

EXHIBIT B



Settlement and License Agreement

This Settlement and License Agreement (“Agreement”) is made as of May 12, 2023 (“Effective Date”), between Kyocera Corporation, a Japanese corporation with its principal place of business at 6 Takeda, Tobadono-cho, Fushimi-ku, Kyoto, Japan 612-8501, (“Kyocera”), and AGIS Software Development LLC, a Texas limited liability company with its principal place of business at 100 West Houston Street, Marshall, Texas 75670 (“AGIS”). As used herein, “Party” refers to either Kyocera or AGIS, and “Parties” refers to Kyocera and AGIS collectively.

Whereas, AGIS brought suit against Kyocera in the Eastern District of Texas (Case No. 2:22-cv-00444-JRG, the “EDTX Lawsuit”) and in the U.S. International Trade Commission (Case No. ITC 337-TA-1347, the “ITC Lawsuit”) (collectively, the “Lawsuits”) for alleged patent infringement of the AGIS Patents-in-Suit (defined below);

Whereas, Kyocera has sold, marketed, and supported certain Kyocera Products (defined below) which are accused of infringement by AGIS;

Whereas, Kyocera has denied any liability in the Lawsuits; and

Whereas, the Parties desire to settle the Lawsuits and enter into this Agreement providing for a full, final, complete, and global settlement of the Lawsuits and resolving forever and always any claim now or in the future by AGIS against Kyocera and its Affiliates involving any AGIS Patents and any Kyocera Product (all defined below), whether such claim is now known or unknown to AGIS, and to provide for certain releases, licenses, and covenants not to sue, all on the terms and conditions set forth herein.

Now, therefore, in consideration of the above premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, in accord with the above Whereas clauses, which are incorporated herein by reference, and intending to be legally bound, hereby agree as follows:

1.0 DEFINITIONS.

“Affiliate” means, with respect to a Party, any Person that now or at any time in the future directly or indirectly controls, is controlled by, or is under the common control with such Party, whether through the ownership of securities, as a result of contract, or otherwise. For purposes of this Agreement, “control” of a legal entity shall mean ownership, directly or indirectly, presently held or acquired in the future, of (a) at least fifty percent (50%) or more of the outstanding voting shares of such entity, or (b) at least fifty percent (50%) or more of the total combined voting power entitled to elect or appoint directors or persons performing similar functions for such an entity, or (c) in the case of a non-corporate entity, equivalent interests in such entity giving the power to direct or cause direction of the management or policies of such entity whether by ownership of voting securities, by contract, or otherwise.



“Third Party” means any Person other than the Parties to this Agreement or their respective Affiliates.

“AGIS Patents” means [redacted]
[redacted]
[redacted] the United States Patent Nos. 8,213,970, 9,467,838, 9,445,251, 9,749,829, and 9,820,123 (“AGIS Patents-in-Suit”); [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

“Excluded Products” means [redacted]
[redacted]
[redacted]
[redacted]

“Exploit, Exploited or Exploitation” means to, in whole or in part, directly or indirectly, own, make, have made, design, develop, author, write, generate source code for, use, sell, offer to sell, supply, purchase, license, lease, import, operate, distribute, perform, provide, display, transmit, use in a network, export, market, advertise, instruct use of, or otherwise practice, or dispose of, and the exercise of all other activities that may give rise to any cause of action, liability, or damage, including under Title 35 of the United States code and foreign counterparts thereto (as may be amended or superseded from time to time).

“Infringe,” “Infringed,” and “Infringement” includes direct and indirect infringement (including inducement and contributory infringement) and whether literally or by virtue of the doctrine of equivalents of any intellectual property right in any jurisdiction worldwide.

“Person” means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization, or other legal entity.

