

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)
March 29, 2023

VirnetX Holding Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-33852
(Commission File Number)

77-0390628
(IRS Employer Identification No.)

308 Dorla Court, Suite 206
Zephyr Cove, Nevada 89448
(Address of principal executive offices, including zip code)

(775) 548-1785
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001	VHC	NYSE

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On March 29, 2023, VirnetX Holding Corporation (the “**Company**”) entered into a cooperation letter agreement (the “**Agreement**”) with The Radoff Family Foundation, Bradley L. Radoff, JEC II Associates, LLC, Michael Torok (collectively, the “**Radoff/JEC Group**”). Among other things, the Agreement provides that:

- The Company agreed to declare and pay a special dividend of \$1.00 on its common stock (the “**Special Dividend**”).
- The Company committed to promptly distribute to shareholders 80% of future proceeds, if any, and net of related legal costs, licensing costs and taxes, that it receives from its current litigation with Apple Inc.
- The Company agreed to take all actions necessary to appoint a new independent director to assist the Company in meeting its goals and objectives with respect to diversity in the composition of the board of directors (the “**Board**”) prior to the Company’s 2024 annual meeting of stockholders.
- During the period commencing on the date of the Agreement and ending on the date that is 15 days prior to the deadline for the submission of stockholder nominations of directors and business proposals for the Company’s 2024 annual meeting of stockholders (the “**Restricted Period**”), the Radoff/JEC Group will vote, subject to certain exceptions as provided in the Agreement, all shares of the Company’s common stock beneficially owned by them in favor of the Company’s director nominees and generally in accordance with the Board’s recommendations on all other proposals. The length of the Restricted Period can be extended under certain circumstances specified in the Agreement.
- During the Restricted Period, the Radoff/JEC Group will be subject to certain customary standstill provisions set forth in the Agreement. The standstill provisions provide, among other things, that the Radoff/JEC Group cannot, subject to certain exceptions as provided in the Agreement:
 - o enter into a voting agreement or any “group” with stockholders of the Company, other than a group that includes all or some of the members of the Radoff/JEC Group;
 - o submit proposals for consideration at stockholder meetings; and
 - o seek election or appointment to or representation on the Board, or nominate or encourage another to nominate any candidate to the Board.
- During the Restricted Period, the parties agreed to refrain from making any public statements that disparage the other party.
- The Radoff/JEC Group agreed to irrevocably withdraw its nomination of candidates for election as directors of the Company.

The foregoing summary of the Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Agreement, a copy of which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated by reference.

ITEM 8.01. OTHER EVENTS.

On March 30, 2023, the Company announced the Special Dividend. The Special Dividend will be payable on April 17, 2023 to shareholders of record as of the close of business on April 10, 2023, and issued a press release entitled “VirnetX Declares Special Cash Dividend of \$1.00 Per Share.” A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

Exhibit No.	Description
10.1	Cooperation Letter Agreement, dated March 29, 2023, among The Radoff Family Foundation, Bradley L. Radoff, JEC II Associates, LLC, Michael Torok and VirnetX Holding Corporation.
99.1	Press Release, dated March 30, 2023, entitled “VirnetX Declares Special Cash Dividend of \$1.00 Per Share.”
104	Cover Page Interactive Data File, formatted in inline XBRL.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

VirnetX Holding Corporation

By: _____ /s/ Kendall Larsen
Kendall Larsen
Chief Executive Officer

Dated: March 30, 2023

VirnetX Holding Corporation
308 Dorla Court, Suite 206
Zephyr Cove, Nevada 89448

March 29, 2023

Bradley L. Radoff
2727 Kirby Drive
Unit 29L
Houston, Texas 77098

JEC II Associates, LLC
68 Mazzeo Drive
Randolph, Massachusetts 02368

Ladies and Gentlemen:

This letter (this “**Agreement**”) constitutes the agreement between (a) VirnetX Holding Corporation (“**Company**”) and (b) Bradley L. Radoff, JEC II Associates, LLC and each of the other related Persons (as defined below) set forth on the signature pages to this Agreement (collectively, the “**Radoff/JEC Signatories**”). Company and the Radoff/JEC Signatories are collectively referred to as the “**Parties**.” The Radoff/JEC Signatories and each Affiliate (as defined below) and Associate (as defined below) of each Radoff/JEC Signatory are collectively referred to as the “**Radoff/JEC Group**.”

1. *Special Dividend.* Company’s board of directors (the “**Board**”) has taken all action necessary to declare and pay a special dividend of \$1.00 per share of Company’s common stock (the “**Special Dividend**”), subject only to the execution of this Agreement. The Special Dividend shall be paid as promptly as practicable and in any event no later than May 1, 2023.

2. *Additional Capital Return.* Company agrees that as promptly as practicable following the receipt of any damages, awards or other payments or proceeds (collectively, the “**Apple Proceeds**”) resulting from the conclusion of the action captioned *VirnetX Inc. v. Apple, Inc.* (Case Nos. 6:11-cv-00563-RWS, 6:12-cv-00855-RWS) (“**Apple II**”) in the United States Court of Appeals for the Federal Circuit, Company shall, to the extent legally permitted, return an amount equal to no less than 80 percent of the Apple Proceeds, if any, and net of related legal costs, licensing costs and taxes, as a special dividend to stockholders of Company.

