

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Kiyon, Inc.		01/14/2005	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Howard C Birndorf		
<b>Street Address:</b>	10398 Pacific Center Ct.		
<b>City:</b>	San Diego		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	92121		
<b>Entity Type:</b>	INDIVIDUAL: UNITED STATES		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	78222081	AUTONOMIC NETWORKING	
<b>Serial Number:</b>	78222054	ETHERMESH	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(650)324-6050		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	650-324-7000		
<b>Email:</b>	sv-trademark@hewm.com		
<b>Correspondent Name:</b>	Harold Milstein		
<b>Address Line 1:</b>	275 Middlefield Road		
<b>Address Line 4:</b>	Menlo Park, CALIFORNIA 94025		
<b>NAME OF SUBMITTER:</b>	Harold Milstein		
<b>Signature:</b>	/HaroldMilstein/		
<b>Date:</b>	02/03/2005		
<b>Total Attachments: 13</b>			

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## INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified or supplemented from time to time, this "*Agreement*"), dated as of January 14, 2005, is made by and among Kiyon, Inc., a Delaware corporation (together with its successors and assigns, the "*Company*"), the individuals and/or entities listed on Schedule A attached hereto (each, a "*Secured Party*" and collectively, the "*Secured Parties*") and Howard C. Birndorf (as nominee), as representative and collateral agent for and on behalf of the Secured Parties (in such capacity, the "*Collateral Agent*").

WHEREAS, the Company, the Secured Parties and the Collateral Agent are party to that certain Secured Convertible Note and Warrant Purchase Agreement, dated as of January 14, 2005 (as amended, modified or supplemented from time to time, the "*Purchase Agreement*").

WHEREAS, pursuant to the Purchase Agreement the Secured Parties have or may in the future make loans to the Company, as evidenced by certain secured convertible promissory notes (the "*Notes*") issued pursuant to the Purchase Agreement.

WHEREAS, the Secured Parties have requested that the Collateral Agent, and the Collateral Agent has agreed, to act as representative and collateral agent for the Lenders solely as an accommodation to the Secured Parties to facilitate the administration and enforcement of the Notes.

WHEREAS, it is a condition precedent to the obligations of Secured Parties pursuant to the Purchase Agreement that the Company execute and deliver this Agreement for filing by the Collateral Agent with the United States Patent and Trademark Office (the "*PTO*") and United States Copyright Office (the "*Copyright Office*") (and any other relevant recording systems in any domestic or foreign jurisdiction) as further evidence of and to effectuate such grant of a security interest in the intellectual property rights of the Company.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants made in the Purchase Agreement, the Notes and this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions; Interpretation. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them under the Purchase Agreement or Notes, as applicable.

2. Appointment of Agent. The Secured Parties agree that the Collateral Agent shall be their representative and collateral agent for the purpose, among other things, of holding the security interests created by this Agreement.

3. Grant of Security Interest. As a continuing security for the payment and performance of the Obligations (as defined below), the Company hereby grants to the Collateral Agent, for itself and on behalf of and for the ratable benefit of each of the Secured Parties, a security interest in and to all of the Company's rights, title and interests in, to and under the

following property, whether now existing or owned or hereafter acquired, developed or arising (collectively, the "**Intellectual Property Collateral**"):

(a) all intellectual property rights of any nature or character including, without limitation, and whether domestic or foreign: (i) all patents and patent applications, all licenses in respect to any rights identified in this clause (i) and all income and royalties with respect to any licenses, all rights to sue for past, present or future infringement of any of the rights identified in this clause (i), all rights arising from any of the rights identified in this clause (i) and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing; (ii) all copyrights and applications for copyright, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and whether registered or unregistered, and all other rights and works of authorship, all rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright, and all licenses in respect of any of the rights identified in this clause (ii) and all income and royalties with respect to any such licenses; (iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the rights identified in this clause (iii) and all income and royalties with respect to any licenses, whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof; (iv) all regulatory approvals, consents, permits, licenses and applications in respect of any of the foregoing and all supporting documentation, books and records relating to any of the foregoing; and (v) all trade secrets, trade dress, trade styles, logos, other source or business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential information, the benefit of confidentiality agreements or non-disclosure agreements, customer lists, license rights (whether or not in respect of any of the rights identified in this subsection (a)), advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blueprints, descriptions, inventions, name plates and catalogs (the foregoing rights and interests collectively, the "**Intellectual Property Rights**") and including, without limitation, those Intellectual Property Rights listed, from time to time, on Exhibits A, B, C and D to this Agreement;

