VarTec purchased an equity interest in Holdings from N-TEL LLC when VarTec purchased 2,863,219 shares of common stock. This purchase gave VarTec a 14.9 percent equity ownership of Holdings.

15. On July 31, 2000, VarTec loaned \$15,000,000 to the Debtors and the Debtors issued VarTec a \$15,000,000 subordinated convertible note pursuant to the April 4, 2000 Note Purchase Agreement. At that point, VarTec held \$40,000,000 in the Debtors' debt instruments.

16. On October 31, 2000, the Debtors and VarTec entered into a second Note Purchase Agreement whereby VarTec loaned \$20,000,000 to the Debtors and the Debtors issued VarTec a \$20,000,000 subordinated convertible note. At that point, VarTec held \$60,000,000 in the Debtors' debt instruments.

17. On February 9, 2001, VarTec loaned \$15,000,000 to the Debtors and the Debtors issued VarTec a \$15,000,000 convertible subordinated note pursuant to the October 31, 2000 Note Purchase Agreement. At that time, VarTec held \$75,000,000 in the Debtors' debt instruments.

18. In March 2001, VarTec increased its equity stake and total investments in the Debtors by purchasing 27 shares of Lightyear Series C Convertible Preferred Stock for approximately \$35,000,000.

19. The Debtors and VarTec executed a Deal Points Memorandum on March 12, 2001 (the "Deal Points Memorandum") which summarized the parties' then-current understanding of the terms of the Proposed Transaction. The Debtors contend, and VarTec disputes, that the Deal Points Memorandum constituted a binding agreement to merge the Debtors and VarTec.

20. On May 3, 2001 and pursuant to the October 31, 2000 Note Purchase Agreement, VarTec loaned \$10,000,000 to the Debtors and the Debtors issued VarTec a \$10,000,000 subordinated convertible note. At that time, VarTec held \$85,000,000 in the Debtors' debt instruments.

21. On November 1, 2001, the Debtors, through Harry Hirsch, a non-executive member of Holdings' Board of Directors, signed the October 23, 2001 Letter of Intent, which set forth the terms and conditions of the Proposed Transaction between the companies.

22. On November 30, 2001, VarTec delivered a draft of a definitive agreement regarding the Proposed Transaction.

23. Due to disputes between the parties at that time regarding the terms of the Proposed Transaction, on or about December 20, 2001, VarTec advised the Debtors that the Proposed Transaction contemplated by the letters of intent, the Deal Points Memorandum and the definitive agreement would likely not occur.

24. The Debtors contend, and VarTec disputes, that the Debtors possess claims in an indeterminate amount against VarTec as a result of VarTec's failure to consummate the Proposed Transaction (the "Debtors' Claims"). VarTec has filed claims in these chapter 11 cases totaling in excess of \$85,000,000 and holds equity securities (the "Equity Securities") in the Debtors of approximately \$47,000,000 (collectively, the "VarTec Claims").

#### THE SETTLEMENT AGREEMENT AND RELEASE

25. Following extensive negotiations, on or about July 21, 2003, the Debtors, VarTec, Henderson, S. Andrew McKay ("McKay"), and Bruce W. Widener ("Widener," collectively with Henderson and McKay, the "Other Release Parties"),<sup>1</sup> and for certain limited purposes, the Committee, John Bogaty ("Bogaty"), Kevin Estes ("Estes"), John Pappas ("Pappas"),<sup>2</sup> and LY Acquisition, entered into a settlement agreement and release based substantially on the terms of the form of Settlement Agreement and Release attached hereto and incorporated herein as Exhibit A.<sup>3</sup> The Settlement Agreement and Release, *inter alia*, resolves all of the VarTec Claims and the Debtors' Claims. Pursuant to the Settlement Agreement and Release, the Debtors and the Other Release Parties, on the one hand, and VarTec, on the other hand, each agree to release the other from any claims, known or unknown, that arose before the date this Court enters an order approving the Settlement Agreement and Release, including but not limited to claims that could have been asserted relating to (a) the Proposed Transaction, (b) the note

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<sup>1</sup> McKay and Widener are former officers of the Debtors.

<sup>2</sup> Bogaty, Estes and Pappas are petitioning creditors of the Holdings chapter 11 case and holders of notes payable by Holdings as a result of a prepetition business acquisition by Holdings.

<sup>3</sup> The Debtors will file with the Court as a supplement to this Motion the fully executed Settlement Agreement and

purchase agreements, (c) the purchase of the Equity Securities, (d) the migration of voice and data traffic, (e) the Excel Transaction (as defined in the Settlement Agreement and Release), and (f) any employment relationship between the Debtors and their past and present employees and VarTec. In addition, the Committee, Bogaty, Estes, and Pappas agree to release VarTec from any known and unknown claims as described above.

1. The terms of the Settlement Agreement and Release are as follows:<sup>4</sup>
  - a. The effectiveness of the Settlement Agreement and Release is conditioned upon the entry of a final and non-appealable order by this Court approving the Settlement Agreement and Release (the "Approval Order"). If the Approval Order is not entered within 35 days of the filing of this Motion, VarTec may, without penalty, terminate the Settlement Agreement and Release upon written notice to the Debtors. In addition, if any party objects to (i) this Motion or (ii) by the date of the hearing on this Motion, the Bid Procedures Motion or the Sale Motion (each, an "Objecting Party"), VarTec may, without penalty, terminate the Settlement Agreement and Release.
  - b. The closing of the settlement contemplated by the Settlement Agreement and Release shall occur one day after entry of the Approval Order (the "Closing Date"). Effective as of the Closing Date, each of VarTec, the Debtors, and the Other Release Parties shall release the other from all claims that arose prior to the entry of the Approval Order.
  - c. Effective as of the Closing Date, the Committee, Bogaty, Estes, and Pappas shall release VarTec from all claims that arose prior to the entry of the Approval Order.
  - d. Effective as of the Closing Date, the Debtors and the Other Release Parties will cooperate and assist VarTec in the defense or prosecution of any existing or future claims or causes of action by or against VarTec of which the Debtors have knowledge of facts relating thereto. VarTec will pay all reasonable out-of-pocket expenses, including reasonable attorneys fees, of the Debtors and the Other Release Parties incurred in connection with the foregoing obligations. In addition, as of the Closing Date and to the extent reasonably practicable and allowable by law, the Debtors will defend any future claims or causes of action brought by a party not a party to the Settlement Agreement and Release and that relate to the subject matter of the releases contained in the Settlement Agreement and Release ("Third-Party Actions").
  - e. LY Acquisition will indemnify VarTec from any Third Party Actions brought by an Objecting Party and any claims or causes of actions asserted against VarTec after the Closing Date by any of the Other Release Parties or Michael Johnson, Bogaty, Estes, or Pappas (the "Indemnified Claims"). The foregoing obligations of LY Acquisition are (i) only effective if LY Acquisition is the highest and best bidder for the purchase of substantially all of the Debtors' assets pursuant to the Bid Procedures Motion and the Sale Motion, (ii) effective upon the Final Closing (as defined in the Bid Procedures Motion and the Sale Motion) and for a period of two years thereafter (the "LY Acquisition Indemnification Period"), (iii) not to exceed \$100,000 for the first 365 days of the LY Acquisition Indemnification Period, (iv) not to exceed \$100,000 for the

