



23496924

Jason Sheasby SBN 205455
jsheasby@irell.com
IRELL & MANELLA
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4267
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

FILED
ALAMEDA COUNTY

MAY 10 2021

CLERK OF THE SUPERIOR COURT

By Margaret J. Davis Deputy

Elizabeth M. Locke, P.C. (*pro hac vice* to be
filed) libby@clarelocke.com
Daniel P. Watkins (*pro hac vice* to be filed)
daniel@clarelocke.com
CLARE LOCKE LLP
10 Prince Street
Alexandra, VA 22314
Telephone: (202) 628-7400
Facsimile: (202) 478-0475

Attorneys for Plaintiff Kytch, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

KYTCH, INC.,

Plaintiff,

v.

JONATHAN TYLER GAMBLE; J.L. GAMBLE
MANAGEMENT LLC DBA MCDONALD'S;
TFGROUP LLC; AND TAYLOR
COMMERCIAL FOODSERVICE, LLC DBA
TAYLOR COMPANY,

Defendants.

Case No. **RG 21099155**

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND DEMAND
FOR JURY TRIAL**

1. Breach of Contract
2. Tortious Interference of Contract
3. Misappropriation of Trade Secrets

[Filed Concurrently with Plaintiff's Ex Parte
Application for TRO, OSC and Related
Notice of Lodging Conditionally Under Seal]

PUBLIC - REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD

BY FAX

PRELIMINARY STATEMENT¹

1. This is a case about corporate espionage and the extreme steps one manufacturer has taken to conceal and protect a multimillion-dollar repair racket.

2. McDonald's is best known for its world-famous burgers, fries, and broken ice cream machines.



McDonald's⁷ @McDonalds · Aug 11, 2020

we have a joke about our soft serve machine but we're worried it won't work

862

4.5K

29K



3. Despite McDonald's Corp. poking fun at its problematic machines, this is no laughing matter to the McDonald's franchise operators forced to shoulder the expensive maintenance and repair costs when the machines are out of commission.

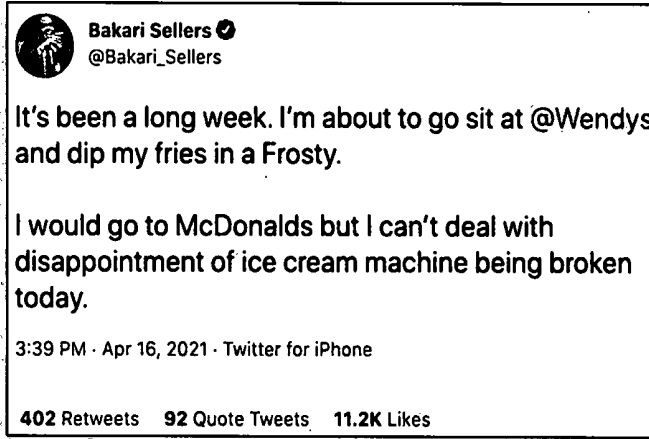
4. Back in 2003, McDonald's gave an effective monopoly to manufacturing giant Taylor Company ("Taylor") to provide soft-serve machines for its approximate 14,000 retail locations in the United States. The problem is Taylor designed its software so that only Taylor-certified technicians can service and repair the machines. Taylor's own documents confirm that in 2017 alone, 6,500 Taylor-certified technicians brought in almost \$80 million in revenue for parts and service support.²

5. This may explain why Taylor has failed to identify a global solution to fix the buggy machines. Especially in light of the fact that McDonald's customers across the country have taken to Twitter and other social media platforms to complain about the machines. One customer expressed that he was unwilling to go to McDonald's because, "I can't deal with disappointment of [the] ice cream machine being broken today."³

¹ Kytch pleads the following recitals with knowledge of its own conduct and on information and belief of the behavior of Defendants.

² The Middleby Corporation: Taylor Acquisition Overview, (May 18, 2018), <https://middlebycorporation.gcs-web.com/static-files/5bd70207-96b1-48bd-a4a2-70dce00a247a>.

³ Bakari Sellers (@Bakari Sellers), Twitter (April 16, 2021, 3:39 p.m.) https://twitter.com/Bakari_Sellers/status/1383143104941801474?s=20.



6. For almost two decades, it appeared that Taylor's broken machines would never be fixed. Until a small California tech startup called Kytch, Inc. cracked the code in April 2019. During product testing and development, Kytch used a proprietary combination of hardware, software and machine learning to demystify the finicky machines.

7. Kytch soon uncovered a repair racket whereby Taylor designed flawed code that *caused the machines to malfunction*. Whether Taylor intentionally designed these flaws or merely did not care enough to ensure bug-free code will become clear during discovery. Either way, Taylor's web of partners profited millions in repair fees for the malfunctions that it manufactured.

8. A number of Taylor's customers at McDonald's have reported that Taylor's technicians made unauthorized changes to software that frequently resulted in expensive—and otherwise unnecessary—repairs.

9. To maintain its lucrative repair and service market, Taylor employs a hidden "Technician's Menu" to conduct even basic maintenance on the machine. Until Kytch entered the marketplace, only Taylor-certified technicians had the tools and know-how to navigate the machines' volatile operations and software.

10. That changed when Kytch launched its flagship device Kytch Solution in spring 2019 as part of a confidential product trial to limited fast-food restaurants. Kytch spent years developing a trade secret man-in-the-middle technology to unlock the cryptic machines ("Kytch Solution Device"). Kytch also designed an online system ("Kytch Solution Platform") for its customers to

1 manage and monitor their machines.⁴ The Kytch Solution Platform is equipped with a user-friendly
2 interface to finally simplify the difficult Taylor machines that were designed to fail.

3 11. Kytch originally agreed to provide its top-secret technologies and user interface to
4 trial participants under strict non-disclosure and non-use agreements (the "Kytch Trial Agreement"
5 and "Terms of Service"). The Kytch Trial was an overnight sensation, and media outlets reported
6 on the innovative technology that promised to reduce the machines' downtime and to consistently
7 deliver more frozen treats to McDonald's customers.

8 12. Because Kytch Solution reduces the need for Taylor service technicians to repair the
9 machines, Kytch's leadership was not surprised when Taylor attempted to obtain the
10 Kytch Solution. First, one of Taylor's distribution managers tried to purchase a device, but Kytch's
11 security protocol flagged and blocked the purchase. Then, a lawyer employed by Taylor's outside
12 counsel attempted to purchase the Kytch Solution. Kytch blocked this second attempt. After that,
13 two private investigators associated with Taylor used aliases and dummy email addresses to get their
14 hands on the device. Once again, Kytch canceled the orders.

15 13. As Kytch's product trial expanded in 2020, it became the largest independent
16 IoT/connectivity software vendor for the shake machine in the McDonald's system. By all
17 appearances, the Kytch Solution Device modernized the outdated soft-serve machines that had
18 frustrated customers for years.

19 14. Based on this rapid growth, Kytch built a reputation as an emerging leader in the
20 fast-growing IoT industry. Kytch was barreling towards a \$50 million valuation, and the company
21 kicked off a \$10 million Series A fundraising round in October of 2020.

22 15. But everything changed after Tyler Gamble⁵ (a major McDonald's franchisee and
23 leader of the group that works to introduce new products into McDonald's restaurants) enrolled in
24 the Kytch Trial.

25
26 _____
27 ⁴ The Kytch Solution Device and the Kytch Solution Platform are referred to collectively
as "Kytch Solution."

28 ⁵ J.L. Management Group and Jonathan "Tyler" Gamble are referred to collectively as
"Gamble" and "Tyler Gamble."

1 16. Gamble approached Kytch and explained that he was the head of McDonald's
2 Equipment Team, the committee responsible for recommending new products to McDonald's Corp.

3 17. At first, Gamble appeared to support Kytch's mission; Gamble even indicated that
4 he would push McDonald's to purchase Kytch Solution Device for all of its U.S. locations.

5 18. Kytch is informed and believes this was a ruse.

6 19. In reality, Kytch is informed and believes that Gamble was working hand-in-hand
7 with Kytch's competitor Taylor to steal Kytch's trade secrets. As part of this unlawful scheme,
8 Gamble breached the Kytch Trial Agreement and Terms of Service last summer by soliciting
9 Kytch's most sensitive information, only to share it with Taylor through one of its distributors.

10 20. Kytch is informed and believes that Taylor's distributor shared Kytch's trade secrets
11 with the manufacturing giant to enable Taylor to monitor Kytch's development. With insider access
12 to Kytch's trade secret information, Taylor could stay one step ahead of Kytch's diagnostic
13 capabilities.

14 21. On November 1, 2020, Kytch sent a message to Gamble (and no one else) [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 22. Kytch is informed and believes that news of Kytch's operating system led to Taylor's
22 decision to launch its own competing device rapidly to preserve its repair racket.

23 23. In mid-April, a Taylor spokesperson went on the record admitting that a distributor
24 had obtained at least one Kytch Solution Device. Taylor has also failed to deny that, months earlier,
25 its outside counsel and private investigators had used faked names to try to get their hands on
26 Kytch Solution Device.
27
28

1 24. Tyler Gamble knew he was acting improperly. In February 2021, Tyler Gamble and
2 his father tried to delete the electronic invitations they sent out to unauthorized third parties
3 providing access to the Kytch Solution Platform.

4 25. These uses of Kytch's confidential information were unauthorized, they have cost
5 Kytch untold millions of dollars, and they will certainly cause Kytch further damage in the future.
6 Defendants have also been unjustly enriched through violating contractual obligations and by
7 exploiting Kytch's confidential information.

8 26. Defendants' conduct has come close to destroying Kytch.

9 27. Accordingly, Defendants must make Kytch whole for the damage caused by their
10 unlawful conduct, and the Court should, as required by the Kytch Trial Agreement and the Terms
11 of Service, enjoin them from further using Kytch's confidential information and trade secrets.

12 **THE PARTIES**

13 28. Plaintiff Kytch, Inc. is a Delaware corporation with its principal place of business in
14 Alameda County, California. Kytch is a subsidiary of Frobot, Inc.

15 29. Defendant Jonathan "Tyler" Gamble operates ten McDonald's restaurants in
16 Tennessee and Mississippi. Gamble is an independent franchise owner, and he serves as the
17 Equipment Team Lead for McDonald's National Supplier Leadership Council.⁶ He owns and
18 operates McDonald's restaurants through Defendant J.L. Gamble Management LLC, DBA
19 McDonald's. Tyler Gamble and J.L. Gamble Management LLC are collectively referred to as
20 "Tyler Gamble" and "Gamble."

21 30. Gamble enrolled in the Kytch Trial after executing the binding Kytch Trial
22 Agreement and after representing that he and his company would not use Kytch's trade secrets to
23 "build or support, and/or assist a third party in building or supporting products or services
24 competitive" to Kytch. (Kytch Terms of Service, § 1(g).)

25 31. The Kytch Trial Agreement incorporates Kytch's binding Terms of Service, and
26 those provisions, among other things, prohibit Gamble from "providing unauthorized access or
27

28 ⁶ This complaint refers to the National Supply Leadership Council as the "NSLC," and the
NSLC's Equipment Team as the "McDonald's Equipment Team."

1 exceeding authorized access to [Kytch's] products, services or any account.”⁷ (Kytch Terms of
2 Service § “Notice.”)

3 32. The contracts give Kytch the right to seek injunctive relief arising from Gamble’s
4 breaches of their duties of confidentiality and their misuse of Kytch’s intellectual property rights.
5 (Kytch Terms of Service § 13.)

6 33. Defendant Taylor Commercial Foodservice, LLC DBA Taylor Company is
7 incorporated in Delaware, and it manufactures soft-serve machines in McDonald’s and other
8 commercial kitchens.

9 34. Defendant TFGroup LLC is a Louisiana limited liability company that is a franchised
10 distributor for Taylor. TFGroup LLC describes itself as utilizing “analytical advances to ensure
11 speed of service, reduction of equipment downtime and labor savings.”

12 35. Taylor Company and TFGroup LLC (collectively the “Taylor Group”) directly
13 compete with Kytch.

14 JURISDICTION & VENUE

15 36. Each Defendant is properly subject to this Court’s jurisdiction, and they all conduct
16 business in California. Defendants have sufficient minimum contacts with California, and otherwise
17 purposely avail themselves of the markets in this State through the research and development of
18 products in California, thereby rendering the exercise of jurisdiction by California courts permissible
19 under traditional notions of fair play and substantial justice.

20 37. This Court has jurisdiction over Gamble because this action arises out of their
21 business transactions with Kytch in California, and they have transacted business, and have caused
22 injury to Kytch, in California.

23 38. Taylor Group is subject to personal jurisdiction in this state because they have
24 conducted and conduct business in California. The acts alleged in this Complaint occurred and the
25

26
27 ⁷ Copies of the Kytch Trial Agreement and the Terms of Service that bind Gamble are
28 attached as **Exhibit A**.

1 damages to Kytch were inflicted and occurred in substantial part in California and within
2 Alameda County.

3 39. Gamble consented to jurisdiction and venue in the court of Alameda County,
4 California, as the proper forum to litigate any disputes arising from and relating to the Kytch Trial
5 Agreement and the Terms of Service.

6 40. Any attempt to remove this matter to federal court would be fraudulent and improper,
7 among other reasons, because the Kytch Trial Agreement and Terms of Service contain forum
8 selection clauses specifying that *state* courts, *i.e.*, the courts of Alameda and Santa Clara County are
9 the proper forum and therefore there is not diversity among the citizenship of the parties.

10 **BACKGROUND FACTS**

11 ***To Protect the Company's Trade Secrets and Confidential Information, Kytch's Trial***
12 ***Agreement Contains Non-Disclosure and Non-Use Provisions.***

13 41. Kytch's data-driven product testing ultimately yielded next-generation IoT
14 technology that cemented the company's status as a leader in the industry.

15 42. Through years of development and \$1.3 million of effort, Kytch has built expertise,
16 proprietary insights, diagnostic tools, and notification systems for the growing "smart kitchen"
17 marketplace.

18 43. In February 2020, Tyler Gamble first contacted Kytch and asked to enroll in the
19 Kytch Trial. Because one of Kytch's key strategic advantages lies in its proprietary information,
20 Kytch required Gamble to enter into a non-disclosure agreement to protect Kytch's trade secrets and
21 confidential information. Gamble executed the Kytch Trial Agreement (the "NDA") on March 19,
22 2020.⁸

23 This Agreement is effective as of 03 / 19 / 2020, 2020 (the "Effective Date"), by and
24 between:

25 J Tyler Gamble
26

27
28 ⁸ The NDA refers to the Kytch Trial Agreement and the Terms of Service incorporated in that document.

1 44. The NDA reflects the fundamental nature of Kytch's and Gamble's business
2 relationship. Kytch is in the midst of developing its solution to the broken machines with the need
3 to collect more data for the Kytch Trial. Gamble is in charge of identifying new and innovative
4 products for McDonald's, and the ice cream machines in his ten stores were constantly breaking
5 down.

6 45. Gamble sought out Kytch's data-driven approach to fixing the machines. Kytch, on
7 the other hand, needed to make sure that one of its chief assets—its innovative hardware and
8 software were protected from competitors.

9 46. Kytch would never just give away its trade secrets for free or so that Gamble could
10 use them for his benefit, much less to benefit Kytch's competitors in the rapid-paced IoT industry.
11 The NDA memorializes how the parties came together around these competing interests: Gamble
12 was obligated and agreed to keep confidential the information and devices Kytch provided, and he
13 could use it only in furtherance of the Kytch Trial.

14 47. The NDA specifically states that "Kytch may seek injunctive or other equitable relief
15 to protect its confidential information . . . *without the need to post bond or other surety.*" (Terms
16 of Service § 15(c).)

17 48. With these contractual protections in place, Kytch gave Gamble access to a
18 substantial amount of proprietary information and confidential documents. Kytch also sent several
19 Kytch Solution Devices—each protected by the NDA—for Gamble to use at his McDonald's
20 locations for one purpose: to support and further the Kytch Trial.

21 49. Kytch shared its confidential and proprietary hardware and software designs with
22 Gamble. As explained further below, Kytch is informed and believes that Gamble betrayed Kytch,
23 and his contractual obligations, when he used Kytch's own confidential information to compete
24 against the company. This has caused irreparable harm to Kytch.

25 50. Kytch required that this information be protected with the NDA because this
26 confidential information is at the heart of Kytch's business model and is what sets it apart from its
27 competitors, specifically Taylor Group.

28

1 51. Kytch's proprietary materials offer a roadmap for a strategy that has never before
2 been attempted in the soft-serve machine industry: using man-in-the-middle technology to
3 communicate with the finicky machines and to stabilize volatile software, all while providing real-
4 time notifications to customers. This offering reduced the need for restaurant operators to pay costly
5 repairs fees to Taylor Group.

6 52. Kytch introduced the industry to the revolutionary notion that these industrial
7 machines should be controlled by the restaurant owners and artificial intelligence, and that by
8 demystifying the complicated machines and reducing the need for costly service technicians, Kytch
9 could save its customers millions of dollars in recaptured revenue and reduced overhead. Kytch's
10 cohesive strategy promises enormous returns, far in excess of current outputs from Taylor's
11 technology.

12 53. Successfully executing this strategy would require a combination of innovative
13 thinking, expertise in the fast-food industry, and sensitivity to customer needs, together with a
14 willingness to invest significant time and resources into creating the analyses and conducting the
15 product testing to turn the strategy into a thriving business. Since its inception, Kytch has invested
16 time and effort building out, in painstaking detail, the Kytch Solution Device and the Kytch Solution
17 Platform.

18 ***Taylor's Ice Cream Machines Are Notorious for Always Breaking Down.***

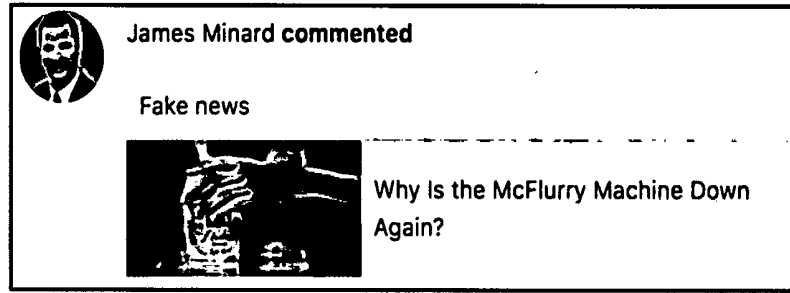
19 54. The majority of McDonald's restaurants are equipped with Taylor Model C602 soft-
20 serve machines. This model is not available for purchase by the general public.

21 55. Although Taylor occupies a substantial share of the market, its machines have been
22 described as unreliable and "notorious for constantly breaking down."

23 56. The machines' reputation for breaking led *The Wall Street Journal* to explain in a
24 recent story that "[t]he interruption in ice cream, milkshake, and McFlurry service is so widespread
25 that it has spawned an avalanche of social media complaints in the U.S. and abroad—and conspiracy
26 theories."

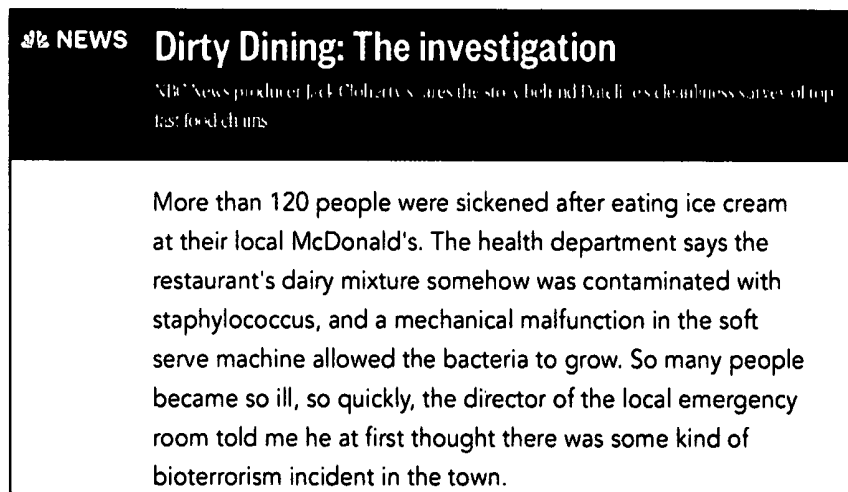
27 57. In response to the criticism, Taylor has tried to deflect responsibility despite
28 widespread complaints across the world. Taylor's COO James Minard has referred to news

1 coverage about the machine malfunctions as "Fake news," in what appears to be an attempt to
2 discredit *The Wall Street Journal's* headline bearing the question, "Why is the McFlurry Machine
3 Down Again?"



