

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:		Chapter 11
	:		
Trident Microsystems, Inc., <i>et al.</i> , <sup>1</sup>	:		Case No. 12-_____ (_____)
	:		
Debtors.	:		(Jointly Administered)
	:		
	X		

**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION  
FOR AN ORDER AUTHORIZING AND APPROVING THE  
PERFORMANCE-BASED INCENTIVES FOR KEY EMPLOYEES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move the Court for entry of an order pursuant to sections 105(a), 363(b) and 503 of title 11 of the United States Code (the “Bankruptcy Code”): (i) authorizing them to implement a performance-based key employee incentive plan, as more fully described herein, and to provide performance-based incentives for certain additional key employees; (ii) granting administrative expense priority status to all such payments; and (iii) granting such other relief as the Court deems just and proper (the “Motion”). In support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction and Venue**

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Trident Microsystems, Inc. (6584) and Trident Microsystems (Far East) Ltd. The mailing address of each of the Debtors, solely for purposes of notices and communications, is 1170 Kifer Road, Sunnyvale, California 94086.



## **Background**

2. On January 4, 2012 (the “Petition Date”), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. Trident Microsystems, Inc. (“TMI” or the “Company”) was incorporated in California in 1987 and reincorporated in Delaware in 1992. TMI is the direct parent company of Trident Microsystems (Far East) Ltd., an exempted company incorporated in the Cayman Islands with limited liability (“TMFE”). TMFE is the direct or indirect parent of subsidiary entities organized under the laws of various foreign countries (the “Foreign Subsidiaries” and together with TMI and TMFE, “Trident”).

4. Trident currently designs, develops, and markets integrated circuits and related software for processing, displaying, and transmitting high quality audio, graphics, and images in home consumer electronics applications such as digital TVs, PC-TV, and analog TVs, and set-top boxes. Trident’s product line includes system-on-a-chip (“SoC”) semiconductors that provide completely integrated solutions for processing and optimizing video, audio, and broadcast and satellite signals to produce high-quality and realistic images and sound. Trident’s products also include frame rate converter, demodulator, audio decoder products, interface devices, and media processors. Trident’s customers have included many of the world’s leading manufacturers of consumer electronics, computer display, and set-top box products, including Samsung, LG, Sony, Sharp, Philips, Comcast, and DirecTV.

5. TMI serves as the corporate head of Trident and provides the corporate oversight and administrative services necessary for Trident’s operations. TMFE serves as the manufacturing procurement hub and primary accounts payable center for Trident. TMFE holds most of Trident’s intellectual property assets and contracts with all suppliers for use of the intellectual property and the production of finished goods. Pursuant to a distribution and supply

agreement between TMFE and non-debtor Trident Microsystems (Hong Kong) Limited (“TMHK”), TMFE sells finished goods to TMHK for re-sale to Trident’s customers. TMFE also serves as Trident’s primary accounts payable processor and processes payments due to suppliers as well as payments to the non-revenue generating Foreign Subsidiaries that provide research and development, sales and marketing services for Trident.

6. Like many technology based industries, the set-top box and television industries in which Trident focuses its operations have been undergoing rapid changes which have made it difficult for Trident to operate profitably. Trident has faced increased pricing pressure from Taiwanese SoC suppliers who have recently made great inroads in penetrating the market. Additionally, industry semiconductor inventory levels are currently elevated due to slowdown in consumer electronics markets primarily driven by slowdown in Western economies, which has forced all market participants, including Trident, to further adjust pricing to manage inventory levels. These pricing pressures have been compounded by set-top box manufacturers who have been slower than anticipated in launching new products. As a result, suppliers have been straddled with higher than anticipated inventory levels and high development costs that cannot be offset by next generation product sales. In addition to these pricing and inventory pressures, there has also been a shift in the industry’s supply chain dominated by Asian OEMs (original equipment manufacturers) and TV manufacturers are increasingly depending on manufacturing SoC and FRC (frame rate converter) components for high-end TVs in-house, reducing the need to look to outside suppliers for products.

7. As a result of these developments, Trident has experienced continued operating losses which have resulted in declining cash over the past year. The deteriorated value of the outstanding common stock and the termination of the Bank of America line of credit have

restricted Trident's ability raise money through traditional means. The combination of lower margins and sale volumes, high employee costs and limited access to new capital has significantly affected Trident's liquidity and ability to pay its debts as they become due.

8. Prior to filing these chapter 11 cases, the Debtors undertook a marketing effort to identify a potential purchaser of their set-top box business line. As discussed in various motions filed contemporaneously herewith, the Debtors have identified a stalking horse bidder (the "Stalking Horse Purchaser") for their set-top box business. The Debtors believe that a rapid sale of the set-top box business will allow them to immediately stop the drain on cash balances and afford them an opportunity to determine which, if any, of the Debtors' other business lines should be marketed for sale and take such other steps necessary to reorganize their remaining operations into a profitable and sustainable business.