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Release upon its execution.

<sup>4</sup> The discussion of the Settlement Agreement and Release contained herein is intended to highlight certain provisions of the Settlement Agreement and Release and does not necessarily contain all terms and conditions of the Settlement Agreement and Release.

final 365 days of the LY Acquisition Indemnification Period; (v) not to exceed \$200,000 in the aggregate; and (vi) paid in arrears.

- f. The Debtors likewise agree to indemnify VarTec from the Indemnified Claims. The foregoing obligations of the Debtors' are (i) effective upon the Closing Date and shall continue until the Final Closing Date, (ii) not to exceed \$100,000 in the aggregate; and (iii) paid in arrears.
- g. The terms of the Settlement Agreement and Release will be incorporated into any plan of reorganization filed or supported by the Debtors (the "Plan"). The Plan shall contain an injunction against Third-Party Actions.
- h. Effective upon the Closing Date, VarTec will (i) surrender and irrevocably forfeit the Notes to Holdings for cancellation by Holdings; (ii) surrender the stock certificates representing the Equity Securities to Holdings for Holdings to redeem, hold as treasury stock, or assign or transfer to a third party in its sole discretion; (iii) withdraw its proofs of claim filed against the Debtors in these chapter 11 cases; (iv) take no further action or make any additional filings in these chapter 11 cases except as necessary to consummate the transactions contemplated by the Settlement Agreement and Release; and (v) support and not oppose the Debtors' Plan in these chapter 11 cases.

26. The Debtors believe that the Settlement Agreement and Release is fair and reasonable and in the best interest of the Debtors' estates and their creditors and, therefore, should be approved by this Court.

#### STANDARD FOR APPROVAL OF SETTLEMENTS

27. In pertinent part, Rule 9019 of the Federal Rules of Bankruptcy Procedure provides as follows:

**Compromise.** On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the Reorganized Debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

28. The standards by which courts evaluate a proposed compromise and settlement are well established. This Court should approve a proposed compromise and settlement after an independent review and evaluation of the applicable principles of law unless it "fall[s] below the lowest point in the range of reasonableness." Cosoff v. Rodman (In re W.T. Grant), 699 F.2d 599, 608 (2d Cir.), cert denied, 464 U.S. 822 (1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir.), cert denied sub nom. Benson v. Newman, 409 U.S. 1039 (1972)). In evaluating the fairness of a proposed compromise and settlement, a court should consider: (i) the probability of success in the litigation, (ii) the difficulties, if any, to be encountered in the matter of collection, (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (iv) the paramount interest of the

creditors and a proper deference to their reasonable views. Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929). See also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); In re Carson, 82 Bankr. 847, 852-55 (Bankr. S.D. Ohio 1987). Those factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement. The Debtors submit that the Settlement Agreement and Release as discussed herein satisfies the standards for approval and, therefore, should be approved under Rule 9019 of the Federal Rules of Bankruptcy Procedure.

**THE SETTLEMENT AGREEMENT AND RELEASE SHOULD BE APPROVED UNDER RULE 9019  
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

29. The Settlement Agreement and Release is reasonable, in the best interests of the Debtors' estates, and should be approved by this Court under Rule 9019 of the Federal Rules of Bankruptcy Procedure. The VarTec Claims represent a substantial percentage of the total claims in the Debtors' chapter 11 cases. Entering into the Settlement Agreement and Release will reduce total claims in the Debtors' chapter 11 cases in excess of \$85,000,000.

30. Finally, entering into the Settlement Agreement and Release will resolve numerous ongoing, contentious, outstanding issues between the Debtors and VarTec that have required the attention of the Debtors, their management team and its professionals.

31. In addition, the various claims asserted by the Debtors and VarTec against each other are significant and complex. Litigation of the claims likely would prove to be time consuming and costly for both parties. The Debtors and VarTec have given every indication that they intend to vigorously pursue their claims against the other. Based on the applicable law and relevant facts, it remains uncertain as to which party will prevail. While the Debtors believe that its position has merit, it is impossible to predict how this Court ultimately will rule on the parties' claims. Based upon the foregoing, the Debtors submit that the Settlement Agreement and Release is in the best interests of the Debtors' estates and should be approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

**NOTICE AND REQUEST FOR HEARING**

32. No trustee or examiner has been appointed in these cases. Notice of this Motion has been given to counsel for VarTec, the United States Trustee, the Official Committee of Unsecured Creditors for Holdings, the Official Committee of Unsecured Creditors for Telecommunications, the twenty largest unsecured creditors of Communications and Virginia, counsel for U.S. Bank National Association



and Deutsche Bank A.G., counsel for the petitioning creditors of Holdings' involuntary petition (the "Petitioning Creditors"), counsel for WorldCom, all other parties claiming to be secured creditors in these chapter 11 cases, all parties requesting notice in these chapter 11 cases, and all creditors and equity security holders of the Debtors. Because of the exigencies of the circumstances and the irreparable harm to the Debtors that will ensue if the relief requested herein is not granted, the Debtors submit that no other notice need be given.

33. The Debtors have filed concurrently herewith an emergency motion to conduct an expedited hearing on this Motion and to shorten the notice period hereof (the "Emergency Motion"). With the Emergency Motion, the Debtors request that this Court schedule a hearing on this Motion for August 4, 2003 at 11:00 a.m., the next omnibus hearing date scheduled in these chapter 11 cases, and set the deadline to object to the relief sought with this Motion for July 31, 2003.