9 58. The ridicule McDonald's has received from the media because of the defective ice
10 cream machines is more serious than the whimsical headlines suggest because some of the problems
11 have alarming public health implications.

12 59. A recent study conducted by Dateline, for example, assessed the cleanliness of top
13 fast-food chains, including McDonald's. According to that NBC News report, "[m]ore than 120
14 people were sickened after eating ice cream at their local McDonald's."⁹



23 60. Kytch's analysis of its customer data revealed that a critical mass of Taylor's
24 machines was equipped with a manual switch designed to bypass mandatory pasteurization and
25 brush cleanings. [REDACTED] of the machines in the Kytch Trial operated with this bypass, in violation

26

27

28

⁹ Jack Cloherty, *Dirty Dining: The investigation* NBC News producer Jack Cloherty shares the story behind Dateline's cleanliness survey of top fast food chains, NBC News (Mar. 10, 2005), <https://www.nbcnews.com/id/wbna7149927>.

1 of public health agency and food safety regulations. Indeed, for years, Taylor's service manuals
2 contained step-by-step instructions to bypass the regulations.¹⁰

3 61. Despite these issues, and in complete disregard of state and county inspection reports
4 confirming that Taylor's machines breach safety protocols, Taylor's pattern of denialism continued
5 for years.

6 62. But any remaining plausibility to Taylor's denial campaign evaporated after a
7 software engineer launched www.McBroken.com to compile statistics reflecting the number of
8 McDonald's ice cream machines that are out of commission at any moment.

9 63. At the time of this writing, McBroken.com reports that more than 11% of the soft-
10 serve machines at McDonald's restaurants in the United States are out of service. These machine
11 outages have cost franchise operators millions of dollars in lost revenue.

12 64. Consequently, McDonald's franchisees have gone on record to explain that Taylor's
13 "machines are temperamental and expensive to repair." McDonald's franchisees have also reported
14 that some of the software updates installed by Taylor technicians cause even more glitches and
15 expensive outages.

16 ***Kytch's Product Testing Reveals that Defects Were Built-in to Taylor's Machines.***

17 65. Kytch's approach to fixing the problematic Taylor machines has always been a data-
18 driven, iterative process that relies on the collection and analysis of large amounts of data.

19 66. Before launching Kytch, founders Jeremy O'Sullivan and Melissa Nelson started
20 Frobot, Inc. back in 2011. Frobot is a fully robotic frozen yogurt dispenser that produces made-to-
21 order frozen confections. Frobot is designed to interact with soft-serve machines made by Taylor.

22 67. Through that venture, Frobot informed Taylor's leadership about its device that
23 promised to augment the capabilities of Taylor's machines, including automation and increasing
24 safety offerings.

25
26
27 ¹⁰ Many Taylor machines have a jumper placed on the W2 pins on the rear of the machine
28 that disables necessary safety mechanisms. Taylor has been aware of this hazard for years but has
taken no action to correct this defect. This violates NSF International's food safety requirements
and may endanger consumers.

68. This innovation required years of product development and additional safety testing given that the process involves serving dairy products to the general public. Taylor's response to Frobot's prototype was positive, and years—and hundreds of thousands of dollars—of product development followed.

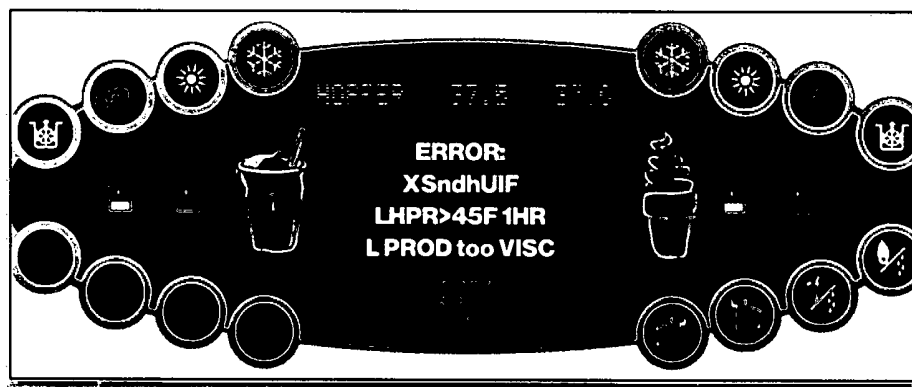
69. Frobot had a small fleet of Taylor machines, and Nelson and O'Sullivan soon learned that the only way to keep the machines up and running is through frequent and expensive service visits.

70. After only a few months of gathering data, it became clear to Kytech that Taylor's machines were not very robust, and the finicky software was constantly causing outages.

71. Kytech was founded in 2018 as a subsidiary of Frobot, and its original purpose was a safety add-on to the automated soft-serve machines. In contrast to Frobot's focus on automation capabilities, Kytech focused on data and software to optimize the soft-serve machines and reduce outages.

72. The Kytech Solution officially launched in July 2019 at Tesla's factory in Lathrop, California, before expanding to fast-food restaurants in the broader San Francisco area a short time later.

73. Kytech learned that Taylor machines are designed to prohibit users from accessing the fulsome "Technician's Menu" that operates the machines. Taylor's menu contains confusing messages that leave McDonald's franchisees frustrated and unable to operate the machine, causing them to "call the technician" for even minor problems with their Taylor machines. One example of Taylor's cryptic error messages is below.



1 ***Kytch's Innovative Technology, Trade Secrets, and Confidential Information***

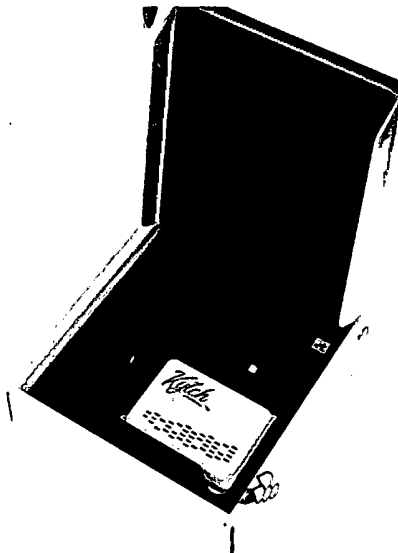
2 74. Kytch's flagship invention is known as the Kytch Solution Device: powered by a
3 tiny Raspberry Pi computer with software to understand the communication between the machine's
4 logic board and interface system.

5 75. There is nothing like the Kytch Solution Device on the market, and the ability of a
6 competitor to access and test the device would allow the competitor to obtain an extraordinary head
7 start in the creation of a competitive device.

8 76. The Kytch Solution Device is an easy-to-install device that can be bolted on the soft-
9 serve machines. When mounted on the machine and connected to Kytch's software and online
10 platform, Kytch's IoT technology and data retrieval processes enable restaurant operators to see
11 exactly what is going on with their machines. Kytch's intensive data-analytics and automated
12 processes work in tandem to optimize machine performance, and Kytch can actually detect errors
13 in the machines and notify users in real-time before the machines malfunction.

14 77. When the Kytch Solution is connected to the internet, the software sends messages
15 to www.Kytch.com.

16 78. The Kytch Solution is depicted below in the "Kytch Kit."



25 79. The Kytch Solution works with custom-made [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 80. [REDACTED]
4 [REDACTED]
5 81. Kytch's technology, wrap-around software, and online platform improve the limited
6 and simplistic interfaces of many appliances. Taylor machines are designed so that only technical
7 experts are able to navigate their internal workings. Kytch disrupted this limitation by creating user-
8 friendly interfaces that are accessible to people without any technical training.
9 82. Generally, Kytch collects three types of proprietary data for the soft-serve machines.
10 83. *First* [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 84. The second datatype is related to machine settings, including: [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 85. Both datatypes reflect unique selections of data for at least two reasons. Taylor makes
27 it extremely difficult, if not impossible, for owners of the device to be able to access this data without
28 the assistance of a trained technician. Moreover, it was only after extensive analysis of massive

1 amounts of data that Kytch identified the above factors as relevant for making decisions on the
2 machine.

3 86. The third datatype is production data. This includes [REDACTED]
4 [REDACTED] To capture the necessary data, Kytch employs scripts to
5 programmatically enter the menu without human assistance. This is unique because normally a
6 human operator must press a *minimum of 12 buttons* just to open the Manager's Menu.

7 87. Another innovative component of Kytch's trade secrets is the remote method for
8 interacting with kitchen devices that Kytch pioneered using a universal master operating system to
9 serve as the user interface and communication system with kitchen appliances. This is discussed in
10 greater detail below.

11 88. All of this is made possible through a man-in-the-middle cable and software that
12 securely inserts the Kytch Solution Device for reading and writing data to and from the control panel
13 assembly of the appliance, without exposing users, employees, and technicians to the potential of
14 high voltage shocks or other related hazards.

15 89. The man-in-the-middle software code allows Kytch [REDACTED]
16 [REDACTED]
17 [REDACTED] The software then communicates messages from the device to Kytch's cloud
18 system for data analytics and navigation.

19 90. Kytch constantly reviews customers' reported errors, and all of these readings and
20 related notifications Kytch provides about the issues are available for customers to review on the
21 Kytch Solution Platform. By detecting anomalous appliance behavior, Kytch builds preference
22 models and enhances its business analytics to predict the needs of its customers.

23 91. Part of Kytch's proprietary technology is discriminating between the substantial
24 amounts of data that we gather from customers' machine usage. Kytch sends only select machine
25 metrics, typically based on thresholds that Kytch has set based on the historic performance and error
26 rates of the machines connected to Kytch's systems. This information includes: [REDACTED]

27 [REDACTED]
28 [REDACTED] warning of

1 potential damage to equipment caused by human error; [REDACTED]
2 [REDACTED]
3 [REDACTED] (7) identifying lack of training
4 and improper use of the machines; and (8) advanced troubleshooting based on customer data across
5 the Kytch Solution Platform.

6 92. If the machine's AUTO function is disabled, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 93. The machines' heat cycle commonly fails, and this is often not addressed by
14 restaurant staff in a timely manner. Alternatively, the staff lacks the technical know-how to mitigate
15 this failure. Kytch Assist functions as a human-assisted automation service. Kytch manages heat
16 cycle [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 94. The machines' heat cycle commonly fails [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
23 [REDACTED]

24 95. Taylor's glycol holding temperature is set at 165 degrees [REDACTED]
25 [REDACTED]

26 96. Kytch's data has determined [REDACTED]
27 [REDACTED] [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED] Kytch informs customers [REDACTED]

3 [REDACTED]

4 97. Kytch also sends productivity alerts [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] Kytch sends a message to the user [REDACTED]

8 [REDACTED]

9 98. Kytch provides real-time alerts on [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 99. Kytch also provides informative warning alerts in order to prevent damage to the
13 machine [REDACTED]

14 *The Kytch Online Platform & Notification System*

15 100. Working in tandem with Kytch's data retrieval and data analytics systems, Kytch's
16 proprietary and confidential online platform at www.Kytch.com ("Kytch Solution Platform")
17 provides customers with more ways to understand and interact with the soft-serve machines.

18 101. There is nothing like the Kytch Solution Platform on the market, and the ability of a
19 competitor to access and observe in how the Kytch Solution Platform operates in real time would
20 allow a competitor to obtain an extraordinary head start in the creation of a competitive device.

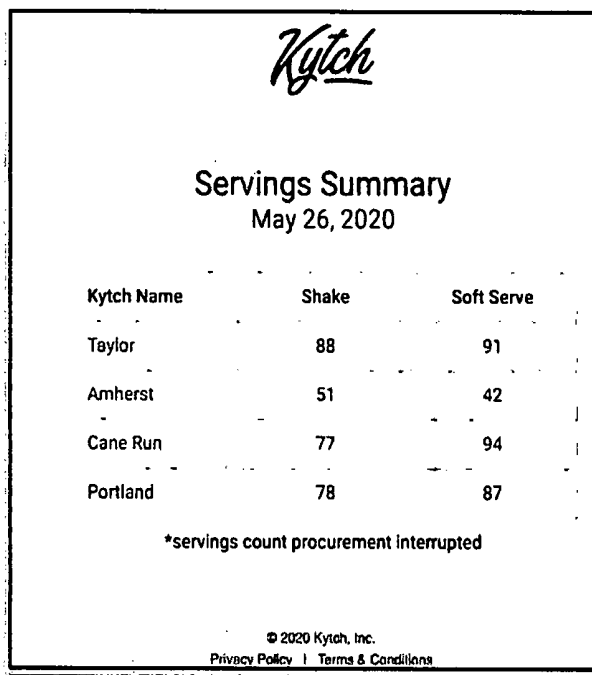
21 102. Kytch sends its customers daily reports regarding machine usage. One example is
22 the Servings Summary, which contains the number of shakes and soft-serve products that were
23 produced each day. This information can only be produced using the proprietary script used to
24 programmatically open the menu employed by the Kytch Solution. [REDACTED]

25 [REDACTED]

26 [REDACTED] [REDACTED]

27 [REDACTED]

28



103. Another function available on Kytch.com is “Kytch Rewind.”

The visualization is similar to a video rewind function.

104. The genesis for Kytch Rewind took place during product testing at Tesla. Kytch needed a way to correlate the data from the machines to identifiable recurring events—either with the machine itself, or through human interactions.

105. So Kytch

This monitoring enabled Kytch to troubleshoot errors in a data-driven manner.

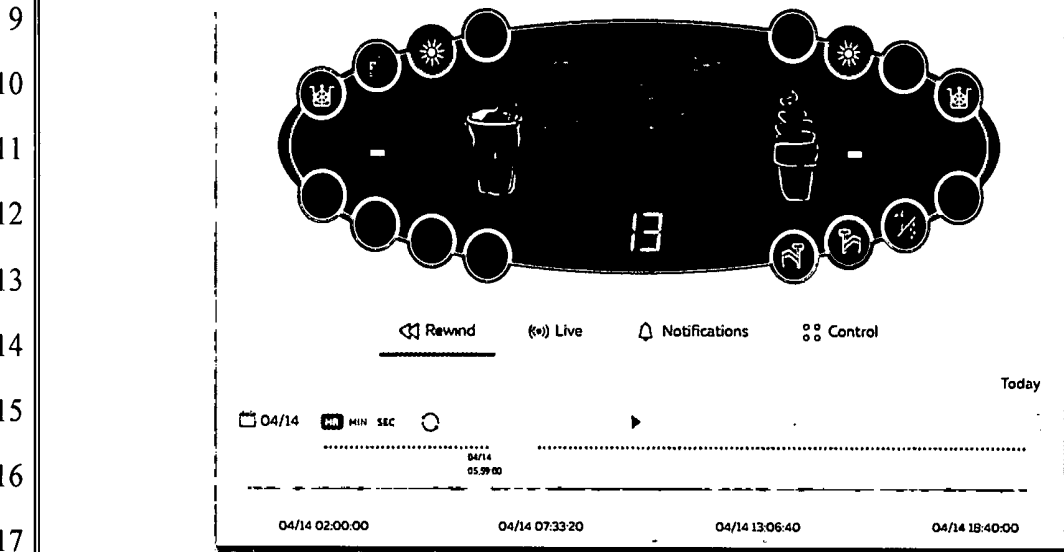
106. Specifically, whether a particular outage was caused by human error—such as loading frozen ice cream mix into the machine—or a software bug.

107. When Kytch realized how useful this tool was, it developed Kytch Rewind to further empower our customers to better understand their machines.

108. Kytch Rewind allows the user

1 [REDACTED]
2 [REDACTED]
3 109. [REDACTED]
4 [REDACTED]
5 [REDACTED].

6 110. Reviewing these patterns subsequently allows Kytch to continue to optimize the
7 machines and select the optimal parameters for functioning, and to avoid outages and costly service
8 appointments. A screenshot of the rewind function is below:



18 111. In this exemplar, Kytch Rewind shows the user the contents of the machine's menu
19 at 5:59 a.m. ET. The machine was in "HEAT MODE" while the right hopper had low mix.

20 112. Another feature of Kytch's notification system is Kytch Assist. Kytch Assist uses
21 human-assisted experience to make decisions to keep Taylor machines up and running. [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

27 ¹¹ The JP2 pin of Taylor's C713 machine hides the hopper temperature by default. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 113. The interaction of these files and the methodology and processes for keeping the
4 system stable and functional have taken a substantial amount of time and money to develop and
5 perfect. An example notification from Kytch Assist is depicted below.

6
7 **Kytch Assist**

10:50 AM

8 Heat cycle failed because the left hopper reached 135.7 degrees instead
9 of the required 151 degrees during the HEAT phase. Kytch restarted the
10 heat cycle to reduce downtime. Potentially caused by overfilling the
11 hopper.

12 114. This notification describes a common error that frustrates many Kytch clients: the
13 heat cycle fails because the hopper missed the target temperature required by the heating phase by
14 approximately one degree.

15 115. Based on [REDACTED]
16 [REDACTED]
17 [REDACTED] Kytch Assist [REDACTED]
18 [REDACTED] to avert machine outages. If Kytch takes action on the machine, [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED] The purpose of these notifications is to educate
24 the user about their machine's issues, [REDACTED]
25 [REDACTED]

26 116. This is important because Kytch's data analysis has confirmed [REDACTED]
27 [REDACTED]
28

1 [REDACTED] This means less
2 downtime than waiting for an employee to get around to pressing the button during a lunch rush.

3 117. Additionally, Kytch's data capture exposes when employees misuse the soft-serve
4 machines. For example, [REDACTED]

5 [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 118. Kytch notifies the user, [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] Kytch notifies
15 the user [REDACTED] [REDACTED]

16 [REDACTED]
17 [REDACTED] Kytch has developed the ability to [REDACTED]
18 [REDACTED]
19 [REDACTED] Kytch examines [REDACTED]
20 [REDACTED] to warn customers [REDACTED]

21 [REDACTED]
22 119. Kytch also notifies users when there are potential issues with [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED] [REDACTED]
26 [REDACTED]
27 [REDACTED] [REDACTED]
28 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120. Kytch also notifies users when [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For example, Kytch notifies the user [REDACTED]

[REDACTED] The notification also directs the user to use the Kytch.com web

application [REDACTED]

[REDACTED] Kytch may notify [REDACTED]

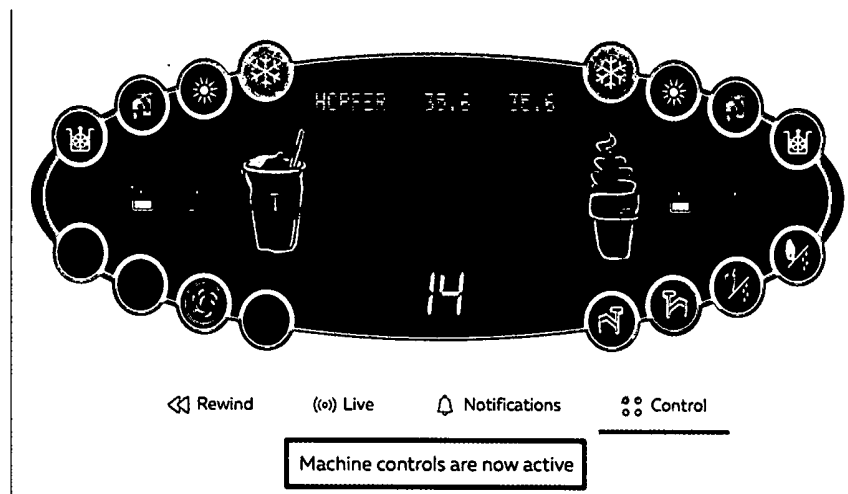
[REDACTED]

1 121. One of the most important features of Kytch's platform is the Remote Control
2 application and interface. This permits Kytch's customers to access Taylor's machines and to
3 optimize their machines even when they are not on site.

