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**ATTORNEYS FOR THE DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	
	§	
<b>VARTEC TELECOM, INC., et al.,</b>	§	<b>CASE NO. 04-81694-HDH-11</b>
	§	
<b>DEBTORS.</b>	§	<b>(Chapter 11)</b>
	§	<b>(Jointly Administered)</b>
	§	
	§	<b>Hearing Set for September 29, 2005</b>
	§	<b>at 2:30 p.m.</b>
	§	

**MOTION TO APPROVE AMENDMENT NO. 1 TO TELE-SERVICES  
AGREEMENT (ONECONTACT, INC.) AND REJECTION OF  
INITIAL SPECIALITY OUTSOURCING SOLUTION'S AGREEMENT**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON  
SEPTEMBER 29, 2005 AT 2:30 P.M. IN THE COURTROOM OF THE  
HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY  
JUDGE, 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS.  
IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST  
RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH  
PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED  
BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE  
CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY (20) DAYS  
FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU  
MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO  
SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE  
PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:**

The above-referenced debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> file this Motion to Approve Amendment No. 1 to Tele-Services Agreement (OneContact, Inc.) and Rejection of Initial Specialty Outsourcing Solution’s Agreement (the “Motion”) and in support thereof the Debtors would show as follows:

### **JURISDICTION AND PROCEDURAL BACKGROUND**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. On November 1, 2004 (the “Petition Date”), the Debtors each filed a voluntary petition for relief (collectively, the “Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

4. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

5. The Debtors’ Cases are jointly administered under the Case styled *In re VarTec Telecom, Inc.*; Case No. 04-81694-HDH-11.

### **FACTUAL BACKGROUND**

6. On October 2, 2002, VarTec Telecom, Inc. (“VarTec”) and Specialty Outsourcing Solutions (“Specialty Outsourcing”) executed that certain telemarketing

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<sup>1</sup> The Debtors include VarTec Telecom, Inc., Excel Communications Marketing, Inc., Excel Management Service, Inc., Excel Products, Inc., Excel Telecommunications, Inc., Excel Telecommunications of Virginia, Inc., Excel Teleservices, Inc., Excelcom, Inc., Telco Communications Group, Inc., Telco Network Services, Inc., VarTec Business Trust, VarTec Properties, Inc., VarTec Resource Services, Inc., VarTec Solutions, Inc., VarTec Telecom Holding Company, VarTec Telecom International Holding Company, and VarTec Telecom of Virginia, Inc.

services agreement as amended (the “Initial Agreement”) under which Specialty Outsourcing agreed to provide call center services to VarTec.

7. On March 7, 2005, the Debtors, in the ordinary course, entered into a new telemarketing services agreement with Specialty Outsourcing (the “Agreement”). The Agreement is attached hereto as **Exhibit A**.

8. Now the Debtors seek to execute the proposed Amendment No. 1 to Tele-Services Agreement (the “OneContact Amendment”). The OneContact Amendment is attached hereto as **Exhibit B**. The OneContact Amendment assigns the Agreement from Specialty Outsourcing to OneContact, Inc. (“OneContact”). The OneContact Amendment will amend the provisions of the Agreement to create the “Amended Agreement.”

9. Under the Amended Agreement, OneContact agrees to, among other things, receive and process inbound calls from potential and current VarTec local and long distance customers for the purpose of entering new accounts, resolving account inquiries, addressing billing inquiries/adjustments, and accepting payments (the “Services”). The Amended Agreement, which expires twelve months after the effective date, includes a favorable revised payment schedule. VarTec may terminate the Amended Agreement after 90-days written notice and no minimum monthly quotas exist.

### **RELIEF REQUESTED**

#### **OneContact Amendment**

10. Pursuant to Bankruptcy Code §§ 105 and 363, the Debtors request approval of the execution of the OneContact Amendment. Bankruptcy Code § 363(b)(1)

provides, “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

11. The proposed use, sale or lease of property of the estate may be approved under Bankruptcy Code § 363(b) if it is supported by sound business justification. *See, e.g., In re Crutcher Resources Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987); *The Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”).