**34. ANY OBJECTION(S) TO THE RELIEF REQUESTED IN THIS MOTION MUST STATE WITH PARTICULARITY THE REASON(S) THAT THE MOTION IS OPPOSED AND MUST BE (A) FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT, (B) SERVED ON THE DEBTORS' COUNSEL, FROST BROWN TODD LLC, 2200 PNC CENTER, 201 EAST FIFTH STREET, CINCINNATI, OHIO 45202, ATTN: RONALD E. GOLD, AND (C) SERVED ON VARTEC'S COUNSEL, HUGHES & LUCE, LLP, 1717 MAIN ST., STE. 2800, DALLAS, TEXAS 75201, ATTN: THOMAS W. PAXTON, SO AS TO BE RECEIVED ON OR BEFORE 4:00 P.M. ON JULY 31, 2003. IF NO TIMELY OBJECTION(S) OR OTHER RESPONSE(S) IS FILED AND SERVED AS SPECIFIED HEREIN, THE BANKRUPTCY COURT MAY ENTER AN ORDER IN THE FORM OF THE PROPOSED ORDER, ATTACHED HERETO AS EXHIBIT B, GRANTING THE RELIEF REQUESTED WITHOUT FURTHER NOTICE OR HEARING.**

WHEREFORE, the Debtors request that upon consideration of the foregoing, the Bankruptcy Court enter an order (a) approving the Settlement Agreement and Release in all respects, (b) authorizing the Debtors to take all actions necessary to effectuate the terms of the Settlement Agreement and Release, (c) approving the notice and service of this Motion as set forth herein as due and proper under the circumstances, and (d) granting such other and further relief as the Court deems just and equitable.

Dated: July 21, 2003

Respectfully submitted,

**FROST BROWN TODD LLC**

By:       /s/ Ronald E. Gold

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**EXHIBIT A**

**SETTLEMENT AGREEMENT AND RELEASE**

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into this 21st day of July, 2003 by and among Lightyear Holdings, Inc. ("Holdings"), a Delaware corporation having its principal place of business at 1901 Eastpoint Parkway, Louisville, Kentucky 40223; Lightyear Communications, Inc. ("Communications"), a Kentucky corporation having its principal place of business at 1901 Eastpoint Parkway, Louisville, Kentucky 40223; Lightyear Telecommunications LLC ("Telecommunications"), a Delaware limited liability company having its principal place of business at 1901 Eastpoint Parkway, Louisville, Kentucky 40223; and Lightyear Communications of Virginia, Inc. ("Lightyear Virginia"), a Virginia corporation having its principal place of business at 1901 Eastpoint Parkway, Louisville, Kentucky 40223 (Holdings, Communications, Telecommunications, and Lightyear Virginia, debtors and debtors-in-possession, collectively referred to herein as the "Debtors"); J. Sherman Henderson III ("Henderson"), a Kentucky resident; S. Andrew McKay ("McKay"), a Kentucky resident; Bruce W. Widener ("Widener"), a Kentucky resident; VarTec Telecom, Inc. ("VarTec"), a Texas corporation having its principal place of business at 1600 Viceroy Drive, Dallas, Texas 75235 (Holdings, Communications, Telecommunications, Lightyear Virginia, Henderson, McKay, Widener, and VarTec, collectively, the "Parties" and individually, a "Party"); and for the purpose of entering into the obligations contained in Section 2.3 and Section 4.2 of the Agreement only: the Official Committee of Creditors Holding Unsecured Claims in the Bankruptcy Cases (the "Committee"), John Bogaty ("Bogaty"), an Oregon resident, Kevin Estes ("Estes"), a Massachusetts resident, and George Pappas ("Pappas"), a Massachusetts resident; and for the purpose of entering into the obligations contained in Section 3.6 of the Agreement only: LY Acquisition LLC ("LY Acquisition"), a Kentucky limited liability company.

### RECITALS:

A. WHEREAS, Holdings and VarTec entered into certain Note Purchase Agreements dated April 5, 2000, and October 31, 2000, respectively, (collectively, the "Note Purchase Agreements"), whereby VarTec purchased from Holdings five subordinated convertible notes in the aggregate principal amount of \$85,000,000 (collectively, the "Notes");

B. WHEREAS, VarTec has previously purchased from third parties 2,863,219 shares of Holdings Common Stock and 27 shares of Holdings Series C 10% Convertible Preferred Stock (collectively, the "Equity Securities");

C. WHEREAS, Communications and VarTec entered into the Switchless Resale Operator Agreement effective as of January 5, 2001, relating to the migration of voice and data traffic and pursuant to which Communications migrated traffic to VarTec's telecommunications network (the "Traffic Migration");

D. WHEREAS, the Debtors assert that the Debtors and VarTec entered into the Deal Points Memorandum dated March 12, 2001, (the "Deal Points Memorandum") in connection with discussions of a possible merger transaction between the Debtors and VarTec;

E. WHEREAS, Holdings, VarTec and other shareholders of Holdings entered into the Shareholders' Agreement dated as of March 13, 2001 (the "Shareholders' Agreement") whereby, among other provisions, VarTec agreed to vote the Equity Securities for the election of the incumbent members of Holdings' Board of Directors until January 1, 2003;

F. WHEREAS, Communications and VarTec entered into a non-binding letter of intent dated October 23, 2001, (the "Letter of Intent") which set forth the terms and conditions necessary for VarTec to acquire Communications (the "Proposed Transaction");

G. WHEREAS, VarTec notified the Debtors by letter dated December 7, 2001, that VarTec believed that the Proposed Transaction contemplated in the Letter of Intent most likely would not occur due to the failure of conditions, and the Debtors dispute that belief;

H. WHEREAS, VarTec executed a definitive agreement pursuant to which VarTec acquired Excelecom, Inc., Telco Communications Group, Inc. and Excel Telecommunications (Canada) Inc. (collectively, "Excel") on April 5, 2002 (the "Excel Transaction");

I. WHEREAS, on or about April 29, 2002 (the "Petition Date"), the Debtors commenced the jointly-administered chapter 11 bankruptcy cases of the Debtors, Case No. 02-32257 (the "Bankruptcy Cases"), currently pending in the United States Bankruptcy Court for the Western District of Kentucky, Louisville Division (the "Bankruptcy Court"), by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and by consenting to entry of an order for relief and voluntarily converting the involuntary case of Holdings to a voluntary case under chapter 11 of the Bankruptcy Code;