4 122. The Remote Control creates a power shift because instead of relying on a network of
5 Taylor technicians, one operator or in-house technician can now access all of their machines from
6 one location.

7 123. Kytch's innovative solutions reduce franchisees' need to hire Taylor technicians by
8 providing, for the first time, previously unavailable data and control mechanisms in the palm of each
9 user's hand.

10 124. Kytch's Remote Control is designed to capture the front panel of the Taylor
11 machines, and it allows users to quickly understand how to use the equipment. Kytch also provides
12 [REDACTED] The image below
13 depicts the remote-control feature on Kytch's online platform.



14
15
16
17
18
19 125. After many hundreds of hours of data analysis on hundreds of machines, Kytch has
20 determined that many of the issues with the machines can be corrected by using the controls and
21 menu on the Taylor machine.

22 126. For example, thermistor probes measure temperatures within the machine, and Kytch
23 discovered that [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 127. Kytch also discovered a cryptic message, "E7," that displayed on the "brush clean"
4 counter, because Taylor's software was unable to display a three-digit number. Kytch's software
5 determined that "E7" indicates that 147 machine hours had passed since the freezer door was last
6 removed. However, despite this cryptic message, the machines continued to operate and serve
7 customers. In simple terms, this means that the machines were designed to serve ice cream without
8 complying with the mandatory brush-cleaning schedules required by public health and safety
9 standards. [REDACTED]
10 [REDACTED]

11 128. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 129. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 130. Customers often praise the proactive flagging of software bugs Kytch provides
21 through Kytch's notification systems and data analytics. Additionally, Kytch tracks all temperatures
22 and alerts across each machine connected to our system. Because of the hundreds of devices on its
23 network, Kytch can analyze the data and flag software errors within Taylor's product.

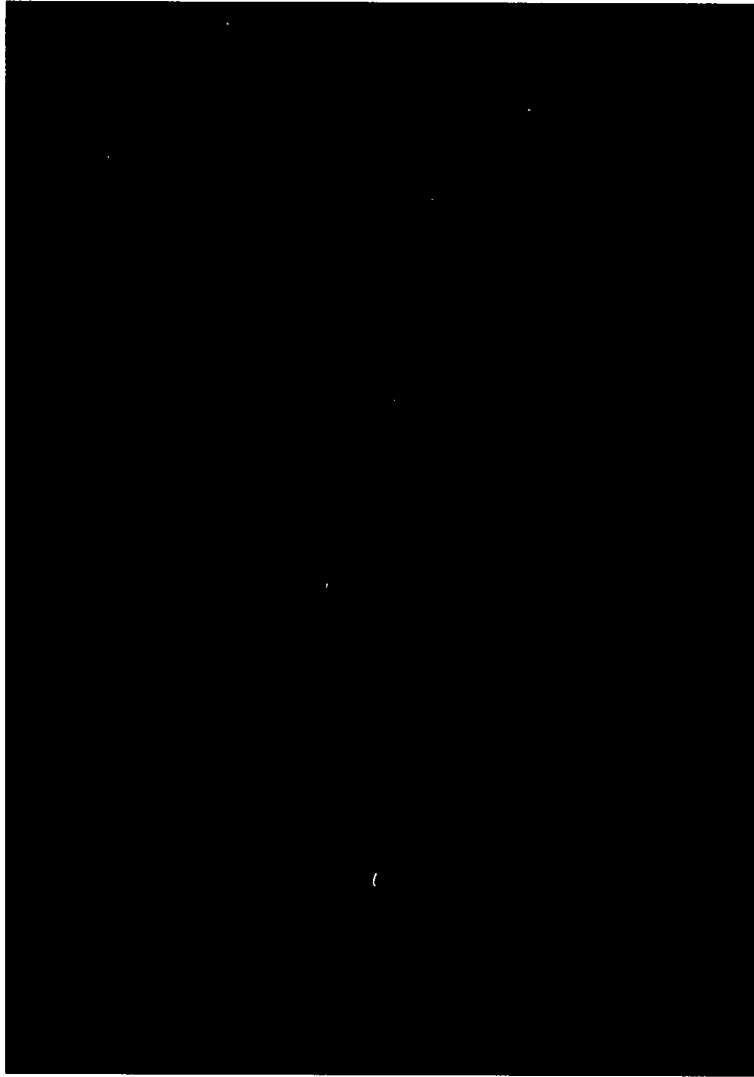
24 131. When Kytch uncovers common or disruptive bugs, it notifies its customers about the
25 issues, and it attempts to identify and implement automation features to counteract the errors.
26 Kytch's ultimate goal was to create a stable software version that was direct-to-consumer and
27 included updates to eliminate these bugs.
28

1 132. One such error is [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 133. Kytch flags this problem for its customers in advance, providing them with detailed,
9 user-friendly instructions on how to fix the issue. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



134. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]



1 135. Kytch's real-time notifications, sent via text and email, include mix alerts, Kytch
2 Health Alerts, alerts for heat cycle failures, downtime, weekly summaries, and issue-spotting alerts.
3 Kytch Health Alerts explain malfunctions and provides tips on how to address each issue.

4 136. Kytch also provides explanations for heat cycle failures [REDACTED]
5 [REDACTED]
6 [REDACTED] Kytch sends [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 137. One of Kytch's Weekly Summary notifications is depicted below. The weekly
11 summary email [REDACTED] that appear
12 on the front panel of the machine.



13
14
15
16
17
18
19
20
21
22
23 138. Through the Kytch.com platform, users are able to see [REDACTED]
24 [REDACTED] This information, alone, is incredibly valuable. And in
25 the aggregate, it enables Kytch to identify problems and potential issues long before Taylor and its
26 certified technicians.
27
28

1 139. Importantly, Kytch.com also allows customers to invite team members to manage
2 and navigate the online interface.

3 140. The data Kytch has collected has enabled the company to perform market
4 assessments to anticipate shifting demands, to develop pricing strategies, to decide when and where
5 to launch products, and it informs Kytch's investments in product development and new
6 technologies.

7 141. Indeed, based on Kytch's robust data retrieval and analytics capabilities, Kytch
8 possessed considerably more data about Taylor's machines, performance histories, and performance
9 optimization than Taylor itself.

10 ***Taylor Tries to Intercept the Kytch Solution to Access Kytch's Trade Secrets.***

11 142. Kytch launched the Kytch Solution Device in April 2019. Taylor started making
12 efforts to obtain the device almost immediately. The first attempt was made by Heather Jordan,
13 Taylor's Distributor Technology Manager, who placed an online order to purchase the Kytch
14 Solution via www.Kytch.com. Ms. Jordan listed Taylor's corporate address in Rockton, Illinois, as
15 her shipping address.

16 143. Because Kytch's founders had worked with Taylor's management in the past—and
17 because Kytch vets the orders placed on its website to block competitors trying to steal the
18 company's valuable trade secrets and Confidential Information—Jeremy O'Sullivan emailed
19 Ms. Jordan to obtain more information before approving the order.

20 144. Kytch canceled the order when Ms. Jordan failed to respond.

21 145. The following month, a lawyer employed by Taylor's outside legal counsel
22 Brinks Gilson attempted to purchase the Kytch Solution through Kytch's website. Kytch reviewed
23 the order and canceled the purchase based on the connection to Taylor, and because Kytch is
24 resolved to keep confidential its trade secrets and related Confidential Information.

25 146. After these two attempts were not successful, at least two private investigators—
26 who, upon information and belief, were also acting on behalf of Taylor—used assumed names to
27 try to purchase the Kytch Solution Device several more times.

28

1 147. Kytch's security precautions flagged and thwarted these initial attempts from Taylor
2 and its confederates to obtain the Kytch Solution. But these efforts to obtain Kytch's intellectual
3 property provide further evidence that Kytch's innovative product has substantial economic value.

4 *The Kytch Trial Expands to McDonald's in Fall 2019.*

5 148. Kytch customers were overjoyed to see their volatile Taylor machines modernized.
6 Customer goodwill grew as Kytch reduced the cost of ownership by minimizing Taylor repair costs.
7 Franchise operators reported increased revenue from their frozen offerings, and Kytch continued to
8 spread like wildfire.

9 149. As explained above, the iterative nature of Kytch's innovations made the Kytch
10 Solution smarter as it gathered more data about Taylor's machines. This means that with more
11 runtime, the Kytch Solution becomes *more* efficient at reducing downtime and associated service
12 costs.

13 150. Kytch spread to McDonald's in the fall of 2019. In October of that year, Kytch was
14 featured at the National Owners Association conference in Dallas, Texas, and it showcased the
15 Kytch Solution in front of the largest association of independent U.S. McDonald's franchise
16 operators.

17 151. These independent franchisees control and operate several trade organizations,
18 including the NSLC. The NSLC collaborates with McDonald's supply chain leadership and its
19 "Equipment Team"—led by Tyler Gamble—provides valuable insight to McDonald's concerning
20 product innovations to integrate into McDonald's system.

21 152. One of the key focus areas for the Equipment Team is to identify solutions for
22 McDonald's soft-serve machine problem through the "McFlurry Task Force," also known as the
23 "Shake Machine Reliability Project."

24 153. Kytch would learn that several of its trial participants had top positions within the
25 NSLC, including the NSLC Chair and Vice Chair Jon Kelley and Eric Wilson, NSLC Equipment
26 Team Lead Tyler Gamble, NSLC Competitive Advantage Team Lead Larry Miller, and Logistics
27 Team Lead Laura Bucar.

28

1 154. Despite enrolling numerous independent McDonald's franchisees in 2019 and 2020,
2 Kytch prohibited corporate-owned-and-operated McDonald's locations from signing up for the
3 Kytch Trial. Because Kytch did not have a non-disclosure agreement in place with
4 McDonald's Corp., the corporate-owned locations lacked the localized authority to enter into the
5 Kytch Trial Agreement.

6 155. As a result, some McDonald's representatives tried to circumvent Kytch's security
7 by obscuring the fact that they worked at corporate-owned locations. McDonald's Corp.'s Regional
8 Deployment Manager Michael Cousins emailed Kytch saying that he was "[i]nterested in the
9 product."

10 156. A short time later, McDonald's Operations Technology Professional Josh Drake
11 attempted to enroll in the Kytch Trial, and he did not disclose that he was employed by
12 McDonald's Corp. or that he was trying to obtain devices on behalf of McDonald's Corp.

13 157. Kytch denied his application after determining the stores in Drake's application were
14 corporate-owned McDonald's locations.

15 158. In all, Kytch rejected approximately 40 corporate-owned McDonald's locations that
16 attempted to enroll in the Kytch Trial.

17 ***Tyler Gamble Infiltrates Kytch's Product Trial.***

18 159. By 2020, McDonald's franchise operators enrolled in the Kytch Trial to test the
19 Kytch Solution at restaurants in Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Illinois,
20 Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,
21 Mississippi, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon,
22 Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

23 160. As a result of this massive expansion, Kytch is informed and believes that it became
24 the largest independent IOT/connectivity software vendor for the shake machine in the McDonald's
25 system. By all appearances, the Kytch Solution was a viable remedy to many of the problems that
26 had troubled Taylor soft-serve machines and frustrated customers for years.

27 161. In February 2020, news outlets reported on Kytch's success.
28

McDonald's ice cream machines may never break down on you again – thanks to new machine

Feb 12 2020, 19:42 ET | Updated: Feb 12 2020, 23:07 ET

New device may prevent McDonald's ice cream machines from breaking

By WWAY News - February 12, 2020 11:28 AM

McDonald's and Burger King franchisees are raving about a new device that can update their notoriously broken soft-serve machines

Shelby County Feb 11, 2020 12:31 AM



A New Device Promises to Keep McFlurry Machines Up and Running

Already popping up in some restaurants, Kytch is hoping to end the scourge of broken down McDonald's soft-serve machines.

By Mike Pomranz Updated February 13, 2020

162. After the first of these news reports were published, Tyler Gamble sent a message to Kytch, expressing interest in enrolling in the product trial: "I'm a McDonald's owner and am the Equipment team lead for the U.S. I'm seeing lots of buzz about your equipment and would like to speak with someone to better understand its possible use in our restaurants."

163. Because Taylor was unable to obtain the Kytch Solution through its employees, its lawyers, or its private investigators, Kytch is informed and believes that Taylor worked with McDonald's franchisees, including Tyler Gamble, to infiltrate the Kytch Trial.

164. A short time later, Kytch CEO Jeremy O'Sullivan had a conversation with Gamble and Eric Wilson, NSLC's Vice Chair and prior McDonald's Equipment Team Lead.

165. During this conversation, Gamble said he was familiar with Kytch's ability to navigate, search and fine-tune the inner workings of Taylor's machines. Gamble, along with NSLC Chair and Vice Chair Jon Kelley and Eric Wilson participated in the Kytch Trial a short time later.

166. Tyler Gamble was eager to obtain the Kytch Solution. Gamble also offered to serve as the liaison between Kytch and the fast-food giant, promising to solidify Kytch's relationship with McDonald's.



Tyler Gamble
NSLC Equipment Team Lead



Eric Wilson
NSLC Vice Chair



Jon Kelley
NSLC Chair

167. It appeared, early on, that Gamble was making good on his promises to promote Kytch. He said that he was serving as a go-between for Kytch with McDonald's corporate, and he said that he wanted to help the company expand to more McDonald's locations.

Gamble Breaches the Kytch Trial Agreement by Sharing Confidential Information with Taylor's Distributor and Misappropriating Trade Secrets.

168. In conversations with Kytch, Gamble endorsed Kytch's innovative technology, and he appeared to be a promising partner for the fast-growing start-up.

169. By the fall of 2020, Gamble had promised Kytch that he would recommend the Kytch Solution to every McDonald's franchise operator in the United States.

170. But on October 19, 2020, Tyler Gamble sent a peculiar message to Jeremy O'Sullivan about Kytch's Remote Control capabilities. Gamble asked whether there was "a way to ensure that no one using the Kytch device remotely accesses the machine while a technician may be working on it? This is a big concern with M[cDonald's] H[ead]Q[uarters]."

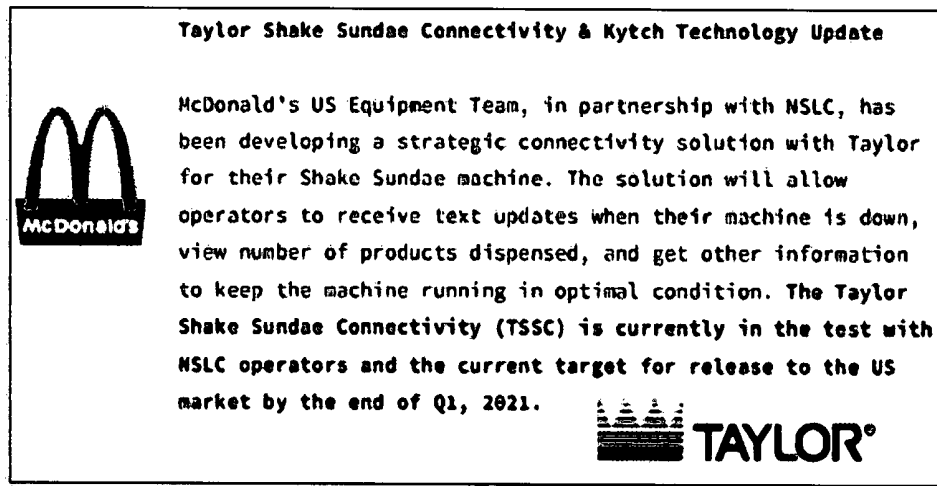
171. O'Sullivan explained the "layers of protection" that guard against this concern: "**first**, the machine should be powered off and unplugged before any work is started. This is standard safety for any equipment." O'Sullivan continued. "**Second**, there's a sensor on the freezer door, [so] that when the freezer door is removed [it] prevents the motor from turning on. **Third**, we do have a mechanism in place that disables any automation when a user takes control of the front panel by pressing any buttons."

172. O'Sullivan closed by explaining that the Kytch Solution "has been tested and certified for safety to UL standards by Intertek labs."

173. Gamble replied: "Thanks!"

1 174. O'Sullivan also shared a video explaining that the Kytch Solution's protocols
2 protected against this "safety issue."

3 175. Taylor and McDonald's subsequently announced Taylor and Gamble's Equipment
4 Team were preparing to release "Taylor Shake Sundae Connectivity (TSSC)." According to the
5 description, TSSC would be released in Q1 2021, and TSSC's product offered features that map to
6 Kytch's.¹²



15 176. Kytch would later learn that Tyler Gamble had been using the Kytch Solution to
16 assist the Taylor Group.

17 177. Kytch recently discovered that Tyler Gamble violated the Kytch Trial Agreement by
18 sharing the Kytch Solution Device and Platform to unauthorized third parties, specifically, TFGroup
19 LLC.

20 178. TFGroup LLC is a franchised servicer and distributor for Taylor and its machines.
21 On its LinkedIn page, TFGroup LLC describes itself as "[a] leader in the foodservice equipment
22 segment, TFGroup utilizes analytical advances to ensure speed of service, reduction of equipment
23 downtime and labor savings."¹³

24
25
26 ¹² Upon information and belief, TSSC later became "Open Kitchen," a device developed
by Taylor affiliate Powerhouse Dynamics. Both companies are owned by Middleby Corporation.

27 ¹³ "TFGROUP EXPANDING TAYLOR BRAND INTO ARKANSAS AND N.
28 LOUISIANA MARKETS," LinkedIn, April 16, 2021,
https://www.linkedin.com/posts/tfgcompanies_tfgroup-expanding-taylor-brand-into-arkansas-activity-6788613873491603456-1Zam.

1 179. Kytch's investigation determined that on May 27, 2020, Tyler Gamble's
2 Kytch Solution identified as "Brownsville" went offline. The device remained offline for eight
3 months, and when Kytch questioned Gamble about its downtime, he claimed that the Taylor
4 machine had an issue with one of its compressors.

5 180. One week after Gamble's Brownsville Kytch Solution Device went offline, Kytch
6 issued a real-time alert from Gamble's Kytch Solution identified as Stonebrook 1. The alert stated
7 "L PRODUCT TOO VISC" was occurring frequently.

8 181. Kytch sent [REDACTED]
9 [REDACTED]
10 [REDACTED] Kytch also provided
11 specific tips on how to correct the problem.

12 182. This problem was appearing in numerous Taylor machines throughout Kytch's
13 online network. But a short time after Kytch provided this notification to Gamble, the "PRODUCT
14 TOO VISC" alert rarely appeared in any Taylor machine connected to the Kytch Platform.

15 183. This is circumstantial evidence that Tyler Gamble shared the message with
16 Taylor Group, and that Taylor subsequently adjusted its programming to account for the error.

17 184. When Gamble's Brownsville device was connected to the internet again in February
18 2021, its SD card was 90% full. The device log indicates that someone had been accessing the
19 Kytch Solution Device, and that the Device was powered on and used for weeks after going offline.
20 However, according to the device log, the Kytch cables were disconnected periodically so the device
21 could not retrieve information or connect to the internet. The uninterrupted reverse engineering of
22 the Kytch Solution Device evidenced by this behavior would provide the Taylor Group with a
23 dramatic head start in designing a competing device. There is nothing like the Kytch Solution in
24 the marketplace. Kytch restricts who has access to its devices because the ability to reverse engineer
25 the device exposes Kytch's trade secrets.