#### **Relief Requested**

9. As set forth above, the Debtors are pursuing transactions involving "going concern" sales of the Debtors' assets (collectively, the "Sales"). It is imperative that performance-based incentives be implemented to maintain the full dedication of certain key employees of the Debtors in connection with the Debtors' efforts to complete the Sales, while simultaneously operating the Debtors' business.

10. Accordingly, the Debtors seek the Court's authorization, under sections 105(a), 363(b) and 503 of the Bankruptcy Code, to: (i) implement a performance-based key employee incentive plan (the "KEIP") in accordance with the terms and subject to the conditions set forth on Exhibit A, and provide performance-based incentives for certain additional key employees; (ii) allow all such payments as administrative expenses of the Debtors' estates; and (iii) pay an amount not to exceed \$4,000,000 to Key Employees (as defined below).

**Description of the KEIP**

11. A summary of the KEIP is as follows:<sup>2</sup>

<b>Purpose</b>	Provide incentives and rewards to key employees of the Debtors to effectuate the Sales and/or the orderly liquidation of the Company in order to maximize recovery for the benefit of the Debtors’ estates and creditor constituencies.
<b>Administration</b>	The Company’s Board of Directors.
<b>Eligibility</b>	Bami Bastani (CEO), Peter Mangan (CFO), David Teichmann (EVP VP - General Counsel), Uri Kreisman (SVP - Operations), Saeid Moshkelani (EVP - Research & Development), Mark Samuel (SVP - Set-Top Box Unit), Dirk Wieberneit (SVP - TV Business Unit) (collectively, “ <u>KEIP Participants</u> ”).
<b>Bonus Opportunities</b>	Each KEIP Participant earns bonus amounts as set forth in <u>Exhibit A</u> , as applicable, upon the attainment of the performance objective for that bonus.
<b>Release</b>	Each KEIP Participant shall, in exchange for accepting the bonus opportunity described herein, execute and deliver to the Company a release, which shall include a release by such employee of (i) any claim against the Company with respect to such employee’s employment with the Company and (ii) if applicable, any claim, right or interest to any previously unpaid amounts earned or accrued with respect to any previous plans, agreements or policies bonus related to retention, severance or incentives.
<b>Milestones</b>	<p><b><u>Section 363 Sale of Set-Top Box Business Unit</u></b></p> <p>The closing of the sale of the business, including all operational assets and intellectual property of the Company affiliated with the Set-Top Box Products (the “<u>Set-Top Box Business Unit</u>”), that provides for the receipt of Total Consideration by the Company of \$45 million or greater.</p> <p><b><u>Section 363 Sale of TV Business Unit</u></b></p> <p>The closing of the sale or licensing, either in the aggregate or individually, of those businesses, including all operational assets and intellectual property of the Company affiliated with the development, marketing and sale of the Company’s TV products (the “<u>TV Business Unit</u>”), that provides for the receipt of Total Consideration by the Company of \$20 million or greater.</p> <p>In addition, closing of the sale or licensing of the TV Business Unit in one</p>

<sup>2</sup> In the event of a discrepancy between the summary and the KEIP, the KEIP shall control.

	<p>or more transactions for a Total Consideration in excess of \$25 million, two additional KEIP Participants will be entitled to receive bonuses as set forth in <u>Exhibit A</u>.</p> <p><b><u>Section 363 Sale of Substantially All Assets in Single Transaction</u></b></p> <p>The closing of the sale of all or substantially all of the assets of the Company in a single transaction. For such a sale, the KEIP Participants will be entitled to receive bonuses based upon (i) the value of the transaction attributable to the sale of the Set-Top Box Business Unit and (ii) the value of the transaction attributable to the sale of the TV Business Unit.</p> <p><b><u>Orderly Wind-down</u></b></p> <p>The confirmation of a plan of reorganization or liquidation in chapter 11 or the conclusion of a wind-down of the Company’s affairs outside of chapter 11 where it is projected that unsecured creditors will receive a recovery of greater than 60% in the aggregate on the amount of their claims. The bonuses awarded will be based on the level of recovery by unsecured creditors in excess of 60% as set forth in <u>Exhibit A</u>.</p>
<b>Payment</b>	<p><b><u>Bonus Attributable to Section 363 Sale of Set-Top Box Business Unit</u></b></p> <p>Five business days after closing of sale.</p> <p><b><u>Bonus Attributable to Section 363 Sale of TV Business Unit</u></b></p> <p>Five business days after closing of sale.</p> <p><b><u>Bonus Attributable to Section 363 Sale of Substantially All Assets</u></b></p> <p>Five business days after closing of sale.</p> <p><b><u>Bonus Attributable to Orderly Wind-down</u></b></p> <p>Five business days after: (i) the effective date of the confirmation of the Debtors’ chapter 11 plan, or (ii) the conclusion of wind-down of the Company’s affairs outside of chapter 11.</p>
<b>Termination of Employment</b>	<p>If the KEIP Participant’s employment terminates for any reason (other than without cause) prior to the attainment of a performance hurdle, the employee automatically forfeits the bonus attributable to that hurdle. If the KEIP Participant’s employment terminates for any reason (other than death or without cause) prior to the payment of any bonus, the employee automatically forfeits the payment of that, and further bonus. If the KEIP Participant is terminated without cause within twenty-five (25) days prior to the date that any payment is due under the KEIP, the KEIP Participant shall be entitled to receive any payment that would have become due under</p>