J. WHEREAS, since the Petition Date, the Debtors have been operating the business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

K. WHEREAS, disputes between the Debtors, Henderson, McKay, and Widener, on the one hand, and VarTec, on the other hand, have arisen regarding the Proposed Transaction and the Excel Transaction; and

L. WHEREAS, on June 20, 2003, the Debtors filed their Motion for Order (A) Authorizing the Sale of Substantially All of the Debtors' Assets Pursuant to 11 U.S.C. Section 363(B), (F) and (M), and (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. Section 365 (the "Sale Motion"), and their Motion for Order (A) Establishing Auction Procedures to Sell Substantially All of the Debtors' Assets and to Assume and Assign Certain of the Debtors' Executory Contracts and Unexpired Leases; (B) Setting Sale Hearing Date; and (C) Approving Form of Notice (the "Bid Procedures Motion"), pursuant to both of which the Debtors seek to sell substantially all of their assets to LY Acquisition or the highest and best bidder and to implement procedures related to such sale; and

M. WHEREAS, the Parties now wish to settle any and all claims arising out of their business relationships.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I

### SURRENDER OF NOTES AND EQUITY SECURITIES/CLOSING

1.1 Surrender of Notes and Equity Securities by VarTec. On the Closing Date (defined below), VarTec shall (a) surrender and irrevocably forfeit the Notes to Holdings for cancellation by Holdings; and (b) surrender the stock certificates representing the Equity Securities to Holdings for Holdings to redeem, hold as treasury stock, or assign or transfer to a third party in its sole discretion.

1.2 Closing; Closing Date. The first business day following the entry of a final and non-appealable order of the Bankruptcy Court in the Bankruptcy Cases approving each of the terms and conditions of this Agreement (the "Approval Order") shall be the "Closing Date." The closing of the settlement (the "Closing") shall occur on the Closing Date, at which time the parties shall execute the documents contemplated hereby and deliver the documents via overnight mail in accordance with Section 5.15 herein, including the delivery by VarTec of the Notes and the stock certificates representing the Equity Securities to Holdings, free and clear of any and all liens, claims, encumbrances, or restrictions of any nature whatsoever.

#### 1.3 Conditions to Closing.

(a) The Parties acknowledge and agree that the entry of the Approval Order shall be an express condition to the effectiveness of this Agreement. The Parties further acknowledge and agree that if the Approval Order is not entered, and the Closing Date does not occur, within 35 days of the filing by the Debtors of a motion to approve the Agreement ("Approval Motion"), VarTec may, in its sole discretion, terminate this Agreement at any time without penalty, upon written notice to the Debtors.

(b) The Parties acknowledge and agree that if any person or entity (i) objects to the Approval Motion or (ii) by the date of the hearing on the Approval Motion, objects to the Bid Procedures Motion or the Sale Motion (each party, an "Objecting Party"), VarTec may, in its sole discretion, terminate this Agreement at any time without penalty. Notwithstanding anything to the contrary herein, VarTec agrees that it will not terminate this Agreement in the event the Committee objects to the Bid Procedures Motion or the Sale Motion.

(c) In the event the Agreement is terminated pursuant to Section 1.3, (i) VarTec acknowledges that any and all rights of the Debtors or the Committee to object to any and all claims asserted by VarTec in the Bankruptcy Cases or any and all proofs of claim filed by VarTec in the Bankruptcy Cases shall be preserved, and (ii) the entire Agreement, including any

indemnification obligations of any party pursuant to the Agreement, shall be terminated and of no further force and effect.

## ARTICLE II

### RELEASE OF CLAIMS AND COVENANTS

#### 2.1 Release of Claims.

(a) Effective upon the Closing Date, each of the Debtors, Henderson, McKay, and Widener, on the one hand, and VarTec, on the other hand, does for themselves and, to the fullest extent possible, their present and former subsidiaries, affiliates, officers, directors, shareholders, options holders, employees, agents, representatives, attorneys, heirs, estates, successors (including any trustees subsequently appointed pursuant to 11 U.S.C. §§ 1104, 701, 702, or 703) and assigns, (collectively, “Successors and Assigns”) hereby release, remise, acquit, satisfy, and forever discharge each other and the Successors and Assigns of each, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, accounts, bills, interests, costs, agreements, damages, judgments, rights of subrogation, executions, claims and demands whatsoever, in law or in equity, whether now existing or hereafter arising, known or unknown, discovered or undiscovered, latent or patent (collectively, “Claims”), based upon, or arising out of any condition, event, act, omission, occurrence, transaction or other activity or inactivity of any kind or nature that occurred before the date upon which the Bankruptcy Court enters the Approval Order, including but not limited to all Claims asserted or that could be asserted in connection with any litigation or any arbitration or arising in, arising under, relating to or in connection with (i) the Deal Points Memorandum and the Proposed Transaction; (ii) the Note Purchase Agreements, the Notes or any other agreement executed in connection therewith; (iii) the purchase of the Equity Securities; (iv) the Traffic Migration; (v) the Excel Transaction; (vi) any employment relationship, express or implied, between Henderson and his Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns and Excel, on the other hand; (vii) any employment relationship, express or implied, between McKay and his Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns and Excel, on the other hand; and (viii) any employment relationship, express or implied, between Widener and his Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns and Excel, on the other hand; provided, however, that nothing in this provision shall be interpreted as releasing the parties hereto or any Successors and Assigns from any representation, warranty or covenant, or the breach thereof, contained in this Agreement, including any exhibits or attachments thereto. Notwithstanding anything to the contrary herein expressed, the releases contained in this paragraph shall be deemed to include neither (x) a release of claims between VarTec and Henderson for monies loaned or advanced to Henderson by VarTec nor (y) a release of claims between or among any of the Debtors, Henderson, McKay and Widener or any of their Successors and Assigns.

(b) In connection with the foregoing release, VarTec acknowledges that it is aware that it may hereafter discover Claims presently unknown or unsuspected, or facts in

addition to or different from those that it now knows or believes to be true, with respect to the matters released in this Agreement. Nevertheless, it is the intent of VarTec in executing this Agreement fully, finally, and forever to settle and release all such matters, and all claims against the Debtors and their Successors and Assigns, Henderson and his Successors and Assigns, McKay and his Successors and Assigns, and Widener and his Successors and Assigns that exist, may exist or might have existed (whether or not previously or currently asserted in any action) that are subject of the foregoing release.