26 185. In April 2021, a spokesperson from Middleby Corporation—Taylor's parent
27 company—confirmed that a "Tennessee distributor reported to Taylor that its servicer removed a
28

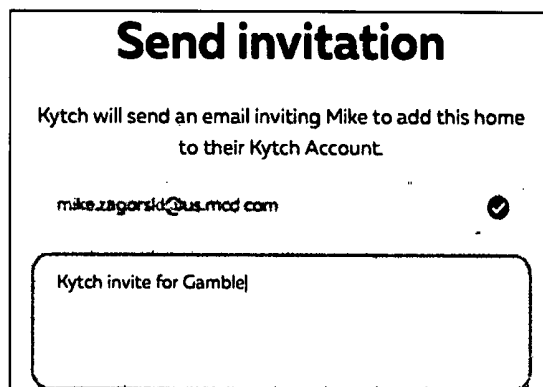
1 Kytch device” from one of Kytch’s trial participant’s stores. Upon information and belief, this
2 “Tennessee distributor” is TFGroup LLC, and the trial participant is Tyler Gamble.

3 186. A short time after disconnecting the Brownsville Kytch Solution Device,
4 Tyler Gamble invited someone named “Matt Wilson,” using the telephone number for Blaine
5 Martin, who serves as TFGroup LLC’s Managing Partner, to access Kytch. Upon information and
6 belief, the registered name “Matt Wilson” may be an alias or an attempt to obscure the fact that
7 Blaine Martin is associated with the unauthorized account access.

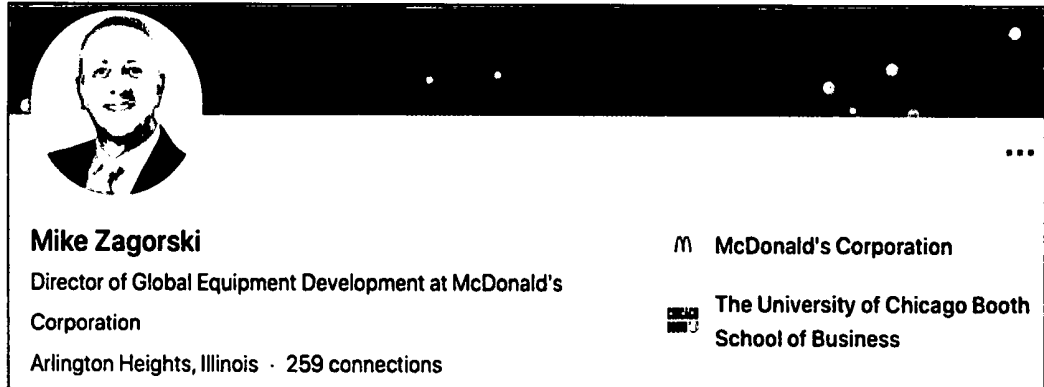
8 187. This account tied to TFGroup LLC obtained access to Kytch’s Confidential
9 Information and trade secrets through the Kytch Solution Device and Platform. This includes access
10 to all historic notifications, the Remote Control—and ultimately Kytch Rewind—using Gamble’s
11 account. The data Gamble allowed the Taylor Group to Access is attached as **Exhibit B** and the
12 information represented by these data is attached as **Exhibit C**, all of which was generated and is
13 contained on the Kytch Solution Platform. It would have taken years, millions of dollars, and a vast
14 trial program for Gamble or the Taylor Group to obtain these data.

15 188. Kytch has forensically confirmed that the fake account associated with the
16 Taylor Group was used to access the Kytch Solution Platform on multiple occasions and the
17 unauthorized access from the TFGroup LLC account continued through January 17, 2021.

18 189. Kytch’s investigation also determined that Gamble unlawfully invited
19 Mike Zagorski to access Kytch’s trade secrets and Confidential Information. The invitation was
20 sent from Gamble’s account and it says “Kytch invite for Gamble.”



1 190. Mike Zagorski is the Director of Global Equipment Development at McDonald's
2 Corp. and Kytch did not authorize Gamble to invite Zagorski to access Kytch's interface. Kytch's
3 investigation has not uncovered evidence that Mr. Zagorski accepted the invitation.



10 191. On January 29, 2021, right around the time they were contacted about another
11 Business Insider article covering Kytch, Tyler Gamble and his father Jeff Gamble both logged in to
12 the Kytch Platform and deleted the users (including Blaine Martin and william_p@eplus.net) that
13 they had invited to access Kytch's trade secret information.

14 192. Despite registering his Kytch devices for use in Tennessee and Mississippi, Kytch's
15 forensic records confirm that the Kytch Solutions Gamble ordered have been accessed—likely by
16 Taylor Group—in Little Rock, Arkansas; Ponchatoula, Louisiana; and New Orleans, Louisiana.

17 193. By using the Kytch Solution at these unauthorized locations, Gamble breached the
18 Kytch Trial Agreement.

19 194. While contractually partnering with Kytch, Gamble was, in fact, stealing Kytch's
20 Confidential Information and trade secrets in the marketplace and passing them to Taylor Group.

21 ***Taylor Group Misappropriates Kytch's Trade Secrets.***

22 195. After Taylor's distributor TFGroup LLC gained access to Kytch's trade secrets and
23 Confidential Information, Kytch is informed and believes that Taylor benefitted from the
24 misappropriation of trade secrets because TFGroup shared the information with Taylor.
25 Taylor Group knew that the information was subject to secrecy agreements and, Kytch is informed
26 and believes, Taylor Group induced Tyler Gamble to breach his secrecy obligations to gain access
27 to Kytch's confidential information and trade secrets.

1 196. Once its distributor had obtained the Kytch Solution Device, Taylor targeted Kytch's
2 customers—who Taylor knew to be bound by NDAs—and induced them to enroll in Taylor's
3 product trial. Specifically, according to Taylor's own statements, the McDonald's Equipment Team
4 was developing Taylor's competing product. Three of Kytch's customers have served on the
5 Equipment Team: David Balducci, Eric Wilson, and Tyler Gamble. Additionally, Jon Kelley—
6 another Kytch customer who oversees the equipment team—is also testing Taylor's competing
7 product.

8 197. Separately, Kytch's investigation revealed more suspicious activities from trial
9 participants connected to McDonald's NSLC. Sellia Group executed the Kytch Trial Agreement on
10 August 17, 2020, and it operates 18 locations in Massachusetts and Rhode Island, not far from the
11 headquarters of Powerhouse Dynamics.

12 198. David Balducci works through the Sellia Group, and they are members of
13 McDonald's Equipment Team.

14 199. On March 20, 2021, Sellia Group's Kytch account was accessed from the Chicago,
15 Illinois, and the Bronx, New York, using a VPN, before logging in from Milford, Massachusetts,
16 the area where the account was registered.

17 200. On November 1, 2020, Kytch sent the following message to Gamble.

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 201. Kytch would later learn that TFGroup had access to Tyler Gamble's account and,
22 thus, this message. Taylor Group knew that Kytch's operating system "KytchOS" presented an
23 existential threat to Taylor's service and repair scheme.

24 202. TFGroup is a distributor for Taylor, but Taylor maintains control over software
25 development and updates related to the machines. Kytch is informed and believes that TFGroup
26 was, at all times, working in concert with Taylor to misappropriate Kytch's trade secrets.

27

28

1 203. Potential investors and customers alike have pointed to Taylor's conduct as a primary
2 basis for why they will not invest in Kytch. Kytch's communications with at least one investor—
3 Benhamou Global Ventures—stalled after news of Taylor's misconduct became public.

4 204. And one of Kytch's most trusted advisors—Narbeh Derhacobian—was forced to pull
5 back conversations with other investors based on the uncertainty flowing from Defendants'
6 misappropriation of trade secrets.

7 ***Taylor's Competing Product Is Markedly Similar to the Kytch Solution.***

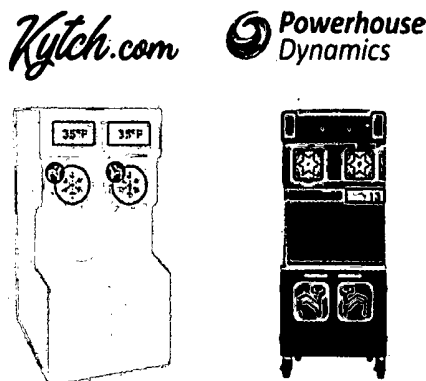
8 205. Although initial reports indicated that Taylor would be releasing its Taylor Shake
9 Sundae Connectivity ("TSSC") in Q1 of 2021, the device has not yet been released.

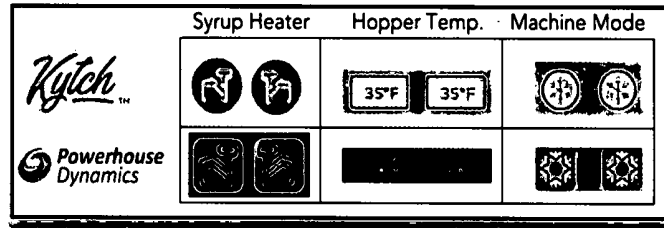
10 206. Upon information and belief, the TSSC product is being rolled out through a Taylor-
11 affiliate entity called Powerhouse Dynamics and its "Open Kitchen" concept.

12 207. In January of 2021, Powerhouse Dynamics released images of the new device, and
13 its offerings and trade dress is similar to the machine depicted in a Kytch user-video that was
14 released years earlier:

15 208. Specifically, of the hundreds of device functions within the respective products, the
16 three functions Powerhouse Dynamics decided to animate in its marketing materials are identical to
17 the functions depicted in Kytch's rendering.

18 209. The rendering from Powerhouse Dynamics bears a striking resemblance to Kytch's
19 earlier drawing.





210. Additionally, although the competing device from Powerhouse Dynamics has not yet been released, information about the product that is publicly available demonstrates that all of the features in the Powerhouse Dynamics device are already within Kytch's product offerings.

Features	Kytch.com	Powerhouse Dynamics
Servings Reports	✓	✓
Real-Time Text Alerts	✓	✓
Machine Status Updates	✓	✓
Machine History	✓	✓

211. Powerhouse Dynamics's product offers servings reports which resemble Kytch's method for programmatically opening the menu to retrieve the data at a specified time each day, saving the data, and displaying the data on a website or email notification.

212. Much like the Kytch Solution's Rewind feature, Powerhouse Dynamics offers a visual representation of the machine's time on various modes.

213. Powerhouse Dynamics also offers real time alerts via text message on soft and hard locks presented on the front panel of the machine. Kytch's innovations involve reading messages on the screen and sending real-time alerts regarding those messages.

214. In its current form, the Taylor machine is incapable of connecting to the internet. Therefore, Powerhouse is likely adding a computing module (raspberry pi or the like) that has wifi capabilities. Just like the Kytch Solution.

215. Powerhouse Dynamics's version of Kytch references all of Kytch's landmark features, its design, and several components that were subject to binding non-disclosure agreements and that were not publicly available.

216. The fact that Powerhouse Dynamics graphics highlight the display of the hopper temperatures provides further evidence of overlap from Kytch's earlier offering. Displaying hopper

1 temperatures is *not* permissible in the default setting of the Taylor machines. Indeed, the display of
2 hopper temperatures deviates from Taylor service manuals. Kytch's innovation was delivering its
3 users information related to hopper temperatures, and this fact was only shared as Confidential
4 Information to trial participants.

5 217. Finally, Powerhouse Dynamics's website indicates that the competing device is
6 being tried out with McDonald's franchise operator and Equipment Team co-lead Louis Buono, Jr.

7 **FIRST CAUSE OF ACTION**

8 **Breach of Written Contract**

9 **(Gamble)**

10 218. Kytch incorporates all of the above paragraphs as though fully set forth herein.

11 219. The Kytch Trial Agreement was a valid and existing contract at all times during and
12 after Gamble's involvement with Kytch and imposed binding contractual obligations on Gamble at
13 all relevant times and as a condition of Gamble's participation in the Trial.

14 220. The Kytch Trial Agreement also contains the following confidentiality undertaking:
15 "You agree, both during the term of this Agreement and for a period of five years after termination
16 of this Agreement, to hold Kytch's Confidential Information in strict confidence using no less than
17 a reasonable degree of care, not to disclose Kytch Confidential Information to any third party (other
18 than your users) and not to use Kytch Confidential Information for any purpose other than your
19 evaluation of the Solution as part of the Trial."

20 221. The Agreement defines "Confidential Information" as "aspects of [Kytch's] Products
21 and information relating to its features, specifications, functionality and performance." Gamble
22 breached this clause by: (a) participating in the development of the competing Taylor Group device
23 known as TSSC/Open Kitchen; (b) assisting in the disassembly, reverse engineering, and
24 distribution of at least the Brownsville Kytch Solution Device; (c) granting the Taylor Group, and
25 potentially others, access to the Kytch Solution Platform.

26 222. The Kytch Trial Agreements further prohibits Gamble from taking any of the
27 following actions:

28 "You shall not, and shall not cause or permit others to:

- remove or modify any Solution markings or any notice of Kytch's or its licensors' proprietary rights;
- modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute or republish all or any part of the Solution, or otherwise access or use the Solution in order to build or support, and/or assist a third party in building or supporting, products or services competitive to any Kytch Solution;
- disclose results of any benchmark tests or performance tests of the Kytch Solution without Kytch's prior written consent;
- perform or disclose any of the following security testing of the Solution (or associated systems, services or infrastructure): network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Kytch Solution available to (or use such Solution for the benefit of) any third party."

223. Gamble breached this clause by: (a) participating in the development of the competing Taylor Group device known as TSSC/Open Kitchen; (b) assisting in the disassembly, reverse engineering and distribution of at least the Brownsville Kytch Solution Device; and (c) granting the Taylor Group, and potentially others, access to the Kytch Solution Platform.

224. Upon information and belief, Gamble improperly took and continues to retain Kytch "Proprietary Information" to develop products and to otherwise compete against Kytch.

225. Upon information and belief, Gamble and his company improperly took and continue to retain Kytch's Confidential Information for the additional purpose of enriching themselves in breach of the Kytch Trial Agreement.

226. Kytch is entitled to recover from Gamble the damages he caused by breaching the Kytch Trial Agreement and the Terms of Service.

1 227. The amount of such damages cannot be determined at this time but will be proven at
2 trial. Kytch is further entitled to recover from Gamble the gains, profits, and advantages that Gamble
3 obtained as a result of these breaches. Kytch is currently unable to ascertain the full extent of these
4 gains, profits, and advantages but will prove the value thereof at trial.

5 228. Kytch is informed and believes that Gamble is continuing to breach the Kytch Trial
6 Agreement.

7 229. By reason of the ongoing breaches, Kytch has and will suffer great and irreparable
8 harm and damage, which harm and damage will be difficult to ascertain, and Kytch will be without
9 an adequate remedy at law.

10 230. Gamble acknowledged in the Terms of Service contract that: "Kytch may seek
11 injunctive or other equitable relief to protect its confidential information and intellectual property
12 rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction and
13 You agree that Kytch may do so without the need to post bond or other surety."

14 231. Kytch's ability to provide comprehensive explanations of the machines' errors is
15 made possible through years of product testing and through hundreds of machines connected to
16 Kytch's platform. The data yield from these interactions provides Kytch a competitive advantage
17 because Kytch was testing and evaluating Taylor's machines to a greater extent than Taylor, even
18 before the trials expanded to McDonald's locations.

19 232. Kytch has flagged defects and bugs with Taylor's software, including the daylight
20 savings bug that causes heat cycle failure, a software version that makes the barrels too cold and
21 causes interruptions of functionality, and the tendency of the machines' heat cycle target
22 temperatures to change on a nightly basis.

23 233. Maintaining this information as confidential is essential to Kytch's ability to compete
24 in the market of IoT technology. These fields are characterized by rapid technological advances
25 and intense competition. If a competitor were to obtain details about Kytch's technology or related
26 commercial information, that competitor could significantly harm Kytch by using Kytch's own
27 technology, know-how, and other details about these products to compete directly with Kytch
28 without having to spend the capital or time that Kytch invested in developing such technologies.

1 234. If Kytch's competitors continue to obtain access to Kytch's Confidential
2 Information, those competitors will benefit significantly from the knowledge gained through that
3 access by directing their product development and marketing efforts to frustrate Kytch's plans. This
4 strategic advantage to Kytch's competitors could, in turn, severely harm Kytch.

5 235. Kytch's research and development is conducted under rigorous conditions to
6 maintain the secrecy of those activities and the products themselves. Kytch carefully controls all
7 information relating to these projects. The Kytch development teams expend substantial time and
8 energy to ensure that the process remains secret. Further, Kytch has spent multiple years working
9 on secret products and methods that have never been discussed publicly.

10 236. The information and physical devices misappropriated by Defendants are comprised
11 of confidential information about Kytch technology, its online interface and security processes, and
12 confidential Kytch documentation. All of this material comprises Kytch trade secrets. In violation
13 of Kytch's rights, the Defendants misappropriated Kytch's confidential information in the improper
14 and unlawful manner as alleged herein.

15 237. Defendants' misappropriation of Kytch's confidential, proprietary, and trade secret
16 information was intentional, knowing, willful, malicious, fraudulent, and oppressive. Defendants
17 have attempted and continue to attempt to conceal their misappropriation.

18 238. As the direct and proximate result of Defendants' conduct, Kytch has suffered and,
19 unless Defendants' conduct is stopped, will continue to suffer, severe competitive harm, irreparable
20 injury, and significant damages, in an amount to be proven at trial.

21 239. Because Kytch's remedy at law is inadequate, Kytch seeks, in addition to damages,
22 temporary, preliminary, and permanent injunctive relief to recover and protect its confidential,
23 proprietary, and trade secret information and to protect other legitimate business interests. Kytch's
24 business operates in a competitive market and will continue suffering irreparable harm absent
25 injunctive relief.

26 **SECOND CAUSE OF ACTION**

27 **Tortious Interference of Contract**

28 **(Taylor Group)**

1 240. Kytch incorporates all of the above paragraphs as though fully set forth herein.

2 241. On March 19, 2020, Kytch and Gamble entered into a valid and binding contract
3 whereby, in exchange for Gamble’s covenants of nondisclosure and secrecy, Kytch agreed to
4 provide its trade secrets and Confidential Information—including Kytch Solution Device and
5 Kytch Solution Platform—to Gamble to use for the sole purpose of furthering the Kytch Trial.

242. Taylor Group had knowledge of the contract as Tyler Gamble publicly discussed his participation in Kytch's product trial, and upon information and belief, discussed the same with Taylor Group.

9 243. Taylor Group acted intentionally to interfere with and induce Gamble to breach the
10 Kytch Trial Agreement by providing it with access to the Kytch Solution Device and Platform.

244. Taylor Group pushed Gamble to breach the Kytch Trial Agreement, using their influence within McDonald's to encourage Gamble, a McDonald's franchisee. Taylor Group's intentional actions caused Kytch considerable damage by disrupting its contractual relationship with Gamble, caused Kytch's performance under the contract more expensive and difficult, and Taylor Group's misconduct has resulted in the breach of the Kytch Trial Agreement.

245. Taylor Group's intentional actions caused Kytch substantial damage by disrupting its contractual relationship with Gamble, allowing the Taylor Group to launch a competing device and driving investors away from Kytch.

246. As a direct and proximate result of Taylor Group's actions, Kytch has suffered severe and substantial economic harm.

THIRD CAUSE OF ACTION

Violation of California Uniform Trade Secrets Act

23 247. Kytch incorporates all of the above paragraphs as though fully set forth herein.

24 248. The Kytch Solution's proprietary design and software, as alleged in Paragraphs 21,
25 60, 79, 80, 83, 84, 86, 89, 91, 91-99, 102, 103, 105, 106, 108, 109, 112, 115-120, 124, 126-129,
26 132-134, 136-138, 181, and 200 above, and the Declaration of Melissa Nelson at **Exhibits 1, 2, 7**,
27 and at Paragraphs 17, 18, 21, 23, 24, 27, 30, 31, 33, 34, 36, 39, 41, 42, 44, 45, 48, 51-60, 63-65, 69,

1 73, 75, 77-79, 82, 116, and 132 constitute trade secrets under the California Uniform Trade Secrets
2 Act.