	the KEIP had the KEIP Participant been employed through such twenty-five (25) day period upon the execution of a general release in a form acceptable to the Company. If the KEIP Participant dies, all bonus payments earned prior to death shall be paid to the employee's estate.
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***The Key VP Incentives***

12. In addition to the KEIP Participants, the Debtors seek to provide incentives and rewards to certain additional key employees of the Debtors (the “Key VPs” and together with the KEIP Participants, the “Key Employees”)<sup>3</sup> to effectuate the Sales in order to maximize recovery for the benefit of the Debtors’ estates and creditor constituencies. Each of the Key VPs is a vice president and key member of either or both the Debtors’ Set-Top Box Business Unit and/or the TV Business Unit. Accordingly, the proposed incentives for the Key VPs (the “Key VP Incentives” and together with the KEIP, the “Incentive Plans”) are tied to the sale of these two business units similar to milestones in the KEIP.

13. Upon the accomplishment of the applicable milestone, each of the Key VPs shall receive a sum equal to two months of his salary (or in the case of Loni Kupchanko, one month salary). In addition, if any of the Key VPs are entitled to receive such incentive payment, the Debtors shall also pay such Key VPs’ premiums required to continue the group health insurance coverage for him and his dependants under the Consolidated Omnibus Reconciliation Act of 1985 for a period of two months. Unless such Key VP is terminated without cause, in order for him to receive any payment of a Key VP Incentive, he must be an employee of the Company as of the closing of the sale of the applicable sale.

14. If the Key VP is terminated without cause within twenty-five (25) days prior to the date that any payment is due under the Key VP Incentives, the Key VP shall be entitled to

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<sup>3</sup> The Key VPs are Mark Baur, Erwin Bosma, Loni Kupchanko, Jianbo Zhang, Chiang Hsueh and Johan Janssen.

receive any payment that would have become due under the Key VP Incentives had the Key VP been employed through such twenty-five (25) day period.

15. The milestone for Mark Baur, Erwin Bosma and Loni Kupchanko shall be the sale of the Set-Top Box Business Unit that provides for the receipt of Total Consideration<sup>4</sup> by the Company of \$45 million or greater upon closing.

16. The milestone for Jianbo Zhang, Chiang Hsueh and Johan Janssen shall be the sale or licensing, either in the aggregate or individually, of the TV Business Unit in one or more transactions for a Total Consideration in excess of \$25 million.

### **Basis for Relief**

17. The Debtors submit that approval of the Incentive Plans fully aligns the interests of the Key Employees with the interests of the Debtors' constituencies in maximizing the returns on any Sale, while simultaneously maintaining the Debtors' operations. The Debtors reasonably believe that the implementation of the Incentive Plans is necessary to appropriately compensate the Key Employees, given the enormous additional burdens placed on such employees by the Bankruptcy Cases, and to ensure that the Key Employees remain motivated to perform the tasks necessary to ensure a successful sale of the Debtors' Set-Top Box Business and TV Business Units. Indeed, if the Debtors are not authorized to implement the Incentive Plans, the dedication, confidence and cooperation of Key Employees may suffer at this critical juncture in the Debtors'

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<sup>4</sup> "Total Consideration" means,

- (i) in the case of the sale, exchange or purchase of the Company's equity securities, the total consideration paid for such securities (including amounts paid to holders of options, warrants and convertible securities), plus the principal amount of all indebtedness for borrowed money (including, without limitation, any capital lease obligations) which remains outstanding as of the consummation of such sale, exchange or purchase, and
- (ii) in the case of a sale, disposition or licensing by the Company of assets, the total consideration paid for such assets, plus the principal amount of all indebtedness assumed by the purchaser.

chapter 11 efforts, thus jeopardizing the Debtors' ability to successfully reorganize their operations.