(c) In connection with the foregoing release, each of the Debtors acknowledges that it is aware that it may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those that it now knows or believes to be true, with respect to the matters released in this Agreement. Nevertheless, it is the intent of the Debtors in executing this Agreement fully, finally, and forever to settle and release all such matters, and all claims against VarTec and its Successors and Assigns, that exist, may exist or might have existed (whether or not previously or currently asserted in any action) that are subject of the foregoing release.

(d) In connection with the foregoing release, Henderson, McKay, and Widener, and each of them, acknowledges that he is aware that he may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those that he now knows or believes to be true, with respect to the matters released in this Agreement. Nevertheless, it is the intent of Henderson, McKay, and Widener, and each of them, in executing this Agreement fully, finally, and forever to settle and release all such matters, and all claims against VarTec and its Successors and Assigns, that exist, may exist or might have existed (whether or not previously or currently asserted in any action) that are subject of the foregoing release.

(e) VarTec further represents and warrants that every claim, demand, debt, liability, obligation, action, cause of action, suit and other matter released by it pursuant to the provisions of this Agreement, has not heretofore been assigned or encumbered, and is not the subject of a transfer by VarTec (as the term "transfer" is defined in 11 U.S.C. § 101(54)).

(f) Except for the liens of the Debtors' pre-petition and post-petition secured lenders, including U.S. Bank National Association and Deutsche Bank AG New York Branch and/or Cayman Islands Branch, and the asserted liens of MCI WorldCom Network Services, Inc. and affiliates, the Debtors further represent and warrant that every claim, demand, debt, liability, obligation, action, cause of action, suit and other matter released by them pursuant to the provisions of this Agreement, has not heretofore been assigned or encumbered, and is not the subject of a transfer by the Debtors (as the term "transfer" is defined in 11 U.S.C. § 101(54)).

(g) Henderson, McKay, and Widener further represent and warrant, on their own behalf and on behalf of their respective Successors and Assigns, that every claim, demand, debt, liability, obligation, action, cause of action, suit and other matter released by him pursuant to the provisions of this Agreement, has not heretofore been assigned or encumbered, and is not



the subject of a transfer by Henderson, McKay, or Widener, respectively (as the term “transfer” is defined in 11 U.S.C. § 101(54)).

## 2.2 No Initiation of Future Action/Third Party Claims.

(a) Each of the Debtors, Henderson, McKay, and Widener, on the one hand, and VarTec, on the other hand, represents, covenants and agrees, on behalf of themselves and, to the fullest extent possible, their respective Successors and Assigns, that it will not in the future initiate any action or file any complaint, lawsuit or proceeding of any kind at any time hereafter against one another for any matter based upon, or arising out of any condition, event, act, omission, occurrence, transaction or other activity or inactivity of any kind or nature that occurred before the date upon which the Bankruptcy Court enters the Approval Order, including but not limited to all Claims arising in, arising under, relating to or in connection with (i) the Deal Points Memorandum and the Proposed Transaction; (ii) the Note Purchase Agreements, the Notes or any other agreement executed in connection therewith; (iii) the purchase of the Equity Securities; (iv) the Traffic Migration; (v) the Excel Transaction; and (vi) any employment relationship, express or implied, between Lightyear and its Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns, on the other hand; provided, however, nothing in this provision shall be interpreted as barring the Debtors, Henderson, McKay, Widener, or VarTec or any of their respective Successors and Assigns from initiating any action or filing any complaint, lawsuit or proceeding in connection with any representation, warranty or covenant, or the breach thereof, contained in this Agreement, including any exhibits or attachments thereto.

(b) The Parties and Successors and Assigns further acknowledge and agree that, to the fullest extent allowable by law, the releases contained herein shall bar third parties from asserting any claims, actions, or causes of action against the Parties and the Successors and Assigns relating to the subject matter of the releases contained herein.

## 2.3 Release of Claims by the Committee, Bogaty, Estes and Pappas.

(a) Effective upon the Closing Date and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Committee, Bogaty, Estes and Pappas, does for it or himself and, to the fullest extent possible, its/his Successors and Assigns, hereby release, remise, acquit, satisfy, and forever discharge VarTec and its Successors and Assigns of and from all Claims based upon, or arising out of any condition, event, act, omission, occurrence, transaction or other activity or inactivity of any kind or nature that occurred before the date upon which the Bankruptcy Court enters the Approval Order, including but not limited to all Claims asserted or that could be asserted in connection with any litigation or any arbitration or arising in, arising under, relating to or in connection with (i) the Deal Points Memorandum and the Proposed Transaction; (ii) the Note Purchase Agreements, the Notes or any other agreement executed in connection therewith; (iii) the purchase of the Equity Securities; (iv) the Traffic Migration; (v) the Excel Transaction; and (vi) any employment relationship, express or implied, between Bogaty, Estes or Pappas, and their Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns and Excel, on the other hand; provided, however, nothing in this Section 2.3 shall be interpreted as barring the parties to this Section 2.3

from initiating any action or filing any complaint, lawsuit or proceeding in connection with any representation, warranty, or covenant, or the breach thereof, contained in this Agreement, including any exhibits or attachments thereto. Furthermore, the Committee and VarTec acknowledge and agree that neither VarTec nor counsel to VarTec participated, in any manner whatsoever, in the Committee's decision to enter into this Agreement.

(b) In connection with the foregoing release, each of the Committee, Bogaty, Estes and Pappas, and its/his respective Successors and Assigns, acknowledge that it/he is aware that it/he may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those that it/he now knows or believes to be true, with respect to the matters released in this Agreement. Nevertheless, it is the intent of each of the Committee, Bogaty, Estes and Pappas, and its/his respective Successors and Assigns in executing this Agreement fully, finally, and forever to settle and release all such matters, and all claims against VarTec and its Successors and Assigns, that exist, may exist or might have existed (whether or not previously or currently asserted in any action) that are subject of the foregoing release.

(c) Each of the Committee, Bogaty, Estes and Pappas, and its/his respective Successors and Assigns, further represents and warrants that every claim, demand, debt, liability, obligation, action, cause of action, suit and other matter released by it/him pursuant to the provisions of this Agreement, has not heretofore been assigned or encumbered, and is not the subject of a transfer by the Committee, Bogaty, Estes or Pappas or its/his respective Successors and Assigns (as the term "transfer" is defined in 11 U.S.C. § 101(54)).