3 249. Kytch is informed and believes that Gamble provided a Kytch Solution Device and
4 access to the Kytch Solution Platform to the Taylor Group for at least eight months, during which
5 time Kytch's trade secrets were misappropriated.

6 250. Kytch has not disclosed its trade secret information and the information has actual or
7 potential independent economic value from not being generally known to the public or other persons
8 who could obtain economic value from their disclosure or use.

9 251. Kytch has undertaken efforts that are reasonable under the circumstances to maintain
10 the secrecy of the trade secrets at issue.

11 252. Defendants knew or should have known under the circumstances that the
12 information misappropriated by Defendants were confidential trade secret materials.

13 253. Defendants knew or should have known under the circumstances that the information
14 misappropriated by Defendants were trade secret materials.

15 254. The California Uniform Trade Secrets Act ("CUTSA") prohibits the unfair
16 competition—and associated irreparable harm to business interests—that is caused by product trial
17 participants improperly using or disclosing documents, information, inventions, and business
18 strategies that require substantial investment, innovation, and countless hours to develop.

19 255. Gamble has misappropriated Kytch Trade Secrets by: (1) using the Kytch Solution
20 Device and the Kytch Solution Platform in the development of TSSC/Open Kitchen; (2) allowing
21 the Taylor Group to access, use and reverse engineer the Brownsville Kytch Solution Device; (3)
22 allowing the Taylor Group full access to the Kytch Solution Platform over an extended period of
23 time; and (4) giving a McDonald's executive access to the Kytch Solution Platform over an extended
24 period of time.

25 256. The Taylor Group has misappropriated Kytch Trade Secrets by: (1) using the Kytch
26 Solution Device and the Kytch Solution Platform in the development of TSSC/Open Kitchen; (2)
27 accessing, using, and reverse engineering the Brownsville Kytch Solution Device; and (3) accessing
28 over an extended period of time the Kytch Solution Platform.

1 257. As a direct and proximate result of Defendants' conduct, Kytch is threatened with
2 injury and has been injured in an amount in excess of the jurisdictional minimum of this Court, and
3 that will be proven at trial.

4 258. Kytch has also incurred, and will continue to incur, additional damages, costs and
5 expenses, including attorney's fees, as a result of Defendants' misappropriation. As a further
6 proximate result of the misappropriation and use of Kytch's trade secrets, Defendants were unjustly
7 enriched.

8 259. The aforementioned acts of Defendants were willful, malicious, and fraudulent.
9 Kytch is therefore entitled to exemplary damages under California Civil Code § 3426.3(c).
10 Defendants' conduct constitutes transgressions of a continuing nature for which Kytch has no
11 adequate remedy at law.

12 260. Unless and until enjoined and restrained by order of this Court, Defendants will
13 continue to retain and use Kytch's trade secret information to enrich themselves and divert business
14 from Kytch. Pursuant to California Civil Code § 3426.2, Kytch is entitled to an injunction against
15 the misappropriation and continued threatened misappropriation of trade secrets as alleged herein
16 and further asks the Court to restrain Defendants from using all trade secret information
17 misappropriated from Kytch and to return all trade secret information to the company.

18 261. Pursuant to California Civil Code § 3426.4 and related law, Kytch is entitled to an
19 award of attorneys' fees for Defendants' misappropriation of trade secrets.

20 262. As the direct and proximate result of Defendants' conduct, Kytch has suffered and,
21 if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable
22 injury, and significant damages, in an amount to be proven at trial.

23 263. Because Kytch's remedy at law is inadequate, Kytch seeks, in addition to damages,
24 temporary, preliminary, and permanent injunctive relief to recover and protect its confidential,
25 proprietary, and trade secret information and to protect other legitimate business interests.

26 264. Kytch's business operates in a competitive market and will continue suffering
27 irreparable harm absent injunctive relief.

28

265. Kytch has been damaged by all of the foregoing and is entitled to an award of exemplary damages and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Kytch respectfully requests the following relief:

266. That the Court enter judgment in Kytch's favor and against Gamble on Counts I and III;

267. That the Court enter judgment in Kytch's favor and against the Taylor Group Defendants on Counts II and III;

268. That Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them, be preliminarily and permanently restrained and enjoined from misappropriating, disclosing, or using Kytch's Confidential Information and trade secrets;

269. That Defendants be ordered to recall and surrender all material and trade secrets wrongfully misappropriated or converted;

270. That Kytch recover compensatory damages for Defendants' wrongdoing in an amount to be established at trial, together with pre-judgment and post-judgment interest at the maximum legal rate;

271. That Kytch recover an award of punitive and other appropriate exemplary damages, disgorgement, restitution, pre-judgment and post-judgment interest as permitted by statute and contract;

272. That Kytch recover attorneys' fees and the costs of suit herein; and

273. Such other and further relief as the Court may deem to be just and proper.

DEMAND FOR JURY TRIAL Kytch hereby demands trial by jury for all causes of action, claims, or issues in this action that are triable as a matter of right to a jury.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 7, 2021

IRELL & MANELLA LLP

By: /s/ Jason Sheasby
Jason Sheasby SBN 205455
Attorneys for Plaintiff Kytch, Inc.

CLARE LOCKE LLP
Elizabeth M. Locke, P.C., * VA Bar No. 71784
Daniel P. Watkins, * VA Bar No. 84592
Appearance Pro Hac Vice to Be Filed
Attorneys for Plaintiff Kytch, Inc.

EXHIBIT A

KYTCH TRIAL AGREEMENT

PLEASE READ ALL OF THE FOLLOWING TERMS OF USE CAREFULLY. THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN YOU AND KYTCH, INC. STATING THE TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE KYTCH SOLUTION DURING THE TRIAL. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" AND "YOUR" SHALL REFER TO SUCH ENTITY. BY SIGNING BELOW OR BY USING THE KYTCH SOLUTION, YOU ARE AGREEING TO ALL OF THE TERMS AND CONDITIONS STATED HEREIN. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT SIGN BELOW AND YOU SHALL NOT HAVE THE RIGHT TO ACCESS OR USE THE KYTCH SOLUTION.

A. Agreement Definitions

"Kytch" refers to Kytch, Inc. "You" and "your" refers to the individual or entity that has ordered the Kytch Trial by having signed below or otherwise having used the Kytch Trial.

The terms "Kytch Trial," or the "Trial," means your use of the Kytch Solution during the Trial Period solely for your internal evaluation and testing and not for commercial or production purposes.

The term "Kytch Solution" or "Solution" refers to the hardware and software products owned or distributed by Kytch and related cloud services, programs, technology platform and other materials to which Kytch grants you access as part of the Trial, including user guides, and any program updates provided as part of the Solution.

The term "users" means only your employees who have a reasonable need to have access to the Kytch Solution solely for internal evaluation in connection with the Trial.

B. Trial Period

This Agreement is effective on the Effective Date (defined below) and will terminate six (6) months from the date Kytch ships you the Solution, unless earlier terminated (the "Trial Period"). Certain Kytch Trials may permit you a one-time option to extend the Trial Period by an additional thirty (30) days, by selecting that option on the Trial. If you would like to use the Solution after the Trial Period, provided that Kytch has made the Solution commercially available, you must purchase such Solution from Kytch.

If the Solution has been disconnected from the Kytch servers for a period of 3 days, or at the conclusion of your Trial Period, you will either (i) immediately cease all use of the Solution, and return the Solution (we will provide you with a free return label you may use), or (ii) promptly purchase and pay for a subscription to the Solution (subject to our standard Kytch Terms of Service) at our then-current monthly pricing (along with all other associated fees) from the Trial end date, unless otherwise agreed in writing (for clarity, upon expiration or termination of any such Solution subscription, your rights thereto shall cease and you shall then promptly return the Solution to Kytch). If the Solution has not been returned within 5 days after the Trial end date or date of disconnection from the Kytch servers, you will be considered to have purchased a subscription to the Solution and you shall pay the full listed non-discounted price of such Solution for the Trial Period. If you have submitted your credit card information, we will charge your credit card.

At any time and without notice, Kytch reserves the right to (i) modify the terms and conditions of the Trial offer, or (ii) cancel and terminate such Trial and this Agreement for any reason.

C. Rights Granted

For the duration of the Trial Period, you have the nonexclusive, nontransferable, non-assignable, non-sublicensable limited right to use the Solution at the approved locations identified in Exhibit A to this Agreement in accordance with Kytch's documentation, subject to the terms of this Agreement, and solely for your internal business purposes to evaluate Kytch's Solution and not for any production or commercial purposes. You may allow your users to use the Solution solely for this purpose and you are responsible and liable for your users' compliance with this Agreement.

You do not acquire any right or license to use the Solution in excess of the scope and/or duration of the Trial defined in this Agreement. Upon the termination or expiration of this Agreement or the Trial Period, your right to access or use the Kytch Solution shall immediately terminate.

D. Ownership and Restrictions

Kytch or its licensors retain all right, title and interest (including all intellectual property rights) in and to the Kytch Solution, including all improvements, enhancements and derivative works thereof, and anything else developed or provided by Kytch under this Agreement.

You shall not, and shall not cause or permit others to:

- remove or modify any Solution markings or any notice of Kytch's or its licensors' proprietary rights;
- modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute or republish all or any part of the Solution, or otherwise access or use the Solution in order to build or support, and/or assist a third party in building or supporting, products or services competitive to any Kytch Solution;
- disclose results of any benchmark tests or performance tests of the Kytch Solution without Kytch's prior written consent;
- perform or disclose any of the following security testing of the Solution (or associated systems, services or infrastructure): network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Kytch Solution available to (or use such Solution for the benefit of) any third party.

E. Disclaimers and Exclusion of Warranties

THE SOLUTION IS PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND KYTCH HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTEES, AND CONDITIONS WITH REGARD TO (A) THE SOLUTION, INCLUDING BUT NOT LIMITED TO SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS AND (B) MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

KYTCH DOES NOT GUARANTEE THAT (A) THE SOLUTION WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT KYTCH WILL CORRECT ALL ERRORS; (B) THE SOLUTION WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER SOFTWARE, HARDWARE, SYSTEMS, OR DATA; (C) YOUR CONTENT AND YOUR APPLICATIONS WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED; AND (D) THE SOLUTION, INFORMATION OR OTHER MATERIAL YOU OBTAIN OR PURCHASE FROM KYTCH UNDER THIS AGREEMENT, WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT KYTCH DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SOLUTION MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. KYTCH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

YOU AGREE TO INDEMNIFY KYTCH FROM ANY DAMAGES, LIABILITIES, COSTS AND EXPENSES OR THE SETTLEMENT AGREED TO BY YOU, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY OF YOUR CONTENT OR APPLICATIONS OR NON-KYTCH SOFTWARE OR TECHNOLOGY. KYTCH IS NOT RESPONSIBLE FOR THE SECURITY OF ANY CONTENT, APPLICATION OR SOFTWARE THAT YOU LOAD INTO OR CREATE WITHIN THE TRIAL ENVIRONMENT.

KYTCH RESERVES THE RIGHT TO MAKE CHANGES OR UPDATES TO THE KYTCH SOLUTION AND TRIAL AT ANY TIME WITHOUT NOTICE. KYTCH MAY TERMINATE THE TRIAL FOR ANY REASON, AT ANY TIME.

F. User Accounts

To use the Solution, you must have an Kytch.com account. Access to and use of password protected or secure areas of the Trial site is restricted to authorized users only. You may not share your password(s), account information, or access to the Trial site. You are responsible for identifying and authenticating all users, for approving access by such users to the Solution, for controlling against unauthorized access by users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating your and your users' Single Sign-On with Kytch, you accept responsibility for timely and proper termination of user records in your local (intranet) identity infrastructure and on your local computers. Kytch is not liable for any harm caused by users, including individuals who were not authorized to have access to the Solution but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in your local identity management

infrastructure or your local computers. You are responsible for all activities that occur under your and your users' passwords or accounts or as a result of your or your users' access to the Trial, and agree to notify Kytch immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Trial.

G. Support Services

The Kytch Trial provides an opportunity for current and potential Kytch customers to experience Kytch Solution before purchasing the Solution. The Trial is provided as a convenience and you agree that Kytch is not obligated to provide any technical support, phone support, or updates for the Kytch Solution accessed or used within the Trial environment.

H. End of Agreement

The Solution provided under this Agreement shall be provided for the Trial Period defined above unless earlier terminated in accordance with this Agreement. At the end of the Trial Period, all rights to access or use the Solution shall immediately terminate.

You may discontinue your use of the Solution at any time. Kytch may terminate your password, account, and access to or use of the Solution at any time for any reason. You acknowledge and agree that Kytch has no obligation to retain your content, data and applications, and that your content, data and applications will be irretrievably deleted, following the termination of the Trial.

If you cancel the Trial before the end of the Trial Period, all your rights to any remaining free Trial Period will be waived and you will not be eligible to participate in any further trials, except as allowed by Kytch in its sole discretion.

At termination of the Trial, if you choose not to buy the Solution, you must return all elements of the Kytch Solution (and all related materials) in your possession or control within five (5) days.

Provisions that survive termination or expiration of this Agreement are those which by their nature are intended to survive.

I. Fees and Taxes

The Solution provided under this Agreement is provided to you free of charge during the Trial Period.

J. Nondisclosure

By virtue of this Agreement, you will have access to information that is confidential to Kytch, including but not limited to all aspects of the Solution and all information relating to its features, specifications, functionality and performance ("Kytch Confidential Information"). Kytch Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of yours; or (b) was in your lawful possession prior to the disclosure and had not been obtained by you either directly or indirectly from Kytch; or (c) is lawfully disclosed to you by a third party without restriction on disclosure; or (d) is independently developed by you without use of or reference to Kytch Confidential Information. You agree, both during the term of this Agreement and for a period of five years after termination of this Agreement, to hold Kytch's Confidential Information in strict confidence using no less than a reasonable degree of care, not to disclose Kytch Confidential Information to any third party (other than your users) and not to use Kytch Confidential Information for any purpose other than your evaluation of the Solution as part of the Trial.

K. Terms and Privacy

The terms, EULA and privacy agreements located at Kytch's website at <https://kytch.com/tos> are incorporated into this Agreement.

L. Entire Agreement

You agree that this Agreement including the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement with respect to the subject matter hereof, and that this Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such subject matter. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this Agreement. It is expressly agreed that the terms of this Agreement shall supersede the terms in any purchase order or other non-Kytch document and no terms included in any such purchase order or other non-Kytch document shall apply to the Solution or Trial. This Agreement may not be modified and the rights and

restrictions may not be altered or waived except in a writing signed by authorized representatives of you and of Kytch.

M. Limitation of Liability

IN NO EVENT SHALL KYTCH BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, EVEN IF KYTCH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL KYTCH'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES EXCEED THE AMOUNT OF ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00).

N. Other

- Kytch is an independent contractor and we each agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. Kytch reserves the right to provide the Solution from locations, and/or through use of affiliates and subcontractors, worldwide.

- You are responsible for obtaining at your sole expense any rights and consents from third parties necessary for your content, your applications, and other vendors' products provided by you and used with the Trial environment, including all rights and consents to such content, applications and products necessary for Kytch to provide the Solution.

- This Agreement is governed by the substantive and procedural laws of the State of California and you and Kytch agree to submit to the exclusive jurisdiction of, and venue in, the courts in Alameda county in California in any dispute arising out of or relating to this Agreement. If you have a dispute with Kytch, you will promptly send written notice to legal@kytch.com. Kytch may give notice applicable to Kytch's Solution customer base by means of a general notice on the Kytch portal for the Solution, and notices specific to you by electronic mail to your e-mail address on record in Kytch's account information or by written communication sent by first class mail or pre-paid post to your address on record in Kytch's account information.

- You may not assign this Agreement or give or transfer the Solution or an interest in them to another individual or entity. Kytch may assign this Agreement to any affiliate or successor to its assets or business.

- Except for actions for violation or misappropriation of Kytch's intellectual property or proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

- Kytch may use software tools to audit and otherwise request information from you regarding your use of the Solution. You agree to cooperate with Kytch's audit and provide reasonable assistance and access to information.

- The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it. You understand that Kytch's business partners, including any third party firms retained by you to provide computer consulting services, are independent of Kytch and are not Kytch's agents. Kytch is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an Kytch subcontractor on an engagement ordered under this Agreement.

O. Force Majeure

Neither of us shall be responsible for events outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event.

P. Feedback

"Feedback" shall mean any input, comments, suggestion or feedback regarding Kytch's Solution, the Trial and/or Kytch Confidential Information, including changes or suggested changes to Kytch's current or future Solutions and/or other products or services. Notwithstanding anything that you may note or state in connection with providing Feedback, all Feedback provided by you shall not be considered confidential information and shall be received and treated by Kytch on a non-confidential and unrestricted basis. You agree that Kytch shall exclusively own (and you hereby assign to Kytch) all right, title and interest (including all intellectual property rights) in and to any Feedback provided by you or any other party, and acknowledge that Kytch may (but is not obligated to) use the Feedback for any purpose, including but not limited to incorporation or implementation of such Feedback into the Kytch Solution or other products or services, and to display, market, sublicense and distribute such Feedback as incorporated or embedded in any Solution, product or service distributed or offered by Kytch.

This Agreement is effective as of 03 / 19 / 2020, 2020 (the "Effective Date"), by and between:

J Tyler Gamble

Signature

J Tyler Gamble

Name

Owner / McDonald's

Title/Company

Melissa Nelson

Signature

Melissa Nelson

Name

Co-CEO / KYTCH, INC.

Title/Company

EXHIBIT A

Approved Trial locations to be listed here

McDonald's 1108 South Cass Street Corinth MS 38834, McDonald's 2586 Anderson Ave
Brownsville TN 38012, McDonald's 1705 South Highland Ave Jackson TN 38301, McDonald's
4101 B Highway 412 S Bells TN 38006.

TITLE	Kytch Trial Agreement
FILE NAME	KYTCH TRIAL AGREEMENT__2020.docx
DOCUMENT ID	6cad3831ad2aabcfa975dac3d13596153a13446
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

03 / 19 / 2020

18:30:52 UTC

Sent for signature to Tyler Gamble (tgamblemcd@gmail.com) and Melissa Nelson (Melissa@kytch.com) from allison@kytch.com
IP: 71.202.29.169



VIEWED

03 / 20 / 2020

02:23:22 UTC

Viewed by Tyler Gamble (tgamblemcd@gmail.com)
IP: 205.185.229.140



VIEWED

03 / 20 / 2020

03:28:57 UTC

Viewed by Melissa Nelson (melissa@kytch.com)
IP: 73.15.84.205



SIGNED

03 / 20 / 2020

02:26:22 UTC

Signed by Tyler Gamble (tgamblemcd@gmail.com)
IP: 205.185.229.140



SIGNED

03 / 20 / 2020

03:29:52 UTC

Signed by Melissa Nelson (melissa@kytch.com)
IP: 73.15.84.205



COMPLETED

03 / 20 / 2020

03:29:52 UTC

The document has been completed.



Kytch, Inc. Terms of Service

Last Updated: July 3, 2020

IMPORTANT NOTICE: THIS AGREEMENT IS SUBJECT TO A WAIVER OF CLASS ACTION RIGHTS AS DETAILED IN THE DISPUTE RESOLUTIONS SECTION.

ACCEPTANCE OF TERMS OF SERVICE

Kytch, Inc., its parent, Frobot, Inc., and affiliates (collectively, "Kytch" "We," "Us," or "Our") provide (1) the Kytch website located at www.kytch.com, and all associated sites linked to www.kytch.com, including the Kytch user account website that may be accessed at www.kytch.com ("Sites") (2) any services accessible through the Sites, including any Trial period and Kytch Gold ("Web Apps"), (3) software that may be downloaded to Your smartphone or tablet to access services ("Mobile Apps"), and (4) any subscription services, including services that can be accessed using the Web Apps and Mobile Apps ("Subscription Services"), all for use in conjunction with Kytch hardware products ("Products") and in other ways that Kytch provides. The term "Services" means the Sites, Web Apps, Mobile Apps, and Subscription Services.