### **Applicable Authority**

#### **A. Implementation of the Incentive Plans Pursuant to Section 363(b) of the Bankruptcy Code is a Valid Exercise of the Debtors' Business Judgment.**

18. The Court may authorize the Debtors to implement the Incentive Plans under section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides that “[t]he 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). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when a “sound business purpose” justifies such action. See, e.g., In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court approval of key employee retention program, stated that “in determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions”); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under §363(b) when there is a legitimate business justification); In re Delaware & Hudson R.R. Co., 124 B.R. 169, 176 (D. Del. 1991) (explaining that the Third Circuit has adopted the “sound business purpose” test to evaluate motions brought pursuant to section 363(b)); see also Stephen Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (adopting the “sound business purpose” standard for sales proposed pursuant to section 363(b)); Titusville County Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa 1991) (same).

19. Courts have found that a debtor’s use of reasonable bonuses and other incentives to motivate employees is a valid exercise of a debtor’s business judgment. See, e.g., In re

America West Airlines, Inc., 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (it is the proper use of a debtors' business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process); In re Interco Inc., 128 B.R. 229, 234 (Bankr. E.D. Mo. 1991) ("debtors' business judgment" was controlling in the approval of a "performance/retention program").

20. Even since the 2005 amendments to the Bankruptcy Code, courts have approved employee bonus programs tied to performance targets as valid exercises of business judgment. See, e.g., In re Midway Games Inc., Case No. 09-10465 (KG) (Bankr. D. Del. Feb. 12, 2009) (approving a key employee retention plan tied to sale price); In re Muzak Holdings LLC, Case No. 09-10422 (KJC) (Bankr. D. Del. Feb. 10, 2009) (approving \$1.75 million key employee incentive plan for senior managers); In re Riverstone Networks, Inc., Case No. 06-10110 (CSS) (Bankr. D. Del. Apr. 3, 2006) (approving \$1.4 million incentive plan for the debtors' management subject to certain parties' reservation of rights); In re Pliant Corp., Case No. 06-10001 (MFW) (Bank. D. Del. Feb. 21, 2006) (approving postpetition payments under a prepetition annual performance-based management incentive plan tied to both individual and corporate performance levels); In re Nobex Corp., Case No. 05-20050 (MFW) (Bank. D. Del. Jan 20, 2006) (approving "sale-related incentive pay" to two officers, contingent on a successful sale of the company for a price in excess of that offered by an existing, stalking horse bidder, in connection with the debtor's aggressively pursuing the sale of the company).

21. The Debtors submit that authorizing them to provide incentive compensation to the Key Employees will accomplish a similarly sound business purpose. The Debtors have determined that the costs associated with such additional postpetition compensation are more than justified by the benefits the Debtors will realize by creating appropriate incentives for the

Key Employees, whose experience, skill, diligent work and knowledge and understanding of the Debtors' operations, customer relationships and infrastructure are critical for the Debtors to operate their business, while at the same time facilitating the Debtors' efforts to consummate the Sales. In the event that the relief sought herein is not granted, the Debtors believe that there is a significant risk that the Key Employees will seek other employment, to the detriment of the Debtors and their constituencies. The time and resources necessary to find qualified and skilled replacements for Key Employees would cause a material disruption to the Debtors' business and a significant deterioration in the "going-concern" value of the business. Indeed, the loss of even one or two of the Key Employees could jeopardize the Debtors' ability to complete the contemplated sales and the reorganization process.

22. The Incentive Plans proposed in this Motion will provide the Key Employees with the appropriate incentives to attain a higher sale price for the Debtors' assets and will enable the Debtors to maximize the value of their assets for the benefit of their estates and their constituencies.

**B. Implementation of the Incentive Plans Does Not Run Afoul of Section 503(c) of the Bankruptcy Code.**

23. Section 503(c) of the Bankruptcy Code imposes certain restrictions on the compensation that a debtor can pay to its executives and other employees in bankruptcy. Section 503(c)(1) applies to payments that are meant to induce insiders to "remain with the [debtor's] business" by requiring, among other things, that a debtor demonstrate that the insider (a) has a bona fide job offer from another business and (b) is "essential to the survival of the business." 11 U.S.C. §503(c)(1)(A) and (B). Section 503(c)(1) also limits the amount of retention payments that can be made to "insiders." See id. Likewise, section 503(c)(2) permits severance payments to "insiders" only if they are part of a program applicable to all employees and are less than ten

times the mean of severance payments made to nonmanagement employees during that calendar year. 11 U.S.C. § 503(c)(2). These sections, however, are limited in their application to “insiders” and neither applies to plans primarily implemented to incentivize personnel or that are not in the nature of a severance. See In re Global Home Products, LLC, 369 B.R. 778, 785 (Bankr. D. Del. 2007).