3. *Board Matters.* Prior to Company’s 2024 annual meeting of stockholders (the “**2024 Annual Meeting**”), the Board and any applicable committees of the Board will take all actions necessary (including increasing the size of the Board) to appoint a new independent director (the “**New Director**”) to the Board who, in the good faith determination of the Board, assists Company in meeting its goals and objectives with respect to improving diversity in the composition of the Board. For the avoidance of doubt, the New Director will be selected by the Board in its sole discretion.

4. *Voting Commitment.* During the Restricted Period, at each annual or special meeting of Company's stockholders (including any adjournments, postponements or other delays thereof) or action by written consent, the Radoff/JEC Signatories will cause all Voting Securities (as defined below) that are beneficially owned by the Radoff/JEC Group to be (a) present for quorum purposes and (b) voted or consented (i) in favor of the election of each person nominated by the Board for election as a director; (ii) against any proposals or resolutions to remove any member of the Board; and (iii) in accordance with the recommendation of the Board on all other proposals or business that may be the subject of stockholder action at such meeting or action by written consent, except that (A) if Institutional Shareholder Services Inc. ("**ISS**") and Glass Lewis & Co., LLC ("**Glass Lewis**") recommend otherwise with respect to any proposals or business (other than the election or removal of directors), each member of the Radoff/JEC Group shall be permitted to vote in accordance with such ISS and Glass Lewis recommendation, and (B) each member of the Radoff/JEC Group shall be permitted to vote in its sole discretion on any proposal with respect to an Extraordinary Transaction. Company agrees to use reasonable efforts to provide the Radoff/JEC Signatories with at least five Business Days' written notice of the record date for each annual or special meeting of Company's stockholders (including any adjournments, postponements or other delays thereof) during the Restricted Period (it being understood and agreed that if Company fails to provide such notice, the obligations set forth in this paragraph 4 shall only apply to Voting Securities which the Radoff/JEC Group is entitled to vote as of the record date for such applicable meeting).

5. *Standstill.*

(a) *Restricted Activities.* During the Restricted Period, each of the Radoff/JEC Signatories agrees that it will not, and shall cause the other members of the Radoff/JEC Group not to, in any way, directly or indirectly (in each case, except as expressly permitted by this Agreement):

(i) acquire, offer or seek to acquire, agree to acquire, or acquire rights or options to acquire (except by way of stock dividends or other distributions or offerings made available to holders of Voting Securities generally on a pro rata basis or pursuant to an Extraordinary Transaction), whether by purchase, tender or exchange offer, through the acquisition of control of another Person, by joining a group, through swap or hedging transactions or otherwise, beneficial ownership of any securities of Company (other than through a broad-based market basket or index), except that the Radoff/JEC Group, in the aggregate, may, in accordance with the terms of this Agreement and applicable securities laws, acquire additional shares of Company's common stock so long as the Radoff/JEC Group beneficially owns, in the aggregate, no more than 7.0 percent of the then-outstanding shares of Company's common stock, including through the exercise of, or acquisition of, derivative securities;

(ii) make any public announcement or proposal with respect to, or publicly offer or propose, (A) any form of business combination or acquisition or other transaction relating to a material amount of assets or securities of Company or any of its subsidiaries; (B) any form of restructuring, recapitalization, change in capital allocation or similar transaction with respect to Company or any of its subsidiaries; or (C) any form of tender or exchange offer for shares of Company's common stock or other Voting Securities, whether or not such transaction involves a Change of Control (as defined below) of Company, it being understood that none of the foregoing will prohibit any member of the Radoff/JEC Group from (1) selling or tendering its shares of Company's common stock, and otherwise receiving consideration, pursuant to any such transaction or (2) voting on any such transaction in its sole discretion in accordance with paragraph 4;

(iii) engage in, or knowingly assist in the engagement in (including engagement by use of or in coordination with a universal proxy card), any solicitation of proxies or written consents to vote any Voting Securities, or conduct, or assist in the conducting of, any type of binding or nonbinding referendum with respect to any Voting Securities, or assist or participate in any other way, directly or indirectly, in any solicitation of proxies (or written consents) with respect to, or from the holders of, any Voting Securities, or otherwise become a “participant” in a “solicitation,” as such terms are defined in Instruction 3 of Item 4 of Schedule 14A and Rule 14a-1 of Regulation 14A, respectively, under the Securities Exchange Act of 1934, as amended, and with the rules and regulations thereunder (the “**Exchange Act**”), to vote any securities of Company (including by initiating, encouraging or participating in any “withhold” or similar campaign), in each case other than in a manner that is consistent with the Board’s recommendation on a matter or otherwise consistent with the voting obligations set forth in paragraph 4;