Please read these Terms of Service ("Terms") carefully before you begin using Our Products and Services or any Third Party Services. By clicking "Login", "Create Account", "Sign In" "Sign Up", "Start Free Trial", creating a user account, placing an order, or otherwise using the Products and Services, you agree to accept and be bound by these Terms, along with the Kytch End User License Agreement, Kytch Trial Agreement, Kytch Privacy Policy, and the Kytch Privacy Statement, which are all taken together and incorporated by reference into these Terms, and govern Your use of the Products and Services and constitute a binding legal agreement between You and Kytch, (the "Agreement"). If any of the provisions of these Terms directly conflict with those applicable to individual Products or Services, the provisions applicable to the specific Products or Services will prevail. If you do not agree to the Agreement, do not access or use our Products or Services or any Third Party Services. Certain features of the Services may also be subject to additional guidelines, terms or rules, which will be posted on the Services in connection with such features. Please read these Terms carefully, as they contain important information about a class action waiver and a binding arbitration provision, requiring you to arbitrate any claims you may have against Kytch on an individual basis. ARBITRATION ON AN INDIVIDUAL BASIS MEANS THAT YOU WILL NOT HAVE, AND YOU WAIVE, THE RIGHT FOR A JUDGE OR JURY TO DECIDE YOUR CLAIMS, AND THAT YOU MAY NOT PROCEED IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE CAPACITY.

THESE TERMS ARE A BINDING LEGAL AGREEMENT. BY ACCEPTING THESE TERMS AND ACCESSING AND USING THE PRODUCTS OR SERVICES IN ANY WAY YOU ARE ACCEPTING AND AGREEING TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT IN CONNECTION WITH THE ACCESS AND USE OF THE PRODUCTS AND SERVICES. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT. YOU REPRESENT THAT YOU ARE, OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE PRODUCTS AND SERVICES AND TO ENTER INTO THIS AGREEMENT.

AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE SERVICES AND OF THE PRODUCTS CONNECTED TO THE SERVICES. IF YOU DO NOT AGREE, YOU SHOULD NOT USE OUR PRODUCTS OR SERVICES.

SECTIONS 4 AND 5 BELOW DESCRIBE IMPORTANT LIMITATIONS OF THE PRODUCTS AND SERVICES, ESPECIALLY IN CONNECTION WITH LIFE SAFETY AND CRITICAL USES. PLEASE READ THESE DISCLOSURES CAREFULLY, WHICH, BY YOUR USE OF THE PRODUCTS AND SERVICES, YOU AGREE TO ACCEPT.

GENERAL

The terms "You," "Your," or "Yours" as used in these Terms, means any person or entity who: (1) accesses or uses any of our Products or Services; and (2) creates or accesses an Account, (as defined in Section 2(a) including, but not limited to Account Owners and Authorized Users (as defined in Section 2(b)). These Terms give you specific legal rights. In addition, you may also have other legal rights which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, mandatory and binding arbitration, limitations of liability, indemnification, waiver of jury trial, waiver of class action and waiver of punitive damages under these Terms will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

NOTICE

BY ACCESSING THE PRODUCTS AND SERVICES OR CREATING ANY ACCOUNT, YOU REPRESENT, WARRANT, AND AGREE THAT YOU ARE AN ACCOUNT OWNER OR AN AUTHORIZED USER AND ARE ACCESSING THE PRODUCTS, SERVICES, AND ANY ACCOUNT FOR A PERMITTED PURPOSE. YOU UNDERSTAND AND AGREE THAT UNAUTHORIZED ACCESS OR EXCEEDING AUTHORIZED ACCESS TO THE PRODUCTS, SERVICES OR ANY ACCOUNT, WILL VIOLATE THESE TERMS OF SERVICE AND MAY ALSO VIOLATE CERTAIN LAWS INCLUDING, BUT NOT LIMITED TO, THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030 et seq., THE COPYRIGHT ACT, 17 U.S.C. § 101 et seq., THE DEFEND TRADE SECRETS ACT, 18 U.S.C. § 1832 et seq. THE CALIFORNIA COMPREHENSIVE DATA ACCESS AND FRAUD ACT, Cal. Penal Code § 502, THE CALIFORNIA UNIFORM TRADE SECRETS ACT Cal. Civil Code § 3426 et seq., AND MAY ALSO CONSTITUTE COMMON LAW MISAPPROPRIATION, UNFAIR COMPETITION, TRESPASS TO CHATTELS, UNJUST ENRICHMENT, AND IS A BREACH OF THESE TERMS OF SERVICE. BY ACCESSING THE PRODUCTS, SERVICES, AND ACCOUNTS, YOU HEREBY EXPRESSLY CONSENT TO KYTCH, INC.'S MONITORING OF YOUR USE OF THE PRODUCTS, SERVICES, AND ACCOUNTS, INCLUDING THROUGH THE USE OF SOFTWARE TOOLS. KYTCH, INC. WILL UTILIZE ANY AND ALL LEGAL REMEDIES TO WHICH IT IS ENTITLED TO ENFORCE ITS RIGHTS. BY ACCESSING THE PRODUCTS, SERVICES, OR ANY ACCOUNT YOU REPRESENT, WARRANT, AND AGREE THAT YOU HAVE BEEN PROVIDED WITH NOTICE OF THIS WARNING.

1. Eligibility; Trials; Subscriptions; Customer Service; Term and Termination

(a) Eligibility. (i) You may use the Products and Services only if you have the legal capacity to form a binding contract with Kytch. Only individuals aged 18 and older are permitted to act as Account Owners of Kytch Accounts. The Products and Services are not available to any users previously prohibited from using the Products and Services by Kytch.

(b) Subscriptions. We offer different subscription plans for our Subscription Services.

(c) Continuous Subscriptions. When you purchase any of our Subscription Services, you expressly acknowledge and agree that (1) Kytch is authorized to charge you an annual subscription service fee (in addition to any applicable taxes) for as long as your subscription continues, and (2) your subscription is continuous until you cancel it or such Subscription Service is suspended, discontinued or terminated in accordance with these Terms.

(d) Billing. We automatically bill the payment method associated with your Kytch account on the day you purchase the subscription. We utilize a third party payment provider: Stripe. In the event you later decide to purchase additional Subscription Services (each, an "Add-On Service"), your payment for such Add-On Service will be prorated to the renewal date of your initial Subscription Service and the full amount of the add-on service will be charged on your subscription renewal date. You acknowledge that the amount billed may vary due to promotional offers, changes in your Subscription Services plan and changes in applicable taxes, and you authorize us to charge your payment method for the corresponding amounts.

(e) Cancellations and Refunds. Once you order your Subscription Service or any Add-On Service, you will be charged the full annual subscription fee which is non-refundable, even if you wish to cancel your subscription.

(f) Pre-paid Subscription Services. We may offer Products that include pre-paid Subscription Services, either included in the purchase price or as a Bundle. Pre-paid Subscription Services may not be used with Products other than the Product with which those pre-paid Subscription Services were purchased. If you purchase such Products, the pre-paid Subscription Services will begin on the date you pair your Product with your Account and end on the date noted in your Account following activation. If you cancel your pre-paid Subscription Services, those Subscription Services will be canceled permanently, and you will not receive a refund. Pre-paid Subscription Services are subject to the same terms and conditions as other Subscription Services, including Kytch's right to suspend, discontinue or terminate the Subscription Services in accordance with these Terms.

(g) Trials. If you are using the Products and Services on a trial basis, Your use of the Products and Services is also governed by the Kytch Trial Agreement and you may only use the Products and Services for the limited Trial Period specified by Kytch in writing or on the Web Apps at the time of Your order, solely for purpose of evaluating suitability. The Products must be installed at Your designated location. Once installed, if the Products have been disconnected from the Kytch servers for a period of 3 days for any reason whatsoever, or, if the Products are shipped to You and You do not install the products within three (3) days after We send a notice to You that you have not installed the Products, or at the conclusion of Your Trial Period, you will either (i) immediately cease all use of the Products and Services, and return the Products in accordance with these Terms, or (ii) promptly purchase a subscription of the Services from the Trial end date, and begin paying for the Services. If the Products have not been returned to Kytch within fourteen (14) days of the Trial Period end date or date of disconnection from the Kytch servers, or they are not installed within three (3) days after We send a notice to You that You have not installed the Products, You hereby affirm and agree that You will be considered to have purchased a subscription to the Services and You agree that you shall pay the full listed non-discounted price of the Product and Services for the Trial Period. If you have submitted Your credit card information, You agree that we will charge Your credit card on file and you hereby give Us permission to do so.

When using the Products and Services through a Trial or Subscription, You may not and you may not directly or indirectly, cause, permit, or allow others to:

- remove or modify any program or services markings or any notice of Kytch's proprietary rights;
- make the Products or Services, including any Kytch programs or materials to which you are provided access, available in any manner to any third party;
- modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute, republish or download any part of the Products and Services, or access or use the services in order to build or support, and/or assist a third party in building or supporting, Products or Services competitive to Kytch;
- disclose the results of the performance of the Products and Services without Kytch's prior written consent;
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing, or otherwise commercially exploit or make the Products and Services, Kytch programs or materials available, to any third party.

(h) Authorized Users. To use the Products and Services you must have a kytch.com account. Access to and use of the Web Apps is restricted to Account Owners and Authorized Users only. You may not share Your password(s), account information, or access to the Web Apps or any Accounts. You are responsible for identifying and authenticating all Authorized Users, for approving access by such Authorized Users to the Services, for controlling against un-authorized users, and for maintaining the confidentiality of usernames, passwords and account information. Kytch is not liable for any harm caused by Authorized Users, including

any individuals who were not authorized to have access to the Products and Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis. You are responsible for all activities that occur under Your and Your Authorized Users' passwords or accounts or as a result of Your and Your Authorized Users' access to the Web Apps, and agree to notify Kytch immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Web Apps.

If you cancel the trial before the end of the trial period, all Your rights to any remaining free trial period will be waived and you will not be eligible to participate in any further trials, except as allowed by Kytch in its sole discretion.

At any time and without notice, Kytch reserves the right to (i) modify the terms and conditions of the trial offer, or (ii) cancel such trial for any reason. Cancellations can be emailed to support@kytch.com. The other sections of Kytch's Terms of Service, Terms of Sale, EULA and Privacy Policies apply.

(i) Kytch Gold. As part of the Services, You may sign up for Kytch Gold. Kytch Gold allows You to see the physical address of the location of Your equipment and whether the equipment is available to serve product. You may choose to make this information available to users of the Kytch Services. If you choose to share this information, you hereby give your consent to Kytch to make it available without limitation.

(j) Customer Service. If you have any questions or concerns regarding the Products, the Services or these Terms, please contact Kytch. You understand and agree that customer service and any customer care and support offered and provided by Kytch is not a technician service or dispatch center, an emergency service provider or dispatch service.

(k) Term and Termination. These Terms will remain in full force and effect as long as you continue to access or use the Products and Services, or until terminated in accordance with the provisions of the Agreement. At any time, Kytch may (i) suspend or terminate Your rights to access or use the Products and Services, or (ii) terminate these Terms with respect to you if Kytch, in good faith, believes that you have used the Products and Services in violation of these Terms, including any incorporated guidelines, terms or rules. You may not give, sell, loan or transfer the Product to any other person or entity. Upon termination or expiration of these Terms for any reason, you must return the Product to Kytch in accordance with these Terms.

(l) Effect of Termination. Upon termination of these Terms for any reason, Your Account and Your right to use the Products and Services will automatically cease, and Kytch shall have no further obligation to You.

(m) Ownership of Products and Product Software. Products includes any Products provided or leased to You by Kytch with or without a separate fee in connection with the Services. You agree that the Product Software and Products will remain the property of Kytch and You will not acquire any ownership or other interest in them by virtue of this Agreement or attachment of the Products to Your equipment as a result of this Agreement. The Product Software is further governed by the EULA. You agree that the Products will not be deemed fixtures or in any way part of Your location. You agree to use the Products only for accessing the Service(s) provided by Kytch pursuant to these Terms. You must follow all instructions from Kytch regarding the installation and use of the Products.

(n) Upgrades. Kytch may upgrade, replace, remove, add or otherwise change the Products at its sole discretion at any time during the Agreement or following its termination. You consent to such changes including Kytch Platform, firmware and other code or software updates or downloads, including updates and downloads by Kytch's third-party suppliers, with or without notice to You, which may alter, add to, or remove features or functionalities of the Products or the Services. You acknowledge and understand that the Products may receive remote updates of software, firmware, or operating systems by Kytch's third-party suppliers. You acknowledge and agree that Kytch's or Kytch's third-party suppliers' updates, or Kytch's addition or removal of or change to the Products may interrupt access to the Services. Kytch may, at its sole discretion, fix the Products, install new or reconditioned Products, including replacing the existing Products, as Kytch deems necessary, at any time for which You may incur a separate fee. If Kytch requests

that You replace, or offers to replace the Products in order to provide the Services, and You fail to do so, Kytch is not responsible for any resulting degradation of the Services or any security vulnerabilities. If Kytch requires that You add or replace the Products and You fail to do so, Kytch may terminate the Agreement at its sole discretion.

(o) Unauthorized Use; Prohibition on Tampering. You are responsible and shall be liable for all Products at Your location and in Your possession. You may not sell, lease, abandon, or give away the Products. You agree that You will not, and You will not permit others, to use, rearrange, disconnect, abandon, remove, relocate, repair, service, alter, modify, tamper or otherwise interfere with any of the Products. Such prohibition includes, without limitation, attaching or, permitting others to attach any unauthorized devices to the Products, using or permitting others to use the Products that causes interference with the Products or Services, or altering identifying information such as serial numbers or logos. If You make or assist any person to make any unauthorized connection or modification to the Products, Product Software, the Kytch Platform or the Service(s) Kytch may terminate the Agreement and recover such damages as may result from Your actions. You also agree that Kytch may recover damages from You for tampering with the Products, Product Software, the Kytch Platform, the Services or utilizing them for purposes other than those contemplated by the Agreement. You agree that You will not allow anyone other than Kytch or its agents to service the Products.

(p) Payment for Damage to or Loss of the Products. You agree to pay the full retail cost for the repair or replacement of any Products or part that are lost, stolen, damaged, modified, sold, transferred, leased, encumbered or assigned together with any costs incurred by Kytch in obtaining or attempting to obtain possession of any Products.

(q) Return of Products. You agree that in the event the Agreement is terminated for any reason, You will return, either in person, or via first class mail, all of the Products to Kytch within fourteen (14) days of the effective date of termination of the Agreement, unless otherwise instructed in writing by Kytch. The returned Products must be in good condition and without any encumbrances, except for ordinary wear and tear resulting from proper use. If You fail to return the Products as provided herein, additional charges may apply. If You return the Products to Kytch by mail, You will be responsible for (i) any damage to the Products as assessed by Kytch upon receipt, (ii) the replacement cost of such Products that are lost, misplaced, not delivered or stolen during transit, and (iii) shipping/handling costs, unless Kytch provides written notice in advance that it will pay such costs.

(r) Relocation of Products. The Products may only be used in the designated business Location(s). You agree that You will not remove any of the Products from the business Location(s) without Kytch's prior consent. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE PRODUCTS OR SERVICE(S) AT A LOCATION OTHER THAN THE BUSINESS LOCATION(S) DESIGNATED BY YOU, WHEN YOU ENTERED INTO THIS AGREEMENT, THE SERVICE(S) MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. If You relocate to a new address, You may be charged a fee to relocate the Products.

(s) Compliance and Auditing Rights You acknowledge and agree that Kytch may monitor your use of the Kytch Products and Services remotely and in person, to ensure your compliance with the Terms. You hereby agree to cooperate with Kytch and to allow Kytch to remotely monitor your use of the Kytch Products. You also agree to allow Kytch to physically inspect your facilities and records that relate to the Kytch Products and Services and your use of the same and to verify your full compliance with the terms of these Terms. You agree to cooperate with Kytch and provide reasonable assistance and access to such information. You and Kytch agree to determine a mutually agreeable time and date for such inspection which shall take place within five (5) business days after written demand by Kytch therefor. In lieu of an inspection, if Kytch so requests, an officer or other authorized representative of your business entity shall certify in writing to Kytch that you are in full compliance with the Terms. You agree that Kytch shall not be responsible for any

of your costs incurred in cooperating with the audit. You agree to immediately pay any fees applicable to your use of the Kytch Products and Services in excess of the rights granted to you pursuant to the Terms. Failure of You to pay shall constitute a material breach of these Terms.

2. Accounts

(a) Your Account. To use certain Products and Services you must register for a user account ("Account") and provide certain information about Yourself, as prompted by the applicable registration form. You represent, warrant, and agree that: (a) all required registration information that you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) Your use of the Products and Services will not violate any applicable federal, state, local, or international law or regulation, including, without limitation, any laws regarding the export of data or software to and from the U.S. and other countries (e.g., you are not located in an embargoed country or are not listed as a prohibited or restricted party under applicable export control laws and regulations); and (d) that you have agreed to these Terms. You are entirely responsible for maintaining the confidentiality of Your Account login credentials and for all activities that occur under Your Account. You agree to use "strong" passwords (passwords that use a combination of upper- and lower-case letters, numbers and symbols) with Your Account and to maintain Your password securely to prevent others from gaining access. You agree to immediately notify Kytch of any unauthorized use or suspected unauthorized use of Your Account, or any other breach of security. Kytch is not liable for any loss or damage arising from Your failure to comply with the above requirements.

(b) The individual who creates an Account is the "Account Owner" of that Account and, if obtaining Products as part of the Services is also the lessee of the Products associated with that Account. Individuals who are authorized to access an Account Owner's Products and Services are those individuals who are employees of the Account Owner who require access to the Account as part of their job functions and only for the Permitted Purpose ("Authorized Users"). Authorized Users may have the ability to use the Services and monitor and control the Products (for example, an Authorized User can change Your settings). Authorized Users may also have the ability to view information (including personal information) and Content across all of an Account Owner's Products and Services (for example, an Authorized User will receive email alerts or can view Your history). Authorized Users are responsible for their own actions in connection with the Products and Services, but the Account Owner also hereby warrants and agrees to be jointly and severally liable for all actions taken by all Authorized Users relating to the Account Owner's Products, Services and Account. If you are an Account Owner who invites or enables an Authorized User, you acknowledge and agree that said Authorized User may subsequently invite or enable other Authorized Users with the same access and ability to use Your Products and Services set out above. As a result, if you are an Account Owner, you should only authorize those individuals whom you trust to access Your Account, Products and Services.

(c) Warranties by Account Owner. Account Owner represents, warrants, and agrees that: (i) Account Owner is fully responsible for the use, security, and integrity of their Account and will only allow Authorized Users to access the Account and shall instruct Authorized Users that they may not share Account login credentials with anyone other than other Authorized Users; (ii) Account Owner is responsible for Authorized User's access to the Account; and (iii) violation of these Account Owner's warranties constitutes a material breach of these Terms.

3. Access to Services

(a) Access and Use. Subject to these Terms, Kytch grants you a limited, non-transferable, non-exclusive, non-assignable right (without the right to sub-license) to access and use the Services in the United States by (i) using the Web Apps in connection with, and solely for the purpose of, controlling and monitoring the Products you are authorized to control and monitor or otherwise accessing the Services provided by Kytch for Your use (the "Permitted Purpose"); (ii) installing and using the Mobile Apps solely on Your own handheld mobile device (e.g., iPhone, iPad or Android smartphone) solely for the Permitted Purpose; and (iii) accessing the Sites solely for the Permitted Purpose.