(b) the entire goodwill of or associated with the businesses now or hereafter conducted by the Company connected with and symbolized by any of the aforementioned properties and assets;

(c) all general intangibles and all intangible intellectual or other similar property of the Company of any kind or nature and not otherwise described above; and

(d) all products, proceeds and supporting obligations at any time of any and all of the foregoing, including products of products and proceeds of proceeds.

For purposes of this Agreement, "**Obligations**" shall mean all indebtedness, liabilities and obligations of the Company to the Secured Parties or the Collateral Agent under or in connection with this Agreement, the Purchase Agreement and any Note, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to the Company or payable by the Company thereunder..

4. Future Rights. If and when the Company shall obtain rights to any new Intellectual Property Rights, or obtain rights or benefits with respect to any reissue, division, continuation, renewal, extension or continuation-in-part of any Intellectual Property Rights, or any improvement of any Intellectual Property Rights, which Intellectual Property Rights if existing at the date hereof would be within the scope of Section 3, the provisions of Section 3 shall automatically apply thereto. The Company shall give to the Collateral Agent prompt notice of the benefit of any registrations or applications the Company may make or obtain to register any Intellectual Property Rights. The Company shall do all things deemed necessary or advisable by the Collateral Agent to ensure the validity, perfection, priority and enforceability of the security interests of the Collateral Agent in such future acquired Intellectual Property Collateral. The Company hereby authorizes the Collateral Agent, as its attorney in fact (with power of substitution), to modify, amend, or supplement the Exhibits hereto and to reexecute this Agreement from time to time on Company's behalf and as its attorney-in-fact to include any such future Intellectual Property Collateral and to cause such reexecuted Agreement or such modified, amended or supplemented Exhibits to be filed with the PTO or Copyright Office as applicable.

5. Valid and Continuing Security Interest. The security interest granted herein shall constitute a valid and continuing first priority security interest in favor of the Secured Parties in the Intellectual Property Collateral, which shall remain in effect until the indefeasible payment in full in cash or the conversion in full of the Notes as provided in the Notes.

6. Covenants.

(a) In no event shall the Company, either itself or through any agent, employee, licensee or designee, sell, pledge or encumber the Intellectual Property Collateral without the written consent of the Collateral Agent.

(b) The Company shall notify the Collateral Agent immediately if it knows or has reason to know (i) that any application or registration relating to any of its Intellectual Property Collateral that is material to the operation of its business may become abandoned or dedicated, or (ii) of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding the Company's ownership of any Intellectual Property Collateral that is material to the operation of its business, its right to register the same, or to keep and maintain the same.

(c) In no event shall the Company, either itself or through any agent, employee, licensee or designee, file an application for the registration of any patent, trademark or copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving the Collateral Agent written notice thereof,

and, upon request of the Collateral Agent, the Company shall execute and deliver any and all security documents as the Collateral Agent may reasonably request to evidence the Collateral Agent's interest in such Intellectual Property Collateral and the general intangibles of the Company relating thereto or represented thereby. The Company hereby authorizes the Collateral Agent to amend this Agreement (without any further action or consent from the Company) to include any such patent, trademark or copyright as Intellectual Property Collateral hereunder.

(d) The Company shall take all actions reasonably necessary to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of its Intellectual Property Collateral, including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless the Company shall reasonably determine that such Intellectual Property Collateral is not material to the conduct of its business.

(e) In the event that any of the Intellectual Property Collateral is infringed upon, or misappropriated or diluted by a third party, the Company shall notify the Collateral Agent promptly after the Company learns thereof. The Company shall, unless it shall reasonably determine that such Intellectual Property Collateral is in no way material to the conduct of its business or operations, promptly sue for, and seek recovery of any and all damages resulting from such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem necessary under the circumstances to protect such Intellectual Property Collateral.