“Kyocera Product” means [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]





2.0 LICENSE, COVENANT AND RELEASE.

2.1 AGIS License to Kyocera. Subject to [REDACTED] AGIS, on behalf of itself, its Affiliates, and their predecessors, successors, and assigns, grants to Kyocera, its Affiliates, and any and all of their predecessors, successors, and assigns, a [REDACTED]

2.2 Covenants.

2.2.1 AGIS Covenant. Without limiting Section 2.1, AGIS, on behalf of itself, its Affiliates, and their predecessors, successors, and assigns, hereby covenants:

[REDACTED]

[REDACTED]

[REDACTED]

2.3 Releases.

2.3.1 AGIS Release of Kyocera. In addition to Sections 2.1 and 2.2, subject to [REDACTED] AGIS, on behalf of itself and its Affiliates, and their predecessors, successors (but only in their capacity as successors to the rights of AGIS and/or its Affiliates), assigns (but only in their capacity as assigns of the rights of AGIS and/or its Affiliates), agents, directors, officers, and employees (but as to agents, directors, officers, and employees, only in their capacities as such) (all of the foregoing collectively with AGIS, the “AGIS Parties”) hereby fully and forever irrevocably and unconditionally releases, acquits, and forever discharges Kyocera (together with its Affiliates, predecessors, successors, assigns, agents, attorneys, insurers, servants, employees, officers, and directors) (collectively with Kyocera the “Kyocera Released Parties”) from any and all actions, causes of action, claims or demands, liabilities, losses, damages, duties, obligations, attorneys’ fees, court costs, or any other form of claim or compensation, whether known or unknown, made or claimed, arising at any



[REDACTED]

time prior to or as of the Effective Date, out of the facts, events, or occurrences underlying, or giving rise to, or otherwise related to (i) the allegations in the Lawsuits or any claim or counterclaim that could have been joined by AGIS in the Lawsuits, as pertaining to the Kyocera Products, (ii) any act of Infringement or any other violation of any of the AGIS Patents with respect to or concerning the Kyocera Products, (iii) the conduct of the Lawsuits, and (iv) the conduct of settlement negotiations before the Effective Date (except for representations and obligations expressly included in the Agreement). For the avoidance of doubt, [REDACTED]

2.3.2 Kyocera Release of AGIS. Kyocera, on behalf of itself and its Affiliates, and their predecessors, successors (but only in their capacity as successors to the rights of Kyocera and its Affiliates), assigns (but only in their capacity as assigns of the rights of Kyocera and its Affiliates), agents, directors, officers, and employees (but as to agents, directors, officers, and employees, only in their capacities as such) (all of the foregoing collectively with Kyocera, the “Kyocera Parties”) hereby fully and forever irrevocably and unconditionally releases, acquits, and forever discharges AGIS (together with its Affiliates, successors, assigns, agents, employees, managers, officers, and directors) (collectively with AGIS, the “AGIS Released Parties”) from any and all actions, causes of action, claims, or demands, liabilities, losses, damages, duties, obligations, attorneys’ fees, court costs, or any other form of claim or compensation, whether known or unknown, made or claimed, arising at any time prior to or as of the Effective Date, out of the facts, events or occurrences underlying, or giving rise to, or otherwise related to: (i) the allegations in the Lawsuits or any claim or counterclaim that could have been joined by AGIS in the Lawsuits, (ii) the conduct of the Lawsuits, and (iii) the conduct of settlement negotiations before the Effective Date (except for representations and obligations expressly included in the Agreement).

2.4 Unknown Claims. The releases in this Agreement include an express, informed, knowing and voluntary waiver and relinquishment to the fullest extent permitted by law. In this connection, the Parties acknowledge that they may have sustained damages, losses, costs or expenses which are presently unknown and unsuspected and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. The Parties hereto further acknowledge that they have negotiated this Agreement taking into account presently unsuspected and unknown claims, counterclaims, causes of action, damages, losses, costs, and expenses, and the Parties hereto voluntarily relinquish and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule, or common law principle, in law or equity, relating to limitations on releases or general releases. Specifically, each Party hereby expressly waives any rights it may have under California Civil Code Section 1542 (or any other similar law in any jurisdiction) providing that:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”