(b) Automatic Software Updates. Kytch may, from time to time, develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Services and/or the Product Software ("Updates"). These may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, Your remedy is to terminate Your Account and stop using the Products and Services. If you do not terminate a previously created Account, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Products and Services and you agree to install any Updates that Kytch provides promptly. Your continued use of the Products and Services is Your agreement – (i) to these Terms with respect to the Products and Services, and (ii) to the End User License Agreement with respect to updated Product Software; and (iii) any change or updates that Kytch may make to these Terms or the End User License Agreement in the future.

(c) Kytch-provided interface to Third-Party Products and Services. Over time, Kytch may provide the opportunity for you to interface the Products and Services to one or more third-party products and services, through and using the Services, for example through the Works with Kytch platform ("Third-Party Products and Services"). You decide whether you want to interface, and with which Third-Party Products and Services you want to interface. Your explicit consent and authorization are required for this interface and is revocable by you at any time. Once Your consent is given for a particular Third-Party Product and Service, you agree that Kytch may exchange information and control data regarding you and Your products, including Your personal information, pursuant to our Privacy Policy in order to enable the interface that you have authorized. Once this information is shared with the particular Third-Party Product and Service, its use will be governed by the third party's privacy policy and not by Kytch's privacy documentation. You acknowledge and agree that Kytch makes no representation or warranty about the quality or safety of any Third-Party Products or Services or the interface with Product and Services. Accordingly, Kytch is not responsible for Your use of any Third-Party Product or Service, or any personal injury, death, property damage (including, without limitation, to Your home), or other harm or losses arising from or relating to Your use of any Third-Party Products or Services. You should contact the third party with any questions about their Third-Party Products and Services.

(d) Content. Certain materials may be displayed, performed, or provided through your access and use of the Products and Services, including, but not limited to, text, graphics, articles, photographs, video, images, reports, and illustrations ("Content"). The Content supplied by Us is owned exclusively by Us, and You obtain no right, title, or interest in or to the Content. The Content may also include information that You may provide through the Services including, without limitation, feedback, comments, questions, video, or other information which is shared with other users in the course of using the Products and Services (collectively, "User Submissions"), which we may also use to provide, maintain and improve the Services. Some Content may be visible to others. You are solely responsible for all User Submissions that You upload, post, email, transmit or otherwise disseminate using, or in connection with, the Services, or that You contribute in any manner to the Services; You represent and warrant that You have all rights necessary to do so, in the manner in which You contribute it; and You license to Kytch all patent, trademark, trade secret, copyright or other proprietary rights in and to such User Submissions for publication on the Service pursuant to these Terms. You shall abide by all copyright notices, trademark rules, information and restrictions contained in any Content accessed through the Services, and shall not use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purposes whatsoever any Content or third-party submissions or other proprietary rights not owned by You: (i) without the express prior written consent of the respective owners, and (ii) in any way that violates any third-party right. Kytch reserves the right to remove any Content, including User Submissions, from the Services at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that You may have breached the immediately preceding sentence), or for no reason at all. Additionally, any User Submissions You submit on or through the Services or otherwise (except for personal information as described in the Privacy Policy) will

be considered non-confidential and non-proprietary. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS KYTCH FROM ANY THIRD PARTY CLAIMS, OF WHATEVER NATURE, BASED OR ARISING FROM ANY USER SUBMISSIONS OR OTHER CONTENT YOU PROVIDE.

(e) Certain Restrictions. The rights granted to You in these Terms are subject to the following restrictions: (i) You agree not to license, sell, rent, lease, transfer, assign, distribute, host or otherwise commercially exploit the Products and Services; (ii) You agree not to modify, make derivative works of, disassemble, reverse-compile or reverse-engineer any part of the Products and Services; (iii) You agree not to access the Products and Services in order to build a similar or competitive service or product; (iv) except as expressly stated herein, no part of the Products and Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (v) You agree not to upload, transmit or distribute any computer viruses, worms or any software intended to damage or alter a computer or communications network, computer, handheld mobile device, data, the Services, the Products, the Product Software or any other system, device or property; (vi) You agree not to interfere with, disrupt or attempt to gain unauthorized access to the servers or networks connected to the Services or violate the regulations, policies or procedures of such networks; (vii) You agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by Kytch; and (viii) You agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) that may be contained in, or displayed in connection with, the Products and Services. Any future release, update or other addition to functionality of the Services shall be subject to these Terms.

(f) Privacy. Please review the Privacy Policy for Kytch Web Sites and the Privacy Statement for Kytch Products and Services. These documents describe practices regarding the information that You or Kytch may collect from users of the Products and Services, including any Content or User Submissions.

(g) Security. We attempt to implement appropriate security measures. However, Kytch cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use Your personal information for improper purposes. You acknowledge that You provide Your personal information at Your own risk.

(h) Modification. Kytch reserves the right, at any time, to modify, suspend or discontinue the Services or any part thereof with or without notice. You agree that Kytch will not be liable to You or to any third party for any modification, suspension or discontinuance of the Services or any part thereof.

(i) Access Outside Certain Countries. Although the Sites are accessible worldwide, the Products and Services provided or accessed through or on the Sites are not available to all persons or in all countries and are only intended for access through the United States and Canada. If You choose to access the Sites from outside a country in which Kytch supports the Product and Services listed here ("Target Country"), You do so on Your own initiative and You are solely responsible for complying with applicable local laws in Your country. You understand and accept that the Sites are not designed for use in a non-Target Country and that some, or all, of the features of the Sites may not work or be appropriate for use in such a country. To the extent permissible by law, Kytch accepts no responsibility or liability for any damage or loss caused by Your access or use of the Sites or Kytch Products in a non-Target Country. You will be bound by these Terms wherever You access or use the Sites or the Services.

4. Agreed Usage and Limitations of Kytch Products and Services

(a) Intended Use of Kytch Services. The Services are intended to be accessed and used for non-time-critical information and control of Kytch Products. While we aim for the Services to be highly reliable and available, they are not intended to be reliable or available 100% of the time. The Services are subject to sporadic interruptions and failures for a variety of reasons beyond Kytch's control, including Wi-Fi intermittency, service provider uptime, mobile notifications and operators, among others. You acknowledge these limitations and agree that Kytch is not responsible for any damages allegedly caused or caused by the failure or delay of the Services.

(b) Reliability of Services. You acknowledge that the Services, including remote access and mobile notifications, are not error-free or 100% reliable and 100% available. Proper functioning of the Services relies and is dependent on, among other things, the transmission of data through Your wi-fi network, enabled wireless device (such as a phone or tablet) and broadband internet access and internet service providers, or optional Cellular Backup service, for which neither Kytch nor any wireless or data carrier is responsible, and may be interrupted, delayed, refused, or otherwise limited for a variety of reasons, including insufficient coverage, power outages, termination of service and access, environmental conditions, interference, non-payment of applicable fees and charges, unavailability of radio frequency channels, system capacity, upgrades, repairs or relocations, and priority access by emergency responders in the event of a disaster or emergency (collectively, "Service Interruptions"). You understand that Service Interruptions may result in the Services being unreliable or unavailable for the duration of the Service Interruption. We cannot and do not guarantee that you will receive notifications within any given time, or at all.

(c) Service Interruptions; no refund or rebate. The Services may be suspended temporarily, without notice, for security reasons, systems failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. Kytch does not offer any specific uptime guarantee for the Services.

(d) System Requirements. The Services will not be accessible without: (i) a working Wi-Fi network in Your store that is positioned to communicate reliably with the Products; (ii) an Account; (iii) an enabled and supported wireless device, such as a phone or tablet (required for some features and functionalities of the Service); (iv) always-on broadband Internet access in Your store with bandwidth sufficient to support the Products you use; and (v) other system elements that may be specified by Kytch. It is Your responsibility to ensure that you have all required system elements and that they are compatible and properly configured. You acknowledge that the Services may not work as described when the requirements and compatibility have not been met. If you modify, substitute, move, or otherwise change any of the required system elements, it is Your sole duty and responsibility to be sure they are compatible and properly configured to work with the Products and Services. In addition, you acknowledge that Kytch may activate Bluetooth on Your smartphone or tablet, with or without prior notification, in order to facilitate proper operation of the Services, enable communication with Kytch Products connected to the same Kytch account and enable certain features.

(e) No Benefits. Kytch does not guarantee or promise any specific monetary benefit from the use of the Products or Services or any feature thereof. From time to time, Kytch may use the Services to provide you with information that is unique to you and Your Business. We do this to highlight an opportunity based on our analysis and information about you and Your business.

(f) The Services Provide You with Information Concerning your equipment. All information is provided "as is" and "as available". We cannot guarantee that it is correct or up to date. Accessing Information through the Services is not a substitute for direct access of the information at the equipment location.

(g) All information Publicly Posted or Privately Transmitted through the Services is the sole responsibility of the person from whom (or from whose Account) such Content originated and Kytch will not be liable for any errors or omissions in any Content. Kytch cannot guarantee the identity of any other users with whom You may interact while using the Services. In addition, we cannot guarantee the authenticity of any data that users or merchants may provide about themselves. You acknowledge that all Content accessed by You using the Services is at Your own risk and You will be solely responsible for any damage or loss to any party resulting therefrom. We cannot control and have no duty to take any action regarding how You may interpret and use the Content or what actions You may take as a result of having been exposed to the Content, and You hereby release us from all liability for You having acquired or not acquired Content through the Services.

(h) You warrant, represent and agree that You will not contribute any Content or otherwise use the Products and Services in a manner that (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy or other rights of any third party; (ii) violates any law, statute, ordinance or regulation or is otherwise illegal; (iii) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous or otherwise objectionable; (iv) impersonates any person or entity, including, without limitation, any employee or representative of Kytch; (v) contains a virus, Trojan Horse, worm, time bomb or other harmful computer code, file or program; (vi) jeopardizes the security of Your Kytch Account or anyone else's Account (such as allowing someone else to log into the Services as You); (vii) attempts, in any manner, to obtain or access the password, account, products, devices, systems, or other security information from any other user or third party; (viii) violates the security of any computer network or cracks any passwords or security encryption codes; (ix) runs Maillist, Listserv or any form of auto-responder or "spam" on the Services or any processes that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure); (x) copies or stores any significant portion of the Content; (xi) decompiles, reverse-engineers or otherwise attempts to obtain the source code or underlying ideas or information of or relating to the Services; (xii) allows access to the Account by anyone other than an Account Owner or Authorized User; (xiii) is not for a Permitted Purpose; or (xiv) denigrates or disrupts any network capacity or functionality.

(i) **Privacy and Data Protection Laws.** Kytch Products and Services are primarily intended for purely personal and business use. Nonetheless, data protection and privacy laws where You live may impose certain responsibilities on You and Your use of the Products and Services. Where Kytch is acting as a processor of data You have collected through its Products and Services, it will explicitly state this in the Kytch Privacy Statement for Products and Services. In these situations, Kytch will attempt to: (i) only process data at Your instruction; (ii) ensure that persons permitted to process data through us on Your behalf are committed to confidentiality; (iii) only engage a third party service provider (sub-processor) that provide an equivalent level of protection as set forth herein; (iv) engage a new third-party service provider (sub-processor) only after Kytch has provided notice of such changes by posting to the website listed below and allowed You ten (10) calendar days to object after notice is given. In the event You do object, Kytch will make reasonable efforts to address Your objection. After this process, if a resolution has not been agreed to within five (5) calendar days, Kytch will proceed with engaging the third-party service provider. You will have the opportunity to terminate Your use of Products and Services without penalty. Kytch sub-processors include Amazon Web Services. It is Your responsibility to check this website regularly for updates; (v) to the extent applicable and possible, assist You with any individual rights requests or other compliance obligations; and (vi) delete or return Your data upon termination.

(j) **Installation, Test and Use.** It is Your responsibility to install and use the Products and Services pursuant to the applicable manual and instructions. IF A PRODUCT IS NOT PROPERLY INSTALLED, OR IF A PRODUCT OR ANY OF ITS SENSORS ARE OUTSIDE THE DETECTION RANGE OR HINDERED OR OBSTRUCTED, YOU MAY EXPERIENCE FALSE ALARMS OR DETECTION FAILURES. It is Your responsibility to test the Products once installed to be sure the Products (and any related sensors, components and peripherals) are functioning and communicating as intended and designed, and then regularly test and maintain the Products after installation. There may be laws in the jurisdiction that you install a particular Product applicable to where and how to install that Product. You should check to ensure that you are in compliance with all relevant laws in your jurisdiction. Kytch is not responsible for any injury or damage caused by self-installation. Kytch maintains a list of recommended installers of the Products on its website. These installers are not Kytch employees and are not affiliated with Kytch. Kytch is not responsible for any conduct of or liability associated with these installers. You should conduct your own due diligence to select one that best fits your needs.

(k) **Compatibility.** KYTCH DOES NOT SUPPORT EVERY MAKE AND MODEL SOFT SERVE EQUIPMENT. BEFORE USING THE SERVICES, PLEASE ENSURE YOUR EQUIPMENT IS SUPPORTED. You acknowledge that you have verified the compatibility of the Products you are purchasing with your equipment. You are solely

responsible for determining the compatibility of the Products with your equipment, and you accept that lack of compatibility is not a valid claim under the warranty provided with your Products and does not otherwise constitute a basis for receiving a refund.

5. Limitations of Kytch Services Due to Third Parties

(a) General. Kytch Services rely on or inter-operate Third Party Products and Services. These Third Party Products and Services are beyond Kytch's control, but their operation may impact on, or be impacted by, the use and reliability of the Kytch Services. You acknowledge and agree that: (i) the use and availability of the Services is dependent on third-party product vendors and service providers, (ii) these third-party products and services may not operate in a reliable manner 100% of the time and they may impact on the way that the Kytch Services operate, and (iii) Kytch is not responsible for damages and losses due to the operation of these third-party products and services.

(b) Third-Party Service Providers Used By Kytch. You acknowledge that Kytch uses third-party service providers to enable some aspects of the Services – such as, for example, data storage, Cellular Back-up, synchronization and communication through Amazon Web Services and mobile device notifications through mobile operating system vendors and mobile operators. **YOU AGREE NOT TO RELY ON THE SERVICES FOR ANY LIFE SAFETY OR TIME-CRITICAL PURPOSES. FURTHER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO RELEASE AND HOLD HARMLESS THIRD-PARTY SERVICE PROVIDERS FROM ALL LIABILITY, DAMAGES OR LOSSES OF ANY KIND OR SORT, PERSONAL INJURY OR LOSS OF LIFE ARISING FROM YOUR USE OF THE PRODUCTS AND SERVICES.**

(c) Equipment, ISP and Operator. You acknowledge that the availability of the Services is dependent on (i) Your computer, mobile device, building wiring, business Wi-Fi network, Bluetooth connection and other related equipment ("Equipment"), (ii) Your Internet service provider ("ISP") and (iii) Your mobile device operator ("Operator"). You acknowledge that You are responsible for all fees charged by Your ISP and Operator in connection with Your use of the Services. You also acknowledge that You are responsible for compliance with all applicable agreements, terms of use/service and other policies of Your ISP and Operator.

(d) App Stores. You acknowledge and agree that the availability of the Mobile Apps is dependent on the third-party websites from which You download the Mobile Apps, e.g., the Google Play Store from Google or the App Store from Apple (each an "App Store"). You acknowledge that these Terms are between You and Kytch and not with an App Store. Each App Store may have its own terms and conditions to which You must agree before downloading Mobile Apps from it. You agree to comply with such App Store terms and conditions, and Your license to use the Mobile Apps is conditioned upon Your compliance with such App Store terms and conditions. To the extent that such other terms and conditions from such App Store are less restrictive than or otherwise conflict with the terms and conditions of these Terms, the more restrictive or conflicting terms and conditions in these Terms apply.

(e) Third-Party Website Links and Referrals. The Sites may contain links to other websites operated by third parties ("Third-Party Sites") and referrals to third-party vendors ("Referred Vendors"). Such Third-Party Sites and Referred Vendors are not under our control. Kytch provides these links and referrals only as a convenience and does not review, approve, monitor, endorse, warrant or make any representations with respect to such Third-Party Sites or Referred Vendors. Your use of these Third-Party Sites is at Your own risk.

(f) Authorized Users. Kytch is not responsible for any Account Owner or Authorized User's behavior, or for any personal injury, death, property damage (including, without limitation, to Your home), or other harm or losses arising from or relating to their use of the Services.

(g) Release Regarding Third Parties. Kytch is not responsible for third parties or their products and services, including, without limitation, the App Stores, Third-Party Products and Services, Third-Party Sites, Referred Vendors, Equipment, ISP and Operators. Kytch hereby disclaims, and you hereby discharge, waive and release Kytch and its licensors and suppliers from any past, present and future claims, liabilities and

damages, known or unknown, arising out of or relating to Your interactions with such third parties and their products and services. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOUR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION.

6. Ownership and Intellectual Property

(a) Kytch Property. You acknowledge that all intellectual property rights, including, without limitation, copyrights, patents, trademarks and trade secrets, in the Product, Product Software and Services (i.e., the Sites, Web Apps and Mobile Apps) are owned by Kytch or its affiliates or our licensors. Your possession, access to and use of the Product, Product Software and Services do not transfer to you or any third party any rights, title or interest in or to such intellectual property rights. Kytch, and its affiliates and licensors and suppliers, reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms. Nothing on or in the Products or Services shall be construed as conferring any license under any intellectual property right, including any right in the nature of trademark or copyright, of Kytch or any third party, whether by estoppel, implication or otherwise. All trademarks and trade names are the property of their respective owners.

You may not use the Content of the Services in any other public or commercial way, nor may you copy or incorporate any of the content of the Services into any other work, including Your own website, without the written consent of Kytch. You must have a license from us before you can post or redistribute any portion of the Services. Kytch retains full and complete title to all Content on the Services, (except User Submissions, for which you have granted Kytch an irrevocable license to use as set forth in these Terms), including any downloadable software and all data that accompanies it. You must not copy, modify or in any way reproduce or damage the structure or presentation of the Services, or any Content therein.

(b) Feedback. You may choose to or Kytch may invite you to submit comments, suggestions or ideas about the Products or Services, including how to improve the Products or Services ("Ideas"). By submitting any Ideas, you agree that Your submissions are voluntary, gratuitous, unsolicited and without restriction, and will not place Kytch under any fiduciary or other obligation and Kytch will be under no obligation to pay you any compensation for said Ideas. Kytch owns all right, title, and interest in and to said "Ideas." Kytch may use, copy, modify, publish or redistribute the submission and its contents for any purpose and in any way without any compensation to you and at its sole discretion. You also agree that Kytch does not waive any rights to use similar or related ideas previously known to Kytch, developed by its employees or obtained from other sources.

(c) User Submissions. You hereby grant us a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licensable and transferable right to access, display or otherwise use, copy, modify, and create derivative works of, Your User Submissions (including all related intellectual property rights). You also hereby do and shall grant to each user of the Services a non-exclusive license to access and use Your User Submissions through the Services and as permitted through the functionality of the Services and under these Terms. Furthermore, you understand that we retain the right to reformat, modify, create derivative works of, excerpt and translate any User Submissions submitted by you. For clarity, the foregoing license grant to Kytch does not affect Your ownership of or right to grant additional licenses to the material in Your User Submissions, unless otherwise agreed in writing. Kytch is not responsible or liable to any third-party for the content or accuracy of any User Submissions provided by You or any other user of the Services and You agree to indemnify, defend, and hold harmless the Kytch for any and all claims, actions, losses, and damages, of any kind, including reasonable attorney fees, arising from Your User Submissions. Although are not required to do so, we have the right to take any action with respect to any User Submissions that we deem necessary or appropriate in Our sole discretion, including if we believe that such User Submissions

have violated these Terms, violates any intellectual property rights or other rights of any person or entity, threatens the personal safety of users of the Services or the public or could create liability for Kytch. We also reserve the right to take appropriate legal action, including referral to law enforcement authorities for any illegal or unauthorized use of the Services and to terminate or suspend Your access to the Services, in Our sole discretion, for violating these Terms.