(iv) initiate, propose or otherwise “solicit” (as such term is used in the proxy rules of the Securities and Exchange Commission (“**SEC**”), including any solicitations of the type contemplated by Rule 14a-2(b) promulgated under the Exchange Act) Company’s stockholders for the approval of any shareholder proposal, whether made pursuant to Rule 14a-4 or Rule 14a-8 promulgated under the Exchange Act, or otherwise, or knowingly cause or encourage any Person to initiate or submit any such shareholder proposal;

(v) (A) seek, alone or in concert with others, election or appointment to, or representation on, the Board, (B) nominate or propose the nomination of, or recommend the nomination of, or encourage any Person to nominate or propose the nomination of or recommend the nomination of, any candidate to the Board, or (C) seek, alone or in concert with others, or encourage any Person to seek, the removal of any member of the Board;

(vi) advise or knowingly encourage any Person with respect to the voting of (or execution of a written consent in respect of) or disposition of any securities of Company other than in a manner that is consistent with the Board’s recommendation on a matter or otherwise consistent with the voting obligations set forth in paragraph 4;

(vii) other than in open market sale transactions where the identity of the purchaser is not known, sell, offer or agree to sell directly or indirectly, through swap or hedging transactions or otherwise, any securities of Company, or any rights decoupled from the underlying securities held by the Radoff/JEC Signatories, to any Person not a party to this Agreement or an Affiliate or Associate thereof (a “**Third Party**”) with a known history of activism or known plans to engage in activism with respect to Company;

(viii) take any action in support of, or make any proposal or request that constitutes or would result in: (A) advising, replacing or influencing any director or the management of Company, including any plans or proposals to change the number or term of directors or to fill any vacancies on the Board; (B) any material change in the capitalization, stock repurchase programs and practices or dividend policy of Company; (C) any other material change in Company's management, business or corporate structure; (D) seeking to have Company waive or make amendments or modifications to its bylaws or certificate of incorporation, or other actions that could reasonably be expected to impede or facilitate the acquisition of control of Company by any Person; (E) causing a class of securities of Company to be delisted from, or to cease to be authorized to be quoted on, any securities exchange; or (F) causing a class of securities of Company to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act (in each case except as otherwise permitted by paragraphs 1 through 4);

(ix) communicate with stockholders of Company or others pursuant to Rule 14a-1(l)(2)(iv) under the Exchange Act (other than in connection with an Extraordinary Transaction);

(x) call or seek to call, or request the call of, alone or in concert with others, any meeting of stockholders, whether or not such a meeting is permitted by the bylaws, including a "town hall meeting";

(xi) deposit any shares of Company's common stock or other Voting Securities in any voting trust or subject any shares of Company's common stock or other Voting Securities to any arrangement or agreement with respect to the voting of any shares of Company's common stock or Voting Securities (other than (A) any such voting trust, agreement, or arrangement solely among the Radoff/JEC Signatories and their Affiliates and Associates, (B) customary brokerage accounts, margin accounts, prime brokerage accounts and the like, and (C) otherwise in accordance with this Agreement);

(xii) submit, or seek, or knowingly encourage or advise any Person, to submit, nominations or proposals in furtherance of the election or removal of directors with respect to Company, or take any other action, or knowingly encourage or advise any Person, with respect to the election, appointment or removal of any directors (other than in connection with paragraph 3);

(xiii) form, join or in any other way participate in any "group" (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any Voting Security (other than a group that includes all or some of the Radoff/JEC Signatories); provided, however, that nothing herein shall limit the ability of an Affiliate of the Radoff/JEC Signatories to join or in any way participate in the "group" currently in existence as of the execution date of this Agreement and comprising the Radoff/JEC Signatories following the execution of this Agreement, so long as any such Affiliate agrees to be subject to, and bound by, the terms and conditions of this Agreement and, if required under the Exchange Act, files a Schedule 13D or an amendment thereof, as applicable, within two Business Days after disclosing that the Radoff/JEC Signatories have formed a group with such Affiliate;

(xiv) demand a copy of Company's list of stockholders or its other books and records or make any request pursuant to Rule 14a-7 under the Exchange Act or under any statutory or regulatory provisions of Delaware providing for stockholder access to books and records (including lists of stockholders) of Company;

(xv) make any request or submit any proposal to amend or waive the terms of this paragraph 5, other than through non-public communications with Company that would not be reasonably likely to trigger public disclosure obligations for any Party; or

(xvi) enter into any discussions, negotiations, agreements or understandings with any Person with respect to any action that the Radoff/JEC Signatories are prohibited from taking pursuant to this paragraph 5, or advise, assist, knowingly encourage or seek to persuade any Person to take any action or make any statement with respect to any such action, or otherwise take or cause any action or make any statement inconsistent with any of the foregoing.