(d) For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Committee, Bogaty, Estes and Pappas represents, covenants and agrees, on behalf of itself/himself and, to the fullest extent possible, its/his respective Successors and Assigns, that it/he will not in the future initiate any action or file any complaint, lawsuit or proceeding of any kind at any time hereafter against VarTec and its Successors and Assigns based upon, or arising out of any condition, event, act, omission, occurrence, transaction or other activity or inactivity of any kind or nature that occurred before the date upon which the Bankruptcy Court enters the Approval Order, including but not limited to all Claims arising in, arising under, relating to or in connection with (i) the Deal Points Memorandum and the Proposed Transaction; (ii) the Note Purchase Agreements, the Notes or any other agreement executed in connection therewith; (iii) the purchase of the Equity Securities; (iv) the Traffic Migration; (v) the Excel Transaction; and (vi) any employment relationship, express or implied, between the Committee, Bogaty and Estes and Pappas and their respective Successors and Assigns, on the one hand, and VarTec and its Successors and Assigns and Excel, on the other hand.

## ARTICLE III

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEBTORS, HENDERSON, MCKAY, WIDENER AND LY ACQUISITION

3.1 Corporate Authorizations of the Debtors; No Contravention. Each of the Debtors represents and warrants to VarTec, solely with respect to itself, that, subject to the effectiveness of the Approval Order, the execution, delivery and performance by it of this Agreement and the consummation of the transactions contemplated hereby (a) have been duly authorized by all necessary corporate action; (b) do not conflict with or contravene the terms of its Certificate of Incorporation, bylaws, or operating agreement, or any amendment thereof; and (c) do not violate, conflict with or result in any material breach or contravention of (i) any of its contractual obligations or (ii) any requirements of law applicable to it.

3.2 Authorizations of Henderson, McKay, and Widener. Henderson, McKay, and Widener, on their own behalf and on behalf of their respective Successors and Assigns, represents and warrants to VarTec that, subject to the effectiveness of the Approval Order, the execution, delivery and performance by him of this Agreement and the consummation of the transactions contemplated hereby do not violate, conflict with or result in any material breach or contravention of (i) any of his contractual obligations or (ii) any requirements of law applicable to him.

3.3 Further Assurances of the Debtors.

(a) To the extent reasonably feasible, practicable and allowable by law, effective as of the Closing Date each of the Debtors, including on behalf of each of the Debtors' present officers, directors, and employees, agrees that it will cooperate with and assist VarTec, including VarTec's subsidiaries and affiliates, at VarTec's reasonable request, in the defense or prosecution of any existing or future claims, actions, or causes of action, of which Debtors have knowledge of any facts relating thereto, including but not limited to Case No. 02-11518 (MFW), styled *Teleglobe Communications Corporation, et al. (Jointly Administered)*, filed in the United States Bankruptcy Court for the District of Delaware, and Case No. 3-02-CV-2585M, styled *VarTec Telecom, Inc. et al. vs. BCE, Inc. et al.*, filed in the United States District Court for the Northern District of Texas, Dallas Division. In connection with such cooperation and assistance as reasonably requested by VarTec, VarTec covenants and agrees to pay and bear all reasonable out-of-pocket costs, fees and expenses, including reasonable legal fees, on the express conditions that such costs, fees and expenses are (i) directly incurred by and incident to the performance of the obligations of the Debtors, including each of the Debtors' present officers, directors and employees, pursuant to this section of this Agreement; and (ii) agreed to in advance by VarTec.

(b) To the extent reasonably feasible, practicable and allowable by law, as of the Closing Date, each of the Debtors covenants and agrees that it will act to enjoin, defend, and dismiss any and all future claims, actions, or causes of action against VarTec that: (i) are asserted by a person or entity not a party to this Agreement; (ii) occur after the date upon which this Agreement is executed by the Parties; and (iii) relate to the subject matter of the releases

contained herein, including but not limited to the Proposed Transaction (a “Future Third-Party Action”).

3.4 Further Assurances of Henderson, McKay, and Widener.

(a) To the extent reasonably practicable and allowable by law, as of the Closing Date Henderson, McKay, and Widener, on their own behalf and on behalf of their respective Successors and Assigns, agrees that he will assist VarTec, including VarTec’s subsidiaries and affiliates, at VarTec’s reasonable request, in the defense or prosecution of any existing or future claims, actions or causes of action, of which Henderson, McKay, or Widener, respectively, has knowledge of any facts relating thereto, including but not limited to Case No. 02-11518 (MFW), *Teleglobe Communications Corporation, et al. (Jointly Administered)*, filed in the United States Bankruptcy Court for the District of Delaware, and Case No. 3-02-CV-2585M, styled *VarTec Telecom, Inc. et al. vs. BCE, Inc. et al.*, filed in the United States District Court for the Northern District of Texas, Dallas Division. In connection with such cooperation and assistance as reasonably requested by VarTec, VarTec covenants and agrees to pay and bear all reasonable out-of-pocket costs, fees and expenses, including reasonable legal fees, on the express conditions that such costs, fees and expenses are (i) directly incurred by and incident to the performance of the obligations of Henderson, McKay, or Widener, respectively, pursuant to this section of this Agreement; and (ii) agreed to, in advance, by VarTec.

(b) To the extent reasonably practicable and allowable by law, as of the Closing Date, Henderson covenants and agrees that he will act to enjoin any and all Future Third-Party Actions.

3.5 Plan of Reorganization. Each of the Debtors will incorporate the terms of this Agreement, including but not limited to a restatement of the releases contained herein, into any disclosure statement, plan(s) of reorganization, or plan(s) of liquidation filed or supported by any of the Debtors in the Bankruptcy Cases, for the purposes of obtaining releases of VarTec pursuant to any plan(s) filed by the Debtors. In addition, any such plan(s) of reorganization or liquidation filed or supported by any of the Debtors in the Bankruptcy Cases shall contain an injunction prohibiting and enjoining the filing or prosecution of any Future Third-Party Action.