(d) Confidentiality. By virtue of Your use and access to the Products and Services, you may have access to information that is confidential to Kytch, including but not limited to aspects of the Products and information relating to its features, specifications, functionality and performance ("Kytch Confidential Information"). Kytch Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of yours; or (b) was in your lawful possession prior to the disclosure and had not been obtained by you either directly or indirectly from Kytch; or (c) is lawfully disclosed to you by a third party without restriction on disclosure; or (d) is independently developed by you without use of or reference to Kytch Confidential Information. You agree, both during the term of the Agreement and for a period of five years after its termination, for any reason, to hold Kytch's Confidential Information in strict confidence using no less than a reasonable degree of care, not to disclose Kytch Confidential Information to any third party (other than Your Authorized Users) and not to use Kytch Confidential Information for any purpose other than for the Permitted Purpose.

7. INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS FROM AND AGAINST (I) ANY AND ALL CLAIMS, COSTS, EXPENSES, LOSSES, ACTIONS, LAWSUITS, JUDGMENTS, LIABILITIES DAMAGES, SUITS, OR CAUSES OF ACTION, AND ANY OTHER LEGAL ACTION BROUGHT BY ANY THIRD PARTY AGAINST KYTCH, ITS LICENSORS, SUPPLIERS, SUBSIDIARIES AND AFFILIATES (INCLUDING THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, SHAREHOLDERS, MEMBERS, SUCCESSORS, AND AGENTS) (COLLECTIVELY THE "KYTCH PARTIES") ARISING FROM OR RELATING TO (A) YOUR USE AND EACH AUTHORIZED USER'S USE OF THE PRODUCTS OR SERVICES; (B) YOU OR YOUR AUTHORIZED USERS' VIOLATION OF THESE TERMS; (C) YOUR USER SUBMISSIONS OR FEEDBACK OR ANY OTHER CONTENT SUPPLIED BY YOU; (D) PROPERTY DAMAGE, PERSONAL INJURY OR DEATH (INCLUDING, WITHOUT LIMITATION CLAIMS BROUGHT BY AND LIABILITIES TO YOUR EMPLOYEES, SUBCONTRACTORS, AGENTS, REPRESENTATIVES, OR ANY THIRD PARTIES) OR (E) YOU OR YOUR AUTHORIZED USERS' VIOLATION OF ANY LAW OR THE RIGHTS OF ANY THIRD-PARTY (COLLECTIVELY, "THIRD PARTY ACTIONS"); AND (II) ANY AND ALL RELATED LOSSES, DAMAGES, SETTLEMENTS AND JUDGMENTS (INCLUDING PAYMENT OF THE KYTCH PARTIES' ATTORNEYS' FEES AND COSTS) INCURRED BY ANY OF THE KYTCH PARTIES, ASSESSED OR FOUND AGAINST ANY OF THE KYTCH PARTIES, OR MADE BY ANY OF THE KYTCH PARTIES, RELATING TO OR ARISING FROM ANY SUCH THIRD PARTY ACTION ("THIRD PARTY RELATED LOSSES"). YOU UNDERSTAND AND AGREE THAT YOUR INDEMNIFICATION OBLIGATION TO THE KYTCH PARTIES APPLIES EVEN IF SUCH THIRD-PARTY ACTION AND THIRD PARTY RELATED LOSSES ARISE FROM THE NEGLIGENCE OF ANY KIND OR DEGREE, BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NON-COMPLIANCE WITH APPLICABLE LAW, OR OTHER FAULT OR WRONGDOING OF ANY OF THE KYTCH PARTIES. HOWEVER, NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO REQUIRE ANY INDEMNIFICATION WHICH WOULD RENDER OR MAKE THIS CLAUSE, IN WHOLE OR IN PART, VOID AND/OR UNENFORCEABLE UNDER APPLICABLE LAW. FURTHER, YOUR INDEMNIFICATION OBLIGATION SHALL NOT APPLY TO ANY WILLFUL, WANTON, INTENTIONAL OR RECKLESS MISCONDUCT OF THE KYTCH PARTIES, OR GROSS NEGLIGENCE OF THE KYTCH PARTIES IN THOSE STATES THAT DO NOT PERMIT INDEMNIFICATION FOR GROSS NEGLIGENCE. "THIRD PARTY" IS DEFINED HEREIN TO INCLUDE, WITHOUT LIMITATION, AN ACCOUNT OWNER, AN AUTHORIZED USER, AN UNAUTHORIZED USER, A SPOUSE, PARTNER, FAMILY MEMBER, GUEST, NEIGHBOR, TENANT, EMPLOYEE OR INSURANCE COMPANY. Kytch reserves the right, at Your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Kytch, and you agree to

cooperate with our defense of such claims. You agree not to settle any such claim without Kytch's prior written consent. Kytch will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

8. Warranty Disclaimers

THE WARRANTIES FOR THE PRODUCT AND PRODUCT SOFTWARE ARE SET FORTH IN THE LIMITED WARRANTY AND THE END USER LICENSE AGREEMENT, RESPECTIVELY.

THE SERVICES ARE PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE", AND WITH ALL FAULTS, AND KYTCH, AND OUR LICENSORS AND SUPPLIERS, EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT.

KYTCH, AND OUR LICENSORS AND SUPPLIERS, MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES: (I) WILL MEET YOUR REQUIREMENTS; (II) WILL BE COMPATIBLE WITH YOUR NETWORK, COMPUTER OR MOBILE DEVICE; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM KYTCH OR THROUGH THE SERVICES, SHALL CREATE ANY WARRANTY.

KYTCH DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH, OR IN CONNECTION WITH, THE PRODUCTS OR SERVICES, OR ANY HYPERLINKED WEBSITE OR SERVICE, AND KYTCH WILL NOT BE A PARTY TO, OR IN ANY WAY MONITOR, ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF SUCH PRODUCTS OR SERVICES.

KYTCH MAKES NO REPRESENTATIONS CONCERNING ANY CONTENT CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND KYTCH WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. KYTCH MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUGGESTIONS OR RECOMMENDATIONS OF PRODUCTS AND SERVICES OFFERED OR PURCHASED THROUGH THE SERVICES.

THE SERVICES MAY PROVIDE YOU INFORMATION REGARDING YOUR EQUIPMENT OR OTHER PERIPHERALS CONNECTED TO YOUR EQUIPMENT. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS ABOVE, ALL INFORMATION IS PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE". KYTCH DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT INFORMATION WILL BE AVAILABLE, ACCURATE, OR RELIABLE.

9. Other Disclaimers

WHEN YOU INSTALL, SETUP OR USE THE PRODUCTS AND SERVICES YOU ARE GIVEN THE OPPORTUNITY TO CHANGE DEFAULTS OR CHOOSE PARTICULAR SETTINGS. THE CHOICES YOU MAKE CAN CAUSE NON-RECOMMENDED OR UNINTENDED OPERATION OR NON-OPERATION OF YOUR PRODUCTS AND SERVICES AND ANY CONNECTED EQUIPMENT OR SYSTEMS. YOU ASSUME ALL LIABILITY FOR ANY DAMAGES AND LOSSES CAUSED BY, OR RELATED TO, THE CHOICES YOU MAKE FOR THE PARTICULAR SETTINGS FOR THE PRODUCTS AND SERVICES, AND SETTING OR CHANGING DEFAULTS. YOU UNDERSTAND AND AGREE THAT SOME OF THE PRODUCTS AND SERVICES ARE NOTIFICATION, SIGNALLING AND DETECTION PRODUCTS AND SERVICES. THOSE PRODUCTS AND SERVICES DO NOT ELIMINATE OCCURRENCES OF EVENTS. FURTHER, YOU UNDERSTAND AND AGREE THAT THOSE PRODUCTS AND SERVICES MAY NOT AVERT OR MINIMIZE SUCH OCCURRENCES OF EVENTS, OR THEIR CONSEQUENCES, AND, THEREFORE, KYTCH MAKES NO EXPRESS OR IMPLIED

WARRANTY OR REPRESENTATION (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) THAT THOSE PRODUCTS AND SERVICES WILL SO AVERT OR MINIMIZE SUCH OCCURRENCES OF EVENTS, OR THEIR CONSEQUENCES.

10. Waiver of Subrogation

You should protect against any risk of loss with the appropriate insurance coverage, and you are responsible for obtaining all insurance coverage you believe is necessary. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE APPLICABLE POLICY OR POLICIES OF INSURANCE YOU OBTAIN AND MAINTAIN, YOU RELEASE KYTCH AND ITS LICENSORS AND SUPPLIERS FROM ALL LIABILITY FOR ANY LOSS, OCCURRENCE, EVENT OR CONDITION COVERED BY YOUR INSURANCE.

11. Limitation of Liability

Nothing in these Terms and, in particular, within this "Limitation of Liability" clause, shall be interpreted or construed to limit or exclude liability that cannot be so limited or excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE WARRANTY AND OTHER DISCLAIMERS IN THESE TERMS, IN NO EVENT WILL (A) KYTCH BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOST DATA OR LOST PROFITS ARISING FROM OR RELATING TO THE SERVICES OR THE PRODUCTS, EVEN IF KYTCH KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) KYTCH'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE SERVICES OR THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT NEVER TO EXCEED THE FEES ACTUALLY PAID BY YOU TO KYTCH DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO THE SUBJECT CLAIM (IF ANY). KYTCH DISCLAIMS ALL LIABILITY OF ANY KIND OF KYTCH'S LICENSORS AND SUPPLIERS. UNDER NO CIRCUMSTANCES WILL KYTCH BE LIABLE IN ANY WAY FOR ANY CONTENT, INCLUDING, BUT NOT LIMITED TO, ANY ERRORS OR OMISSIONS IN ANY CONTENT OR ANY LOSS OR DAMAGE OF ANY KIND INCURRED IN CONNECTION WITH USE OF, OR EXPOSURE TO, ANY CONTENT POSTED, EMAILED, ACCESSED, TRANSMITTED OR OTHERWISE MADE AVAILABLE VIA THE SERVICES.

YOU UNDERSTAND AND AGREE THAT THIS LIMITATION OF LIABILITY IN THIS SECTION SHALL APPLY EVEN IF KYTCH IS FOUND LIABLE FOR ANY LOSS OR DAMAGE DUE TO BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED OR LIMITED WARRANTY, NEGLIGENCE OF ANY KIND OR DEGREE, STRICT PRODUCT LIABILITY, SUBROGATION, INDEMNIFICATION OR CONTRIBUTION, OR ANY OTHER THEORY OF LIABILITY. HOWEVER, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY WILFUL, WANTON, INTENTIONAL OR RECKLESS MISCONDUCT OF KYTCH OR GROSS NEGLIGENCE OF KYTCH IN THOSE STATES THAT DO NOT PERMIT LIMITATION OF LIABILITY FOR GROSS NEGLIGENCE.

12. Fees and Payment

Certain Services may be provided for a fee. You shall pay all applicable fees in connection with the Services selected by you in accordance with the Terms and your Subscription Plan.

13. Disputes

Any dispute, controversy or claim arising out of or in connection with these Terms that relates to (a) a Party's breach of confidentiality obligations; (b) infringement or misappropriation of intellectual property rights; or (c) requests for injunctive relief of any kind including, without limitation, the right of a Party to seek a temporary restraining order, preliminary injunctive or other equitable relief to preserve the status quo or prevent irreparable harm, shall be submitted to and finally resolved by a court of competent jurisdiction in the State of California, Santa Clara County. Each Party hereby submits to the exclusive jurisdiction of those courts for the purposes of any such proceeding. Each party hereby waives any claim that any legal proceeding (including any tort claim) has been brought in an inconvenient forum or that the

venue of that proceeding is improper. Disputes, claims or controversies other than those specified above arising out of or relating to this Agreement (hereinafter "Arbitration Claims") that cannot otherwise be resolved by good faith negotiations of the Parties, shall, at the sole option of Kytch, be settled by binding arbitration in accordance with the commercial rules of the American Arbitration Association ("AAA") that are then in effect. The Parties shall attempt to agree upon the selection of a single arbitrator who is unrelated to either Party and has demonstrable experience in the area of commercial law. In the event the Parties are unable to select a mutually acceptable arbitrator, the arbitrator shall be appointed by the AAA, with instruction that such selected arbitrator shall be one with at least five-years experience in commercial law. All arbitration proceedings shall be held in Santa Clara County, California. The arbitrator's costs shall be borne equally by the Parties and each Party shall be responsible for its own preparation, discovery, and internal and external costs incurred to prosecute or defend the Arbitration Claim. The prevailing Party in any arbitration proceeding will be entitled to, in addition to any other relief granted, recover its reasonable costs and attorney's fees, as determined by the arbitrator. The arbitrator shall be bound by the express provisions of this Agreement in deciding any Arbitration Claim. The determination of the arbitrator shall be final, and except as provided by law, shall not be subject to appeal or judicial review. Any court of competent jurisdiction may enforce any award or determination rendered by the arbitrator. The arbitrator shall not have the authority to award damages for lost profits or consequential damages, or special, punitive, or other exemplary damages of any sort.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU UNDERSTAND AND AGREE THAT WE ARE EACH (A) WAIVING THE RIGHT TO A TRIAL BY JURY; (B) WAIVING THE RIGHT TO PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION; AND (C) WAIVING THE RIGHT TO CLAIM OR RECOVER PUNITIVE DAMAGES AGAINST THE OTHER. These Terms evidence a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision.

If, for any reason, a claim proceeds in court rather than in arbitration, we each waive our right to a jury trial.

(a) Notice of Disputes. You and Kytch agree to provide the other with notice in writing of any dispute. ("Notice of Dispute"). The notice to Kytch should be sent to: Kytch Legal Department, 3327 Seldon Court, Fremont, CA 94539, USA. Kytch will send notice to you at the email and/or mailing addresses associated with Your account. Your notice to Kytch must (a) provide Your name, mailing address, and email address; (b) describe the dispute; and (c) state the relief you are requesting.

(b) Class Action Waiver TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND KYTCH AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED GROUP LITIGATION OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless all affected parties agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or group proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

14. Digital Millennium Copyright Act

(a) If you are a copyright owner or an agent thereof and believe that any Content infringes Your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C §512[c][3] for further details): (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) Identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed, or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material; (iv) Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number and, if

available, an electronic mail; (v) A statement that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(b) Kytch's designated Copyright Agent to receive notifications of claimed infringement is Copyright Agent – Attention Legal, 3327 Seldon Court, Fremont, CA 94539, USA; Legal@kytch.com. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support and other communications should be directed to Kytch customer service through <https://kytch.com/support/>. You acknowledge that if you fail to comply with all the requirements of this Section Your DMCA notice may not be valid.

(c) Counter-Notice. If you believe that the Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent or pursuant to the law to post and use the material in Your Content, you may send a counter-notice containing the following information to the Copyright Agent: (i) Your physical or electronic signature; (ii) Identification of the Content that has been removed, or to which access has been disabled, and the location at which the Content appeared before it was removed or disabled; (iii) A statement that you have a good-faith belief that the Content was removed or disabled as a result of mistake or misidentification of the Content; and (iv) Your name, address, telephone number and email address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, USA and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

(d) If a counter-notice is received by the Copyright Agent, Kytch may send a copy of the counter-notice to the original complainant informing that person that they may replace the removed Content or cease disabling it in 10 working days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 working days or more after receipt of the counter-notice, at Kytch's sole discretion.

15. General

(a) **Changes to These Terms.** Kytch reserves the right to make changes to these Terms. Kytch will post notice of changes to any one or more of the following: this page, a Site, Web Apps, or Mobile Apps. You should ensure that you have read and agree with the most recent Terms when you use the Products and Services. Continued use of the Products and Services following notice of such changes shall indicate Your acknowledgment of such changes and agreement to be bound by the revised Terms. IF YOU DO NOT AGREE WITH ANY OF THE CHANGES TO ANY OF THE TERMS, YOU SHOULD DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT AND CEASE ACCESSING OR USING THE PRODUCTS AND SERVICES AND RETURN THE PRODUCT AS SET FORTH IN THESE TERMS.

(b) **Governing Law.** These Terms, and the Agreement and any claim, dispute, action, cause of action, issue, or request for relief arising out of or relating to these Terms or Your use of the Products and Services shall be governed by the laws of the State of California without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. The courts in some states and countries may not apply California law to some types of dispute. If you reside in one of those states or countries, then where California law is excluded from applying, Your state's or country's laws will apply. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE TO SUBMIT TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS IN OR FOR SANTA CLARA COUNTY, CALIFORNIA FOR THE PURPOSE OF LITIGATING ALL SUCH CLAIMS OR DISPUTES, UNLESS SUCH CLAIM OR DISPUTE IS REQUIRED TO BE ARBITRATED AS SET FORTH IN AN ABOVE SECTION.

(c) **Protection of Confidentiality and Intellectual Property Rights.** Notwithstanding the foregoing, Kytch may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction and You agree that

Kytch may do so without the need to post bond or other surety.

(d) Entire Agreement/Severability. These Terms and the Agreement constitute the entire agreement between you and Kytch regarding the use of the Products and Services. Any failure by Kytch to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Neither party is an agent or partner of the other party.

(e) Survivability. The obligations in these Terms which would naturally survive termination or expiration shall survive, including, without limitation, Sections 1(g) and (q), 3(d) and (e), 4, 6, 7, 8, 9, 10, 11, 13 and 15.

(f) Assignment. These Terms, and any associated rights or obligations, may not be assigned or otherwise transferred by you without Kytch's prior written consent. These Terms may be assigned by Kytch without restriction. These Terms are binding upon any permitted assignee.

(g) Notifications. Kytch may provide notifications to you as required by law, or for marketing or other purposes, via (at its option) email to the primary email associated with Your Account, mobile notifications, hard copy or posting of such notice on www.Kytch.com. Kytch is not responsible for any automatic filtering that you or Your network provider may apply to email notifications. Kytch recommends adding @kytch.com email addresses to Your email address book to help ensure that you receive email notifications from Kytch. You agree and warrant that You have provided the correct contact information and will keep Kytch updated should that information change. Kytch shall not be responsible for notices not received by You.

(h) Disclosures. Kytch's address is 3327 Seldon Court, Fremont, CA 94539, USA. If you are a resident of California, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them, in writing, at 400 R Street, Sacramento, CA 95814, USA, or by telephone on (800) 952-5210.

(i) Copyright/Trademark Information. Copyright © 2019, Kytch, Inc. All rights reserved. All trademarks, logos and service marks ("Marks") displayed on the Services are the property of Kytch or of their respective holders. You are not permitted to use any of the Marks without the applicable prior written consent of Kytch or such respective holders. Kytch reserves the right to alter product and services offerings, specifications and pricing at any time, without notice, and is not responsible for typographical or graphical errors that may appear in this or in related documents.

(j) Third Party Rights. Except as expressly set forth herein, nothing in this Agreement shall be construed as giving any person or entity, other than the parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

(k) No Agency. Nothing contained in this Agreement will be deemed to create any agency, joint venture, partnership or similar relationship between the parties to this Agreement. Nothing contained in this Agreement will be deemed to authorize either party to this Agreement to bind or obligate the other party. Kytch is an independent contractor, and neither Kytch nor its employees are, or shall be deemed, Your employees.

(l) Force Majeure. Kytch will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a contract that is caused by an act or event beyond our reasonable control, including without limitation acts of God, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic or other natural disaster, failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

Product

[Pricing](#)

[Platform](#)

[Kytch Kit](#)

Company

[Partner With Kytch](#)

[About Us](#)

[Careers](#)

[Privacy](#)

[Terms](#)

Support

[FAQs](#)

[Contact Us](#)

Get Kytch updates here

[Download App](#)

Copyright © Kytch, Inc. 2021. All Rights Reserved.

3327 Seldon Ct. Fremont, CA 94539

EXHIBIT B

PUBLIC – REDACTS MATERIALS
FROM CONDITIONALLY SEALED
RECORD

Pages 82 - 133

EXHIBIT C

PUBLIC – REDACTS MATERIALS
FROM CONDITIONALLY SEALED
RECORD

Pages 135-141