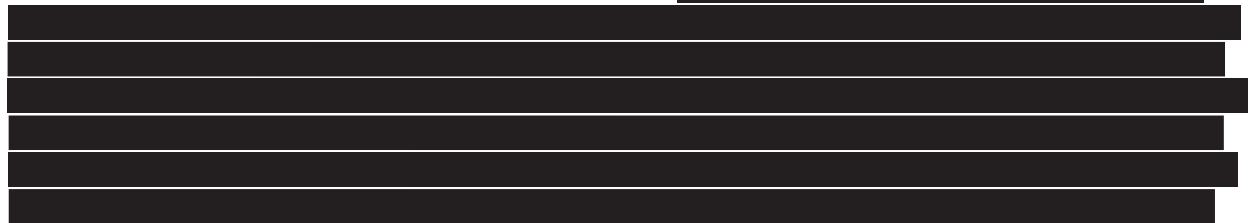
2.5 Agreement Obligations Not Released. Notwithstanding any of the foregoing in this Section 2, neither the release to Kyocera and its Affiliates in Section 2.3.1 herein, nor the release to AGIS and its Affiliates in Section 2.3.2 herein, releases any Party from its respective obligations under this Agreement or prevents any Party from enforcing the terms and conditions of this Agreement against the other.

2.6 Dismissals.

2.6.1 Dismissal of AGIS's Claims against Kyocera in the Lawsuits. Within [REDACTED] after the Effective Date, (1) AGIS shall dismiss, with prejudice, all claims brought against Kyocera in the Lawsuits; by filing a stipulation or notice of dismissal substantially in the form attached hereto as Exhibit B, or in such other form as required for approval by the Court to effectuate the dismissal.

2.6.2 No Admissions. Kyocera and its Affiliates do not make any admission of Infringement, validity, or enforceability of the AGIS Patents, or any admission of liability by the negotiation, execution, or performance of this Agreement.

2.7 Patent Challenges. Kyocera and its Affiliates, on behalf of themselves and their successors and assigns, further agree that during such time as they fully benefit from the license and covenant rights granted by this Agreement, they [REDACTED]



[REDACTED] Nothing in this Agreement shall prohibit Kyocera and its Affiliates or successors or assigns from complying with any Court order, subpoena, or other legal obligation to provide documents, information, or testimony or otherwise cooperate with any third party.

3.0 CONSIDERATION.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.3 Taxes, Costs, and Documentation. All taxes shall be the financial responsibility of the Party obligated to pay such taxes as determined by the applicable law, and no Party is or shall be liable at any time for any other Party's taxes incurred in connection with or related to amounts paid under this Agreement.

4.0 WARRANTIES.

4.1 Due Authorization. Each Party warrants and represents that it is a valid existing business and in good standing under the laws of its respective jurisdiction and it has the full power and authority to enter into this Agreement and to perform its obligations hereunder and consummate the transactions contemplated herein; and further warrants and represents that the person executing this Agreement on its behalf has full power and authority to do so.

4.2 No Assignment. The Parties represent and warrant that they have not assigned, transferred, or otherwise conveyed or purported to assign, transfer, or convey to any person or entity any of the rights, remedies, causes of action, claims or demands for damages that they have released hereunder, or that they have asserted in the Lawsuits. Each Party agrees to indemnify and hold harmless the other Party against any claim, demand, debt, obligation, liability, cost, expense, or cause of action arising out of or in connection with any such transfer, assignment, or conveyance, or purported transfer, assignment or conveyance.