24. The Debtors’ proposed Incentive Plans are designed to provide an incentive to Key Employees to assist the Debtors in achieving their goal of maximizing the value of their estates. The Incentive Plans are not primarily designed to retain the Debtors’ Key Employees and, accordingly, the Debtors believe that section 503(c)(3) of the Bankruptcy Code is the applicable section for this Court to evaluate the requested relief.

25. Section 503(c)(3) of the Bankruptcy Code limits the payment of obligations outside of the ordinary course of business that are not covered by sections 503(c)(1) or (2). Specifically, section 503(c)(3) provides as follows:

[there shall neither be allowed, nor paid-] (3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c)(3).

26. Accordingly, section 503(c)(3) only limits payments that are “outside the ordinary course of business.” Id. This Court has applied the two-part test adopted in In re Roth American, Inc., 975 F.2d 949, 952 (3d Cir. 1992) for purposes of determining whether a plan falls within the ordinary course of a debtor’s business. See Nellson Neutraceutical, Inc., 369 B.R. 787, 788 (Bankr. D. Del. 2007). In Roth, the Court applied a horizontal and vertical dimensions test for purposes of determining whether something was considered ordinary course. See Roth, 975 F.2d at 952. The relevant inquiry under the “horizontal” dimension test is whether

the proposed transaction “is of the sort commonly undertaken by companies in that industry.” Id. at 953. Under the “vertical” dimension test, on the other hand, the Court looks to the reasonable expectations of interested parties as to the types of transactions a debtor is likely to enter into in the ordinary course of business. Id. The relevant inquiry under the “vertical” dimension test is whether the proposed plans are consistent with the Debtors’ prepetition business practices and conduct. Id. To the extent that a transaction is deemed ordinary course, section 503(c)(3) does not apply and “the Court will not entertain an objection to the transaction, provided that the conduct involves a business judgment made in good faith upon a reasonable basis and within the scope of authority under the Bankruptcy Code.” Nellson, 369 B.R. at 800 (quoting In re Curlew Valley Associates, 14 B.R. 506, 513 (Bank. D. Utah 1981)).

27. The relevant inquiry under section 503(c)(3) is whether the proposed plans are “justified by the facts and circumstances” of the case. 11 U.S.C. § 503(c)(3). Courts have generally used a form of the “business judgment” standard to determine whether incentive programs and the payments thereunder meet the section 503(c)(3) “facts and circumstances” standard. See, e.g., In re Dura Automotive Systems, Inc., Case No. 06-11202, Hr’g Tr. 40:17-41:2 (Bankr. D. Del. Apr. 25, 2007); (section 503(c)(3) “mean[s] something above the business judgment standard but maybe not much farther above it”); In re Werner Holding Co. (DE), Inc., Case No. 06-10578 (KJC) (Bankr. D. Del. July 20, 2006, Aug. 22, 2006, and Dec. 20, 2006) (ordering various relief requested in connection with debtors’ incentive bonus plans pursuant to sections 363(b) and 503(c) of the Bankruptcy Code); In re Nobex Corporation, Case No. 05-20050 (CSS) (Bankr. D. Del. May 15, 2006 and Dec. 21, 2005) (an order approving the management incentive plan at issue was entered Jan. 20, 2006) (ruling that “[section] is the catch-all and the standard . . . for any transfers or obligations made outside the ordinary course of

business . . . that are justified by the facts and circumstances of the case . . . I find it quite frankly nothing more than a reiteration of the standard under 363 . . . the business judgment of the debtor...”); In re Riverstone Networks, Inc., Case No. 06-10110 (CSS) (Bankr. D. Del. Mar. 28, 2006) (same); In re Pliant Corporation, Case No. 06-10001 (MFW) (Bankr. D. Del. Mar. 14, 2006) (same).

28. In applying section 503(c)(3), the Court in In re Dana Corp., 358 B.R. 567 (Bankr. S.D.N.Y. 2006), noted that the “test in section 503(c)(3) appears to be no more stringent a test than the one courts must apply in approving an administrative expense under section 503(b)(1)(A) . . . [a]n expense must be an actual, necessary cost or expense of preserving the estate.” Dana, 358 B.R. at 576. The Court then went on to consider the following factors in determining whether the debtor had satisfied the “sound business judgment” test: (i) whether a reasonable relationship existed between the proposed plan and the desired results; (ii) whether the cost of the plan was reasonable in light of the overall facts of the case; (iii) whether the scope of the plan was fair and reasonable; (iv) whether the plan was consistent with industry standards; (v) whether the debtor had put forth sufficient due diligence efforts in formulating the plan; and (vi) whether the debtor received sufficient independent counsel in performing any due diligence and formulating the plan. See id. at 576-77.