7. Remedies. If any Event of Default (as defined in the Notes) shall occur and be continuing, in addition to any rights and remedies provided in the Notes, the Collateral Agent shall have the right to, in the name of the Company, or in the name of the Collateral Agent or the Secured Parties or otherwise, without the requirement of assent by the Company, and the Company hereby constitutes and appoints the Collateral Agent (and any agent designated by the Collateral Agent) as the Company's true and lawful attorney-in-fact, with full power and authority to: (a) sign any of the financing statements and other documents and instruments necessary or reasonably advisable to perfect or continue perfected, maintain the priority of or provide notice of the security interest granted herein in the Intellectual Property Collateral (including any notices to or agreements with any securities intermediary); (b) assert, adjust, sue for, compromise or release any claims under any policies of insurance; and (c) execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of the Company, which the Collateral Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Intellectual Property Collateral and the Collateral Agent's security interest therein and to accomplish the purposes of this Agreement, including, without limitation, (i) to defend, settle, adjust or institute any action, suit or proceeding with respect to Intellectual Property Collateral, (ii) to assert or retain any rights under any license agreement for any Intellectual Property Collateral, including without limitation any rights of the Company arising under Section 365(n) of the Bankruptcy Code, and (iii) to execute any and all applications, documents, papers and instruments for the Collateral Agent to use the Intellectual Property Collateral, to grant or issue any exclusive or non-exclusive license or sub-license with respect to the Intellectual Property Collateral, and to assign, convey or otherwise transfer title in or dispose of the Intellectual Property Collateral. The Collateral Agent agrees that, except upon and during the continuance of an Event of Default (as defined in the Notes), it shall not exercise the power

of attorney hereunder, or any rights granted to the Collateral Agent, pursuant to clauses (b) and (c). The foregoing power of attorney is coupled with an interest and irrevocable so long as the Obligations have not been indefeasibly paid and performed in full. The Company hereby ratifies, to the extent permitted by law, all that the Collateral Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

8. Collateral Agent's Duties. Notwithstanding any provision contained in this Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to the Company or any other person for any failure to do so or delay in doing so. Except for the accounting for moneys actually received by the Collateral Agent hereunder or in connection herewith, the Collateral Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Intellectual Property Collateral.

9. Collateral Agent's Rights and Remedies. The Collateral Agent shall have all rights and remedies available to it under this Agreement, the Purchase Agreement, each other Transaction Document and applicable law with respect to the security interests in any of the Intellectual Property Collateral. The Company agrees that such rights and remedies include, but are not limited to, the right of the Collateral Agent as a secured party to sell or otherwise dispose of the Intellectual Property Collateral pursuant to the UCC.

10. Termination. Upon the indefeasible payment in full in cash or the conversion in full of the Notes (as provided in the Notes) and performance in full of the Obligations, the security interests created by this Agreement shall terminate and the Collateral Agent shall promptly execute and deliver to the Company (at Company's expense) such documents and instruments reasonably requested by the Company as shall be necessary to evidence termination of all such security interests given by the Company to the Collateral Agent hereunder, including cancellation of this Agreement by written notice from the Collateral Agent to the PTO and/or the Copyright Office.

11. Fees and Expenses. The Company agrees to pay on demand all costs and expenses (including reasonable attorneys' fees) of the Collateral Agent with respect to (a) the negotiation, execution and delivery of this Agreement and any amendments, modifications or waivers of the terms hereof and (b) the enforcement or attempted enforcement of, and preservation of any Intellectual Property Collateral.

12. Transfer; Successors and Assigns. The terms and conditions of this Agreement shall be binding upon the Company and its successors and assigns and inure to the benefit of the Secured Parties and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. The Collateral Agent shall not, except upon the written consent of the Secured Parties holding a majority in interest of the principal amount of Notes outstanding, transfer his rights and/or obligations under this Agreement. Upon the resignation or death of the Collateral Agent prior to the termination of this Agreement as provided under Section 10 hereof, the Secured Parties holding a majority in

interest of the principal amount of Notes outstanding may act together as the representative and collateral agent of all Secured Parties pursuant to the terms and conditions of this Agreement.