[REDACTED]

[REDACTED]

4.3 Title. AGIS represents and warrants to Kyocera that (i) AGIS and/or its Affiliates owns the AGIS Patents, that it has the right, on its own behalf and on behalf of its Affiliates, to grant the releases, licenses, covenants, and all other rights granted under this Agreement, (ii) that no other third party owns any right, without the joinder or consent of AGIS or an AGIS Affiliate, to enforce or recover for Infringement, or any other violation, of the AGIS Patents by Kyocera and its Affiliates at any time during the term of this Agreement, (iii) that AGIS has not granted and will not grant any licenses or other rights, under the AGIS Patents or otherwise, that would conflict with or undermine the licenses, covenants, releases, and rights granted to Kyocera and its Affiliates hereunder; and (iv) that it has not divested, sold, assigned or otherwise transferred any rights to the AGIS Patents since the filing of the Lawsuit. AGIS represents and warrants that there are no liens, conveyances, mortgages, assignments, encumbrances, or other agreements that would prevent or impair the full and complete exercise of the terms of this Agreement, including the releases, licenses, covenants and other rights granted under this Agreement. AGIS or its Affiliates shall not sell, assign, divest, or otherwise transfer any of the AGIS Patents, or grant, transfer or assign any rights under the AGIS Patents, unless such sales, assignments, divestments, grants or transfers are made subject to the rights granted in this Agreement.

4.4 AGIS represents and warrants to Kyocera that, as of the date of this Agreement, it does not directly or indirectly own or control, nor is it owned or controlled by or in common with, any other company or other entity that owns or controls any patents or patent applications other than the AGIS Patents. The express purpose of this clause is to permit Kyocera to understand all patent rights that could be asserted against it by anyone having an interest in the AGIS Patents. In the event that, and notwithstanding this representation and warranty of Section 4.4., there are other patents or patent applications that are directly or indirectly owned or controlled by AGIS or another entity that is owned or controlled by or in common with AGIS, then such other patents and patent applications (along with all patents issuing thereon) shall be treated as if they were AGIS Patents for the purposes of all licenses, covenants, releases and other rights granted in this Agreement.


5.0 TERM AND TERMINATION.

5.1 Term. This Agreement shall be deemed effective as of its Effective Date. The Agreement shall remain in full force and effect [REDACTED]. At that time, the licenses, covenants, termination provisions, and releases granted herein [REDACTED].

5.2 Termination. Other than as set forth in Section 5.1, this Agreement may only be terminated by mutual written agreement of the Parties.

6.0 ASSIGNABILITY.

6.1 Assignment. Except as set forth in Section 6.2 below, neither Party may grant or assign any rights or delegate any duties under this Agreement to any third party without the prior written consent of the other Parties, which shall not be unreasonably withheld, and any attempted assignment without such consent shall be null and void. Notwithstanding the foregoing, any Party may, without the prior consent of the other Parties, (i) assign rights under this Agreement



to any of its Affiliates; and (ii) assign rights under this Agreement to (a) an acquirer of all or substantially all of the equity or assets of its business to which this Agreement relates, or (b) the surviving entity in any merger, consolidation, equity exchange, or reorganization of its business to which this Agreement relates.

6.2 Rights Run with Patents. All license rights and covenants contained herein shall run with the AGIS Patents and shall be binding on any successors-in-interest or assigns thereof. AGIS shall not assign, or grant any right under, any AGIS Patents to any other party unless such assignment or grant is subject to all of the terms and conditions of this Agreement applying to the AGIS Patents.