3.6 Indemnification by Lightyear Acquisition.

(a) LY Acquisition, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to indemnify VarTec, pursuant to the terms and conditions listed in Section 3.6(b), below, from (i) any Future Third-Party Action by an Objecting Party, including but not limited to all attorneys’ fees, costs, settlements, damages, judgments, or awards of any nature whatsoever; and (ii) any claims, causes of action or suits asserted against VarTec after the Closing Date by Henderson, McKay, Widener, Michael Johnson, Bogaty, Estes, or Pappas, including but not limited to attorneys’ fees, costs, settlements, damages, judgments, or awards of any nature whatsoever (each an “Indemnified Claim” and, collectively, the “Indemnified Claims”). LY Acquisition waives any and all rights it has or may have to defend or challenge the amount, reasonableness, or effectiveness of any Indemnified

Claim. After receipt by VarTec of an Indemnified Claim, VarTec shall notify LY Acquisition of the Indemnified Claim in writing (to LY Acquisition, LLC, Attn: W. Brent Rice, Interim Chief Executive Officer, c/o McBrayer, McGinnis, Leslie & Kirkland PLLC, 201 East Main Street, Suite 1000, Lexington, Kentucky 40507) (each notification, a “Notice”). LY Acquisition shall promptly indemnify VarTec after receipt of a Notice, in no event more than 10 business days from the receipt of a Notice.

(b) Notwithstanding anything to the contrary herein, LY Acquisition’s obligations pursuant to Section 3.6(a), above, shall (i) exist only if LY Acquisition is the “highest and best bidder” pursuant to the terms of the Sale Motion and the Bid Procedures Motion and is the entity that acquires substantially all of the Debtors assets pursuant to the Sale Motion; (ii) be effective upon the Final Closing Date (as defined in the Sale Motion and the Bid Procedures Motion) and for a period of two years thereafter (the “LY Acquisition Indemnification Period”); (iii) not exceed \$100,000 for the first 365 days of the LY Acquisition Indemnification Period; (iv) not exceed \$100,000 for the final 365 days of the LY Acquisition Indemnification Period; (v) not exceed \$200,000 in the aggregate; and (vi) be paid in arrears.

### 3.7 Indemnification by the Debtors.

(a) The Debtors agree to indemnify VarTec, pursuant to the terms and conditions listed in Section 3.7 (b), below, from any Indemnified Claim. The Debtors waive any and all rights they have or may have to defend or challenge the amount, reasonableness, or effectiveness of any Indemnified Claim. After receipt by VarTec of an Indemnified Claim, VarTec shall deliver a Notice to the Debtors. The Debtors shall promptly indemnify VarTec after receipt of a Notice, in no event more than 10 business days from the receipt of a Notice.

(b) Notwithstanding anything to the contrary herein, the Debtors’ obligations pursuant to Section 3.7(a), above, shall (i) be effective upon the Closing Date and shall continue through and until the Final Closing Date (as defined in the Sale Motion and the Bid Procedures Motion) (the “Debtors’ Indemnification Period”); (ii) not exceed \$100,000 in the aggregate; and (iii) be paid in arrears. In satisfaction of their obligations pursuant to this Section 3.7, the Debtors must deposit or cause to be deposited \$100,000 in an escrow account to be used solely to satisfy any Indemnified Claim during the Debtors’ Indemnification Period.

## ARTICLE IV

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF VARTEC

4.1 Corporate Authorization of VarTec; No Contravention. VarTec represents and warrants to the Debtors, Henderson, McKay and Widener that, subject to the effectiveness of the Approval Order, the execution, delivery and performance by it of this Agreement and the consummation of the transactions contemplated hereby, (a) have been duly authorized by all necessary corporate action, including, if required, stockholder action; (b) do not conflict with or contravene the terms of its Certificate of Incorporation or By-Laws, or any amendment thereof;

and (c) do not violate, conflict with or result in any material breach or contravention of (i) any of its contractual obligations, or (ii) any requirements of law applicable to it.

4.2 VarTec Covenants. VarTec covenants and agrees, on behalf of itself and its Successors and Assigns, that, effective on the Closing Date, it will (a) withdraw all proofs of claim previously filed by it in the Bankruptcy Cases, if any; (b) take no further action or make any additional filings in the Bankruptcy Cases, except as necessary to consummate the transactions contemplated herein; and (c) withdraw as a member of the Official Committee of Unsecured Creditors for Holdings. VarTec further covenants and agrees that, commencing on the Closing Date, it will support and not oppose any plan(s) of reorganization submitted in the Bankruptcy Court by the Debtors.

## ARTICLE V

### MISCELLANEOUS

5.1 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto, including any trustee that may be appointed in a subsequent case of the Debtors under either chapter 7 or 11 of the Bankruptcy Code and/or the Committee.

5.2 No Admissions. Neither this Agreement, nor any exhibit or attachment referred to in this Agreement, nor any action taken pursuant to or as part of this Agreement, nor any other document executed pursuant to or as part of this Agreement, shall be used as an admission by, or evidence of liability by or on behalf of the Debtors, Henderson, McKay, Widener, VarTec or Excel.

5.3 No Use as Evidence. This Agreement is entered for the purpose of compromise, and neither this Agreement, nor any of its terms, nor negotiations regarding its terms, shall be construed, referred to, or otherwise used as evidence in any proceeding; provided, however, that this Agreement, including its terms, may be used as evidence in any proceeding by a party seeking to enforce the terms of this Agreement.

5.4 Binding Effect. This Agreement binds and inures to the benefit of the parties and their respective successors and assigns; provided, however, that no assignment by any party to this Agreement shall relieve such party from its obligations under this Agreement.

5.5 No Third Party Beneficiaries. This Agreement is the entire agreement of the parties regarding the resolution of the matters regarding claims that were or could have been asserted, and no prior negotiations, agreements, or other understandings may be used to explain this Agreement.

5.6 Further Assurances. From time to time at another party's request and without further consideration, a party shall execute and deliver such further instruments of conveyance, assignment and transfer, and take such other actions as the requesting party may reasonably request, in order to more effectively consummate the transactions contemplated herein.

5.7 Attorneys' Fees. Each party to this Agreement shall bear its own attorneys' fees and costs incurred in the resolution of the disputes that are the subject of this Agreement. In any action or proceeding brought by a party to this Agreement against any other party to this Agreement to enforce any provision of this Agreement, or to seek damages for a breach or any provision hereof, or where any provision hereof is validly asserted as a defense, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party in addition to any other available remedy.