13. Additional Investors. Notwithstanding anything to the contrary contained herein, if any Additional Investor shall purchase a Note and Warrant pursuant to the Purchase Agreement, any such Additional Investor shall become party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and upon such execution and delivery, shall be deemed a "Secured Party" and a party hereunder and such Secured Party's name shall be added to Schedule A hereto.

14. Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

15. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

16. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing (including facsimile or similar electronic transmissions) and shall be deemed to have been duly given when received by the addressee, if delivered by hand, facsimile or similar form of electronic transmission, one (1) day after deposit with a nationally recognized overnight delivery service or three (3) days after mailing, if mailed.

18. Severability. If any term, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. Modification; Waiver. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company, the holders of a majority in interest of the Notes and the Collateral Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties hereto have duly executed this Intellectual Property Security Agreement, as of the date first above written.

COMPANY:

KIYON, INC., a Delaware corporation

By:  \_\_\_\_\_

Michael Nova, M.D.  
Chief Executive Officer

Address: 4225 Executive Square  
Suite 290  
La Jolla, CA 92037  
Attn: Chief Executive Officer

COLLATERAL AGENT:

\_\_\_\_\_  
Howard C. Birndorf, an individual

SECURED PARTIES:

THE HOWARD C. BIRNDORF LIVING  
TRUST DATED SEPTEMBER 1, 2000

By: \_\_\_\_\_

Howard C. Birndorf, Trustee

Address: c/o Nanogen, Inc.  
10398 Pacific Center Ct.  
San Diego, CA 92121

[SIGNATURE PAGE TO INTELLECTUAL PROPERTY SECURITY AGREEMENT]

SD 697078 v3  
(40275.0001)

IN WITNESS WHEREOF, the parties hereto have duly executed this Intellectual Property Security Agreement, as of the date first above written.

COMPANY:

KIYON, INC., a Delaware corporation

By: \_\_\_\_\_  
Michael Nova, M.D.  
Chief Executive Officer

Address: 4225 Executive Square  
Suite 290  
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Attn: Chief Executive Officer

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\_\_\_\_\_  
Howard C. Birndorf, an individual

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TRUST DATED SEPTEMBER 1, 2000

By:   
\_\_\_\_\_  
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San Diego, CA 92121

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(40275.0001)

SCHEDULE A

Secured Parties

The Howard C. Birndorf Living Trust Dated September 1, 2000

EXHIBIT A

**Patents (or Patent Applications) of Company**

<u>Country</u>	<u>Status</u>	<u>Application/ Patent No.</u>	<u>Filing Date</u>	<u>Title</u>
U.S. Prov	Expired	60/380,425	05/13/2002	Low Cost, Minimal Software Footprint, Self Configuring, Ad Hoc, Autonomic Networking Apparatus and Method of Use
U.S. Prov	pending	60/557,954	03/31/2004	Broadband Applications For Wireless Mesh Networks
U.S.	pending	10/437,129	05/13/2003	System and Method for Routing Packets in a Wired or Wireless Network
PCT	pending	PCT/US03/ 34799	10/31/2003	Systems and Methods for Routing Packets in a Wired or Wireless Network
U.S.	pending	10/437,128	05/13/2003	System and Method for Boundary Scan Test of a Wired or Wireless Network
PCT	pending	PCT/US03/ 34884	10/31/2003	System and Method for Boundary Scan Test of a Wired or Wireless Network
U.S.	pending	10/816,481	04/01/2004	Systems and Methods for Congestion Control in a Wireless Mesh Network

EXHIBIT B

Trademarks of Company

<u>Registration No.</u>	<u>Registration Date</u>	<u>Filing Date</u>	<u>Registered Owner</u>	<u>Mark</u>	<u>Country of Filing</u>

EXHIBIT C

**Pending Trademark Applications of Company**

<u>Application No.</u>	<u>Filing Date</u>	<u>Applicant</u>	<u>Mark</u>	<u>Country of Filing</u>
78/222,081	03/05/2003	Kiyon, Inc.	AUTONOMIC NETWORKING	U.S.
78/222,054	03/05/2003	Kiyon, Inc.	ETHERMESH	U.S.

EXHIBIT D

**Copyright/Mask-PCT Authority Registrations of Company**

<u>Copyright/Mask PCT Authority</u>	<u>Reg. No.</u>	<u>Date of Issue</u>	<u>Country of Filing</u>