6.3 Inurement. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their permitted successors and assigns.

6.4 Null assignments. Any attempted assignment or grant in contravention of Sections 6.1 - 6.2 shall be null and void.

7.0 CONFIDENTIALITY.

7.1 Non-disclosure. The terms of this Agreement and all correspondence relating to this Agreement are confidential. The Parties shall keep terms and particulars of this Agreement confidential and no Party shall now or hereafter disclose such terms and particulars to any third party except: (i) with the prior written consent of the other Parties; (ii) as may be required by applicable law, regulation, or order of a governmental authority of competent jurisdiction; (iii) during the course of litigation, so long as the disclosure of such terms and conditions is subject to the same restrictions as is the confidential information of the other litigating parties, such restrictions are embodied in a court-entered protective order limiting disclosure to outside counsel, and such disclosing Party uses reasonable efforts to provide the other Parties written notice at least ten (10) business days prior to such disclosure; (iv) in confidence to the professional legal and financial counsel, accountants, or tax advisors representing such Party; (v) for the purposes of disclosure in connection with the Securities and Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, and any other reports filed with the Securities and Exchange Commission, or any other filings, reports, or disclosures that may be required under applicable laws or regulations; (vi) in confidence to any party covered by the releases, licenses, or covenants granted herein; or (vii) for the purposes of a business transaction, so long as the disclosure of such terms and conditions is subject to the protections of a commercially reasonable non-disclosure agreement. With respect to the foregoing (ii), such disclosing Party shall, to the extent legally permissible, provide the other Parties with prior written notice of such applicable law, regulation, or order and, at the request of the other Parties, use reasonable efforts to limit the disclosure of the terms and conditions of this Agreement, and to obtain a court-ordered protective order or agreement limiting disclosure to outside counsel or other requested confidential treatment.

7.2 Public Statement. The Parties will not issue press releases or otherwise publicize this settlement or the dismissal of the Lawsuits, except for statements that the matter was



resolved amicably and that AGIS has granted a license to Kyocera. The Parties will not publish any disparaging remarks about the other Parties to third parties.

7.3 Waiver. The failure of any Party to enforce at any time any of the provisions governing the confidentiality of the terms of this Agreement or to require at any time performance by any of the Parties of any such provisions shall in no way be construed as a waiver of such provision or relinquishment of the right thereafter to enforce such provision.

8.0 NOTICES.

8.1 Delivery. All notices required or permitted to be given hereunder shall be in writing and shall be deemed delivered (i) upon receipt if delivered by hand; (ii) the next business day after being sent by prepaid, nationally-recognized, overnight air courier; (iii) five (5) business days after being sent by registered or certified airmail, return receipt required, postage prepaid; or (iv) upon transmittal when transmitted by confirmed telecopy (provided that such notice is followed by notice pursuant to any of (i) – (iii) above).

8.2 Address. All notices shall be addressed as follows:

For Kyocera:

[Redacted address for Kyocera]

[Redacted]

[Redacted address for AGIS]

For AGIS:

[Redacted address for AGIS]

[Redacted]

[Redacted address for AGIS]





9.0 MISCELLANEOUS.

9.1 Independent Contractors. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties. No Party shall incur any debts or make any commitments for the others. There is no fiduciary duty or special relationship of any kind between the Parties to this Agreement. Each Party expressly disclaims any reliance on any act, word, or deed of the other Parties in entering into this Agreement.

9.2 No Implied Licenses. Unless expressly set forth elsewhere in this Agreement, nothing herein shall be construed as conferring any right to a license or to otherwise use any patent, patent application, trademark, service name, service mark, trade dress, trade secret, or other intellectual property belonging to Kyocera.

9.3 Severability. If any portion of this Agreement is found to be invalid, illegal, or unenforceable for any reason, the remainder of the Agreement shall continue in force and, if needed, the Parties or a court of competent jurisdiction shall substitute suitable provisions having like economic effect and intent.

9.4 Amendment. This Agreement cannot be modified, rescinded, terminated, or amended in any respect orally or by conduct of the Parties. Any termination, modification, rescission, or amendment may be made only by a writing signed by all Parties, and any such modification, termination, rescission, or amendment shall be effective only in the specific instance and for the specific purpose given. No waiver of any provision shall be binding in any event unless executed in writing by the Party making the waiver.

9.5 Counterparts. This Agreement may be executed in several counterparts, each of which is deemed to be an original but all of which constitute one and the same instrument. A photocopy, fax, or PDF of a signature or an electronic signature (such as by DocuSign) shall have the same force and effect as an original, wet-ink signature.

9.6 Drafting. Each Party and counsel have reviewed and approved this Agreement, and accordingly any presumption or rule of construction permitting ambiguities to be resolved against the drafting party shall not be employed in the interpretation or application of this Agreement.