12. In the exercise of their business judgment, the Debtors have determined that the execution of the OneContact Amendment will benefit their estates. OneContact has a reputation for providing excellent Services, and it will be able to satisfy the needs of the Debtors and their customers. The personnel expected to render the Services formerly were employees of Specialty Outsourcing, and as a result, they are familiar with the Debtors’ business. That familiarity will reduce the time needed for OneContact to “ramp up” and minimize the need to train OneContact employees. Based on the payment schedule under the Amended Agreement and assuming that call volume remains the same, the Debtors anticipate realizing a savings in excess of \$120,000 on an annual basis on account of the Amended Agreement. Further, the fact that the Amended Agreement does not have a minimum usage requirement eliminates much of the contract risk. By executing the OneContact Amendment, the Debtors are able to reduce overhead without incurring significant administrative expenses.

## Rejection of the Initial Agreement

13. Since the Debtors are seeking approval of the Amended Agreement, they will no longer need the services provided under the Initial Agreement. Therefore, the Debtors have determined that the rejection of the Initial Agreement will avoid unnecessary and burdensome administrative claims against their estates that could be asserted. Pursuant to Bankruptcy Code § 365, the Debtors have determined, in their business judgment, that it is in their best interest, and that of their estates, to immediately reject the Initial Agreement.

14. By this Motion, the Debtors request entry of an order pursuant to Bankruptcy Code § 365 authorizing and approving the rejection of the Initial Agreement as of September 1, 2005.

15. Bankruptcy Code § 365 provides that the Debtors, "subject to the Court's approval, may assume or reject any executory contract and unexpired lease of the debtor." 11 U.S.C. § 365(a). A debtor operating its business pursuant to Bankruptcy Code §§ 1107 and 1108 must use reasonable judgment in ordinary business matters in its determination of whether to reject executory contracts and unexpired leases.

16. Bankruptcy Code § 365 does not provide a standard for determining when a debtor's rejection of an executory contract or unexpired lease is appropriate. *In re Monarch Tool & Manufacturing Co.*, 114 B.R. 134 (Bankr. S.D. Ohio 1990). However, most courts acknowledge that the business judgment standard should be applied to determine "whether to authorize the rejection of executory contracts and unexpired leases." *In re Federated Department Stores, Inc.*, 131 B.R. 808, 811 (Bankr. S.D. Ohio 1991) (citing, *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) and *Group of*

*Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523 (1943)).

As one court stated:

[A] bankruptcy court . . . need determine only . . . whether disaffirmance would be advantageous to the debtor. The burden or hardship which rejection would impose on other parties to such a contract *is not* a factor to be weighed by the bankruptcy court in ruling upon the debtor's application.

*Borman's, Inc. v. Allied Supermarkets, Inc.*, 706 F.2d 187, 189 (6th Cir.) (dicta), *cert. denied*, 464 U.S. 908 (1983) (emphasis added). Therefore, the Debtors may reject any executory contract or unexpired lease provided that they determine, in their business judgment, that rejection would be advantageous to them.

17. The Debtors have determined, in their business judgment, that the Initial Agreement will no longer be necessary to their operations or to effect successful reorganizations of their businesses. The failure to reject the Initial Agreement could result in the incurrence of unnecessary expense.

18. For these reasons, the Debtors have determined in their business judgment that the OneContact Amendment should be executed and the Initial Agreement should be rejected as of September 1, 2005.

### **PRAYER**

The Debtors respectfully request that the Court enter an Order approving VarTec's execution of the Agreement, rejection of the Initial Agreement as of September 1, 2005, and granting them such other and further relief to which they may be justly entitled.

Dated: September 2, 2005

Respectfully submitted,

**VINSON & ELKINS L.L.P.**

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By:           /w/ William L. Wallander            
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**ATTORNEYS FOR THE DEBTORS**

**CERTIFICATE OF SERVICE**

This is to certify that on September 2, 2005, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas. A separate certificate of service shall be filed with respect to those parties on the Clerk's list who do not receive electronic e-mail service.

          /s/ Holly J. Warrington            
One of Counsel

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