**C. The Incentive Plans Satisfy the Applicable Legal Standard and Should be Approved.**

29. As set forth above, the primary motivation of the Debtors in creating the Incentive Plans was not to retain the Key Employees and the Incentive Plans are not in the nature of severance. Instead, the Incentive Plans are intended to create incentives for the Key Employees to reach certain performance goals and to facilitate maximum recovery for the benefit of the Debtors’ constituencies. Accordingly, sections 503(c)(1) and (2) of the Bankruptcy Code are not

triggered by the Incentive Plans. See Global Home Products, 369 B.R. at 785. Moreover, the Debtors submit that section 503(c)(3) of the Bankruptcy Code is also not implicated as the proposed Incentive Plans fall within the ordinary course of the Debtors' business. The Incentive Plans are similar to other incentive programs adopted by the Debtors' Board of Directors in the past. The benchmarks contemplated by the Incentive Plans (e.g., the sales of the Debtors' business units and a successful orderly liquidation of the business (together, the "Milestones")) are the only differences between the Incentive Plans and the Debtors' prior incentive programs. The Debtors further submit that the Incentive Plans are consistent with plans instituted by companies comparable to the Debtors. The Incentive Plans therefore constitute ordinary course transactions under the two-part test applied in Roth. See Roth, 975 F.2d at 952. Accordingly, the Court should not consider any objections to the Incentive Plans absent a showing that the Debtors acted in bad faith or without a reasonable basis in approving the plans.

The KEIP Should Be Authorized Pursuant to Section 503(c)(3) as a Sound Exercise of the Debtors' Business Judgment.

30. Assuming *arguendo* that the Court does not find the Incentive Plans to be within the ordinary course of Debtors' business, the Debtors submit that the plans satisfy the requirements of section 503(c)(3) of the Bankruptcy Code. As discussed above, Courts have applied the "sound business judgment" test to determine whether incentive programs and the payments thereunder meet the section 503(c)(3) "facts and circumstances" standard. The Debtors' approval of the Incentive Plans satisfies the "sound business judgment" test as articulated by the Court in Dana, 38 B.R. at 576. The Debtors' overall goal with respect to the Incentive Plans is to maximize the value of the Debtors' assets. Accordingly, the Incentive Plans are predicated on the Milestones being met by the Debtors. While all of the Debtors' employees play a role in their financial success, the Debtors have limited participation under the plans to

Key Employees, *i.e.*, the employees who are most influential in the Debtors' ability to achieve the Milestones. Moreover, the Debtors submit that the cost and scope of the plans are reasonable in light of the overall facts of these chapter 11 cases and consistent with industry standards.

31. Moreover, the Incentive Plans were approved by the Debtors' Board of Directors prior to the Petition Date after a lengthy due diligence period and with significant input from the Debtors' counsel and financial advisors. In addition, the Debtors engaged the services of Radford, an independent executive compensation consulting firm, to assist in the development of the Incentive Plans. The Incentive Plans were also evaluated and approved by the Debtors' Compensation Committee, none of whom are receiving payments under the Incentive Plans. Therefore, the Debtors are merely seeking authority to continue to implement the Incentive Plans post-petition.

The Payments Contemplated Under the Incentive Plans Constitute Actual and Necessary Costs of Preserving the Debtors' Estates.

32. The payments contemplated under the Incentive Plans constitute actual and necessary costs and expenses of preserving the Debtors' estates. The Incentive Plans are performance based plans intended to motivate participants to achieve certain targeted financial results. The Debtors' ability to maximize recovery for the Debtors' estates and creditor constituencies is dependent on the Debtors' achievement of the Milestones. As discussed above, a reasonable relationship exists between the payments contemplated under the Incentive Plans and the Debtors' targeted financial goals. Accordingly, the payments contemplated thereunder constitute actual and necessary costs of the Debtors' estates under section 503(b) of the Bankruptcy Code.

**D. The Incentive Plans May Additionally Be Authorized Pursuant to Section 105(a) of the Bankruptcy Code.**

33. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(1).

34. As stated, the Debtors strongly and reasonably believe that the Incentive Plans are critical to their chapter 11 efforts. With respect to the Incentive Plans, such payments are essential to appropriately reward the Key Employees for all of their efforts throughout these Bankruptcy Cases, to maintain the morale of the Key Employees and to ensure the Key Employees’ continued focus on the Sales. The Debtors submit that such payments are necessary to maximize value of their estates for the benefit of their constituencies.