9.7 Sophisticated Parties. The Parties hereby acknowledge, accept, warrant and represent that (i) they are sophisticated parties represented at all relevant times during the negotiation and execution of this Agreement by counsel of their choice, and that they have executed this Agreement with the consent and on the advice of such independent legal counsel, and (ii) they and their counsel have determined through independent investigation and robust, arms-length negotiation that the terms of this Agreement shall exclusively embody and govern the subject matter of this Agreement.



9.8 Interpretation. The headings inserted in this Agreement are for reference only and are not intended to form any part of the operative portion of this Agreement, and they shall not be employed in the interpretation or application of this Agreement.

9.9 Governing Law. This Agreement shall be construed, and the relationship between the Parties determined, in accordance with the laws of the State of Delaware, notwithstanding any choice-of-law principle that might dictate a different governing law. AGIS and Kyocera agree (a) that all disputes and litigation regarding this Agreement, its construction, and matters connected with its performance be subject to the exclusive jurisdiction of the federal courts located in the District of Delaware (the “Court”); and (b) to submit any disputes, matters of interpretation, controversies, or enforcement actions arising with respect to the subject matter of this Agreement exclusively to the Court. The Parties hereby waive any challenge to the jurisdiction or venue of the Court over these matters.

9.10 Integration. This Agreement sets forth the entire understanding of the Parties with respect to the AGIS Patents, and replaces any prior or contemporaneous oral or written communications, discussions, representations, or agreements between them respecting the subject matter herein.

9.11 LIABILITY. EXCEPT AS PROVIDED EXPLICITLY HEREIN, IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY OR ANY OTHER PERSON OR ENTITY (UNDER CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR OTHER THEORY) FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, OPPORTUNITIES OR SAVINGS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT.

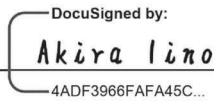
9.12 Bankruptcy. The Parties acknowledge and agree that the AGIS Patents are “intellectual property” as defined in Section 101(35A) of the United States Bankruptcy Code (the “Code”), as the same may be amended from time to time, that have been licensed hereunder in a contemporaneous exchange for value. AGIS acknowledges that if AGIS, as a debtor in possession or a trustee in bankruptcy in a case under the Code, rejects this Agreement, Kyocera may elect to retain their rights under this Agreement as provided in Section 365(n) of the Code. Upon written request from Kyocera to AGIS (as applicable) or to the bankruptcy trustee to proceed under Section 365(n), AGIS (as applicable) or the bankruptcy trustee shall comply in all respects with Section 365(n), including without limitation by not interfering with the rights of Kyocera as provided by this Agreement.

In witness whereof, this Agreement has been duly executed by the Parties to be effective as of the Effective Date.





Kyocera Corporation

By:  _____
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Name: Akira Iino

Title: Executive Officer, Senior General
Manager of Corporate Communication
Equipment Group

Dated: May __, 2023
5/16/2023

AGIS Software Development LLC

By: _____

Name: _____

Title: _____
CEO

Dated: May __, 2023





This document is now complete.

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Kyocera Corporation

By: _____

Name: Akira Iino

Title: Executive Officer, Senior General
Manager of Corporate Communication
Equipment Group

Dated: May __, 2023

AGIS Software Development LLC

DocuSigned by:
Malcolm Beyer
By: _____

Name: Malcolm Beyer

Title: CEO

Dated: May 5/16/2023



EXHIBIT A:





EXHIBIT A





**EXHIBIT B:
Draft Dismissal of the EDTX Lawsuit**





MOTION TO DISMISS

[CAPTION]

IN THE EDTX CASE:

Plaintiff AGIS Software Development LLC (“Plaintiff”) and Defendant Kyocera Corporation (“Defendant”) (collectively, the “Parties”) have settled their respective claims for relief asserted in this litigation. Accordingly, the Parties respectfully request that all claims for relief asserted against Kyocera by Plaintiff herein are dismissed, with prejudice; and the Parties further request that all attorneys’ fees, costs of court, and expenses be borne by each Party incurring the same.