5.8 Amendment and Waiver. This Agreement and its terms may not be amended, modified, or waived except in a writing signed by all parties to this Agreement and approved by the Bankruptcy Court in the Bankruptcy Cases. Failure by any Party to insist upon the strict performance by any other Party to this Agreement shall not be deemed a waiver of any of the provisions of this Agreement; and, notwithstanding any such failure, such party shall have the right at any time to require strict performance of this Agreement by the other party.

5.9 Rules of Construction. This Agreement was negotiated jointly by counsel for the Parties and shall not be construed against any Party as the drafter if there is any question as to the meaning of this Agreement or any of its terms.

5.10 Due Execution. The undersigned have read this Agreement, understand it fully, and each is fully authorized to sign on behalf of himself or the entity for which each signatory sets forth his or her signature below.

5.11 Counterparts. This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

5.12 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

5.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to conflicts of law principles. Each of the Parties hereby expressly and irrevocably agrees to submit itself and himself to the jurisdiction of the Bankruptcy Court for all disputes arising under or related in any way to this Agreement or any papers or documents contemplated or referenced herein or prepared pursuant hereto, and agrees that any such disputes shall be litigated (if at all) exclusively in the Bankruptcy Court. Accordingly, each of the Parties hereby expressly and irrevocably waives any and all objections and defenses as to venue and personal jurisdiction that any Party may have to any such dispute, suit, action or proceeding brought in the Bankruptcy Court, agrees to subject itself and himself to the in personam jurisdiction of the Bankruptcy Court, and further waives any and all rights to trial by jury related to such dispute, suit, action or proceeding.

5.14 Entire Agreement. This Agreement, together with the exhibits or attachments hereto, is intended by the parties as a final expression of their agreement regarding the resolution

of the matters contained herein, including claims that were or could have been asserted, and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties regarding the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth herein or therein. This Agreement, together with the exhibits or attachments hereto, supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

5.15 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered in person, by telecopy, by an overnight express delivery service (e.g., UPS Overnight) or by registered or certified mail (postage prepaid, return receipt requested) to the other party at the following addresses (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof):

If to Lightyear Holdings, Inc., Lightyear Communications, Inc., Lightyear Telecommunications LLC, or Lightyear Communications of Virginia, Inc.:

1901 Eastpoint Parkway  
Louisville, KY 40223  
(502) 244-6666  
Attn: John J. Grieve, Esq.

With a copy to:

Frost Brown Todd LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202  
(513) 651-6800  
Attn: Ronald E. Gold, Esq.

If to Henderson:

c/o Lightyear Communications, Inc.  
1901 Eastpoint Parkway  
Louisville, KY 40223  
Attn: J. Sherman Henderson III

If to McKay:

1401 Elm Road  
Louisville, KY 40223



If to Widener:

15312 Champion Lakes Place  
Louisville, KY 40245

If to VarTec Telecom, Inc.:

1600 Viceroy Dr.  
Dallas, Texas 75235-2306  
Attn: Chief Legal Officer  
Facsimile: (214) 424-1501

With a copy to:

Hughes & Luce, LLP  
Attn: Craig W. Budner  
1717 Main St., Ste. 2800  
Dallas, Texas 75201  
Facsimile: (214) 939-5849

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement or caused this Agreement to be duly executed and delivered by himself or their respective officers thereunto duly authorized as of the date first above written.

LIGHTYEAR HOLDINGS, INC. --

By: \_\_\_\_\_  
Name: J. Sherman Henderson III  
Title: President and Chief Executive Officer

LIGHTYEAR COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name: J. Sherman Henderson III  
Title: President and Chief Executive Officer

LIGHTYEAR TELECOMMUNICATIONS, LLC

By: \_\_\_\_\_  
Name: J. Sherman Henderson III  
Title: President and Chief Executive Officer

LIGHTYEAR COMMUNICATIONS OF VIRGINIA, INC.

By: \_\_\_\_\_  
Name: J. Sherman Henderson III  
Title: President and Chief Executive Officer

\_\_\_\_\_  
J. SHERMAN HENDERSON III

\_\_\_\_\_  
S. ANDREW McKAY

\_\_\_\_\_  
BRUCE W. WIDENER

VARTEC TELECOM, INC.

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

Name: A. Joe Mitchell, Jr.

Title: President

THE OFFICIAL COMMITTEE OF CREDITORS  
HOLDING UNSECURED CLAIMS IN THE  
BANKRUPTCY CASES (for purposes of entering  
into the obligations contained in Section 2.3 only)

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

Name:

Title:

\_\_\_\_\_  
JOHN BOGATY (for purposes of entering into the  
obligations contained in Section 2.3 only)

\_\_\_\_\_  
KEVIN ESTES (for purposes of entering into the  
obligations contained in Section 2.3 only)

\_\_\_\_\_  
GEORGE PAPPAS (for purposes of entering into  
the obligations contained in Section 2.3 only)

LY ACQUISITION LLC (For purposes of entering  
into the obligations contained in Section 3.6 only)

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

Name:

Title:

**EXHIBIT B**

**PROPOSED ORDER**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

IN RE: : CHAPTER 11  
LIGHTYEAR HOLDINGS, INC., : CASE NO. 02-32257  
ET AL., : (JOINTLY ADMINISTERED)  
DEBTORS. :  
: HON. DAVID T. STOSBERG

**ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE**

**THIS MATTER** is before the Court on the Motion of Debtors for Order Approving Settlement Agreement Between the Debtors and VarTec Telcom, Inc. Pursuant to Fed. R. Bankr. P. 9019 (the "Settlement Motion") filed on July 21, 2003 to approve a certain Settlement Agreement and Release between the Debtors, VarTec Telecom, Inc. and certain non-debtor parties; due and proper notice of the Settlement Motion having been given to all parties entitled thereto; the Court having reviewed the Settlement Motion and the Settlement Agreement and Release, the Court having heard the statements of counsel at the hearing on the Settlement Motion; and the Court being otherwise fully advised in the premises:

**NOW, THEREFORE, THE COURT HEREBY FINDS THAT:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2).

B. The notice and service of the Settlement Motion and the Settlement Agreement and Release is deemed proper under the circumstances. No further notice of the Settlement Motion and the Settlement Agreement and Release is necessary.

C. Cause exists to approve the Settlement Motion and the Settlement Agreement and Release in their entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Settlement Motion is approved in its entirety.
2. The Settlement Agreement and Release is approved in its entirety.
3. The Debtors are authorized to take all acts necessary to effectuate the Settlement Agreement and Release.