35. The Debtors respectfully submit that the post-petition compensation described herein for the Key Employees is an appropriate exercise of the Debtors’ business judgment, is necessary and in the best interest of the Debtors, their creditors, and their estates and should be approved under sections 105(a) and 363(b) of the Bankruptcy Code and allowed as administrative expenses under 503(b) of the Bankruptcy Code.

**Notice**

36. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware, (b) the Debtors’ twenty largest unsecured creditors, as identified in their respective chapter 11 petitions, (c) counsel to the Stalking Horse Purchaser, (d) the United States Attorney’s Office for the District of Delaware and (e) the Securities and Exchange Commission. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Del. Bankr. L.R. 9013-1(m). Due

to the urgency of the circumstances surrounding this Motion and the nature of the relief herein, the Debtors respectfully submit that no further notice of this Motion is required.

**No Prior Request**

37. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors' respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit B: (i) granting the relief requested herein and (ii) granting such other and further relief as the Court may deem proper.

Dated: January 4, 2012  
Wilmington, Delaware

Respectfully submitted,

/s/ Stuart M. Brown

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PROPOSED ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

**EXHIBIT A**

**(Key Employee Incentive Plan Summary)**

**TRIDENT MICROSYSTEMS, INC.**  
*Overview of Key Employee Incentive Plan*

**Overview**

Trident Microsystems, Inc. (the “Company”) in proposing to implement a Key Employee Incentive Plan (the “KEIP”) for certain critical executive employees. The KEIP will be in lieu of all existing bonus and severance programs. For the following four employees, the KEIP will be comprised of three elements, (i) a Set-Top Box Business Unit Sale, (ii) a TV Business Unit Sale and (iii) the confirmation of a plan of reorganization or liquidation in chapter 11 or a wind-down of the Company’s affairs outside of chapter 11:

- Bami Bastani (CEO)
- Peter Mangan (CFO)
- David Teichmann (EVP – GC)
- Uri Kreisman (Sr. VP Ops)

Three other executives will receive payments under the KEIP based upon only receiving payment for a specific transaction within their respective business unit:

- Saeid Moshkelani (EVP – R&D)
- Mark Samuel (Sr. VP – STB)
- Dirk Wieberneit (Sr. VP – TV)

All employees referenced herein shall be considered “KEIP Participants.” For a KEIP Participant to receive any KEIP payments set forth in the KEIP, they must be an employee of the Company as of the consummation of the transaction set forth herein, and they must execute (without revocation within any statutorily-authorized revocation period) a general release of known and unknown claims in favor of the Company and its affiliated persons and entities in a form satisfactory to the Company. If the KEIP Participant is terminated without cause within twenty-five (25) days prior to the date that any payment is due under the KEIP, the KEIP Participant shall be entitled to receive any payment that would have become due under the KEIP had the KEIP Participant been employed through such twenty-five (25) day period.

If a KEIP Participant is entitled to receive any KEIP payment described below, the Company shall also pay such KEIP Participant’s premiums required to continue the group health insurance coverage for such KEIP Participant and his dependants under the Consolidated Omnibus Reconciliation Act of 1985 for a period of six months.

**KEIP Thresholds**

**(i) Set-Top Box Business Unit Sale**

Upon the sale of the business, including all operational assets and intellectual property of the Company affiliated with the Set-Top Box Products (the “Set-Top Box Business Unit”) that

provides for the receipt of Total Consideration by the Company of \$45 million or greater upon closing, the KEIP Participants shall receive the following:

- Bastani - \$350,000
- Mangan - \$137,500
- Teichmann - \$98,750
- Kreisman - \$65,000
- Samuel - \$375,000

**(ii) TV Business Unit Sale**

Upon the sale or licensing, either in the aggregate or individually, of those businesses, including all operational assets and intellectual property of the Company affiliated with the development, marketing and sale of the Company's TV products (the "TV Business Unit"), the KEIP Participants shall receive the following: 3.5% of the Total Consideration received from the sale of the TV Business Unit, providing, the Total Consideration exceeds \$20 million (the "TV Business Incentive Payment"). In the event that multiple transactions occur relating to the sale of the TV Business Unit, the KEIP Participants shall be paid the KEIP payment upon the consummation of each such transaction. Of the KEIP payment for the sale of TV Business Unit, the amounts shall be distributed as follows:

- Bastani – 49.8%
- Mangan – 22.9%
- Teichmann – 16.5%
- Kreisman – 10.8%

In addition, upon the sale of the TV Business Unit in one or more transactions for a Total Consideration in excess of \$25 million, the following KEIP Participants will receive the payments listed below:

- Moshkelani - \$375,000
- Wieberneit - \$125,000

For the purposes of the preceding paragraph, Total Consideration means,

(i) in the case of the sale, exchange or purchase of the Company's equity securities, the total consideration paid for such securities (including amounts paid to holders of options, warrants and convertible securities), plus the principal amount of all indebtedness for borrowed money (including, without limitation, any capital lease obligations) which remains outstanding as of the consummation of such sale, exchange or purchase, and

(ii) in the case of a sale, disposition or licensing by the Company of assets, the total consideration paid for such assets, plus the principal amount of all indebtedness assumed by the purchaser.

In the event that the Company sells all or substantially all of the assets of the Company in a single transaction, the KEIP Participants will be entitled to receive a KEIP payment based upon (i) the value of the transaction attributable to the sale of the Set-Top Box Business Unit and (ii) the value of the transaction attributable to the sale of the TV Business Unit.

**(iii) Wind-down of Operations**

Upon the confirmation of a plan of reorganization or liquidation in chapter 11 or a wind-down of the Company’s affairs outside of chapter 11, KEIP Participants shall receive a KEIP payment in the amounts set below where it is projected that unsecured creditors will receive a recovery of:

- Greater than 60% but less than 70% in the aggregate on the amount of their claims, a KEIP payment of \$500,000;
- Greater than 70% but less than 80% in the aggregate on the amount of their claims, a KEIP payment of \$700,000;
- Greater than 80% but less than 85% in the aggregate on the amount of their claims, a KEIP payment of \$800,000;
- Greater than 85% in the aggregate on the amount of their claims, a KEIP payment in the amount of \$1,000,000

Such KEIP payments shall be paid to the KEIP Participants as follows:

- Bastani – 49.8%
- Mangan – 22.9%
- Teichmann – 16.5%
- Kreisman – 10.8%

**Example of Application**

The following table illustrates payments to KEIP Participants in the event that (i) the Company consummates a Set-Top Box Business Unit Sale, (ii) a sale of the TV Business Net with Total Consideration of \$27.5 million and (iii) a wind-down of the Company that projects payments to unsecured creditors exceeding 80% of their claims:

	<b>STB Incentive</b>	<b>TV Incentive</b>	<b>Wind-down Incentive</b>	<b>Total</b>	<b>% of Annual Pay/Bonus</b>
Bastani	\$350,000	\$479,325	\$398,400	\$1,227,725	122%
Mangan	\$137,500	\$220,412	\$183,200	\$541,112	99%
Teichmann	\$98,750	\$158,812	\$132,000	\$389,562	74%
Kreisman	\$65,000	\$103,950	\$86,400	\$255,350	73%
Moshkelani	-	\$375,000	-	\$375,000	65%
Samuel	\$375,000	-	-	\$375,000	83%
Weiberneit	-	\$125,000	-	\$125,000	28%
<b>Total</b>	<b>\$1,026,250</b>	<b>\$1,462,499</b>	<b>\$920,000</b>	<b>\$3,408,749</b>	

**EXHIBIT B**  
**(Proposed Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re : Chapter 11  
Trident Microsystems, Inc., *et al.*,<sup>1</sup> : Case No. 12-\_\_\_\_\_ (\_\_\_\_\_) :  
Debtors. : (Jointly Administered) :  
: **Re: Dkt. No.** \_\_\_\_\_ :  
-----X

**ORDER GRANTING MOTION OF THE DEBTORS AND DEBTORS IN  
POSSESSION FOR AN ORDER AUTHORIZING AND APPROVING  
PERFORMANCE-BASED INCENTIVES FOR KEY EMPLOYEES**

This matter coming before the Court on the *Motion of the Debtors and Debtors in Possession For an Order Authorizing and Approving Performance-Based Incentives for Key Employees* (the “Motion”),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”); the Court having reviewed the Motion and having scheduled a hearing before the Court (the “Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties-in-interest; and good and sufficient cause having been shown;

<sup>1</sup> The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Trident Microsystems, Inc. (6584) and Trident Microsystems (Far East) Ltd. The mailing address of each of the Debtors, solely for purposes of notices and communications, is 1170 Kifer Road, Sunnyvale, California 94086.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, to make payments to the Key Employees under the Incentive Plans, up to an aggregate amount of \$4,000,000.
3. All payments under the Incentive Plans shall be deemed allowed administrative expenses of the Debtors' estates under section 503(b) of the Bankruptcy Code.
4. This Court shall retain jurisdiction over all matters set forth in the Motion, including the entitlement of any party to any payment pursuant to the Incentive Plans.

Dated: \_\_\_\_\_, 2012  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge