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Proposed Counsel for Debtors-in-Possession

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

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In re:	:	Chapter 11
	:	
ADVANCE SCIENCE TECHNOLOGIES,	:	Case No. 17-13668 (SMB)
INC., and FS-IP LLC,	:	
	:	Joint Administration Requested
Debtors. ¹	:	
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**APPLICATION TO EMPLOY PERKINS COIE LLP AS COUNSEL FOR THE
DEBTORS-IN-POSSESSION NUNC PRO TUNC TO PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Advance Science Technologies, Inc. (“*AST*”) and FS-IP LLC (“*FS-IP*”), as debtors and debtors-in-possession (collectively, the “*Debtors*”), respectfully represent:

PRELIMINARY STATEMENT

1. These chapter 11 cases are “prepackaged Chapter 11 case[s]” within the scope and definition set forth in Part II of the Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York (the “*Guidelines*”)² as the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Advance Science Technologies, Inc. (6977); and FS-IP LLC (5674). Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the Debtors’ bankruptcy cases.

² Part II of the Guidelines provides that “a ‘prepackaged Chapter 11 case’ is one in which the Debtor, substantially contemporaneously with the filing of its Chapter 11 petition, files a Confirmation Hearing Scheduling Motion for Prepackaged Plan in substantially the form annexed [to the Guidelines] as Exhibit A and satisfying the criteria set forth in Part III.A. below, Prepackaged Plan, disclosure statement (or other solicitation document), and voting certification.”

Debtors, contemporaneously with the filing of their respective chapter 11 petitions, filed, among other documents, the *Debtors' Joint Prepackaged Plan of Reorganization* (the "**Plan**") and *Information and Disclosure Statement* (the "**Disclosure Statement**"). All classes of creditors and shareholders entitled to vote accepted the Plan prior to the Petition Date (as defined herein).³ All other claims and equity interests are not impaired under the Plan.

2. This application seeks authorization to employ Perkins Coie LLP as the Debtors' bankruptcy counsel in these chapter 11 cases.

BACKGROUND

3. On the date hereof (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case (collectively, the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

4. Prior to the Petition Date, the Debtors commenced and completed the solicitation of votes on the Plan, through the Disclosure Statement.

5. Additional factual background regarding the Debtors, including their business operations, corporate and capital structure and the events leading to these chapter 11 cases is set forth in the *Declaration of Sean Sullivan Pursuant to Local Bankruptcy Rule 1007-2, in Support of First Day Pleadings* (the "**Sullivan Declaration**").

JURISDICTION AND VENUE

6. This Court has jurisdiction over these chapter 11 cases under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated December 1, 2016. This matter constitutes a core

³ Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Plan.

proceeding under 28 U.S.C. § 157(b)(2).

7. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections §§ 327(a) and 329 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rules 2014(a), 2016 and 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and LBR 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

PERKINS COIE’S QUALIFICATIONS

9. Perkins Coie is particularly well-suited to serve as the Debtors’ general bankruptcy counsel in these cases. With over 1,000 attorneys in 19 offices across the United States and Asia, Perkins Coie has broad-based practice groups with expertise in all areas of law that may be significant in this case including, for example, bankruptcy and restructuring, corporate finance, corporate governance, regulatory, real estate and commercial litigation. Moreover, Perkins Coie possesses nationally-recognized expertise in bankruptcy matters, having recently been actively involved in a number of complex chapter 11 cases. Al Smith and Schuyler Carroll, Perkins Coie’s lead bankruptcy lawyers in this proposed engagement, together have more than 60 years of experience in the areas of bankruptcy, insolvency and reorganization.

10. Perkins Coie has obtained a detailed and extensive familiarity with the Debtors’ businesses, capital structure and financial affairs through its representation for over ten years of the Debtors’ non-debtor parent entity Fortior Solutions, Inc., formerly known as SureID, Inc. (“**Fortior**”). The Debtors engaged Perkins Coie to serve as general bankruptcy counsel in connection with the planning and implementation of these chapter 11 cases in light of Perkins Coie’s extensive expertise in complex Chapter 11 reorganizations. Perkins Coie also represented the Debtors in the transactions that have lead up to the filing of the chapter 11 cases. Perkins Coie has the necessary background to deal effectively with the full range of potential legal issues and problems that may arise in the context of these chapter 11 cases.

SERVICES TO BE RENDERED

11. The Debtors propose to employ Perkins Coie to render services in these chapter 11 cases, including, among others, the following:

- a. advise the Debtors with respect to their powers and duties as debtors-in-possession in the continued management and operation of their business and property;
- b. attend meetings and negotiate with representatives of creditors and other parties-in-interest, and advise and consult on the conduct of these chapter 11 cases, including all the legal and administrative requirements of operating in chapter 11;
- c. assist the Debtors with the preparation of Schedules of Assets and Liabilities and Statement of Financial Affairs, if required;
- d. advise the Debtors in connection with any contemplated sales of assets or business combinations, formulate and implement appropriate procedures with respect to the closing of any such transactions, and counsel the Debtors in connection with such transactions;
- e. advise the Debtors in connection with any postpetition financing and cash collateral arrangements, negotiate and draft related documents, and provide advice and counsel with respect to prepetition financing agreements and their restructuring;
- f. advise the Debtors on matters relating to the assumption, rejection, or assignment of unexpired leases and executory contracts, if required;
- g. advise the Debtors with respect to legal issues arising in or relating to the Debtors' ordinary course of business including attendance at senior management meetings, meetings with the Debtors' financial and turnaround advisors, and meetings of the board of directors as appropriate;
- h. take all necessary action to protect and preserve the Debtors' estates, including the prosecution of actions on its behalf, the defense of any actions commenced against them, negotiations concerning any litigation in which the Debtors are or become involved and objections to claims filed against the Debtors' estate;
- i. prepare, on the Debtors' behalf, all motions, applications, answers, orders, reports and papers necessary to the administration of the estates;
- j. obtain approval of the RSA;
- k. seek confirmation of and implement the plan of reorganization filed herewith, associated disclosure statement, and all related agreements and documents, and take any necessary action on the part of the Debtors to obtain confirmation of the plan;
- l. attend meetings with creditors and other third parties and participate in negotiations with respect to the above matters;

- m. appear and advance the Debtors' interests before this Court, any appellate courts, and the U.S. Trustee; and
- n. perform all other necessary legal services and provide all other necessary legal advice to the Debtors in connection with these chapter 11 cases.

12. Perkins Coie is willing to act as Debtors' general bankruptcy counsel in these chapter 11 cases and to render the services described above.

DISINTERESTEDNESS

13. To the best of the Debtors' knowledge, information, and belief, based on and other than as set forth in the Smith Declaration:

- a. Perkins Coie does not hold or represent an interest adverse to the Debtors' estates and is a "disinterested person," as that term is defined in Bankruptcy Code § 101(14) and modified by § 1107(b), with respect to the matters for which Perkins Coie is to be employed;
- b. Except for the "Connections" set forth in the Smith Declaration, no Perkins Coie partner, counsel, or associate has any connection with the Debtors, its creditors, its estate, any United States District Judge or United States Bankruptcy Judge for the Southern District of New York, the U.S. Trustee or any person employed in the office of the U.S. Trustee for Region 2, or any other party-in-interest, or their respective attorneys and accountants;
- c. Perkins Coie has represented and currently represents affiliates of the Debtors' senior secured lenders, Goldman Sachs Specialty Lending Group, L.P., in matters wholly unrelated to the Debtors or Fortior; and
- d. The disclosures made by Perkins Coie in the Smith Declaration (regarding connections with the Debtors, their creditors, any other parties-in-interest in these cases, their respective attorneys and accountants, any U.S. District Judge or U.S. Bankruptcy Judge for the Southern District of New York, the U.S. Trustee or any person employed in the office of the U.S. Trustee for Region 2) satisfies the requirements of Bankruptcy Rule 2014.

COMPENSATION

14. The Debtors seek to employ Perkins Coie on an hourly basis at rates consistent with those Perkins Coie routinely charges in comparable matters and consistent with the rates Perkins Coie charged the Debtors and non-debtor affiliates prepetition. In the case of certain timekeepers, Perkins Coie provides a discount off of its standard hourly rates. In all such instances, this is a discount that reduces the fees Perkins Coie ordinarily would charge.

15. As discussed in detail in the Smith Declaration, Perkins Coie provided services to the Debtors and certain non-debtor affiliates prepetition in conjunction with these prepackaged cases and in connection with unrelated general corporate matters. Except as described in the Smith Declaration respecting certain fees voluntarily written off, all such invoices were promptly paid in the ordinary course of business, in many cases while Perkins Coie held a retainer in an amount in excess of any one invoice.

16. As of the Petition Date, Perkins Coie had been compensated for all known fees and reimbursed for all known expenses incurred before the Petition Date (taking into account the writeoff referenced above and explained more fully in the Smith Declaration). As of the Petition Date, Perkins Coie holds a retainer with an unapplied balance of approximately \$7,224.20 (the “*Retainer*”). Perkins Coie reserves the right to apply certain amounts of the Retainer to fees and expenses accrued before the Petition Date but not discovered or otherwise accounted for until after the Petition Date. Perkins Coie will retain all remaining amounts of the Retainer in trust during the pendency of these chapter 11 cases to be applied to any professional fees, charges and disbursements approved by, and in accordance with any order of, this Court.

17. For professional services, Perkins Coie’s fees are based on its customary hourly rates, which are periodically adjusted in accordance with Perkins Coie’s policy. Based on the engagement agreement, Perkins Coie and the Debtors have agreed that Perkins Coie will not be seeking to be separately compensated for certain staff, clerical, and resource charges. As of January 1, 2018, the hourly rates for Perkins Coie lawyers and paralegals range between \$220 to \$1,240 for lawyers, and \$125 to \$405 for paralegals. Mr. Smith’s hourly rate for 2018 in this matter is \$780 and Mr. Carroll’s hourly rate for 2018 is \$1,035. The hourly rates set forth above are subject to periodic increases in the normal course of Perkins Coie’s business, often due to the increased experience of a particular professional and changes in the prevailing legal market, but are not expected to increase during the abbreviated timeframe of this case.

18. Consistent with its policy with respect to its other clients, Perkins Coie will continue to charge the Debtors for all other services provided and for other charges and

disbursements incurred in the rendition of services. These charges and disbursements include, among other things, costs for telephone charges, photocopying, business meals, messengers, couriers, postage, witness fees and other costs related to trials and hearings, all within the guidelines promulgated by the Office of the U.S. Trustee.

19. Perkins Coie will provide the Debtors with periodic (no less frequently than monthly) invoices for services rendered and disbursements incurred. Perkins Coie will apply to the Court for allowance of compensation for professional services rendered and reimbursement of charges and disbursements incurred in these chapter 11 cases in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York and the orders of this Court. Perkins Coie will seek compensation for the services of each attorney and paralegal acting on the Debtors' behalf at the then-current rate charged for such services in a non-bankruptcy matter.

20. Perkins Coie has agreed to accept the compensation the Court allows on the basis of: (i) professional time spent; (ii) rates charged; (iii) the necessity of the services performed to the administration of the estate; (iv) the reasonableness of the time within which the services were performed in relation to the results achieved; and (v) the complexity, importance, and nature of the problems, issues, or tasks addressed.

21. Other than as set forth above, no arrangement is proposed between the Debtors and Perkins Coie for compensation to be paid in these chapter 11 cases.

22. The Debtors respectfully submit that its fee arrangement with Perkins Coie is similar to fee arrangements that have been authorized in countless other chapter 11 cases in which Perkins Coie and many other similar firms have rendered services and is reasonable in light of industry practice, prevailing market rates, Perkins Coie's experience in reorganizations, and the scope of the work to be performed. The Debtors believe that the fee structure is both fair and reasonable.

23. The Debtors believe that Perkins Coie is well qualified to represent the Debtors effectively and efficiently in these chapter 11 cases. Perkins Coie's resources, capabilities, and

experience in advising the Debtors are crucial to the Debtors' successful restructuring. As such, the Debtors believe that employing Perkins Coie is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest.

RELIEF REQUESTED

24. By this Application, the Debtors seek to employ Perkins Coie as its general bankruptcy counsel and respectfully request entry of an order under Bankruptcy Code §§ 327(a) and 329, and Bankruptcy Rules 2014(a), 2016, and 6003, substantially in the form attached to this application as Exhibit A, authorizing the Debtors to employ Perkins Coie as their bankruptcy counsel effective as of the Petition Date.

25. Bankruptcy Code § 327(a) provides that a debtor-in-possession, subject to Court approval:

may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor-in-possession] in carrying out the [debtor-in-possession's] duties under this title.