(b) *Permitted Activities.* Notwithstanding anything to the contrary in this Agreement, including paragraph 5(a), the members of the Radoff/JEC Group shall not be prohibited or restricted from (i) communicating privately with members of the Board or officers of Company regarding any matter in a manner consistent with communications that may be reasonably made by all stockholders of Company, so long as such communications are not intended to lead to, and would not reasonably be expected to require, any public disclosure of such communications by any Party; (ii) taking any action necessary to comply with any law, rule or regulation or any action required by any governmental or regulatory authority or stock exchange that has, or may have, jurisdiction over any member of the Radoff/JEC Group, but only so long as a breach by any member of the Radoff/JEC Group of this Agreement is not the cause of the applicable requirement; (iii) communicating with stockholders of Company and others in a manner that does not otherwise violate this Agreement; and (iv) exchanging, tendering or otherwise participating in any tender or exchange offer with respect to Company's common stock, whether or not such transaction constitutes an Extraordinary Transaction, on the same basis as the other stockholders of Company.

(c) *Stockholder Access to Company.* The Radoff/JEC Signatories and Company acknowledge that, other than as restricted by the terms in this Agreement or applicable law, the Radoff/JEC Signatories shall conduct themselves as, and be treated as, any other stockholder, with similar stockholder rights and access to management and the Board. The Radoff/JEC Signatories shall not have or claim any information rights beyond those afforded to all other stockholders (other than as limited or otherwise restricted by the provisions of paragraph 5(a)) and acknowledge Company's securities disclosure obligations, including under Regulation FD.

6. *Mutual Non-Disparagement.*

(a) *With Respect to Radoff/JEC Group.* During the Restricted Period, Company will not, and will cause its directors, officers and employees not to, make or cause to be made any public statement that disparages, calls into disrepute, slanders, impugns, casts in a negative light or otherwise damages the reputation of any member of the Radoff/JEC Group or any of their respective Affiliates, Associates, subsidiaries, successors or assigns, or any of its or their respective current or former officers, directors or employees, or any of its or their respective businesses, products or services.

(b) *With Respect to Company.* During the Restricted Period, the Radoff/JEC Signatories will not, and will cause the other members of the Radoff/JEC Group and its and their directors, officers and employees not to, make or cause to be made any public statement that disparages, calls into disrepute, slanders, impugns, casts in a negative light or otherwise damages the reputation of Company or any of its Affiliates, Associates, subsidiaries, successors or assigns, or any of its or their respective current or former officers, directors or employees, or any of its or their respective businesses, products or services.

(c) *Exceptions.* Notwithstanding the foregoing, this paragraph 6 will not restrict the ability of any Person to (i) comply with any subpoena or other legal process or respond to a request for information from any governmental authority with jurisdiction over such Person; (ii) enforce such Person's rights pursuant to this Agreement; or (iii) publicly respond to a statement made in violation of paragraph 6(a) or paragraph 6(b), as applicable.

7. *Withdrawal of Nominations.* The Radoff/JEC Group agrees that automatically and without any additional action by any Party, upon the execution of this Agreement by all of the Parties, Bradley L. Radoff will be deemed to have irrevocably withdrawn his nomination of candidates for election as directors of Company set forth in his letter to Company dated February 24, 2023.

8. *Compliance with this Agreement.* The Radoff/JEC Signatories will cause the other members of the Radoff/JEC Group to comply with the terms of this Agreement and will be responsible for any breach of the terms of this Agreement by any member of the Radoff/JEC Group (even if such member of the Radoff/JEC Group is not a party to this Agreement).

9. *Expenses.* Within five Business Days of the receipt of reasonable documentation, Company will reimburse the Radoff/JEC Group for the reasonable and documented out-of-pocket expenses (including legal fees and expenses) incurred by the Radoff/JEC Group in connection with its nomination of director candidates, Company's 2023 annual meeting of stockholders (the "**2023 Annual Meeting**"), the negotiation and execution of this Agreement, and related matters in an aggregate amount not to exceed \$200,000. Except as set forth in the preceding sentence, all fees, costs and expenses incurred in connection with this Agreement will be paid by the Person incurring such fee, cost or expense.

10. *Public Disclosure.*

(a) *Press Release.* No later than 6:00 a.m., Pacific time, on March 30, 2023, Company will issue a press release in the form attached as Exhibit A (the "**Press Release**"). It is understood and agreed that the Press Release includes certain commitments by Company in respect of capital allocation matters. Neither Company nor any member of the Radoff/JEC Group will (i) make any public statements with respect to the matters covered by this Agreement (or in any other filing with the SEC, any other regulatory or governmental agency, any stock exchange or in any materials that would reasonably be expected to be filed with the SEC) that are inconsistent with, or otherwise contrary to, the statements in the Press Release or the terms of this Agreement; or (ii) speak on the record or on background with the press, media or any analysts about the other Party or any of its respective Affiliates, Associates, subsidiaries, successors or assigns, or any of its or their respective current or former officers, directors or employees. Prior to the issuance of the Press Release, neither Company nor any member of the Radoff/JEC Group will issue any press release or public announcement regarding this Agreement or take any action that would require public disclosure of this Agreement.

(b) *Form 8-K*. Company will promptly prepare and file (but not before the issuance of the Press Release) with the SEC a Current Report on Form 8-K (the “**Form 8-K**”) reporting the entry into this Agreement. All disclosure in the Form 8-K will be consistent with this Agreement. Company will provide the Radoff/JEC Signatories and their counsel with a reasonable opportunity to review and comment on the Form 8-K prior to filing, and will consider in good faith any changes proposed by the Radoff/JEC Signatories or their counsel.

(c) *Schedule 13D*. The Radoff/JEC Signatories will promptly prepare and file (but not before the issuance of the Press Release) with the SEC an amendment to their Schedule 13D (such amendment, the “**Amended Schedule 13D**”) reporting the entry into this Agreement. All disclosure in the Amended Schedule 13D will be consistent with this Agreement. The Radoff/JEC Signatories will provide Company and its counsel with a reasonable opportunity to review and comment on the Amended Schedule 13D prior to filing, and will consider in good faith any changes proposed by Company or its counsel.

11. *Definitions*. As used in this Agreement, the following terms have the following meanings:

(a) “**Affiliate**” has the meaning set forth in Rule 12b-2 promulgated under the Exchange Act and will include Persons who become Affiliates of any Person after the date of this Agreement. The term “Affiliate” shall not include any publicly traded portfolio company of any member of the Radoff/JEC Group. For purposes of this Agreement, no member of the Radoff/JEC Group shall be deemed an Affiliate of Company and Company shall not be deemed an Affiliate of any member of the Radoff/JEC Group.

(b) “**Associate**” has the meaning set forth in Rule 12b-2 promulgated under the Exchange Act and will include Persons who become Associates of any Person after the date of this Agreement, but will exclude any Person not controlled by or under common control with the related Person.

(c) “**beneficially own**,” “**beneficially owned**” and “**beneficial owners**” has the meaning set forth in Rule 13d-3 and Rule 13d-5(b)(1) promulgated under the Exchange Act.

(d) “**Business Day**” means any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of San Francisco is closed.

(e) “**Change of Control**” shall be deemed to have taken place if (i) any Person is or becomes a beneficial owner, directly or indirectly, of securities of Company representing more than 50 percent of the equity interests and voting power of Company’s then-outstanding equity securities; or (ii) Company enters into a stock-for-stock transaction (or one or more related transactions) whereby immediately after the consummation of the transactions Company’s stockholders retain, directly or indirectly, less than 50 percent of the equity interests and voting power of the surviving entity’s then-outstanding equity securities.

(f) “**Extraordinary Transaction**” means any equity tender offer, equity exchange offer, merger, acquisition, joint venture, business combination, financing, recapitalization, reorganization, restructuring, disposition, distribution, or other transaction with a Third Party that, in each case, would result in a Change of Control of Company, including any liquidation, dissolution or other extraordinary transaction involving a majority of its equity securities or all or substantially all of its assets (determined on a consolidated basis), and, for the avoidance of doubt, including any such transaction with a Third Party that is submitted for a vote of Company’s stockholders;

(g) “**Person**” will be interpreted broadly to include, among others, any individual, general or limited partnership, corporation, limited liability or unlimited liability company, joint venture, estate, trust, group, association or other entity of any kind or structure.

(h) “**Restricted Period**” means the period from the date of this Agreement until 11:59 p.m., Pacific time, on the day that is 15 days prior to the deadline for the submission of stockholder nominations of directors and business proposals for the 2024 Annual Meeting; *provided*, however, that if the Special Dividend is not less than \$1.00 per share of Company’s common stock, then the Restricted Period shall expire 11:59 p.m., Pacific time, on the day that is 15 days prior to the deadline for the submission of stockholder nominations of directors and business proposals for Company’s 2025 annual meeting of stockholders.

(i) “**Voting Securities**” means the shares of Company’s capital stock and any other securities of Company entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies.

12. *Interpretations.* The words “include,” “includes” and “including” will be deemed to be followed by the words “without limitation.” Unless the context requires otherwise, “or” is not exclusive. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Any agreement, instrument, law, rule or statute defined or referred to in this Agreement means, unless otherwise indicated, such agreement, instrument, law, rule or statute as from time to time amended, modified or supplemented. The measure of a period of one month or year for purposes of this Agreement will be the day of the following month or year corresponding to the starting date. If no corresponding date exists, then the end date of such period being measured will be the next actual day of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1).

13. *Representations of the Radoff/JEC Signatories.* Each of the Radoff/JEC Signatories, severally and not jointly, represents that (a) its authorized signatory set forth on the signature page of this Agreement has the power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind such Person; (b) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of such Person, enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; (c) this Agreement does not and will not violate any law, any order of any court or other agency of government, its organizational documents or any provision of any agreement or other instrument to which it or any of its properties or assets is bound, or conflict with, result in a material breach of or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument to which any member of the Radoff/JEC Group is bound, or result in the creation or imposition of, or give rise to, any material lien, charge, restriction, claim, encumbrance or adverse penalty of any nature whatsoever; (d) except as otherwise disclosed to Company, it has not, and no member of the Radoff/JEC Group has, directly or indirectly, compensated or entered into any agreement, arrangement or understanding to compensate any person for his or her service as a director of Company with any cash, securities (including any rights or options convertible into or exercisable for or exchangeable into securities or any profit sharing agreement or arrangement) or other form of compensation directly or indirectly related to Company or its securities; and (e) except as otherwise disclosed to Company, as of the date of this Agreement, the Radoff/JEC Signatories (i) are the beneficial owners of an aggregate of 4,720,919 shares of Company’s common stock, (ii) have voting authority over such shares, and (iii) own no other equity or equity-related interest in Company.

14. *Representations of Company.* Company represents that (a) its authorized signatory set forth on the signature page to this Agreement has the power and authority to execute this Agreement and any other documents or agreements to be entered into in connection with this Agreement and to bind Company; (b) this Agreement has been duly authorized, executed and delivered by it and is a valid and binding obligation of Company, enforceable against Company in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar laws generally affecting the rights of creditors and subject to general equity principles; (c) this Agreement does not require the approval of the stockholders of Company; and (d) this Agreement does not and will not violate any law, any order of any court or other agency of government, Company's certificate of incorporation or bylaws, each as amended from time to time, or any provision of any agreement or other instrument to which Company or any of its properties or assets is bound, or conflict with, result in a material breach of or constitute (with due notice or lapse of time or both) a default under any such agreement or other instrument to which Company is bound, or result in the creation or imposition of, or give rise to, any material lien, charge, restriction, claim, encumbrance or adverse penalty of any nature whatsoever. Company has not taken any actions with respect to any matters related to this Agreement that require disclosure on a Current Report on Form 8-K prior to the date of this Agreement that have not previously been disclosed.

15. *Specific Performance; Fees.* Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach (or threatened breach) of this Agreement by it and that, in the event of any breach or threatened breach of this Agreement, (i) the Party seeking specific performance will be entitled to seek injunctive and other equitable relief, without proof of actual damages; (ii) the Party against whom specific performance is sought will not plead in defense that there would be an adequate remedy at law; and (iii) the Party against whom specific performance is sought agrees to waive any applicable right or requirement that a bond be posted. Such remedies will not be the exclusive remedies for a breach of this Agreement and will be in addition to all other remedies available at law or in equity. If a Party institutes any legal suit, action, or proceeding against the other Party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) or arising out of or relating to this Agreement, including contract, equity, tort, fraud, and statutory claims, the prevailing Party in the suit, action, or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses, even if not recoverable by law.

16. *Entire Agreement; Binding Nature; Assignment; Waiver.* This Agreement constitutes the only agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. This Agreement binds, and will inure to the benefit of, the Parties and their respective successors and permitted assigns. No Party may assign or otherwise transfer either this Agreement or any of its rights, interests, or obligations under this Agreement without the prior written approval of the other Party. Any purported transfer requiring consent without such consent is void. No amendment, modification, supplement or waiver of any provision of this Agreement will be effective unless it is in writing and signed by the affected Party, and then only in the specific instance and for the specific purpose stated in such writing. Any waiver by any Party of a breach of any provision of this Agreement will not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a Party to insist upon strict adherence to any term of this Agreement on one or more occasions will not be considered a waiver or deprive that Party of the right to insist upon strict adherence to that term or any other term of this Agreement in the future.

17. *Severability.* If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, then the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement that is held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable, and this Agreement will otherwise be construed so as to effectuate the original intention of the Parties reflected in this Agreement. The Parties further agree to replace such invalid or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision.

18. *Governing Law; Forum.* This Agreement is governed by and will be construed in accordance with the laws of the State of Delaware. Each of the Parties (a) irrevocably and unconditionally consents to the exclusive personal jurisdiction and venue of the Court of Chancery of the State of Delaware and any appellate court thereof (unless the federal courts have exclusive jurisdiction over the matter, in which case the United States District Court for the District of Delaware and any appellate court thereof will have exclusive personal jurisdiction); (b) agrees that it will not challenge such personal jurisdiction by motion or other request for leave from any such court; (c) agrees that it will not bring any action relating to this Agreement or otherwise in any court other than the such courts; and (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum. The Parties agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in paragraph 21 or in such other manner as may be permitted by applicable law, will be valid and sufficient service thereof.

19. *Waiver of Jury Trial.* EACH OF THE PARTIES, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY OF THEM. No Party will seek to consolidate, by counterclaim or otherwise, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

20. *Third Party Beneficiaries.* This Agreement is solely for the benefit of the Parties and is not enforceable by any other Person.

21. *Notices.* All notices and other communications under this Agreement must be in writing and will be deemed to have been duly delivered and received (a) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (b) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; (c) immediately upon delivery by hand; or (d) on the date sent by email (except that notice given by email will not be effective unless either (i) a duplicate copy of such email notice is promptly given by one of the other methods described in this paragraph 21 or (ii) the receiving Party delivers a written confirmation of receipt of such notice either by email or any other method described in this paragraph 21 (excluding "out of office" or other automated replies)). The addresses for such communications are as follows. At any time, any Party may, by notice given to the other Parties in accordance with this paragraph 21, provide updated information for notices pursuant to this Agreement.

If to Company:

VirnetX Holding Corporation
308 Dorla Court, Suite 206
Zephyr Cove, Nevada 89448
Attn: Kendall Larsen
Email: kendall_larsen@virnetx.com

with a copy (which will not constitute notice) to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attn: Katharine A. Martin
Douglas K. Schnell
Sebastian Alsheimer
Email: kmartin@wsgr.com; dschnell@wsgr.com; salsheimer@wsgr.com

If to the Radoff/JEC Signatories:

Bradley L. Radoff
2727 Kirby Drive
Unit 29L
Houston, Texas 77098
Email: brad@fondrenlp.com

-and-

JEC II Associates, LLC
68 Mazzeo Drive
Randolph, Massachusetts 02368
Email: michael@jeccapital.com

with a copy (which will not constitute notice) to:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
New York, New York 10019
Attn: Ryan Nebel
Rebecca Van Derlaske
Email: RNebel@olshanlaw.com; RVanDerlaske@olshanlaw.com

22. *Representation by Counsel.* Each of the Parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed this Agreement with the advice of such counsel. Each Party and its counsel cooperated and participated in the drafting and preparation of this Agreement, and any and all drafts of this Agreement exchanged among the Parties will be deemed the work product of all of the Parties and may not be construed against any Party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any Party that drafted or prepared it is of no application and is expressly waived by each of the Parties, and any controversy over interpretations of this Agreement will be decided without regard to events of drafting or preparation.

23. *Counterparts.* This Agreement and any amendments to this Agreement may be executed in one or more textually identical counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Any such counterpart, to the extent delivered by fax or .pdf, .tif, .gif, .jpg or similar attachment to electronic mail or by an electronic signature service (any such delivery, an “**Electronic Delivery**”), will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party may raise the use of an Electronic Delivery to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of an Electronic Delivery, as a defense to the formation of a contract, and each Party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

24. *Headings.* The headings set forth in this Agreement are for convenience of reference purposes only and will not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision of this Agreement.

25 *Termination.* Unless otherwise mutually agreed in writing by each Party, this Agreement shall terminate upon the expiration of the Restricted Period. Notwithstanding the foregoing, paragraph 2, paragraph 7, paragraph 9, paragraph 11, paragraph 12 and paragraphs 15 through 25 shall survive the termination of this Agreement. No termination of this Agreement shall relieve any Party from liability for any breach of this Agreement prior to such termination. Notwithstanding anything to the contrary in this Agreement (including the second sentence of this paragraph 25), Company's obligations under paragraph 2 will immediately terminate upon the earliest of: (a) any member of the Radoff/JEC Group breaching this Agreement and such breach not being cured (if capable of being cured) within 15 Business Days after receipt by the Radoff/JEC Signatories from Company of written notice specifying the breach (or, if later, the final judicial resolution of any dispute between the Parties related to the occurrence of such breach); or (b) the submission by any member of the Radoff/JEC Group during the Restricted Period of any director nominations in connection with any meeting of Company's stockholders. Notwithstanding anything to the contrary in this Agreement, Company's obligations under paragraph 3 will immediately terminate upon the earliest of: (i) any member of the Radoff/JEC Group breaching this Agreement and such breach not being cured (if capable of being cured) within 15 Business Days after receipt by the Radoff/JEC Signatories from Company of written notice specifying the breach; or (ii) the submission by any member of the Radoff/JEC Group during the Restricted Period of any director nominations in connection with any meeting of Company's stockholders. Notwithstanding anything to the contrary in this Agreement, the Radoff/JEC Group's obligations under paragraph 5 will immediately terminate upon Company breaching this Agreement and such breach not being cured (if capable of being cured) within 15 Business Days after receipt by Company from the Radoff/JEC Signatories of written notice specifying the breach (or, if later, the final judicial resolution of any dispute between the Parties related to the occurrence of such breach).

[Signature page follows.]

Very truly yours,

VIRNETX HOLDING CORPORATION

By: /s/ Kendall Larsen

Name: Kendall Larsen

Title: President, Chief Executive Officer
and Chairman of the Board of Directors

ACCEPTED AND AGREED

as of the date written above:

THE RADOFF FAMILY FOUNDATION

By: /s/ Bradley L. Radoff

Name: Bradley L. Radoff

Title: Director

BRADLEY L. RADOFF

/s/ Bradley L. Radoff

JEC II ASSOCIATES, LLC

By: /s/ Michael Torok

Name: Michael Torok

Title: Manager

MICHAEL TOROK

/s/ Michael Torok

[Signature Page to Letter Agreement]

Form of Press Release

[see attached]

VirnetX Declares Special Cash Dividend of \$1.00 Per Share

Commits to Further Shareholder Distributions of Significant Portion of Any Net Proceeds from Ongoing Litigation Against Apple Inc.

Enters into Cooperation Agreement with Bradley L. Radoff and Michael Torok

March 30, 2023
(Zephyr Cove, NV)

VirnetX Holding Corporation (NYSE: VHC), an Internet security software and technology company with patented technology for secure communications, today announced that its Board of Directors has declared a special cash dividend of \$1.00 per common share. The dividend will be paid on or about April 17, 2023 to shareholders of record on April 10, 2023. The aggregate amount of the cash payment to be made in connection with this special dividend will be approximately \$71.4 million. Over the course of VirnetX's history as a public company, including this dividend, VirnetX will have distributed over \$165 million in cash to shareholders.

In conjunction with the special cash dividend, VirnetX entered into a cooperation agreement with Bradley L. Radoff and Michael Torok and certain of their respective affiliates (the "Investor Group"), who collectively own approximately 6.6% of VirnetX's common stock.

As part of the agreement, VirnetX committed to promptly distribute to shareholders 80% of future proceeds, if any, and net of related legal costs, licensing costs and taxes, that it receives from its current litigation with Apple Inc. ("Apple"). During 2021, Apple appealed a 2020 U.S. Federal District Court jury verdict that awarded VirnetX over \$500 million in damages. Oral arguments for this appeal were heard by the U.S. Court of Appeals for the Federal Circuit in September 2022.

VirnetX has also agreed to further strengthen its Board of Directors through the selection and addition of another independent director within the next 12 months who will help improve diversity in the boardroom.

Kendall Larsen, Chairman and CEO of VirnetX commented: "With increased clarity into the capital required to commercialize our technology, the Board is pleased to declare a \$1.00 per share special dividend. This special dividend reflects our ongoing commitment to enhancing shareholder value. We are confident that we are close to a final outcome in our litigation with Apple, and the Board has committed to distribute to our shareholders a substantial portion of the net proceeds after the case concludes."

Messrs. Radoff and Torok commented: "We are pleased to have reached this constructive agreement with VirnetX that returns significant capital to the company's shareholders and look forward to the prospect of meaningful future distributions following the completion of the Apple litigation."

The agreement with the Investor Group includes a customary standstill and voting commitment. The agreement will be filed on a Form 8-K with the Securities and Exchange Commission.

About VirnetX

VirnetX Holding Corporation is an Internet security software and technology company with patented technology for secure communications including 4G LTE and 5G security. VirnetX's software and technology solutions, including its Secure Domain Name Registry and Technology, VirnetX One™, VirnetX War Room™, VirnetX Matrix™, and Gabriel Connection Technology™, are designed to facilitate secure communications and to create a secure environment for real-time communication applications such as cloud computing, instant messaging, VoIP, smart phones, e-Readers and video conferencing. VirnetX's patent portfolio includes over 200 U.S. and foreign granted patents, validations and pending applications. For more information, please visit: <http://www.virnetx.com/>.

Special Note Regarding Forward-Looking Statements

This press release should be read in conjunction with our Annual Report on Form 10-K (the “Form 10-K”), which is expected to be filed with the Securities and Exchange Commission, before the close of business on March 31, 2023. Statements herein may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

These forward-looking statements are based upon our current expectations, estimates, assumptions, and beliefs concerning future events and conditions and may discuss, among other things, expectations about products and product performance, expectations about future cash distributions or dividends and the impact of potential and ongoing litigation. Any statement that is not historical in nature is a forward-looking statement and may be identified by the use of words and phrases such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “plans,” “predicts,” “projects,” “will be,” “will continue,” “will likely result in,” and similar expressions. Readers are cautioned not to place undue reliance on forward-looking statements. Forward-looking statements are necessarily subject to risks, uncertainties, and other factors, many of which are outside our control, and could cause actual results to differ materially from such statements and from our historical results and experience. These risks, uncertainties and other factors include, but are not limited to risks detailed in our filings with the Securities and Exchange Commission (the “SEC”), including in our Quarterly Reports on Form 10-Q for the quarter ended September 30, 2022 and other filings and reports that we may file from time to time with the SEC, including the Form 10-K. Readers are cautioned that it is not possible to predict or identify all the risks, uncertainties and other factors that may affect future results and that the risks described herein should not be considered a complete list. Any forward-looking statement speaks only as of the date on which such statement is made.

For example, Mr. Larsen’s statement, and this press release generally, refer to:

- Litigation with Apple. Those statements may imply that VirnetX may soon receive a substantial amount of cash; however we do not control the court’s timetable for a ruling, and we do not know whether that ruling will be favorable, or if it is favorable, whether there may be substantial time between the ruling and the actual receipt of cash, which might be reduced from the amount we currently expect, or eliminated entirely.
- Prospects regarding distributions to shareholders. These statements may imply that VirnetX may soon make distributions to shareholders. However, if the litigation with Apple does not conclude in VirnetX’s favor, then VirnetX will be unable to do so.

EXCEPT AS REQUIRED BY LAW, WE UNDERTAKE NO OBLIGATION TO UPDATE OR REVISE ANY FORWARD-LOOKING STATEMENT AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.
