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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)		
In re:)		Chapter 11
)		
TERRESTAR CORPORATION, <i>et al.</i> , ¹)		Case No. 11-10612 (SHL)
)		
Debtors.)		Jointly Administered
)		

NOTICE OF HEARING ON THE TSC DEBTORS’ MOTION FOR ENTRY OF AN ORDER, PURSUANT TO BANKRUPTCY CODE SECTION 363(b) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019, APPROVING THE STIPULATION BETWEEN THE TSC DEBTORS, ELEKTROBIT INC. AND CERTAIN OF THE PREFERRED SHAREHOLDERS AND BRIDGE LENDERS

PLEASE TAKE NOTICE that on August 2, 2012, the TSC Debtors filed the *Motion for Entry of an Order, Pursuant to Bankruptcy Code Section 363(b) and Federal Rule of Bankruptcy Procedure 9019, Approving the Stipulation Between the TSC Debtors, Elektrobit Inc. and Certain of the Preferred Shareholders and Bridge Lenders* (the “**Motion**”).

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal taxpayer-identification number, are: (a) TerreStar Corporation [6127]; and TerreStar Holdings Inc. [0778] (collectively, the “**February Debtors**”) and (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; MVH Holdings Inc. [9756] (collectively, the “**Other TSC Debtors**”) and collectively, with the February Debtors, the “**TSC Debtors**”).

PLEASE TAKE FURTHER NOTICE that a hearing (the “*Hearing*”) to consider the Motion shall be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, on August 23, 2012 at 4:00 p.m. (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court and the Bankruptcy Court’s *Order Pursuant to Sections 105(a) and (d) of the Bankruptcy Code and Bankruptcy Rules 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures* [Docket No. 12] (the “*Case Management Order*”), shall be filed with the Bankruptcy Court either (a) electronically in accordance with General Order M-399 (which can be found at <http://www.nysb.uscourts.gov>) by registered users of the Bankruptcy Court’s filing system, or (b) on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at <http://www.nysb.uscourts.gov>), and shall be served in accordance with General Order M-399 on: (a) TerreStar Corporation, 344 Maple Avenue West, #275, Vienna, Virginia 22180, Attn: Doug Brandon, Esq.; (b) counsel to the TSC Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq., and 1700 Pacific Ave., Suite 4100, Dallas, Texas 75201, Attn: Sarah Link Schultz, Esq.; (c) the Office of the United States Trustee for the Southern District of New York; (d) the entities listed on the TSC Debtors’ Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (e) NexBank, SSB as agent under the Bridge

Loan and as agent for the TSC Debtors' proposed DIP Financing facility; (f) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (g) Wachtell, Lipton, Rosen & Katz as counsel to NexBank, SSB, the agent under the Bridge Loan and the agent for the TSC Debtors' proposed DIP Financing facility; (h) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; (k) the United States Attorney for the Southern District of New York; (l) the Federal Communications Commission; (m) Sullivan and Worcester, LLP, as counsel to Elektrobit, Inc., (n) Otterbourg, Steindler, Houston & Rosen, P.C., counsel to FTI Consulting Inc., as liquidating trustee for the TerreStar Networks Inc. Liquidating Trust; (o) reorganized TerreStar Networks Inc.; and (p) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002 (collectively, the "*Notice Parties*"), in each case so as to be received no later than **August 16, 2012 at 5:00 p.m. (prevailing Eastern time)** (the "*Response Deadline*").

PLEASE TAKE FURTHER NOTICE that if no responses with respect to the Motion are timely filed and served in accordance with the Case Management Order, the TSC Debtors may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

New York, New York
Dated: August 2, 2012

/s/ Ira S. Dizengoff
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Sarah Link Schultz

Counsel to the TSC Debtors

Hearing Date: August 23, 2012 at 4:00 p.m. (prevailing Eastern time)
Objection Deadline: August 16, 2012 at 5:00 p.m. (prevailing Eastern time)

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BANKRUPTCY CODE SECTION 363(b) AND FEDERAL RULE
OF BANKRUPTCY PROCEDURE 9019, APPROVING THE STIPULATION
BETWEEN THE TSC DEBTORS, ELEKTROBIT INC. AND CERTAIN
OF THE PREFERRED SHAREHOLDERS AND BRIDGE LENDERS**

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal taxpayer-identification number, are: (a) TerreStar Corporation [6127] ("*TSC*") and TerreStar Holdings Inc. [0778] (together with TSC, the "*February Debtors*"); (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191]; and MVH Holdings Inc. [9756] (collectively, the "*Other TSC Debtors*" and, collectively with the February Debtors, the "*TSC Debtors*").

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The TSC Debtors seek entry of a stipulation and agreed order, substantially in the form attached hereto as Exhibit A (the “*Stipulation*”), authorizing the TSC Debtors to enter into, and approving, the settlement (the “*Settlement*”) among (a) the TSC Debtors, (b) Elektrobit Inc. (“*Elektrobit*”), (c) Highland Capital Management, L.P. and certain of its affiliated and managed funds (“*Highland*”), in their capacities as holders of the Series A Cumulative Convertible Preferred Stock of TSC, lenders under that certain Term Loan Credit Agreement, dated as of November 19, 2010, with TSC as borrower and TS Holdings as guarantor thereunder (the “*Bridge Loan*”), and potential lenders under the TSC Debtors’ proposed DIP Financing (as defined below), (d) Solus Alternative Asset Management LP and certain of its affiliated and managed funds (“*Solus*”), in their capacities as a holder of Series B Cumulative Convertible Preferred Stock of TSC, a lender under the Bridge Loan, and a potential lender under the TSC Debtors’ proposed DIP Financing, (e) West Face Long Term Opportunities Global Master L.P., on behalf of its affiliated and managed funds, in their capacities as holders of Series B Cumulative Convertible Preferred Stock of TSC and potential lenders under the TSC Debtors’ proposed DIP Financing (“*West Face*”), and (f) OZ Management, LP, and certain of its affiliated and managed funds, in their capacities as successors in interest to Harbinger (as defined below) and as holders of Series B Cumulative Convertible Preferred Stock of TSC and lenders under the TSC Debtors’ proposed DIP Financing (“*Och-Ziff*” and, together with Highland, Solus and West Face, the “*Preferred Shareholders*” and, together with Elektrobit and the TSC Debtors, the “*Parties*”) pursuant to section 363 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) resolving and settling certain disputes and pending litigation matters in the TSC Debtors’ chapter

11 cases, including, among others, the Elektrobit Claim Litigation (as defined below). In support of this Motion, the TSC Debtors respectfully state as follows:²

I. PRELIMINARY STATEMENT

1. The TSC Debtors have been in chapter 11 for almost 17 months. During that time, as this Court is aware, the TSC Debtors and one of their creditors – Elektrobit – have disagreed on numerous things, including the amount of Elektrobit’s asserted claim against TSC and the appropriate treatment for unsecured creditors under the TSC Debtors’ plan. Additionally, Elektrobit has objected to certain actions proposed by the TSC Debtors in these cases and may file additional objections, including with respect to approval of the TSC Debtors’ proposed post-petition debtor-in-possession financing facility. These disputes have cost, and if unresolved will continue to cost, both Elektrobit and the TSC Debtors significant legal fees and may delay or prevent the TSC Debtors’ exit from chapter 11. Therefore, in an effort to stop the litigation expense bleed, achieve a greater degree of certainty in the chapter 11 cases, and move more quickly toward emergence, the Parties have reached a resolution of their issues and now seek this Court’s authority to enter into the Settlement.

2. On June 27, 2012, the TSC Debtors filed the Plan (as defined below), which provides that unsecured creditors will receive either (a) a full recovery in the allowed amount of their claim, in the form of a secured note, or (b) in the event of a sale of the TSC Debtors’ assets, payment in cash in full. The TSC Debtors estimate that the maximum amount of unsecured claims could be as high as approximately \$40,000,000.00,³ with the TSC Elektrobit Claim (as

² The statements contained in this Motion are being made solely in the context of this Motion and in order to seek approval of the relief requested. To the extent this Motion is denied, the statements made in this Motion may not be used against any Party in any future proceeding or litigation.

³ This amount reflects a reduction on account of the TSC Debtors’ settlement with Sprint Nextel Corporation, as the same was approved by this Court on December 15, 2011 [Docket No. 299].

defined below) potentially comprising approximately \$27.8 million of that maximum amount. Recognizing that Elektrobit is their largest unsecured creditor, the TSC Debtors have spent close to a year (with various intermittent “stoppages”) engaged in discovery and briefing with regard to the Elektrobit Claim Litigation.

3. Although the TSC Debtors believe that they would ultimately prevail with respect to the Elektrobit Claim Litigation and all other disputes with Elektrobit, the outcome is not free from doubt. Further, even if the TSC Debtors were successful in litigating all of the Contested Issues (as defined below), prosecuting such issues would likely be prohibitively expensive and time-consuming, and therefore serve to drastically deplete the TSC Debtors’ estates to the detriment of their creditors and stakeholders. In fact, given the TSC Debtors’ current liquidity, such costs and delay could threaten the continuation of the TSC Debtors’ chapter 11 cases.

4. Therefore, the Parties have agreed to the proposed settlement set forth herein. Specifically, and pursuant to the Settlement,⁴ in full and final satisfaction of the TSC Elektrobit Claim, and in resolution of all of the Contested Issues, (a) Elektrobit will receive an immediate cash payment of \$13,500,000.00 in satisfaction of the TSC Elektrobit Claim upon this Court’s entry of an order approving the proposed Settlement, (b) Elektrobit will agree to support the TSC Debtors’ Plan and withdraw all pending litigation, and (c) the TSC Debtors and the Preferred Shareholders, on the one hand, and Elektrobit, on the other hand, will mutually release each other with regard to all issues relating to the chapter 11 cases.⁵

⁴ The terms set forth herein are qualified in their entirety by the terms of the Stipulation. To the extent that the terms set forth below are inconsistent with the terms of the Stipulation, the terms of the Stipulation shall govern.

⁵ To be clear, the funds necessary to make the payments contemplated by the Settlement will come from the TSC Debtors’ incurrence of additional DIP financing. To that end, it is a condition precedent to payment of the Settlement that this Court approve the TSC Debtors’ motion to approve \$16,500,000.00 in DIP financing (the “*DIP Motion*”), which has been filed concurrently herewith and is scheduled to be heard on the same date as approval of this Motion.

5. It is important to note that one of the key elements to the Settlement is the ability of Elektrobit to receive the \$13,500,000.00 cash payment immediately after this Court approves the Settlement. Although, admittedly, such a payment to an unsecured creditor outside of a plan is somewhat irregular, all of the Parties believe that in these cases, such a payment is warranted in light of the fact that (a) there are no secured creditors who oppose the Settlement, (b) all other unsecured creditors are receiving payment in full in the form of a secured note, (c) Elektrobit has agreed to take an approximately 50% reduction in the asserted amount of the TSC Elektrobit Claim in order to reach the Settlement, and (d) similar to the situation where bankruptcy courts allow secured creditors to receive payment of principal outside of a plan to “stop the bleed” of post-petition interest for secured creditors, a settlement here will “stop the bleed” of litigation expenses that the TSC Debtors may not be able to satisfy given their precarious liquidity position and their inability to receive DIP Financing from any sources other than the Preferred Shareholders. Moreover, this feature was one of the key elements in securing Elektrobit’s agreement to the Settlement and, absent such immediate payment, it is unclear whether Elektrobit will agree to the Settlement.

6. Accordingly, rather than the TSC Debtors potentially (a) incurring millions of dollars in fees litigating all of the Contested Issues, (b) delaying exit from chapter 11 on account of time-consuming litigation, (c) risking confirmation of the Plan and the TSC Debtors’ emergence from an already long chapter 11 process, and (d) having an additional approximately \$27.8 million (plus interest) in secured debt upon emergence from chapter 11, TSC will make a single payment to Elektrobit of \$13,500,000.00 in full and final satisfaction of the TSC Elektrobit Claim and all of the Contested Issues. Not only will the TSC Debtors and Elektrobit benefit from this Settlement, but other unsecured creditors and preferred shareholders will

benefit as well, as the chapter 11 cases can now move on a more rapid, and less litigious, path to emergence and ultimate pay-out of claims and interests. The TSC Debtors respectfully submit, therefore, that the Settlement clearly falls well within the range of reasonableness and provides abundant benefits to the TSC Debtors' estates and, thus, should be approved. In light of the amount in dispute and the likely cost and delay associated with the pending and potential litigation related to the Contested Issues, approval of the Settlement is in the best interest of the TSC Debtors' estates and clearly meets the applicable standards for approval in this circuit.

II. JURISDICTION

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

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

9. The bases for the relief requested herein are Bankruptcy Code section 363, Bankruptcy Rule 9019 and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the "***Local Rules***").

III. BACKGROUND

10. On October 19, 2010 (the "***October Petition Date***") and February 16, 2011 (the "***Petition Date***"), the Other TSC Debtors⁶ and the February Debtors, respectively, filed petitions with this Court under chapter 11 of the Bankruptcy Code. The TSC Debtors are operating their

⁶ Also on the October Petition Date, TerreStar Networks Inc. ("***TSN***") and certain of its affiliated debtors (collectively, the "***TSN Debtors***," and together with the Other TSC Debtors, the "***October Debtors***") each filed a petition with this Court under chapter 11 of the Bankruptcy Code. As this Court is aware, the TSN Debtors confirmed a chapter 11 plan that became effective on or about March 29, 2012, and have continued to operate the remaining parts of their businesses since that date as reorganized debtors (the "***Reorganized TSN Debtors***").

business and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.⁷

11. On October 29, 2010, the United States Trustee for the Southern District of New York (the “*U.S. Trustee*”) appointed an official committee of unsecured creditors (the “*TSN Committee*”) of the October Debtors.⁸ No statutory committees have been appointed or designated in the TSC Debtors’ cases.

12. On June 27, 2012, the TSC Debtors filed the *Third Amended Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* [Docket No. 513] (as it may be amended from time to time, the “*Plan*”) and a supplement [Docket No. 515] to the TSC Debtors’ disclosure statement (the “*Supplement*”).⁹ Under the Plan, holders of allowed unsecured claims will receive a full recovery on account of their claims, either (a) in the form of a secured note¹⁰ or (b) in the event of a sale of the TSC Debtors’ assets, payment in cash in full. Pursuant to the Plan, holders of series A & B preferred equity interests will receive their pro rata portion of 100% of reorganized TSC’s common stock.

⁷ A detailed description of the TSC Debtors’ business and the reasons for filing these chapter 11 cases are set forth in the *Declaration of Jeffrey W. Epstein Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Pleadings*, which was filed on the Petition Date.