26. The relief sought in this application is justified and appropriate under Bankruptcy Code § 327(a). It is well recognized that a business entity must be represented by counsel to appear in court. *See, e.g., Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985); *see also In re K.M.A., Inc.*, 652 F.2d 398, 399 (5th Cir. 1981). Accordingly, the Debtors are technically unable to proceed in these chapter 11 cases without this Court's approval of Perkins Coie as its counsel. The Debtors would be unable to seek the essential relief needed in the earliest stages of this case because the Debtors are business entities that cannot appear without counsel. Without the relief requested in the Debtors' first-day motions, the Debtors, their creditors, and other parties-in-interest may suffer immediate and irreparable harm.

27. Even beyond the first days of this case, the Debtors need Perkins Coie's advice in seeking approval of the RSA and the Disclosure Statement, pursuing confirmation of the Plan and utilizing the tools available in chapter 11 to reorganize the Debtors' financial affairs. Failure

to have all of Perkins Coie's resources readily available could jeopardize the ultimate outcome of these chapter 11 cases.

28. Bankruptcy Rule 6003 was revised as of December 1, 2011. As revised, the Court may not, within 21 days after filing of the petition, issue an order granting an application under Bankruptcy Rule 2014 unless necessary to avoid immediate and irreparable harm. Rule 6003 limits the timing of the entry of certain orders, but does not prevent the Court from making such an order retroactively effective as of the Petition Date. Accordingly, the Debtors ask that, to avoid immediate and irreparable harm, the Court make the order approving this Application retroactive to the Petition Date.

NOTICE

29. Notice of this Motion shall be provided to (i) the attorneys for Goldman Sachs Specialty Lending Group, L.P., the administrative agent for the senior secured lenders, (ii) all known creditors of the Debtors, (iii) any official committee(s) appointed in these cases, (iv) the Office of the United States Trustee for Region 2, and (v) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

31. For the foregoing reasons, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein and such further relief as the Court deems just and appropriate.

Dated: December 29, 2017
New York, New York

**DEBTORS ADVANCE SCIENCE
TECHNOLOGIES, INC. and FS-IP, LLC**

By: /s/ Sean Sullivan
Sean Sullivan, Vice President
and Treasurer

PERKINS COIE LLP
Proposed Counsel for Debtors-in-Possession

By: /s/ Schuyler G. Carroll
Schuyler G. Carroll
Alan D. Smith (*pro hac vice* pending)
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Email: scarroll@perkinscoie.com
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Exhibit A

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

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In re:	:	Chapter 11
	:	
ADVANCE SCIENCE TECHNOLOGIES,	:	Case No. 17-13668 (SMB)
INC., and FS-IP LLC,	:	
	:	Joint Administration Requested
Debtors. ¹	:	
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**ORDER GRANTING APPLICATION TO EMPLOY PERKINS COIE LLP AS
COUNSEL FOR THE DEBTORS-IN-POSSESSION
NUNC PRO TUNC TO PETITION DATE**

UPON the *Application to Employ Perkins Coie LLP as Counsel for Debtors-In-Possession Nunc Pro Tunc to Petition Date* (the “**Application**”), filed by the above-captioned Debtors and the *Verified Statement of Alan D. Smith in Support of Application to Employ Perkins Coie LLP as Counsel for Debtors-In-Possession* (the “**Smith Declaration**”) and the *Declaration of Sean Sullivan Pursuant to Local Bankruptcy Rule 1007-2, in Support of the First Day Pleadings*, and the entire record of these proceedings,

The Court finds and concludes that:

- a. This Court has jurisdiction over these chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).
- b. Bankruptcy Code §§ 327(a) and 329 authorize the Debtors, as debtors-in-possession, to employ Perkins Coie LLP as its counsel as of the commencement of these chapter 11 cases, to perform the services as set forth in the Application.
- c. Perkins Coie LLP is a “disinterested person” within the meaning of Bankruptcy Code §§ 101(4) and 1107(b).
- d. The disclosures made by Perkins Coie LLP in the Smith Declaration satisfy the requirements of Bankruptcy Rule 2014.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Advance Science Technologies, Inc. (6977) and FS-IP LLC (5674). Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the Debtors’ bankruptcy cases.

e. Notice of the Application was adequate under the circumstances.

In light of the foregoing, IT IS ORDERED that:

1. The Application is granted.
2. The Debtors are authorized to employ Perkins Coie LLP as counsel under Bankruptcy Code § 327(a).
3. Perkins Coie LLP may be entitled to compensation for its services and receive reimbursement for its expenses as an administrative expense in accordance with Bankruptcy Code § 330 and further orders of the Court.

Dated: _____, 2018
New York, New York

UNITED STATES BANKRUPTCY JUDGE