⁸ The TSN Debtors have confirmed and consummated their chapter 11 plan. Therefore, the TSN Committee is no longer in existence.

⁹ The adequacy of the TSC Debtors’ disclosure statement was approved by order of this Court entered on January 17, 2012 [Docket No. 343] (together with the Supplement, and as the same may be amended from time to time, the “*Disclosure Statement*”)

¹⁰ The terms of the secured notes are set forth in the Supplement to the Disclosure Statement.

A. The TSC Elektrobit Claim

13. On August 10, 2007, TSN and Elektrobit entered into that certain Master Development and Licensing Agreement (as amended from time to time, the “*Development Agreement*”) as part of TSN’s arrangement with Elektrobit to develop mobile telephone handsets for TSN. At that time, TSC was not a party to the Development Agreement. In October 2009, TSN and Elektrobit executed a statement of work entitled “Statement of Work #3 StarComm program activities between milestones M2-M4” (“*SOW 3*”) that laid out the parameters for the latest phase of Elektrobit’s work for TSN under the Development Agreement. As of that date, SOW 3 permitted Elektrobit to spend no more than approximately \$16,500,000.00 (the “*Not to Exceed Amount*”) on costs and expenses for the work described.

14. Approximately six weeks after TSN and Elektrobit entered into SOW 3, TSC executed Amendment No. 4 to the Development Agreement, which contained a guarantee from TSC to Elektrobit for TSN’s obligations under the Development Agreement. In the months following the execution of Amendment No. 4, TSN and Elektrobit executed four amendments to SOW 3 that, in the aggregate, increased the Not to Exceed Amount by \$33,972,251.00. TSC was not a signatory to any of these amendments.

15. On December 1, 2009, TSC and Elektrobit entered into that certain Master Supply Agreement (the “*Supply Agreement*”), under which Elektrobit agreed to manufacture and supply the phones developed under the Development Agreement.

16. On March 23, 2011, the Court approved the rejection of the Development Agreement by both the TSC Debtors [Docket No. 57] and the TSN Debtors [Case No. 10-15446, Docket No. 498].

17. On or about April 20, 2011, Elektrobit filed a proof of claim in the TSC Debtors’ cases, asserting a general unsecured claim for damages in the amount of \$24,800,956.86 arising

under TSC's purported guarantee of TSN's obligations under the Development Agreement.¹¹ Elektrobit also asserted a general unsecured claim for \$3,068,812.96 in damages arising under the Supply Agreement, as well as a general unsecured claim in an unliquidated amount for "interest, attorneys' fees, disbursements and costs of enforcement to the full extent permitted under applicable law" (collectively, the "*TSC Elektrobit Claim*"). The TSC Elektrobit Claim, therefore, is asserted in the amount of not less than \$27,869,769.83.¹²

18. On November 16, 2011, both (a) the TSC Debtors [Docket No. 275] and (b) Highland, Solus and Harbinger Capital Partners, LLC and certain of its managed and affiliated funds ("*Harbinger*" and, collectively with Highland and Solus, the "*Bridge Lenders*") [Docket No. 276] filed objections to the TSC Elektrobit Claim. The objections argue that under New York law, TSC's guarantee of TSN's obligations under the Development Agreement was extinguished when TSN and Elektrobit purported to alter TSC's obligations as guarantor by executing amendments to SOW 3 without TSC's authorization, or that, in the alternative, TSC should not be liable for any part of the TSC Elektrobit Claim that is for an amount greater than the Not to Exceed Amount (*i.e.*, for any of the amounts agreed to be paid by TSN for amendments to SOW 3 for which TSC was not a signatory). On December 12, 2011, Elektrobit filed [Docket No. 296] an omnibus opposition to these two objections responding to these assertions and arguing, among other things, that the guaranty given by TSC was a continuing guaranty recognized under New York law, that TSC was aware of and benefitted from the goods

¹¹ This claim is for goods and services provided to TSN and invoiced between February 28, 2010 and March 8, 2011.

¹² Contemporaneously with the filing of the TSC Elektrobit Claim, on or about April 20, 2011 Elektrobit filed a proof of claim in TSN's chapter 11 case in the same amount, amending a proof of claim filed in TSN's case on or about December 9, 2010 in the amount of not less than \$25,753,554.20 (as amended, the "*TSN Elektrobit Claim*"). It is the intent of the TSC Debtors and the other Parties to the Stipulation that nothing contained in the Settlement, the Stipulation or this Motion shall affect the rights of Elektrobit to assert the full, as-filed amount of the TSN Elektrobit Claim in the TSN Debtors' chapter 11 cases.

and services provided by Elektrobit under SOW 3, and that, as TSC controlled TSN at all relevant times, TSN's consent may be imputed to TSC under New York law. The TSC Debtors [Docket No. 323] and the Bridge Lenders [Docket No. 322] filed responses to Elektrobit's opposition on January 5, 2012. There has been no further briefing of the TSC Elektrobit Claim, but the Parties have tentatively agreed that the hearing regarding the TSC Elektrobit Claim will occur at some point in October or November 2012.

19. In connection with the litigation surrounding the TSC Elektrobit Claim (the "*Elektrobit Claim Litigation*"), the TSC Debtors have produced more than 5,000 documents (containing more than 30,000 pages) in response to discovery requests from Elektrobit, as well as a summary privilege log. Elektrobit has produced more than 5,000 documents (containing more than 20,500 pages) in response to discovery requests from the Bridge Lenders, with many of such documents in the Finnish language (with translation services, at the expense of the TSC Debtors, estimated to cost between \$50,000 to \$100,000 in light of the number of documents). Additionally, Elektrobit has stated its intention to take additional depositions in the coming months in connection with the Elektrobit Claim Litigation.

B. Other Potential Litigation With Elektrobit

20. In addition to the Elektrobit Claim Litigation, Elektrobit has objected to certain motions filed by the TSC Debtors in these cases in support of the TSC Plan and may file additional objections, including with respect to approval of the TSC Debtors' proposed post-petition debtor-in-possession financing facility. These disputes may slow or even prevent the TSC Debtors' emergence from chapter 11 and in all events promise to be costly and time-consuming.

21. First, on September 30, 2011, Elektrobit filed a preliminary objection [Docket No. 222] to confirmation of the version of the TSC Debtors' joint chapter 11 plan filed in July 2011,

setting forth a number of assertions as to why the Plan could not be confirmed. Although the TSC Debtors have since modified the Plan, Elektrobit has expressed to the TSC Debtors its intent to formally renew its confirmation objection in connection with the amended version of the Plan that was filed on June 27, 2012 and has not ruled out, at this point, raising objections to the Plan beyond those set forth in its initial objection. Although the TSC Debtors believe that they would ultimately prevail over these objections (and any others that Elektrobit may bring), the matter is not free from doubt and the TSC Debtors are cognizant of the fact that some of these objections will require extensive discovery and depositions.¹³ As such, the TSC Debtors believe that engaging in full-blown litigation (with its attendant risks) regarding the foregoing Plan objections may not only be costly, but could also be time-consuming.

22. Second, and in addition to the Elektrobit Claim Litigation and Elektrobit's anticipated objections to confirmation of the Plan, Elektrobit has also filed a motion to designate the votes of the Bridge Lenders and of NexBank, SSB ("*NexBank*"), as administrative agent under the Bridge Loan [Docket No. 394] (the "*Motion to Designate*"). Although the TSC Debtors believe that the Motion to Designate is flawed and that Elektrobit's arguments are contrary to applicable law, they recognize that not only is there litigation risk, but that Elektrobit will want to take discovery in connection with the Motion to Designate (not only of the TSC Debtors, but also of the various Bridge Lenders), which would be very costly and time-consuming.

23. Third, and in addition to the Elektrobit Claim Litigation, Elektrobit's objections to confirmation of the Plan and the Motion to Designate, the TSC Debtors are aware that Elektrobit

¹³ The TSC Debtors are also aware that this Court has expressed some concern over the fact that the TSC Debtors have not subjected their assets to a "market test."

intends to prosecute litigation regarding other Plan-related items, including (but potentially not limited to) the following:

- (a) The TSC Debtors' Motion to Incur Additional DIP Financing. The TSC Debtors anticipate that Elektrobit will object to various provisions of the proposed DIP Financing. Although the TSC Debtors believe that any such objection will not be supported by applicable law, the TSC Debtors need DIP Financing to fund the chapter 11 cases and the litigation that Elektrobit has brought or is anticipated to bring could harm the TSC Debtors' cases.
- (b) Discovery Disputes. The TSC Debtors anticipate that issues relating to various discovery disputes will require time and expense to litigate. Although the TSC Debtors believe that Elektrobit's attempts to gain additional discovery will fail based on current case law and the facts of these cases, the TSC Debtors realize that any discovery dispute carries with it attendant risks and costs. Further, a ruling in favor of Elektrobit in these discovery disputes could result in substantial delay to these chapter 11 cases, as the TSC Debtors would have to engage in significant additional document review and production.

24. Importantly, in addition to the documents produced in connection with the Elektrobit Claim Litigation, the TSC Debtors have already produced more than 1,700 documents (containing more than 37,000 pages) in response to discovery requests from Elektrobit in connection with the other potential litigation listed above. The Preferred Shareholders have already produced more than 1,000 documents (containing more than 12,000 pages) in response to discovery requests from Elektrobit. Additionally, Elektrobit has already taken three depositions and has requested to take additional depositions in the coming months in connection with pending contested matters.

25. In short, although the TSC Debtors believe that they would ultimately prevail in such Plan-related litigation, as well as litigation relating to the TSC Elektrobit Claim (collectively, the "*Contested Issues*"), such litigation would not only be time-consuming and costly, but the TSC Debtors must also factor in the risk that one or more of these litigations could be decided in a manner adverse to the TSC Debtors, which could derail the TSC Debtors' plan

confirmation process. As such, it is clear (as further explained below) that settling with Elektrobit is in the TSC Debtors' (and their stakeholders') best interests.

C. The Stipulation and Settlement

26. To resolve the Contested Issues and thereby relieve the TSC Debtors' estates from the potentially significant costs and delay relating to the litigation thereof—as well as the attendant risks to the TSC Debtors' chapter 11 cases—the Parties have agreed to the Settlement and to the terms of the Stipulation, which terms not only fall within the “lowest rung in the range of reasonableness” but are clearly in the best interests of the TSC Debtors' estates, creditors and stakeholders. Specifically, pursuant to the Settlement, in full and final satisfaction of the TSC Elektrobit Claim against the TSC Debtors, and in resolution of the Contested Issues and any and all other issues between the Parties related to these chapter 11 cases, (a) Elektrobit will receive an immediate cash payment of \$13,500,000.00 upon entry of an order approving the Settlement, (b) Elektrobit will support the TSC Debtors' Plan, and (c) the TSC Debtors and the Preferred Shareholders, on the one hand, and Elektrobit, on the other hand, will agree to mutual releases for any and all claims and causes of action related to these chapter 11 cases. Therefore, rather than the TSC Debtors (a) being required to continue litigating the Contested Issues, (b) engaging in extensive discovery related thereto, (c) incurring substantial costs to the estate and significant delays, and (d) potentially risking having their chapter 11 process derailed, the TSC Debtors will be able to move toward confirmation for a cash payment of less than 50% of the asserted TSC Elektrobit Claim.

27. Importantly, and as noted above, a key provision of the proposed Settlement is the ability of Elektrobit to receive payment in cash as soon as this Motion and the TSC Debtors' DIP Motion are approved. Elektrobit is only willing to accept payment of the TSC Elektrobit Claim in a substantially reduced amount on the premise that it would receive cash up front and would

not have to wait for the TSC Debtors' emergence from chapter 11 (and any risks attendant thereto). The TSC Debtors (along with the Preferred Shareholders) support this payment for the following reasons:

- (a) there are no secured creditors who oppose making this payment,
- (b) all other unsecured creditors are receiving payment in full under the Plan in the form of a secured note,
- (c) Elektrobit has agreed to take an approximately 50% reduction in the asserted amount of the TSC Elektrobit Claim in order to reach the Settlement,
- (d) Elektrobit has been the single most active creditor in these cases, and therefore a settlement with Elektrobit will ensure that these cases can move swiftly towards emergence, and
- (e) similar to the situation where bankruptcy courts allow secured creditors to receive payment of principal outside of a plan to "stop the bleed" of post-petition interest, a settlement here will "stop the bleed" of litigation expenses that the TSC Debtors may not be able to satisfy given their precarious liquidity position and their inability to receive DIP Financing from any sources other than the Preferred Shareholders.

28. In light of all of the above and as further explained below, the TSC Debtors believe that entry into the Settlement and approval of the Stipulation is in the best interests of the TSC Debtors' estates.

IV. RELIEF REQUESTED

29. By this Motion, the TSC Debtors seek entry of an order approving the Settlement as memorialized in the Stipulation between the Parties that fully and finally resolves any and all issues, disputes, or controversies in connection with the TSC Elektrobit Claim, the other Contested Issues and these chapter 11 cases.

30. The TSC Debtors believe that entry into the Stipulation is beneficial to all parties in interest in these cases and is in the best interests of the TSC Debtors' estates because entry into the Stipulation will (a) preserve estate assets that would otherwise be spent in costly

litigation, (b) eliminate any delay that may result from litigating the Contested Issues, and (c) avoid any risk that the TSC Debtors' chapter 11 process could be derailed. The proposed Settlement clearly falls within the lowest rung on the range of reasonableness, and should therefore be approved.

V. BASIS FOR RELIEF

A. **The Standard for Approval of Settlements Under Bankruptcy Rule 9019**

31. Pursuant to Bankruptcy Rule 9019, bankruptcy courts have the authority to approve a compromise or settlement if it is in the best interest of the estate. *See Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). The settlement need not result in the best possible outcome for the debtor, but must not "fall below the lowest point in the range of reasonableness." *Id.* (internal citations omitted). The decision to accept or reject a compromise or settlement is within the sound discretion of the bankruptcy court. *Nellis v. Shugrue*, 165 B.R. 115, 121-23 (S.D.N.Y. 1994); *Drexel Burnham Lambert*, 134 B.R. at 505; *see also In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (noting that a bankruptcy court may exercise its discretion "in light of the general public policy favoring settlements"); 10 Collier on Bankruptcy ¶ 9019.02 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010).

32. In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and equitable. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Shugrue*, 165 B.R. at 122. That does not mean that the bankruptcy court should substitute its judgment for the debtor's judgment. *See In re Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984), *aff'd*, 50 B.R. 764 (S.D.N.Y. 1985). Instead, a bankruptcy court should "canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness." *In re*

Adelphia Commc'ns Corp., 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)). Stated differently, the court does not need to conduct a “mini-trial” of the facts and merits underlying the dispute; it needs only to be apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement. *See id.*

33. To evaluate whether a settlement is fair and equitable, courts in the Second Circuit consider factors including:

- (a) the balance between any litigation’s possibility of success and the settlement’s future benefits,
- (b) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay,
- (c) the paramount interests of the creditors, including each affected class’s relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement,
- (d) whether other parties in interest support the settlement,
- (e) the competency and experience of counsel supporting the settlement, and
- (f) the extent to which the settlement is the product of arm’s-length bargaining.

See Iridium Promotions, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (internal citations omitted); *see also Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414, 428 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d. Cir. 1994).

B. The Settlement Satisfies the Applicable Standard for Settlements

34. The TSC Debtors (and each of the Parties) believe that the terms of the Settlement contained in the Stipulation are in the best interests of the TSC Debtors’ estates, creditors and stakeholders and satisfy the standard for approval under applicable law. Indeed, the TSC

Debtors respectfully submit that all of the applicable factors weigh in favor of approving the Settlement and entering the Stipulation.

35. First, the TSC Debtors believe the Settlement embodies a fair balance between the likely success of each Party to the Contested Issues (*i.e.*, TSC believes that it has a strong defense against its liability in connection with the TSC Elektrobit Claim as a matter of New York state law and believes that it would be able to confirm its Plan over Elektrobit's objections, while Elektrobit vigorously disputes these contentions, and the matter is not free from doubt) and the Settlement's overall benefits (which benefits include, among other things, value maximization for the estate through elimination of litigation and professional fees, expedited timing, and decreased risk). As such, this Settlement embodies a fair resolution of the pending issues. Indeed, this is clearly the most important driving factor in favor of this Court's approval of the Settlement. The Parties have come to a resolution that all sides feel is not only reasonable, but appropriate in light of the costs, risks and delay associated with the various Contested Issues.

36. Second, and importantly, the process of actually litigating the Contested Issues will take significant time. Completion of discovery and the Elektrobit Claim Litigation alone would take several months, which will force the estates to incur substantial fees and expenses related to the objection.¹⁴ In comparison, approval of the Settlement will resolve these issues in the near term and allow the TSC Debtors the ability to prosecute the current Plan without having to expend time, energy or value-depleting fees and expenses on account of the outstanding issues between the Parties, including the costs associated with motion practice, discovery and trial.

¹⁴ The TSC Debtors note that not only would they be required to pay for the fees and expenses of the TSC Debtors in connection with the Elektrobit Claim Litigation, but also for the fees and expenses of certain other parties.

37. The third factor also supports approval of the Stipulation because the Settlement is beneficial to all of the TSC Debtors' stakeholders. As described above, approval of the Settlement will enable the TSC Debtors to significantly reduce potential litigation costs and reduce their unsecured claims pool, thereby improving the value to be distributed to their stakeholders under the Plan. Further, and importantly, the Settlement would pay Elektrobit approximately 50% of its asserted claim in cash in lieu of receiving payment in full in the form of a note pursuant to the Plan. These facts are perhaps the best evidence that the Settlement inures to the benefit of TSC Debtors' creditors and stakeholders and that, as required by the fourth factor, other parties in interest will likely support the Settlement.

38. The fifth factor—the quality and experience of counsel, and the sixth factor—whether the TSC Debtors negotiated the Settlement at arm's-length, both weigh in favor of approval of the Settlement. The Parties' careful and independent assessment of the merits of and costs associated with each of the Contested Issues weighs heavily in favor of the Settlement and is further evidence of the quality and experience of counsel. Additionally, there can be no doubt that the Parties negotiated this Settlement completely at arm's-length—this Court can attest to the level of acrimony over the past year between the Parties and can be assured that the negotiation of the Settlement was not any less contentious.

C. The Court Has Authority to Approve the Payment to Elektrobit Under the Settlement

39. As noted above, one of the key elements to the Settlement is the payment to Elektrobit in cash of the settlement amount upon this Court's approval of this Motion and the TSC Debtors' DIP Motion. The Parties believe that ample authority, as well as the facts of these cases, supports entry of an order authorizing such payment.

40. Bankruptcy Code section 363(b)(1) provides that a debtor, “after notice and a hearing, may use . . . other than in the ordinary course of business, property of the estate,” and provides the authority necessary for the proposed payment because “section 363 . . . governs the use of funds by the debtor in possession while it operates its business after the bankruptcy petition is filed.” 11 U.S.C. § 363(b); *see also U.S. Tr. v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, Case No. 02 Civ. 2854 (MBM), 2003 WL 21738964, at *10 (S.D.N.Y. July 28, 2003). Bankruptcy Code section 105(a) provides the bankruptcy court with the power and authority to carry out the provisions of section 363(b). *See Law Debenture Trust Co. v. Calpine Corp. (In re Calpine Corp.)*, 356 B.R. 585, 594 (S.D.N.Y. 2007) (citing *Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27 (S.D.N.Y. 2005).

41. Further, the Second Circuit has adopted a rule that requires a judge determining a section 363(b) application to expressly find from the evidence presented before him at the hearing a good business reason to grant such application. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (finding that section 363(b) was applicable because sound business judgment supported the sale of assets). In approving a transaction conducted pursuant to Bankruptcy Code section 363(b)(1), courts consider whether the debtor exercised sound business judgment in making its determination as to the transaction. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983) (holding that the application of section 363(b) must be supported by “some articulated business justification, other than appeasement of major creditors,” and that “a judge determining a § 363(b) application [must]

expressly find from the evidence presented before him at the hearing a good business reason to grant such an application”).

42. To determine whether the business judgment test is met, the court is required to examine whether a reasonable businessperson would make a similar decision under similar circumstances. *See In re Dura Auto. Sys. Inc.*, Case No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *272 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs., Inc.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)). Once a debtor articulates a valid business justification, it is presumed that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). The business judgment rule therefore shields a debtor’s management from judicial second-guessing, and mandates that a court approve a debtor’s business decision unless that decision is a product of bad faith or gross abuse of discretion. *See id.*; *see also Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985).

43. Use of estate proceeds under Bankruptcy Code section 363(b)(1) to repay a secured creditor outside of a plan of reorganization has often been held to be in the best interests of the estate because such payment will stop the “hemorrhaging” of the estate’s cash to pay interest on those secured obligations. *See, e.g., Calpine*, 356 B.R. at 590, 597 (finding that repayment to secured lenders, which relieved the estate of unnecessary interest expense, was an appropriate use of cash under section 363) (quoting Transcript of 5/10/06 Bench Ruling of Judge Lifland at 82-86). A similar rationale applies here: payment on account of an unsecured

creditor's claim is in the best interests of the estate where, as here, such payment is the only way to stop incurring mounting litigation costs (and potential additional interest accrual) incurred on account of the various outstanding contested issues in the case (which litigation costs are borne by the estate). That such payment is in the best interests of the estate, and not just of the preferred creditor, is further demonstrated where, again, as here, such payment is not objected to by any party in the case and, indeed, is supported by (a) the proposed DIP lenders, (b) the TSC Debtors' secured creditors, (c) the largest and most active unsecured creditor, and (d) the various interest holders who will hold all of the equity value of the reorganized entity. Indeed, all of the constituents in these cases have been negotiating for months (while at the same time incurring professional fees to be borne by the estate), but they have been unable to come to a resolution that does *not* involve payment of an unsecured claim before the effective date of any chapter 11 plan confirmed in these cases.

44. Moreover, payment of unsecured creditors' prepetition claims outside a plan of reorganization is not unprecedented when such payment is "the only way to facilitate reorganization" and the disfavored creditors will be at least as well off as they would have been had the preferred unsecured creditor not received early payment. *See generally, In re Kmart Corp.*, 359 F.3d 866, 874 (7th Cir. 2004) (suggesting that payments to unsecured prepetition creditors were appropriate where those creditors' services were thought to be "critical" to the debtors' reorganization and where those creditors would not provide those critical services post-petition were their prepetition claims not paid); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.").

45. In addition to the above, there are numerous facts that support the payment to Elektrobit here:

- (a) There are no secured creditors who oppose making this payment;
- (b) All other unsecured creditors are receiving payment in full in the form of a secured note, and therefore no one is harmed by the payment under this settlement;
- (c) Elektrobit has agreed to take an approximately 50% reduction in the asserted amount of its claim in order to reach the Settlement;
- (d) Elektrobit has been a very active creditor in these cases, and therefore a settlement with Elektrobit will ensure that these cases can move swiftly toward emergence; and
- (e) The settlement will “stop the bleed” of litigation expenses that the TSC Debtors may not be able to satisfy given their precarious liquidity position and their inability to receive DIP Financing from any sources other than the Preferred Shareholders.

46. Courts in this district have similarly found that it is consistent with a debtor’s fiduciary duties to pay prepetition unsecured obligations where there is a sound business justification for doing so. *See, e.g., id.* at 175 (finding that maintaining employee morale and loyalty was a sound business justification for payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). It is thus consistent with precedent as being supported by a sound business justification and consistent with the TSC Debtors’ fiduciary duties to maximize value for the estates and, indeed, to bring them to an expedient and consensual conclusion, to pay Elektrobit in full and final resolution of the Elektrobit Claim Litigation and the other Contested Issues pursuant to the terms of the Settlement and before the effective date of any chapter 11 plan confirmed in these cases. Moreover, resolution of the Contested Issues as

set forth in the Settlement will allow the TSC Debtors to move forward expeditiously with confirmation of their Plan, as it will eliminate from the equation the only creditor who has actively opposed the TSC Debtors' path for emergence from chapter 11 on various fronts, and, in fact, ensure this creditor's support of the Plan.

VI. CONCLUSION

47. In sum, for all of the foregoing reasons, the resolution embodied in the Settlement, as memorialized in the proposed Stipulation, was negotiated at arm's length, with no collusion, and is in the interests of the TSC Debtors' estates as a whole. The proposed Stipulation is the result of extensive, good-faith negotiations between the Parties, each of whom was (and continues to be) represented by experienced and skilled counsel. Lastly, ample authority exists to permit the Court to allow payment to Elektrobit on account of the Settlement upon approval of this Motion. As a result of, and consistent with, their fiduciary duties to maximize value for their estates, the TSC Debtors submit that the Settlement is within their sound business judgment and is in the best interests of their estates and creditors.

VII. WAIVER OF BANKRUPTCY RULE 6004(h)

48. To implement the foregoing successfully, the TSC Debtors seek a waiver of the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

VIII. MOTION PRACTICE

49. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Accordingly, the TSC Debtors submit that this motion satisfies Local Rule 9013-1(a).

IX. NOTICE

50. The TSC Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the TSC Debtors' Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) NexBank, SSB as agent under the Bridge Loan and as agent for the TSC Debtors' proposed DIP Financing facility; (d) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (e) Wachtell, Lipton, Rosen & Katz as counsel to NexBank, SSB, the agent under the Bridge Loan and the agent for the TSC Debtors' proposed DIP Financing facility; (f) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the United States Attorney for the Southern District of New York; (j) the Federal Communications Commission; (k) Sullivan and Worcester, LLP, as counsel to Elektrobit, Inc., (l) Otterbourg, Steindler, Houston & Rosen, P.C., counsel to FTI Consulting Inc., as liquidating trustee for the TerreStar Networks Inc. Liquidating Trust; (m) the Reorganized TSN Debtors; and (n) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002 (collectively, the "***Notice Parties***"). In light of the nature of the relief requested, the TSC Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein, the TSC Debtors respectfully request that the Court (a) enter the Stipulation, substantially in the form attached hereto as Exhibit A authorizing the TSC Debtors to enter into, and approving, the Settlement and (b) grant such other and further relief as is just and proper.

New York, New York
Dated: August 2, 2012

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EXHIBIT A

Proposed Stipulation and Order

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
TERRESTAR CORPORATION, <i>et al.</i> , ¹)	
)	Case No. 11-10612 (SHL)
Debtors.)	
)	Jointly Administered

**STIPULATION AND AGREED ORDER APPROVING THE TSC DEBTORS’
MOTION FOR ENTRY OF AN ORDER, PURSUANT TO BANKRUPTCY CODE
SECTION 363(b) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019
APPROVING THE STIPULATION AMONG THE TSC DEBTORS, ELEKTROBIT INC.
AND CERTAIN OF THE PREFERRED SHAREHOLDERS AND BRIDGE LENDERS**

This stipulation and agreed-to order (the “*Stipulation and Order*”) is entered into by and among (a) the TSC Debtors, (b) Elektrobit Inc. (“*Elektrobit*”), (c) Highland Capital Management, L.P. and certain of its affiliated and managed funds (“*Highland*”), in their capacities as holders of the Series A Cumulative Convertible Preferred Stock of TSC, lenders under that certain Term Loan Credit Agreement, dated as of November 19, 2010, with TSC as borrower and TS Holdings as guarantor thereunder (the “*Bridge Loan*”), and lenders under the TSC Debtors’ proposed DIP Financing (as defined below), (d) Solus Alternative Asset Management LP and certain of its affiliated and managed funds (“*Solus*”), in their capacities as a holder of Series B Cumulative Convertible Preferred Stock of TSC, a lender under the Bridge Loan, and a lender under the TSC Debtors’ proposed DIP Financing, (e) West Face Long Term Opportunities Global Master L.P. and certain of its affiliated and managed funds, in their capacities as successors in interest to Harbinger (as defined below) and as holders of Series B Cumulative Convertible

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal taxpayer-identification number, are: (a) TerreStar Corporation [6127] (“*TSC*”) and TerreStar Holdings Inc. [0778] (“*TS Holdings*”) and, together with TSC, the “*February Debtors*”); (b) TerreStar New York Inc. [6394]; Motient Communications Inc. [3833]; Motient Holdings Inc. [6634]; Motient License Inc. [2431]; Motient Services Inc. [5106]; Motient Ventures Holding Inc. [6191] (“*MV Holding*”); and MVH Holdings Inc. [9756] (collectively, the “*Other TSC Debtors*”) and, collectively with the February Debtors, the “*TSC Debtors*”).

Preferred Stock of TSC and lenders under the TSC Debtors' proposed DIP Financing (“*West Face*”) and (f) OZ Management, LP, on behalf of its affiliated and managed funds, in their capacities as holders of Series B Cumulative Convertible Preferred Stock of TSC and lenders under the TSC Debtors' proposed DIP Financing (“*Och-Ziff*” and, together with Highland, Solus and West Face, the “*Preferred Shareholders*” and, together with Elektrobit and the TSC Debtors, the “*Parties*”). The Parties hereby stipulate and agree as follows:

A. General Background

WHEREAS, on October 19, 2010 (the “*October Petition Date*”) and February 16, 2011 (the “*Petition Date*”), the Other TSC Debtors² and the February Debtors, respectively, filed petitions with this Court under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”). The TSC Debtors are operating their business and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108;

WHEREAS, on July 22, 2011, the TSC Debtors filed the *Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* [Docket No. 141] (the “*Initial Plan*”);

WHEREAS, on or about August 3, 2011, the TSC Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* [Docket No. 149];

² Also on the October Petition Date, TerreStar Networks Inc. (“*TSN*”) and certain of its affiliated debtors (collectively, the “*TSN Debtors*,” and together with the Other TSC Debtors, the “*October Debtors*”) each filed a petition with this Court under chapter 11 of the Bankruptcy Code. The TSN Debtors' chapter 11 plan has been consummated and the TSN Debtors emerged from chapter 11 on March 29, 2012.

WHEREAS, on December 27, 2011, the TSC Debtors filed a revised plan of reorganization [Docket No. 313] and accompanying disclosure statement [Docket No. 315];

WHEREAS, on January 12, 2012, the TSC Debtors filed a further revised plan of reorganization [Docket No. 336] and accompanying disclosure statement [Docket No. 338];

WHEREAS, on January 17, 2012, the Bankruptcy Court entered an order approving the adequacy of the TSC Debtors' disclosure statement [Docket No. 343];

WHEREAS, on June 27, 2012, the TSC Debtors filed the *Third Amended Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* [Docket No. 513] (as it may be amended from time to time, the "**Plan**") and a supplement [Docket No. 515] (the "**Supplement**") to the form of the TSC Debtors' disclosure statement that was approved by the Bankruptcy Court on January 17, 2012 (such Supplement, together with the form of disclosure statement approved on January 17, 2012 and as the same may be amended from time to time, the "**Disclosure Statement**");

WHEREAS, on June 27, 2012, the TSC Debtors filed a motion [Docket No. 512] (the "**Initial DIP Motion**") seeking authority to enter into a \$3,000,000.00 secured debtor-in-possession financing facility (the "**Initial DIP Financing**") with the February Debtors as borrowers and MV Holding as guarantor;

WHEREAS, concurrently herewith, the TSC Debtors have filed a supplement to the Initial DIP Motion (the "**Supplemental DIP Motion**") and together with the Initial DIP Motion, the "**DIP Motion**") seeking authority to enter into a \$16,500,000.00 secured debtor-in-possession financing facility (the "**Supplemental DIP Financing**" and together with the Initial DIP Financing, the "**DIP Financing**") with the February Debtors as borrowers and MV Holding as guarantor;

WHEREAS, a hearing to consider the TSC Debtors' entry into the DIP Financing is scheduled to be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, Room 701, New York, New York 10004 on August 23, 2012 at 4:00 p.m. (prevailing Eastern Time), on the same date as the hearing to consider approval of the 9019 Motion (as defined below);

B. The Elektrobit Claims

WHEREAS, on or about December 9, 2010, Elektrobit filed proof of claim number 106 in the TSN Debtors' cases in the amount of not less than \$25,753,554.20, which Elektrobit amended on or about April 20, 2011 by filing proof of claim 128 in the amount of not less than \$27,869,769.82 (as amended, the "*TSN Elektrobit Claim*");

WHEREAS, on or about April 20, 2011, Elektrobit filed proof of claim number 58 (the "*TSC Elektrobit Claim*") in the TSC Debtors' cases in the amount of not less than \$27,869,769.82;

WHEREAS, on November 16, 2011, both the TSC Debtors [Docket No. 275] and Highland, Solus and Harbinger Capital Partners LLC, on behalf of its affiliated and managed funds ("*Harbinger*"), each as holders of the Series A Cumulative Convertible Preferred Stock of TSC or the Series B Cumulative Convertible Preferred Stock of TSC [Docket No. 276] filed objections to the TSC Elektrobit Claim, disputing TSC's liability to Elektrobit as asserted in the TSC Elektrobit Claim;

WHEREAS, prior to the date hereof, Harbinger transferred all of the Series B Cumulative Convertible Preferred Stock of TSC that it held to West Face;

WHEREAS, the final adjudication of the allowed amount of the TSN Elektrobit Claim and the TSC Elektrobit Claim has not yet occurred;

C. Other Potential Litigation With Elektrobit

WHEREAS, on September 30, 2011, Elektrobit filed a preliminary objection to confirmation of the Initial Plan [Docket No. 222];

WHEREAS, on February 22, 2012, Elektrobit filed a motion to designate (the “*Motion to Designate*”) the votes of the lenders under the Bridge Loan and of NexBank, SSB, as administrative agent under the Bridge Loan, with respect to the Initial Plan [Docket No. 394];

WHEREAS, the TSC Debtors are aware that Elektrobit intends to prosecute litigation regarding a number of additional items relating to the TSC Debtors’ chapter 11 cases and the Plan, including (but potentially not limited to) (i) objecting to the TSC Debtors’ pending DIP Motion and (ii) commencing or continuing various discovery disputes;

D. The Settlement

WHEREAS, in August 2012, the TSC Debtors, Elektrobit and the Preferred Shareholders reached a settlement (the “*Settlement*”), as reflected in this Stipulation and Order, of the various disputes (both pending and potential) among them in these chapter 11 cases including, without limitation, the disputes set forth in the preceding sections hereof (collectively, the “*Contested Issues*”);

WHEREAS, on August 2, 2012, the TSC Debtors (with the support of Elektrobit and the Preferred Shareholders) filed a motion (the “*9019 Motion*”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) seeking approval of the Settlement, which sought entry of this Stipulation and Order, authorizing the TSC Debtors and all Parties to enter into the Settlement on the terms and conditions set forth in the Settlement;

WHEREAS, the Parties support the 9019 Motion;

WHEREAS, the TSC Debtors believe that the Settlement contained herein is in the best interests of the TSC Debtors’ estates and all of their creditors and stakeholders; and

WHEREAS, the TSC Debtors provided adequate and appropriate notice of the Stipulation and Order to the appropriate persons, including: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) NexBank, SSB as agent under the Bridge Loan and as agent for the TSC Debtors' proposed DIP Financing facility; (d) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners LLC and certain of its managed and affiliated funds; (e) Wachtell, Lipton, Rosen & Katz as counsel to NexBank, SSB, the agent under the Bridge Loan and the agent for the TSC Debtors' proposed DIP Financing facility; (f) Richards Kibbe & Orbe LLP as counsel to West Face Long Term Opportunities Global Master L.P.; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the United States Attorney for the Southern District of New York; (j) the Federal Communications Commission; (k) Sullivan and Worcester, LLP, as counsel to Elektrobit, Inc., (l) Otterbourg, Steindler, Houston & Rosen, P.C., counsel to FTI Consulting Inc., as liquidating trustee for the TerreStar Networks Inc. Liquidating Trust; (m) reorganized TerreStar Networks Inc.; and (n) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, SUBJECT TO BANKRUPTCY COURT APPROVAL, AS FOLLOWS:

1. The 9019 Motion is granted to the extent set forth herein.
2. The TSC Debtors have provided adequate and appropriate notice of the 9019 Motion and this Stipulation and Order.
3. As set forth in the 9019 Motion, and pursuant to Bankruptcy Rule 9019, the Parties are authorized and directed to enter into and perform under the Settlement, the terms of which are

fair and equitable and in the best interests of the TSC Debtors' estates, their creditors and their stakeholders.

4. The Parties hereby agree that entry into the Settlement will fully and finally resolve the Contested Issues, as such disputes are related to the TSC Debtors and their chapter 11 cases, including, without limitation, any and all issues, disputes, or controversies related to the TSC Elektrobit Claim, the Plan, the Motion to Designate, and any and all issues, disputes or controversies which have arisen as of the date hereof (whether known or unknown) as between Elektrobit, on the one hand, and the TSC Debtors and the Preferred Shareholders, on the other hand, relating to the TSC Debtors' chapter 11 cases.

5. This Stipulation and Order shall be of no force or effect unless and until both (a) it is approved by the Bankruptcy Court and (b) the DIP Motion is approved by the Bankruptcy Court (the later of those two dates, the "*Effective Date*"). In the event that either this Stipulation and Order or the DIP Motion is not approved by the Bankruptcy Court, nothing contained herein or in the 9019 Motion shall be deemed to be a waiver of any claims or an admission of liability by any Party hereto and, in such event, all rights of the Parties shall be preserved.

6. Within two business days after the Effective Date (the "*Payment Date*"), in full and final satisfaction of the TSC Elektrobit Claim, and in resolution of all of the Contested Issues, the TSC Debtors shall pay to Elektrobit an immediate cash payment of \$13,500,000.00 (the "*Settlement Payment*") by wire transfer to the wiring address provided to the TSC Debtors by Elektrobit.

7. Upon Elektrobit's receipt from the TSC Debtors of payment of the Settlement Payment in full, in good funds, on the Payment Date, (a) the TSC Elektrobit Claim and the objections thereto shall be deemed withdrawn in their entirety with prejudice, (b) Elektrobit's

pending Motion to Designate shall be deemed withdrawn with prejudice, and (c) any and all of Elektrobit's pending pleadings, motions, and other briefs filed with the Bankruptcy Court in the TSC Debtors' chapter 11 cases relating in any way to any of the matters in the TSC Debtors' chapter 11 cases shall be deemed withdrawn with prejudice.

8. To the fullest extent permitted by applicable law, upon Elektrobit's receipt from the TSC Debtors of payment of the Settlement Payment in full, in good funds, on the Payment Date, Elektrobit will support (after solicitation accompanied by a disclosure statement that meets the requirements of the Bankruptcy Code) the Plan, as the same may be amended from time to time, (so long as any such amendments do not otherwise materially and adversely affect Elektrobit's rights); *provided, however*, that nothing contained in this Stipulation and Order shall be construed as a recommendation to vote in favor of the Plan.

9. By executing this Stipulation and Order, each of the Preferred Shareholders, in their capacities as holders of the Series A and B Cumulative Convertible Stock of TSC, lenders under the Bridge Loan, and lenders under the TSC Debtors' proposed DIP Financing, as applicable, agrees not to object to the Settlement.

10. Nothing in this Stipulation and Order shall affect the rights of Elektrobit to assert the full amount of the TSN Elektrobit Claim in the TSN Debtors' chapter 11 cases.

11. It is a condition precedent to the effectiveness of each and every provision of this Stipulation and Order (other than any provision that requires the Parties to support and prosecute the Settlement and its terms) that an order approving the DIP Motion be entered by the Bankruptcy Court.

Other Terms and Provisions

12. This Stipulation and Order and all the provisions hereof shall be binding upon and shall inure to the benefit of all the Parties hereto, each of their respective executors, heirs,

successors and assigns, and all entities claiming by or through any of the Parties with respect to the subject matter hereof and relating to the Settlement. The Parties agree to prosecute, support and defend all terms of the Settlement as memorialized in this Stipulation and Order and comply with all terms hereof, including defending the Settlement against any third parties or other parties in interest in these chapter 11 cases.

13. This Stipulation and Order shall be construed and interpreted in accordance with the laws of the State of New York, excluding, and without regard to, the conflict of law rules thereof. The Parties have each cooperated in drafting this Stipulation and Order. Therefore, in any action or proceeding concerning this Stipulation and Order, the provisions hereof shall be construed as if jointly drafted by the Parties.

14. By their signatures hereto, each of the undersigned (a) represents that it has been duly authorized to enter into this Stipulation and Order and (b) requests that the Bankruptcy Court approve this Stipulation and Order.

15. Upon Elektrobit's receipt from the TSC Debtors of payment of the Settlement Payment in full, in good funds, on the Payment Date, except as provided in this paragraph 15, the TSC Debtors and the Preferred Shareholders shall be deemed to have forever waived, released, acquitted and discharged Elektrobit, including Elektrobit's current, former or future officers, directors, employees, stockholders, agents, servants, assigns, successors, predecessors, representatives, members, financial advisors, industry experts/advisors, attorneys, trustees, partners, subsidiaries, parent entities and affiliates, each in their capacity as such and in no other capacity, and Elektrobit shall be deemed to have forever waived, released, acquitted and discharged the TSC Debtors and each of the Preferred Shareholders, including the TSC Debtors' and each of the Preferred Shareholders' current, former or future officers, directors, employees,

stockholders, agents, servants, assigns, successors, predecessors, representatives, members, financial advisors, industry experts/advisors, attorneys, trustees, partners, subsidiaries, parent entities and affiliates, each in their capacity as such and in no other capacity, from any and all claims, demands, debts, objections to claims, obligations, damages, losses or liabilities whatsoever of any nature, type or description, whether known or unknown, suspected or unsuspected, concealed or hidden, direct or indirect, patent or latent, or fixed or contingent, arising out of or relating to any cause, matter or thing from the beginning of time through the date of this Stipulation and Order, pertaining in any way to the TSC Debtors, the TSC Debtors' chapter 11 cases or the TSC Elektrobit Claim. For the avoidance of doubt, the releases provided under this paragraph shall not affect (a) the rights and obligations of the Parties arising under this Stipulation and Order or (b) the rights of Elektrobit to assert and recover on the full amount of the TSN Elektrobit Claim, as filed, in the TSN Debtors' chapter 11 cases.

16. In the event this Stipulation and Order is not approved by the Bankruptcy Court, this Stipulation and Order and the Settlement shall be of no force and effect and none of its provisions, nor any statements made by any Party in the 9019 Motion, will be deemed to prejudice or impair any of the Parties' respective rights and remedies, nor may the same be used in any way against any of the Parties hereto in any litigation regarding, or in connection with, the Contested Issues.

17. This Stipulation and Order constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior negotiations or agreements, oral or written, between the Parties with respect to all or any part of the subject matter hereof, which negotiations or agreements shall be of no further force or effect. It is expressly understood and agreed by the Parties hereto that this Stipulation and Order may not be altered, amended, modified

or otherwise changed in any respect whatsoever except by a writing duly executed by each Party or the authorized representatives of each of the Parties.

18. The Bankruptcy Court shall retain jurisdiction and authority to interpret, enforce, and resolve and enter final orders in any disputes arising under or related to this Stipulation and Order, and the acceptance by any party of any distribution of funds authorized under this Stipulation and Order shall constitute consent by such party to the jurisdiction and authority of the Bankruptcy Court to hear and determine any such dispute. Any motion or application brought before the Bankruptcy Court to resolve any dispute arising under or related to this Stipulation and Order shall be brought on proper notice in accordance with the relevant Bankruptcy Rules and the Local Rules for the Bankruptcy Court for the Southern District of New York.

19. This Stipulation and Order may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or email pdf shall be deemed an original signature for purposes of this Stipulation and Order.

[Signature Pages Follow]

/s/ Ira S. Dizengoff

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Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE