

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q/A  
(Amendment No. 1)

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2010

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-33852

**VirnetX Holding Corporation**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

77-0390628  
Identification Number)

5615 Scotts Valley Drive, Suite 110  
Scotts Valley, California  
(Address of principal executive offices)

95066  
(Zip Code))

Registrant's telephone number, including area code: (831) 438-8200

Not applicable  
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of the Registrant's Common Stock as of August 2, 2010 was 47,446,023.

## EXPLANATORY NOTE

This Quarterly Report on Form 10-Q/A amends the Quarterly Report on Form 10-Q for the period ended June 30, 2010 originally filed by VirnetX Holding Corporation (the “Company”) with the Securities and Exchange Commission (“SEC”) on August 9, 2010. The following items have been amended:

- Part I — Item 1. Financial Statements;
- Part I — Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations;
- Part I — Item 4. Controls and Procedures
- Part II — Item 1A. Risk Factors; and
- Part II — Item 6. Exhibits

As disclosed in a Current Report on Form 8-K the Company filed with the SEC on January 31, 2011, the Company’s Audit Committee determined on January 25, 2011 that the Company’s previously filed financial statements for: (i) the fiscal quarter ended September 30, 2009 included in the Form 10-Q filed with the SEC on November 9, 2009, (ii) the fiscal year ended December 31, 2009 included the Form 10-K filed with the SEC on March 31, 2010, (iii) the fiscal quarter ended March 31, 2010 included in the Form 10-Q filed with the SEC on May 7, 2010, (iv) the fiscal quarter ended June 30, 2010 included in the Form 10-Q filed with the SEC on August 9, 2010 and (v) the fiscal quarter ended September 30, 2010 included in the Form 10-Q filed with the SEC on November 8, 2010, needed to be restated to correct the accounting for certain derivative instruments (the Series I Warrants issued by the Company in a private placement transaction in September 2009 discussed below) in such financial statements, which were previously recorded as equity instruments. Please refer to Note 2, “Restatements” to the Notes to Condensed Consolidated Financial Statements.

The Company has performed a re-assessment of the Series I Warrants to purchase 2,619,036 shares of common stock that were issued in connection with its September 2009 private placement and has concluded that the Series I Warrants are liabilities within the scope of Accounting Standards Codification 815 40, “*Derivatives and Hedging – Contracts in Entity’s Own Equity*” (“ASC 815 40”), formerly Emerging Issues Task Force Issue No. 07 05, “*Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock*” (“EITF 07 05”), because the Series I Warrants contain a provision requiring a weighted average adjustment to the exercise price of the Series I Warrants in the event the Company issues common stock, or securities convertible into or exercisable for common stock, at a price per share lower than such exercise price. Accordingly, the Series I Warrants should have been accounted for as a derivative liability, measured at fair value, with changes in fair value recognized as gain or loss for each reporting period thereafter.

The following tables (in thousands, except per share amounts) show the effects of the restatement on the Company’s condensed consolidated balance sheet as of June 30, 2010 and condensed consolidated statements of operations for the six month period ended June 30, 2010:

	<u>6/30/2010</u>			<u>6/30/2010</u>	
	<u>As previously reported</u>	<u>As Restated</u>		<u>As previously reported</u>	<u>As Restated</u>
<b>LIABILITIES AND STOCKHOLDERS’ EQUITY</b>			<b>INCOME FROM OPERATIONS</b>	\$ 200,044	\$ 200,044
<b>CURRENT LIABILITIES</b>			Losses from derivative liability	\$ -	\$ (6,981)
Warrant liability	\$ -	\$ 12,302	Total other income	\$ 13	\$ 13
<b>TOTAL CURRENT LIABILITIES</b>			<b>NET INCOME</b>	\$ 76,657	\$ 69,676
<b>STOCKHOLDERS’ EQUITY</b>	\$ 58,170	\$ 70,472	<b>BASIC EARNINGS PER SHARE</b>	\$ 1.79	\$ 1.63
Additional paid in capital	\$ 52,298	\$ 46,420	<b>DILUTED EARNINGS PER SHARE</b>	\$ 1.69	\$ 1.54
Accumulated deficit	\$ 16,928	\$ 10,505			
<b>TOTAL STOCKHOLDERS’ EQUITY</b>	\$ 69,230	\$ 56,928			
<b>TOTAL LIABILITIES AND STOCKHOLDERS’ EQUITY</b>	\$ 127,400	\$ 127,400			

Except as described above, no other amendments are being made to the disclosures presented in the original Form 10-Q. This amended Form 10-Q does not reflect events occurring after the filing of the original Form 10-Q, or modify or update the disclosure contained therein in any other way other than as required to reflect the amendments discussed above. Information not affected by the restatement is unchanged and reflects the disclosures made at the time of the original filing of the Form 10-Q with the SEC on August 9, 2010.

## INDEX

	<u>Page</u>
PART I — FINANCIAL INFORMATION	
<a href="#">Item 1. Financial Statements (Unaudited)</a>	4
<a href="#">Condensed Consolidated Balance Sheets at June 30, 2010 (restated) and December 31, 2009 (restated)</a>	4
<a href="#">Condensed Consolidated Statements Of Operations for the three and six months ended June 30, 2010 (restated) and 2009</a>	5
<a href="#">Condensed Consolidated Statements Of Cash Flows for the six months ended June 30, 2010 (restated) and 2009</a>	6
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	7
<a href="#">Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	15
<a href="#">Item 3. Quantitative and Qualitative Disclosures About Market Risk</a>	19
<a href="#">Item 4. Controls and Procedures</a>	19
PART II — OTHER INFORMATION	
<a href="#">Item 1. Legal Proceedings</a>	20
<a href="#">Item 1A. Risk Factors</a>	21
<a href="#">Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</a>	34
<a href="#">Item 6. Exhibits</a>	35

## PART I — FINANCIAL INFORMATION

## ITEM 1. — FINANCIAL STATEMENTS

## Restatement of 2010 Financial Statements

As discussed in Note 2 to the Financial Statements, the Company restated its financial statements for the period ended June 30, 2010. On January 25, 2011, the Company determined that certain provisions in ASC 815-40, which was effective January 1, 2009, were not, but should have been applied to the Series I Warrants issued in a private placement transaction in September 2009. The application of these provisions resulted in a reclassification of the Series I Warrants as a derivative liability, measured at fair value, with changes in fair value recognized as part of other income or expense for each reporting period thereafter.

**VIRNETX HOLDING CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

	<u>June 30, 2010</u> (Unaudited) (Restated)	<u>December 31, 2009</u>  (Restated)
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 127,179,912	\$ 2,011,470
Accounts receivable, net	7,717	6,842
Prepaid expense and other current assets	61,601	43,863
<b>Total current assets</b>	<u>127,249,230</u>	<u>2,062,175</u>
Property and equipment, net	19,240	23,430
Intangible and other assets	132,000	156,000
<b>Total assets</b>	<u>\$ 127,400,470</u>	<u>\$ 2,241,605</u>
<b>LIABILITIES AND STOCKHOLDERS' (EQUITY)</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 572,115	\$ 4,478,325
Income tax liability	34,000,000	—
Accrued dividend	23,599,000	—
Current portion of long-term obligation	—	40,000
Derivative liability	12,301,651	6,311,091
<b>Total current liabilities</b>	<u>70,472,766</u>	<u>10,829,416</u>
Long-term obligation, net of current portion	—	120,000
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, par value \$0.0001 per share Authorized 10,000,000 shares issued and outstanding: 0 shares at June 30, 2010 and December 31, 2009, respectively	—	—
Common stock, par value \$0.0001 per share Authorized 100,000,000 shares, issued and outstanding: 47,195,477 shares at June 30, 2010 and 39,750,927 at December 31, 2009, respectively	4,720	3,975
Additional paid in capital	46,419,312	26,860,747
Retained earnings (Deficit accumulated during the development stage)	10,503,672	(35,572,534)
<b>Total stockholders' equity</b>	<u>56,927,704</u>	<u>(8,707,812)</u>
<b>Total liabilities and stockholders' equity</b>	<u>\$ 127,400,470</u>	<u>\$ 2,241,605</u>

See accompanying notes to condensed consolidated financial statements

## VIRNETX HOLDING CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(Unaudited)

	Three Months Ended June 30, 2010 (Restated)	Three Months Ended June 30, 2009
Revenue — royalties	\$ 200,023,392	\$ 7,207
Operating expense:		
Royalty expense	59,239,274	—
Research and development	1,227,688	220,558
General, selling and administrative	24,455,057	3,714,995
Total operating expense	<u>(84,922,019)</u>	<u>(3,935,553)</u>
Income (loss) from operations	115,101,373	(3,928,346)
Loss on derivatives	(2,537,488)	—
Interest and other income, net	11,601	1,244
Income (loss) before taxes	<u>112,575,486</u>	<u>(3,927,102)</u>
Income taxes	34,000,000	—
<b>Net Income (loss)</b>	<b>\$ 78,575,486</b>	<b>\$ (3,927,102)</b>
Basic earnings (loss) per share:	\$ 1.78	\$ (0.11)
Diluted earnings (loss) per share:	\$ 1.67	\$ (0.11)
Weighted average shares outstanding basic	<u>44,277,422</u>	<u>37,369,985</u>
Weighted average shares outstanding dilutive	<u>47,266,249</u>	<u>37,369,985</u>
	<b>Six Months Ended June 30, 2010 (Restated)</b>	<b>Six Months Ended June 30, 2009</b>
Revenue — royalties	\$ 200,044,161	\$ 10,361
Operating expense:		
Royalty expense	59,239,274	—
Research and development	1,749,923	442,257
General, selling and administrative	28,410,942	6,901,684
Total operating expense	<u>(89,400,139)</u>	<u>(7,343,941)</u>
Income (loss) from operations	110,644,022	(7,333,580)
Loss from derivatives	(6,981,731)	—
Interest and other income, net	12,914	3,471
Income (loss) before taxes	<u>103,675,205</u>	<u>(7,330,109)</u>
Income taxes	34,000,000	—
<b>Net Income (loss)</b>	<b>\$ 69,675,205</b>	<b>\$ (7,330,109)</b>
Basic earnings (loss) per share:	\$ 1.63	\$ (0.20)
Diluted earnings (loss) per share:	\$ 1.54	\$ (0.20)
Weighted average shares outstanding basic	<u>42,720,896</u>	<u>36,974,239</u>
Weighted average shares outstanding dilutive	<u>45,248,343</u>	<u>36,974,239</u>

See accompanying notes to condensed consolidated financial statements

**VIRNETX HOLDING CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**

	<b>Six Months Ended June 30, 2010 (Restated)</b>	<b>Six Months Ended June 30, 2009</b>
Cash flows from operating activities:		
Net Income (loss)	\$ 69,675,205	\$ (7,330,109)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	1,565,822	1,434,036
Change in value of derivative liability	6,981,731	---
Depreciation and amortization	29,794	19,738
Changes in assets and liabilities:		
Receivables and other current assets	(18,612)	(24,574)
Accounts payable and accrued liabilities	30,093,790	2,537,993
Net cash provided (used) by operating activities	<u>108,327,730</u>	<u>(3,362,916)</u>
Cash flows from investing activities:		
Purchase of property and equipment	(1,603)	(3,429)
Net cash used in investing activities	<u>(1,603)</u>	<u>(3,429)</u>
Cash flows from financing activities:		
Payment of royalty obligation less imputed interest	(160,000)	(44,000)
Proceeds from exercise of options	272,208	—
Proceeds from exercise of warrants	16,730,107	—
Proceeds from sale of common stock	—	3,367,925
Net cash provided by financing activities	<u>16,842,315</u>	<u>3,323,925</u>
Net increase (decrease) in cash and cash equivalents	125,168,442	(42,420)
Cash and cash equivalents, beginning of period	2,011,470	457,155
Cash and cash equivalents, end of period	<u>\$ 127,179,912</u>	<u>\$ 414,735</u>
Supplemental disclosure of cash flow information:		
Cash paid during the period for taxes	\$ —	\$ 2,173
Cash paid during the period for interest	<u>\$ 10,000</u>	<u>\$ 6,000</u>
Supplemental disclosure of noncash investing and financing activities:		

See accompanying notes to condensed consolidated financial statements

## VIRNETX HOLDING CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)**Note 1 — Basis of Presentation**

Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) have been condensed or omitted. Results of operations for the interim periods presented are not necessarily indicative of results which may be expected for any other interim period or for the year as a whole. The accompanying unaudited interim financial statements include all adjustments (consisting of normal recurring adjustments) which are, in the opinion of management, necessary for a fair presentation. The information contained in this quarterly report on Form 10-Q/A should be read in conjunction with the audited financial statements and related notes for the year ended December 31, 2009 which are contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”), on March 31, 2010.

**Note 2 — Restatement**

As disclosed in a Current Report on Form 8-K the Company filed with the SEC on January 31, 2011, the Company’s Audit Committee determined on January 25, 2011 that the Company’s previously filed financial statements for: (i) the fiscal quarter ended September 30, 2009 included in the Form 10-Q filed with the SEC on November 9, 2009, (ii) the fiscal year ended December 31, 2009 included in the Form 10-K filed with the SEC on March 31, 2010, (iii) the fiscal quarter ended March 31, 2010 included in the Form 10-Q filed with the SEC on May 7, 2010, (iv) the fiscal quarter ended June 30, 2010 included in the Form 10-Q filed with the SEC on August 9, 2010 and (v) the fiscal quarter ended September 30, 2010 included in the Form 10-Q filed with the SEC on November 8, 2010, needed to be restated to correct the accounting for certain derivative instruments (the Series I Warrants issued by the Company in a private placement transaction in September 2009 discussed below) in such financial statements, which were previously recorded as equity instruments.

The Company has performed a re-assessment of the Series I Warrants to purchase 2,619,036 shares of common stock that were issued in connection with its September 2009 private placement and has concluded that the Series I Warrants are liabilities within the scope of ASC 815-40, “*Derivatives and Hedging – Contracts in Entity’s Own Equity*” (“ASC 815-40”), formerly Emerging Issues Task Force Issue No. 07-05, “*Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock*” (“EITF 07-05”), because the Series I Warrants contain a provision requiring a weighted average adjustment to the exercise price of the Series I Warrants if the Company were to issue common stock, or securities convertible into or exercisable for common stock, at a price per share lower than such exercise price. Accordingly, the Series I Warrants should have been accounted for as a derivative liability, measured at fair value, with changes in fair value recognized as gain or loss for each reporting period thereafter.

The following table (in thousands, except per share amounts) show the effects of the restatement on the Company's condensed consolidated balance sheet as of June 30, 2010 and condensed consolidated statement of operations for the six month period ended June 30, 2010:

	6/30/2010			6/30/2010	
	As Previously Reported	As Restated		As Previously Reported	As Restated
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			<b>INCOME FROM OPERATIONS</b>	\$ 200,044	\$ 200,044
<b>CURRENT LIABILITIES</b>			Losses from derivative liability	\$ -	\$ (6,981)
Warrant liability	\$ -	\$ 12,302	Total other income	\$ 13	\$ 13
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$ 58,170</b>	<b>\$ 70,472</b>	<b>NET INCOME (LOSS)</b>	<b>\$ 76,657</b>	<b>\$ 69,676</b>
<b>STOCKHOLDERS' EQUITY</b>			<b>BASIC EARNINGS PER SHARE</b>	<b>\$ 1.79</b>	<b>1.63</b>
Additional paid in capital	\$ 52,298	\$ 46,420	<b>DILUTED EARNINGS PER SHARE</b>	<b>\$ 1.69</b>	<b>1.54</b>
Accumulated deficit	\$ 16,928	\$ 10,505			
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>\$ 69,230</b>	<b>\$ 56,928</b>			
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 127,400</b>	<b>\$ 127,400</b>			

### Note 3 — Formation and Business of the Company

VirnetX Holding Corporation (“we,” “us,” “our” or the “Company”) is a company focused on commercializing a patent portfolio for providing solutions for secure real-time communications such as instant messaging, or “IM,” and voice over internet protocol, or “VoIP.”

In July 2007 we effected a merger between PASW, Inc., a company which had at the time of the merger, publicly traded common stock with limited operations, and VirnetX, Inc., which became our principal operating subsidiary. As a result of this merger, the former security holders of VirnetX, Inc. came to own a majority of our outstanding common stock.

Our principal business activities to date are our efforts to commercialize our patent portfolio, and our primary source of significant revenue has been from the Settlement and License Agreement we entered into with Microsoft Corporation on May 14, 2010. We also conduct the remaining activities of PASW, Inc., which are generally limited to the collection of royalties on certain internet-based communications by a wholly owned Japanese subsidiary of PASW pursuant to the terms of a single license agreement. The revenue generated by this agreement is not significant.

The company is no longer considered to be in the development stage as principal operations have commenced and significant revenues have been recognized. As such, the cumulative amounts and other additional disclosure required for development stage companies are omitted in the June 30, 2010 quarterly statements.

### Note 4 — Earnings Per Share

Basic earnings per share is based on the weighted average number of shares outstanding for a period. Diluted earnings per share is based upon the weighted average number of shares and potentially dilutive common shares outstanding. Potential common shares outstanding principally include stock options, warrants, restricted stock and other equity awards under our stock plan.

### Note 5 — Summary of Significant Accounting Policies

#### *Basis of Presentation*

The consolidated financial statements include the accounts of the VirnetX Holding Company, a development stage enterprise, and its wholly owned subsidiaries. All intercompany transactions have been eliminated.



These financial statements reflect the historical results of VirnetX, Inc. and subsequent to the merger date of July 5, 2007, the historical consolidated results of VirnetX Holding Corporation.

### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

### ***Cash and Cash Equivalents***

We consider all highly liquid investments purchased with original maturities of three months or less at the date of purchase to be cash equivalents.

### ***Concentration of Credit Risk and Other Risks and Uncertainties***

Our cash and cash equivalents are primarily maintained at two financial institutions in the United States. Deposits held with this financial institution may exceed the amount of insurance provided on such deposits. The balances are insured by the Federal Deposit Insurance Corporation (FDIC). During the period ended June 30, 2010 we had, at times, funds that were uninsured. The uninsured balance at June 30, 2010 was in excess of approximately \$5,500,000. We have not experienced any losses on our deposits of cash and cash equivalents.

### ***Intangible Assets***

We record intangible assets at cost, less accumulated amortization. Amortization of intangible assets is provided over the estimated useful lives, which can range from 3 to 15 years, on either a straight-line basis or as revenue is generated by the asset. This quarter, costs incurred to defend the patent were expensed due to the uncertainty of additional revenue being generated by those efforts.

### ***Impairment of Long-Lived Assets***

We identify and record impairment losses on intangible and other long-lived assets used in operations when events and changes in circumstances indicate that the carrying amount of an asset might not be recoverable. Recoverability is measured by comparison of the anticipated future net undiscounted cash flows to the related assets' carrying value. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the projected discounted future net cash flows arising from the asset.

### ***Research and Development***

Research and development costs include expenses paid to outside development consultants and compensation related expenses for our engineering staff. Research and development costs are expensed as incurred.

## Income Taxes

We account for income taxes under the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

Accounting for Uncertainty in Income Taxes using the prospective method allowed by FIN 48. The adoption of FIN 48 did not have a material impact on our financial statements.

## Derivative Loss

In accordance with FASB ASC 815-40-15 “Derivatives and Hedging-Contracts in Entity’s Own Equity-Scope and Scope Exceptions” (see Note 2), the Company is required to account for the Series I Warrants as derivative liabilities. The Company is required to mark to market in each reporting quarter the value of the embedded derivative and Series I Warrants. The Company revalues these derivative liabilities at the end of each reporting period. The periodic change in value of the derivative liabilities is recorded as either non-cash derivative income (if the value of the embedded derivative and Series I Warrants decrease) or as non-cash derivative expense (if the value of the embedded derivative and Series I Warrants increase). Although the values of the embedded derivative and warrants are affected by interest rates, the remaining contractual conversion period and the Company’s stock volatility, the primary cause of the change in the values will be the value of the Company’s Common Stock. If the stock price goes up, the value of these derivatives will generally increase and if the stock price goes down the value of these derivatives will generally decrease.

## Stock-Based Compensation

Our accounting for share-based compensation is in accordance with the fair value method which requires the measurement and recognition of compensation expense in the statement of operations for all share-based payment awards made to employees and directors including employee stock-options based on estimated fair values. Using the modified retrospective transition method of adopting this standard, the financial statements presented herein reflect compensation expense for stock-based awards as if the provisions of this standard had been applied from the date of inception.

In addition, as required we record stock and options granted to non-employees at fair value of the consideration received or the fair value of the equity instruments issued as they vest over the performance period.

## Revenue Recognition

We recognize revenue in accordance with Accounting Standards Codification (“ASC”) 605 *Revenue Recognition* (formerly Staff Accounting Bulletin 104). We are a licensor of software and generate revenue primarily from the one-time sales of licensed software. Generally, revenue is recognized when persuasive evidence of an arrangement exists, upon shipment of the licensed software, the price is fixed or determinable and collectability is reasonably assured. For multiple element license arrangements, the license fee is allocated to the various elements based on fair value.

## Note 6 — Fair Value of Financial Instruments

Carrying amounts of our financial instruments, including cash and cash equivalents, accounts payable, notes payable, and accrued liabilities approximate their fair values due to their short maturities. The carrying amount of our minimum royalty payment obligation approximates fair value because it is recorded at a discounted calculation.

The Company’s liabilities measured at fair value on a recurring basis were determined using the following inputs:

	Total	Fair Value Measurements at June 30, 2010		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Warrants	\$ 12,301,651	\$ -	\$ -	\$ 12,301,651
Total	\$ 12,301,651	\$ -	\$ -	\$ 12,301,651

Beginning September 1, 2009, the Company carried its embedded Series I Warrants on its balance sheet as liabilities (see Note 2) carried at fair value determined by using the Binomial valuation model. As of June 30, 2010, the assumptions used in the valuation of the embedded derivative of the Series I Warrants with an exercise price of \$3.93, as well as the Company’s stock price of \$5.92, discount rate of 1.79%, and volatility of 123%.

A reconciliation of the Company's liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows:

	<b>Fair Values Measurements Using Significant Unobservable Inputs (Level 3) Warrant Liability</b>
Balance December 31, 2009	\$ 6,311,091
Total unrealized loss included in earnings	6,981,731
Settlements	(991,171)
Balance June 30, 2010	<u>\$ 12,301,651</u>

#### Note 7 — Patent Portfolio

As of June 30, 2010, we had 12 issued U.S. and eight issued foreign technology related patents, in addition to pending U.S. and foreign patent applications. The terms of our issued U.S. and foreign patents run through the period 2019 to 2024. Most of our issued patents were acquired by our principal operating subsidiary, VirnetX, Inc., from Science Applications International Corporation, or SAIC, pursuant to an Assignment Agreement dated December 21, 2006, and a Patent License and Assignment Agreement dated August 12, 2005, as amended on November 2, 2006, including documents prepared pursuant to the November amendment, and as further amended on March 12, 2008. We are required to make payments to SAIC based on the revenue generated from our ownership or use of the patents assigned to us by SAIC. Royalty amounts vary depending upon the type of revenue generating activities, and certain royalty categories are subject to maximums and other limitations. With respect to revenue-generating activities within our field of use, minimum annual royalty payments of \$50,000 were due beginning in 2008 but as of June 30, 2010 we have met our maximum royalty payment. SAIC is also entitled under certain circumstances to receive a portion of the proceeds from revenues, monies or any form of consideration paid to VirnetX for certain acquisitions of VirnetX or from the settlement of certain patent infringement claims of ours.

#### Note 8 — Income Taxes

The Company had pre-tax income during the six months ended June 30, 2010 for the first time since inception. The components of income tax expense are as follows:

	<b>June 30, 2010</b>	<b>June 30, 2009</b>
Current	\$ 34,000,000	\$ 0
Deferred	0	0
Total	<u>\$ 34,000,000</u>	<u>\$ 0</u>

A reconciliation of the federal statutory rate to the Company's effective rate was as follows:

	<b>June 30, 2010</b>	<b>June 30, 2009</b>
Tax provision (benefit at statutory rate)	\$ 37,500,000	\$ (2,500,000)
State taxes, net of federal benefit	6,000,000	0
Non deductible expenses	500,000	400,000
Change in deferred tax allowance	(10,000,000)	2,100,000
Total	<u>\$ 34,000,000</u>	<u>\$ 0</u>

Prior to the six months ended June 30, 2010, the tax benefit of the Company's net operating loss carryforwards were fully reserved as utilization was uncertain.

Deferred tax benefit of net operating loss carryforwards	\$ 1,000,000	\$ 10,500,000
Research and development credits	—	500,000
Subtotal	1,000,000	11,000,000
Less utilization allowance	(1,000,000)	(11,000,000)
Total	<u>\$ 0</u>	<u>\$ 0</u>

#### Note 9 — Commitments

We lease our office facility under a non-cancelable operating lease that was amended in 2008 and ends in 2012. We recognize rent expense on a straight-line basis over the term of the lease.

For the Year	Minimum Required Lease Payments in Period
July 1 through December 31, 2010	\$ 29,040
2011	59,242
2012	30,202
	<u>\$ 118,484</u>

#### Note 10 — Stock Plan

In 2005, VirnetX, Inc. adopted the 2005 Stock Plan, which was assumed by us upon the closing of the transaction between VirnetX Holding Corporation and VirnetX, Inc. on July 5, 2007. Our Board of Directors renamed this plan the "VirnetX Holding Corporation 2007 Stock Plan, or the Plan, and our stockholders approved the Plan at our 2008 annual stockholders' meeting. The Plan provides for the issuance of up to 11,624,469 shares of our common stock. To the extent that any award should expire, become un-exercisable or is otherwise forfeited, the shares subject to such award will again become available for issuance under the Plan. The Plan provides for the granting of stock options and stock purchase rights to our employees and consultants. Stock options granted under the Plan may be incentive stock options or nonqualified stock options. Incentive stock options, or ISOs, may only be granted to our employees (including officers and directors). Nonqualified stock options, or NSOs, and stock purchase rights may be granted to our employees and consultants.

The Plan will expire 10 years after it was approved by our Board of Directors. Options may be granted under the Plan with an exercise price determined by our Board of Directors, provided, however, that the exercise price of an ISO or NSO granted to one of our Named Executive Officers shall not be less than 100% fair market value of the shares at the date of grant and the exercise price of an ISO granted to a 10% stockholder shall not be less than 110% of the fair market value of the shares on the date of grant.

There were 5,117,637 options outstanding at June 30, 2010 and 5,785,790 at December 31, 2009 with an average exercise price of \$3.21 at June 30, 2010 and \$2.57 at December 31, 2009. As of June 30, 2010, there were 1,071,979 shares available to be granted under the Plan.

During the period January 1, 2010 through June 30, 2010, 1,013,403 options were exercised.

#### Note 11 — Stock-Based Compensation

We account for equity instruments issued to employees in accordance with the fair value method which requires that such issuances be recorded at their fair value on the grant date. The recognition of the expense is subject to periodic adjustment as the underlying equity instrument vests.

Stock-based compensation expense is included in general and administrative expense for the period ended June 30, 2010. Total stock-based compensation expense was \$1,565,822 and \$1,434,036 for the six months ended June 30, 2010 and 2009, respectively.

As of June 30, 2010, the unrecorded deferred stock-based compensation balance related to stock options was \$5,841,561, which will be amortized as expense over an estimated weighted average vesting amortization period of approximately 1.6 years.

The fair value of each option grant was estimated on the date of grant using the following weighted average assumptions:

	<b>Period Ended June 30, 2010</b>	<b>Year Ended December 31, 2009</b>
Volatility	110%	120%
Risk-free interest rate	3.20%	2.93%
Expected life	7.0 years	6.6 years
Expected dividends	0%	0%

The expected life was determined using the simplified method outlined in Staff Accounting Bulletin 111, taking the average of the vesting term and the contractual term of the option. Expected volatility of the stock options was based upon historical data and other relevant factors, such as the volatility of comparable publicly-traded companies at a similar stage of life cycle. We have not provided an estimate for forfeitures because we have no history of forfeited options and believe that all outstanding options at June 30, 2010 will vest. In the future, we may change this estimate based on actual and expected future forfeiture rates.

**Note 12 — Warrants**

In 2007 and 2009 we issued warrants to purchase shares of our common stock in public and private securities offerings.

**Warrant Activity As Of The Six Months Ended June 30, 2010**

<b>Original Number of Warrant Issued</b>	<b>Exercise Price per Share of Common Stock</b>	<b>Shares of Common Stock Issued Upon Exercise During the 6 Months Ended June 30, 2010</b>	<b>Warrant Shares Terminated/ Cancelled/ Expired During the 6 Months Ended June 30, 2010</b>	<b>Exercisable at June 30, 2010</b>	<b>Termination Date</b>
300,000	\$ 4.80	(120,000)	—	180,000	December 2012
1,235,000	\$ 2.00	(1,233,741)	(1,259)	0	—
1,235,000	\$ 3.00	(1,157,027)	—	77,973	July 2010(1)
1,235,000	\$ 4.00	(1,106,511)	—	128,489	July 2010(1)
220,000	\$ 1.80	(220,000)	—	0	—
2,619,036(2)	\$ 3.93(2)	(212,926)	—	2,406,110	March 2015
2,419,023	\$ 0.01	—	(2,419,023)	0(3)	—
2,380,942	\$ 2.52	(2,380,942)	—	0	—
<b>Total</b>		<b>(6,431,147)</b>	<b>(2,420,282)</b>	<b>2,792,572</b>	

- (1) Subject to call by us under certain conditions.
- (2) The exercise price and number of shares of common stock issuable pursuant to these warrants do not reflect the impact of the Company's declaration of a special cash dividend to stockholders of record on July 1, 2010. In certain situations, the exercise price and number of shares issuable pursuant to each outstanding Series I Warrant will be adjusted based on certain price-based formulas. The foregoing description is subject to, and qualified in its entirety by, the form of warrant filed with the SEC as an exhibit to our Current Report on Form 8-K on September 3, 2009.
- (3) These warrants were to become exercisable under certain conditions. Those conditions were not met, and accordingly, these warrants terminated on January 14, 2010.

During the six months ended June 30, 2010, we received aggregate proceeds from the exercise of warrants of approximately \$16,730,000.

### **Note 13 — Litigation**

We commenced a patent infringement lawsuit against Microsoft Corporation in February 2007 and a second patent infringement lawsuit in March 2010.

On May 14, 2010, we entered into a Settlement and License Agreement with Microsoft to settle all claims asserted by us against Microsoft. Pursuant to the Microsoft Settlement, Microsoft paid us \$200,000,000 in June 2010 and we dismissed both lawsuits and granted Microsoft a worldwide, irrevocable, nonexclusive, non-sub licensable fully paid up license under our patents. The license will not impact our plans to operate a Secure Domain Name Service. The foregoing description of the Microsoft settlement is not complete and is qualified in its entirety by reference to the complete terms of the Settlement and License Agreement, by and between VirnetX, Inc. and the Microsoft Corporation, dated as of May 14, 2010, a copy of which is attached to this Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2010 as Exhibit 10.01. We have requested confidential treatment for certain portions of this agreement which have been redacted and provided separately to the U.S. Securities and Exchange Commission. On May 25, 2010 and June 1, 2010 all claims asserted by us against Microsoft with respect to the Microsoft litigation were dismissed with prejudice by the U.S. District Court for the Eastern District of Texas, Tyler Division.

On May 18, 2010, Microsoft filed notices with the U.S. Patent and Trademark office, or USPTO, to end its challenges, commenced in December 2009, of the validity of certain of our patents.

On June 16, 2010, the USPTO confirmed all our claims in our U.S. Patent No. 6,502,135 and U.S. Patent No. 7,188,180 as patentable and valid and closed all reexamination proceedings for these patents.

### **Note 14 — Cash Dividend**

On June 15, 2010, the Company's Board of Directors declared a special cash dividend of \$0.50 per share of the Company's common stock to holders of record on July 1, 2010. A total amount of \$23.6 million was paid to stockholders on July 15, 2010 in connection with this special cash dividend.

## ITEM 2 — MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

*This Quarterly Report on Form 10-Q/A, including this Management’s Discussion and Analysis of Financial Condition and Results of Operations contains “forward-looking” statements within the meaning of the Private Securities Litigation Reform Act of 1995, which provides a “safe harbor” for statements about future events, products and future financial performance that are based on the beliefs of, estimates made by and information currently available to our management. Except for the historical information contained herein, the outcome of the events described in these forward-looking statements is subject to risks and uncertainties. See “Risk Factors” for a discussion of these risks and uncertainties. The following discussion should be read in conjunction with and is qualified in its entirety by reference to our consolidated financial statements included elsewhere in this report. Actual results and the outcome or timing of certain events may differ significantly from those stated or implied by these forward-looking statements due to the factors listed under “Risk Factors,” and from time to time in our other filings with the Securities and Exchange Commission, or SEC. For this purpose, using the terms “believe,” “expect,” “expectation,” “anticipate,” “can,” “should,” “would,” “could,” “estimate,” “appear,” “based on,” “may,” “intended,” “potential,” “indicate,” “are emerging” and “possible” or similar statements are forward-looking statements that involve risks and uncertainties that could cause our actual results and the outcome and timing of certain events to differ materially from those stated or implied by these forward-looking statements. By making forward-looking statements, we have not assumed any obligation to, and you should not expect us to, update or revise those statements because of new information, future events or otherwise.*

As used herein, “we,” “us,” “our,” or the “Company” means VirnetX Holding Corporation, together with its consolidated subsidiaries where applicable.

### Company Overview

We are developing and commercializing software and technology solutions for securing real-time communications over the Internet. Our patented GABRIEL Connection Technology™ combines industry standard encryption protocols with our patented techniques for automated domain name system, or DNS, lookup mechanisms, enabling users to create a secure communication link using secure domain names over wired or wireless (4G/LTE) networks. We also intend to establish the exclusive secure domain name registry in the United States and other key markets around the world. Our software and technology solutions provide the security platform required by next-generation Internet-based applications such as instant messaging, or IM, voice over Internet protocol, or VoIP, mobile services, streaming video, file transfer and remote desktop. Our technology generates secure connections on a “zero-click” or “single-click” basis, significantly simplifying the deployment of secure real-time communication solutions by eliminating the need for end users to enter any encryption information.

Our portfolio of intellectual property is the foundation of our business model. We currently have twelve patents in the United States and eight international patents, as well as several pending U.S. and foreign patent applications. Our patent portfolio is primarily focused on securing real-time communications over the Internet, as well as related services such as the establishment and maintenance of a secure domain name registry. Our patented methods also have additional applications in operating systems and network security. On December 2, 2009, we declared to the 3GPP (3rd Generation Partnership Project) that our U.S. and international patents are or may be essential to Long Term Evolution (LTE) and 4G wireless specifications. We believe that we will hold the majority of 4G essential patents related to Series 33 specifications that define security standards for LTE/4G and are prepared to license the use of our patents for incorporation into 4G related products such as chips, servers, smartphones, tablets, netbooks, laptop computers, etc. Our employees include the core development team behind our patent portfolio, technology and software. This team has worked together for over ten years and is the same team that invented and developed this technology while working at Science Application International Corporation, or SAIC. SAIC is a FORTUNE 500® scientific, engineering and technology applications company that uses its deep domain knowledge to solve problems of vital importance to the nation and the world, in national security, energy and the environment, critical infrastructure and health. We acquired this patent portfolio in 2006, and it now serves as the foundation of our licensing business and planned service offerings. We expect to continue to derive the majority of our revenue from license fees and royalties associated with the patents. We also intend to continue our research and development efforts to further strengthen and expand our patent portfolio, and over time, we plan to leverage this portfolio to develop a product suite that can be sold to original equipment manufacturers, or OEMs, enterprise customers and developers.

Microsoft Corporation is our first licensee and has been granted a worldwide, irrevocable, nonexclusive, non-sublicenseable fully paid up license of our patents for Microsoft products. The license will not impact our plans to operate a Secure Domain Name Service. We also intend to license our patents and our GABRIEL Connection Technology™ to manufacturers of chips, servers, smart phones, tablets, e-Readers, laptops, net books and other devices, within the IP-telephony, mobility, fixed-mobile convergence and unified communications markets including 4G/LTE. The leaders in these markets include Alcatel-Lucent, Apple Inc., Avaya Inc., Cisco Systems, Inc., Juniper Networks, Inc., LM Ericsson Telephone Company, Motorola, Inc., NEC Corporation, Nokia Corporation, Nortel Networks Corporation, Samsung Electronics Co. Ltd. and Sony Ericsson Mobile Communications AB, among others.

The beta testing of our GABRIEL Connection Technology™ has been progressing well and has now become part of our Secure Domain Name Initiative (SDNI) that was announced on April 13, 2010. We have been in active discussions with leading 4G/LTE companies (domain infrastructure providers, chipset manufacturers, service providers, and others) to participate in a design pilot for delivering to end-users and consumers of the Internet and mobile devices the needed and necessary security requirements for the next generation 4G/LTE wireless networks. The pilot will implement our patented Secure Domain Name and our GABRIEL Connection Technology™.

We also intend to license our patent portfolio, technology and software, including our secure domain name registry service, to domain infrastructure providers, communication service providers as well as to system integrators. We believe that the market opportunity for our software and technology solutions is large and expanding as secure domain names are now an integral part of securing the next generation 4G/LTE wireless networks. All 4G mobile devices will require their own individual and unique secure domain name and become part of a secure domain name registry. As part of our licensing strategy, ipCapital Group, a leading advisor on licensing technology and intellectual property, continues to assist us in building relationships with several major potential licensees. Since its founding in 1998, ipCapital Group has supported the licensing efforts of clients across a variety of technologies and markets, resulting in transactions representing several hundred million dollars of value.

We intend to continue using an outsourced and leveraged model to maintain efficiency and manage costs as we grow our licensing business by offering incentives to early licensing targets or asserting our rights for use of our patents. We also intend to expand our design pilot in participation with leading 4G/LTE companies (domain infrastructure providers, chipset manufacturers, service providers, and others) and build our secure domain name registry.

### **Recent Developments in the Three Months Ended June 30, 2010**

On April 27, 2010, we entered into an engagement letter with McKool Smith, a professional corporation, confirming McKool as our lead counsel in our lawsuit filed in March 2010 against Microsoft, as the March 2010 Litigation. In the event of a judgment or settlement of the March 2010 Litigation, we agreed to pay McKool a portion of the total proceeds of the March 2010 Litigation, and a portion of any judgment or settlement paid in our litigation against Microsoft filed in February 2007, as the February 2007 Litigation. Under the April 2010 engagement letter, McKool agreed to represent us at McKool's standard hourly rates subject to a cap of \$7.5 million, plus a contingency fee. As a result of the March 2010 Litigation and February 2007 Litigation being settled together in connection with the Settlement and License Agreement with Microsoft, as further described below, the contingency fee payable to McKool was 10% of the settlement proceeds, plus expenses.

On May 14, 2010, we entered into a Settlement and License Agreement with Microsoft to settle all claims asserted by us against Microsoft in the Microsoft litigation, or the Microsoft Settlement. Pursuant to the Microsoft Settlement, Microsoft agreed to make a one-time cash payment of \$200,000,000 to us in exchange for dismissing both lawsuits and a worldwide, irrevocable, nonexclusive, non-sub licensable fully paid up license under our patents. The foregoing description of the Microsoft Settlement does not purport to be complete and is qualified in its entirety by reference to the complete terms of the Settlement and License Agreement, by and between VirnetX, Inc. and the Microsoft Corporation, dated as of May 14, 2010, a copy of which is attached to this Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2010 as Exhibit 10.1. We have submitted a request for confidential treatment for certain portions of the Microsoft Settlement Agreement. Those portions have been redacted and have been provided separately to the U.S. Securities and Exchange Commission.



In connection with the Microsoft Settlement, on May 25, 2010 and June 1, 2010, the District Court entered two Orders of Dismissal whereby all claims asserted by us against Microsoft with respect to the Microsoft litigation were dismissed with prejudice. In addition, on May 18, 2010, Microsoft filed Notices of Non-Participation with the United States Patent and Trademark Office, or USPTO, whereby Microsoft stated that it will not participate further in the Inter Partes Reexamination of certain of our patents.

On June 16, 2010, the USPTO confirmed all our claims in our U.S. Patent No. 6,502,135 and U.S. Patent No. 7,188,180 as patentable and valid and stated that it has closed all Reexamination proceedings for these patents.

### **Subsequent Events**

In June the Board of Directors declared a special cash dividend of \$.50 per share to our shareholders of record on July 1, 2010. In connection with the cash dividend, the Board of Directors also approved a cash distribution to holders of stock options under our 2007 Stock Plan. In connection with the July 15, 2010 payments, we paid out approximately \$26,157,000 to our stockholders and holders of our stock options.

On July 30, 2010, warrants issued in our January 2009 public offering representing 3,705,000 shares of our common stock expired. All warrants issued to public investors in connection with the January 2009 offering have expired and are no longer outstanding.

### **Critical Accounting Policies**

There were no material changes in the application of the Company's critical accounting policies since the end of the most recent fiscal year. For further information, see the "Critical Accounting Policies" section of Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," in our Annual Report on Form 10-K for the year ended December 31, 2009, filed with the SEC on March 31, 2010.

### **Recent Accounting Pronouncements**

In January 2010, the Financial Accounting Standards Board required new disclosures about fair value of financial instruments for interim and annual reporting periods. These new disclosures are effective for interim and annual reporting periods beginning after December 15, 2009, except for disclosures about purchase, sales, issuances and settlements of so-called Level 3 financial instruments, which are effective for interim and annual reporting periods in fiscal years beginning after December 15, 2010. Adoption is not expected to have a material effect on the Company's consolidated financial statements.

For further information, see the "Recent Accounting Pronouncements" section of Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," in our Annual Report on Form 10-K for the year ended December 31, 2009, filed with the SEC on March 31, 2010.

### **Results of Operations**

#### **Three and Six Months Ended June 30, 2010 Compared with Three and Six Months Ended June 30, 2009**

#### ***Restatement of 2010 Financial Statements***

As discussed in Note 2 to the Financial Statements, the Company restated its financial statements for the period ending June 30, 2010. On January 25, 2011, the Company determined that certain provisions in ASC 815-40, which was effective January 1, 2009, were not, but should have been applied to the Series I Warrants issued in a private placement transaction in September 2009. The application of these certain provisions resulted in a reclassification of the Series I Warrants as a derivative liability, measured at fair value, with changes in fair value recognized as part of other income or expense for each reporting period thereafter.

### **Revenue — Royalties**

Revenue generated increased to \$200,023,392 for the three months ended June 30, 2010, from \$7,207 for the three months ended June 30, 2009, and to \$200,044,161 for the six months ended June 30, 2010, from \$10,361 for the six months ended June 30, 2009. Our revenue in 2009 was solely limited to the royalties earned under our single license agreement through our Japanese subsidiary. We expect the revenue from this license to decrease substantially in the future. We do not intend to seek additional licenses or other revenue through our Japanese subsidiary.

Our revenue in 2010 was largely attributable to the revenue generated from the Settlement and License Agreement entered into with Microsoft Corporation on May 14, 2010. See Part II, Item 1 “Legal Proceedings” for additional information regarding the Microsoft Settlement.

### **Royalty Expense**

Under our agreements with SAIC, we were obligated to pay SAIC 35% of the proceeds from the settlement of litigation with Microsoft after reduction for costs, including legal fees and expenses, incurred by us and SAIC in connection with the Microsoft litigation. In June we paid SAIC \$59,239,274 in connection with our obligations under the SAIC agreements. We remain obligated to make future payments to SAIC equal to a portion of certain revenues we may generate in the future, as described in our Report on Form 10-K dated December 31, 2009.

### **Research and Development Expenses**

Research and development costs include expenses paid to outside development consultants and compensation related expenses for our engineering staff. Research and development costs are expensed as incurred.

Our research and development expenses increased by \$1,007,130 to \$1,227,688 for the three months ended June 30, 2010, from \$220,558 for the three months ended June 30, 2009, and to \$1,749,923 for the six months ended June 30, 2010, from \$442,257 for the six months ended June 30, 2009. This increase is primarily due to increased engineering activities for product development, salary increase and bonuses paid in March 2010 as well as compensation paid to options holders as of June 15, 2010.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses include management and administrative personnel, as well as outside legal, accounting, and consulting services.

Our selling, general and administrative expenses increased by \$20,740,062 to \$24,455,057 for the three months ended June 30, 2010 from \$3,714,995 for the three month period ended June 30, 2009, and to \$28,410,942 for the six months ended June 30, 2010, from \$6,901,684 for the six months ended June 30, 2009. The increase was primarily due to increased legal fees and expenses associated with our Microsoft litigation and the settlement license agreement.

Within selling, general and administrative expenses, legal fees increased by \$19,183,919 to \$21,548,727 for the three months ended June 30, 2010 from \$2,364,808 for the three months ended June 30, 2009, and to \$23,665,206 for the six months ended June 30, 2010, from \$4,221,197 for the six months ended June 30, 2009. The increase in fees incurred was due primarily to fees and expenses associated with our Microsoft litigation and the settlement license agreement.

The Company recognized \$6,981,731 in non-cash loss related to the periodic revaluation of its Series I Warrants. This non operating expense is a result of the Company’s stock price increasing making the outstanding warrants more valuable. There were no derivative instruments in the same period for the prior year.

## Liquidity and Capital Resources

As of June 30, 2010, our cash, cash equivalents and short-term investments totaled \$127,179,912.

In the quarter ended June 30, 2010, we received \$200,000,000 in cash from Microsoft Corporation in connection with our May 2010 settlement. We have paid \$59,239,274 to SAIC, and \$20,000,000 to McKool Smith. In July 2010, we paid a special dividend to our common shareholders aggregating \$23,598,589. We expect to pay taxes on our taxable income for 2010 and have estimated and accrued a \$34,000,000 tax provision. As such, the proceeds of the Microsoft settlement expected to be retained by us are approximately \$63,000,000.

Before entering into the Microsoft Settlement, we allocated a large part of our cash and cash equivalents to the fees and expenses associated with the Microsoft litigation. We expect to use the net proceeds expected to be retained by us from the Microsoft settlement to be sufficient to fund our operations and provide working capital for general corporate purposes for at least the next 12 months. We expect to derive the majority of our future revenue from license fees and royalties associated with our patent portfolio, technology and software.

## Off-Balance Sheet Arrangements

None.

## ITEM 3 — QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we intend to invest in short-term, high-quality, interest-bearing securities. Our investments in debt securities are subject to interest rate risk. To minimize our exposure to an adverse shift in interest rates, we invest in short-term securities and maintain an average maturity of one year or less. If interest rates were to instantaneously increase or decrease by 100 basis points, the change in the fair market value of our short-term investment would not be a material amount to our financial statements.

## ITEM 4 — CONTROLS AND PROCEDURES.

(a) *Disclosure controls and procedures.* Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such items are defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (“Exchange Act”)), as of the end of the period covered by this Quarterly Report on Form 10-Q (the “Evaluation Date”). Based on this evaluation, as of the Evaluation Date, our Chief Executive Officer and Chief Financial Officer previously concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report were effective to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act was accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure, and that such information was recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms.

However, in connection with the filing of this Amendment No. 1 to the Company’s quarterly report on Form 10-Q/A, the Company’s Chief Executive Officer and Chief Financial Officer re-evaluated, with the participation of management, the effectiveness of the Company’s disclosure controls and procedures, and concluded that a material weakness existed with respect to the Company’s reporting of complex, non-routine transactions (the Series I Warrants) during and as of the end of the period covered by this quarterly report on Form 10-Q/A. This weakness was a result of our interpretation of the guidance in ASC 815-40, “*Derivative and Hedging – Contracts in an Entity’s own Equity*” with respect to its application to the Series I Warrants, which required the restatement of our consolidated balance sheet as of December 31, 2010 and statements of operations and cash flows for the six months ended June 30, 2010 covered by this quarterly report on Form 10-Q/A.

(b) *Changes in internal control over financial reporting.* There was no change in our internal control over financial reporting during the quarter ended June 30, 2010 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II — OTHER INFORMATION

### ITEM 1 — LEGAL PROCEEDINGS.

We commenced a patent infringement lawsuit against Microsoft Corporation on February 15, 2007, the February 2007 lawsuit, by filing a complaint in the United States District Court for the Eastern District of Texas, Tyler Division, or the District Court. Pursuant to the complaint, we alleged that Microsoft infringes two of our U.S. patents: U.S. Patent No. 6,502,135 B1, entitled “Agile Network Protocol for Secure Communications with Assured System Availability,” and U.S. Patent No. 6,839,759 B2, entitled “Method for Establishing Secure Communication Link Between Computers of Virtual Private Network Without User Entering Any Cryptographic Information.” On April 5, 2007, we filed an amended complaint specifying certain accused products at issue and alleging infringement of a third, recently issued U.S. patent: U.S. Patent No. 7,188,180 B2, entitled “Method for Establishing Secure Communication Link Between Computers of Virtual Private Network.” Microsoft answered the amended complaint and asserted counterclaims against us on May 4, 2007. Microsoft counterclaimed for declarations that our patents are not infringed, are invalid and are unenforceable. We filed a reply to Microsoft’s counterclaims on May 24, 2007. We have served our infringement contentions directed to certain of Microsoft’s operating system and unified messaging and collaboration applications. On March 31, 2008, Microsoft filed a motion to dismiss for lack of standing, which was denied by the court pursuant to an order dated June 3, 2008. Also pursuant to that court decision, on June 10, 2008, SAIC joined us in our lawsuit as a plaintiff. On November 19, 2008, the court granted our motion to amend our infringement contentions, permitting us to provide increased specificity and citations to Microsoft’s proprietary documents and source code to support our infringement case against Microsoft’s accused products, including, among other things, Windows XP, Vista, Server 2003, Server 2008, Live Communication Server, Office Communication Server and Office Communicator.

On July 30, 2009, the District Court issued its Markman Order in the Microsoft litigation. On March 16, 2010, the jury awarded us a \$105,750,000 verdict against Microsoft for infringing two of our patents. The jury also found that Microsoft’s patent infringement was willful.

On March 17, 2010, we filed a new complaint against Microsoft, or the March 2010 lawsuit, alleging infringement of U.S. Patent Nos. 6,502,135 and 7,188,180 by Microsoft’s Windows 7 and Windows Server 2008 R2 software products. We refer to the February 2007 lawsuit and the March 2010 lawsuit, collectively, as the Microsoft litigation.

In addition to the legal proceedings discussed above, in December 2009, Microsoft submitted a reexamination request to the United States Patent and Trademark Office, or USPTO, to challenge the validity of certain claims on certain of our patents at issue in connection with the Microsoft litigation. In January 2010, the USPTO confirmed the validity of certain claims, while taking “non-final action” on other of Microsoft’s claims.

On May 14, 2010, we entered into a Settlement and License Agreement with Microsoft to settle all claims asserted by us against Microsoft in the Microsoft litigation, or the Microsoft Settlement. Pursuant to the Microsoft Settlement, Microsoft agreed to make a one-time cash payment of \$200,000,000 to us in exchange for dismissing both lawsuits and a worldwide, irrevocable, nonexclusive, non-sub licensable fully paid up license under our patents. The license will not impact our plans to operate a Secure Domain Name Service. The foregoing description of the Microsoft Settlement does not purport to be complete and is qualified in its entirety by reference to the complete terms of the Settlement and License Agreement, by and between VirnetX, Inc. and the Microsoft Corporation, dated as of May 14, 2010, a copy of which is attached to this Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2010 as Exhibit 10.1. We have submitted a request for confidential treatment for certain portions of the Microsoft Settlement Agreement. Those portions have been redacted and have been provided separately to the U.S. Securities and Exchange Commission.

On May 25, 2010 and June 1, 2010, the District Court entered two Orders of Dismissal whereby all claims asserted by us against Microsoft with respect to the Microsoft litigation were dismissed with prejudice.

On May 18, 2010, Microsoft filed Notices of Non-Participation with the USPTO, whereby Microsoft stated that it will not participate further in the Inter Partes Reexamination of certain of our patents.

On June 16, 2010, the USPTO confirmed all our claims in our U.S. Patent No. 6,502,135 and U.S. Patent No. 7,188,180 as patentable and valid and stated that it has closed all Reexamination proceedings for these patents.

One or more potential intellectual property infringement claims may also be available to us against certain other companies who have the resources to defend against any such claims. Although we believe these potential claims are worth pursuing, commencing a lawsuit can be expensive and time-consuming, and there is no assurance that we will prevail on such potential claims. In addition, bringing a lawsuit may lead to potential counterclaims which may preclude our ability to commercialize our initial products, which are currently in development.

Currently, we are not a party to any other pending legal proceedings, and are not aware of any proceeding threatened or contemplated against us by any governmental authority or other party.

#### **ITEM 1A — RISK FACTORS.**

You should carefully consider the following material risks in addition to the other information set forth in this Quarterly Report on Form 10-Q/A before making any investment in the offered securities. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. If any of these risk factors occurs, you could lose substantial value or your entire investment in the offered securities.

##### **Risks Related to the Restatements**

*We have identified a material weakness in our internal control over financial reporting and our failure to maintain the effectiveness of our internal control over financial reporting could cause the cost related to remediation to increase and could cause our stock price to decline.*

When we determined that we were required to restate our financial statements for the fiscal quarter ended June 30, 2010, along with the fiscal year ended December 31, 2009 and the fiscal quarters ended September 30, 2009, March 31, 2010 and September 30, 2010, our management identified material deficiencies regarding the design and effectiveness of our system of internal control over financial reporting with respect to the Company's method of accounting for the Series I Warrants. Although the effects of the restatement did not effect our cash flows, if we fail to successfully remediate this weakness, it could diminish our ability to accurately report our results of operations or financial position and to meet our financial reporting obligations in a timely manner and could cause our stock price to decline.

##### **Risks Related to Our Business and Our Industry**

*We may or may not be able to capitalize on potential market opportunities related to our licensing strategy or our patent portfolio.*

Our business strategy calls for us to enter into licensing relationships with the leading companies in our target market in order to reach a larger end-user base than we could reach through direct sales and marketing efforts. Although we entered into a Settlement and License Agreement with Microsoft Corporation, there can be no assurance that we will be able to continue to capitalize on our patent portfolio or any potential market opportunity in the foreseeable future. We have engaged ipCapital Group to help develop our licensing strategy and to introduce us to five potential strategic licensees of our technology. In connection with this engagement, we agreed to pay ipCapital Group 10% of the royalties of each resulting licensing arrangement, up to an aggregate maximum of \$2 million per licensee, or \$10 million in the aggregate. There can be no assurance that we or ipCapital Group will be successful in these efforts. Our inability to generate licensing revenues associated with the potential market opportunity could result from a number of factors, including, but not limited to:

- our management team may not have sufficient bandwidth to successfully capitalize on all of the opportunities identified by ipCapital Group;
- we may not be successful in entering into licensing relationships with our targeted customers on commercially acceptable terms;
- the validity of certain claims of certain of our patents underlying our licensing opportunity; and

***Our business plan for commercializing our patents and technology is new and unproven, and therefore we can provide no assurance that we will be successful in pursuing it.***

We intend to develop products to provide a security platform for real-time communications; however, this is not a defined market. We expect to depend on our intellectual property licensing fees for the majority of our revenues. Our ability to generate licensing fees is highly dependent on mainstream market adoption of real-time communications based on SIP or using DNS lookup protocols as well as customer adoption of our GABRIEL Communication Technology™ and our secure domain name registry. We cannot assure you that customers will adopt our products and services, or that we will succeed in building a profitable business based on our business plan.

***There has been increased competition for security solutions in the real-time communications industry, as more companies seek to provide products and services similar to our proposed products and services, and because larger and better-financed competitors may affect our ability to operate our business and achieve profitability, our business may fail.***

We expect competition for our products and services to be intense. We expect to compete directly against other companies offering similar security products and services that will compete directly with our proposed products and services. We also expect that we will compete against established vendors within the IP-telephony, mobility, fixed-mobile convergence and unified communications markets. These companies may incorporate other competitive technologies into their product offerings, whether developed internally or by third parties. For the foreseeable future, substantially all of our competitors are likely to be larger, better-financed companies that may develop products superior to our proposed products, which could create significant competitive advantages for those companies. Our future success depends on our ability to compete effectively with our competitors. As a result, we may have difficulty competing with larger, established competitor companies. Generally, these competitors have:

- substantially greater financial, technical and marketing resources;
- a larger customer base;
- better name recognition; and
- more expansive product offerings.

These competitors are likely to command a larger market share than us, which may enable them to establish a stronger competitive position, in part, through greater marketing opportunities. Further, our competitors may be able to respond more quickly to new or emerging technologies and changes in user preferences and to devote greater resources to developing and operating networks of affinity websites. These competitors may develop products or services that are comparable or superior. If we fail to address competitive developments quickly and effectively, we may not be able to remain a viable entity.

***We may commence additional legal proceedings against third parties who we believe are infringing on our intellectual property rights, and if we are forced to litigate to defend our intellectual property rights, or to defend claims by third parties against us relating to intellectual property rights, legal fees and court injunctions could adversely affect our financial condition.***

Disputes regarding the ownership of technologies and intellectual property rights are common and we may have intellectual property infringement claims against parties similar to those that we pursued against Microsoft Corporation. If we decide to commence actions against any additional parties, doing so may be expensive and time-consuming, which may adversely affect our financial condition and results of operations. Moreover, there can be no assurance that we would be successful in these additional legal proceedings and the existence and outcome of any such litigation could harm our business. In addition, commencing lawsuits may lead to potential counterclaims which may preclude our ability to develop and commercialize our initial products.

***If we are not able to adequately protect our patented rights, our operations would be negatively impacted.***

Our ability to compete largely depends on the superiority, uniqueness and value of our technology and intellectual property. To protect our intellectual property rights, we rely on a combination of patent, trademark, copyright and trade secret laws, confidentiality agreements with our employees and third parties, and protective contractual provisions. Further, we can give no assurances that infringement or invalidity claims (or claims for indemnification resulting from infringement claims) will not be asserted or prosecuted against us or that any such assertions or prosecutions will not materially adversely affect our business.

Regardless of whether these or any future claims are valid or can be successfully asserted, defending against such claims could cause us to incur significant costs, could jeopardize or substantially delay a successful outcome in any future litigation, and could divert resources away from our other activities. In addition, assertion of infringement claims could result in injunctions that prevent us from distributing our products. In addition to challenges against our existing patents, any of the following could also reduce the value of our intellectual property now, or in the future:

- our applications for patents, trademarks and copyrights relating to our business may not be granted and, if granted, may be challenged or invalidated;
- issued trademarks, copyrights, or patents may not provide us with any competitive advantages;
- our efforts to protect our intellectual property rights may not be effective in preventing misappropriation of our technology; or
- our efforts may not prevent the development and design by others of products or technologies similar to or competitive with, or superior to those we develop.

In addition, we may not be able to effectively protect our intellectual property rights in certain foreign countries where we may do business in the future or from which competitors may operate. While we have numerous pending international patents, obtaining such patents will not necessarily protect our technology or prevent our international competitors from developing similar products or technologies. Our inability to adequately protect our patented rights would have a negative impact on our operations and revenues.

In addition, legal standards relating to the validity, enforceability, and scope of protection of intellectual property rights in Internet-related businesses are uncertain and still evolving. Because of the growth of the Internet and Internet related businesses, patent applications are continuously and simultaneously being filed in connection with Internet-related technology. There are a significant number of U.S. and foreign patents and patent applications in our areas of interest, and we believe that there has been, and is likely to continue to be, significant litigation in the industry regarding patent and other intellectual property rights.

***The burdens of being a public company may adversely affect our ability to pursue litigation.***

As a public company, our management must devote substantial time, attention and financial resources to comply with U.S. securities laws. This may have a material adverse affect on management's ability to effectively and efficiently pursue litigation as well as our other business initiatives. In addition, our disclosure obligations under U.S. securities laws require us to disclose information publicly that will be available to future litigation opponents. We may, from time to time, be required to disclose information that will have a material adverse affect on our litigation strategies. This information may enable our litigation opponents to develop effective litigation strategies that are contrary to our interests.

***When we attempt to implement our secure domain name registry services business, we may be subject to government and industry regulation and oversight which may impede our ability to achieve our business strategy.***

The U.S. government has historically controlled the authoritative domain name system, or DNS, root server since the inception of the Internet. On July 1, 1997, the President of the United States directed the U.S. Secretary of Commerce to privatize the management of the domain name system in a manner that increases competition and facilitates international participation in its management.

On September 29, 2006, the U.S. Department of Commerce extended its delegation of authority by entering into a new agreement with the Internet Corporation for Assigned Names and Numbers, or ICANN, a California non-profit corporation headquartered in Marina Del Rey, California. ICANN is responsible for managing the accreditation of registry providers and registrars that manage the assignment of top level domain names associated with the authoritative DNS root directory. Although other DNS root directories are possible to create and manage privately without accreditation from ICANN, the possibility of conflicting name and number assignments makes it less likely that users would widely adopt a top level domain name associated with an alternative DNS root directory provided by a non-ICANN-accredited registry service.

On June 26, 2008, ICANN announced that it will be relaxing its prior position and will begin to issue generic top level domain names, or gTLDs, more broadly than it had previously. ICANN expects to begin to take applications for gTLDs in April or May of 2009 with an application fee of \$100,000 or more per application. ICANN expects the first of these customized gTLDs to be issued in the fourth quarter of 2009.

We are currently evaluating whether we will apply to become an ICANN-accredited registry provider with respect to one or more customized gTLDs, or create our own alternative DNS root directory to manage the assignment of non-standard secure domain names. We have not yet begun discussions with ICANN and we cannot assure you that we will be successful in obtaining ICANN accreditation for our registry service on terms acceptable to us or at all. Whether or not we obtain accreditation from ICANN, we will be subject to the ongoing risks arising out of the delegation of the U.S. government's responsibilities for the domain name system to the U.S. Department of Commerce and ICANN and the evolving government regulatory environment with respect to domain name registry services.

***The laws governing online secure communications are largely unsettled, and if we become subject to various government regulations, costs associated with those regulations may materially adversely affect our business.***

The current regulatory environment for our services remains unclear. We can give no assurance that our planned product offerings will be in compliance with local, state and/or U.S. federal laws or other laws. Further, we can give no assurance that we will not unintentionally violate such laws or that such laws will not be modified, or that new laws will be enacted in the future which would cause us to be in violation of such laws.

VoIP services are not currently subject to all of the same regulations that apply to traditional telephony. The U.S. Federal Communications Commission has imposed some traditional telephony requirements on VoIP such as disability access requirements and other obligations. It is possible that federal and state legislatures may seek to impose increased fees and administrative burdens on VoIP, data and video providers. Such regulations could result in substantial costs depending on the technical changes required to accommodate the requirements, and any increased costs could erode the pricing advantage over competing forms of communication and adversely affect consumer adoption of VoIP products generally.



The use of the Internet and private IP networks to provide voice, video and other forms of real-time, two-way communications services is a relatively recent development. Although the provisioning of such services is currently permitted by U.S. law and is largely unregulated within the United States, several foreign governments have adopted laws and/or regulations that could restrict or prohibit the provisioning of voice communications services over the Internet or private IP networks. More aggressive domestic or international regulation of the Internet in general, and Internet telephony providers and services specifically, may materially and adversely affect our business, financial condition, operating results and future prospects, particularly if increased numbers of governments impose regulations restricting the use and sale of IP telephony services.

In addition to regulations addressing Internet telephony and broadband services, other regulatory issues relating to the Internet in general could affect our ability to provide our planned security solutions. Congress has adopted legislation that regulates certain aspects of the Internet, including online content, user privacy, taxation, liability for third-party activities and jurisdiction. In addition, a number of initiatives pending in Congress and state legislatures would prohibit or restrict advertising or sale of certain products and services on the Internet, which may have the effect of raising the cost of doing business on the Internet generally.

***If we experience security breaches, we could be exposed to liability and our reputation and business could suffer.***

We will retain certain confidential customer information in our secure data centers and secure domain name registry. It will be critical to our business strategy that our facilities and infrastructure remain secure and are perceived by the marketplace to be secure. Our secure domain name registry operations will also depend on our ability to maintain our computer and telecommunications equipment in effective working order and to reasonably protect our systems against interruption, and potentially depend on protection by other registrars in the shared registration system. The secure domain name servers that we will operate will be critical hardware to our registry services operations. Therefore, we expect to have to expend significant time and money to maintain or increase the security of our facilities and infrastructure.

Security technologies are constantly being tested by computer professionals, academics and “hackers.” Advances in the techniques for attacking security solutions could make some or all of our products obsolete or unmarketable. Likewise, if any of our products are found to have significant security vulnerabilities, then we may need to dedicate engineering and other resources to eliminate the vulnerabilities and to repair or replace products already sold or licensed to our customers. Despite our security measures, our infrastructure may be vulnerable to physical break-ins, computer viruses, attacks by hackers or similar disruptive problems. It is possible that we may have to expend additional financial and other resources to address such problems. Any physical or electronic break-in or other security breach or compromise of the information stored at our secure data centers and domain name registration systems may jeopardize the security of information stored on our premises or in the computer systems and networks of our customers. In such an event, we could face significant liability and customers could be reluctant to use our services. Such an occurrence could also result in adverse publicity and therefore adversely affect the market’s perception of the security of electronic commerce and communications over IP networks as well as of the security or reliability of our services.

***Our business greatly depends on the growth of IM, VoIP, mobile services, streaming video, file transfer and remote desktop and other next-generation Internet-based applications.***

Next-generation Internet-based applications such as instant messaging, or IM, voice over Internet protocol, or VoIP, mobile services, streaming video, file transfer and remote desktop may not continue to gain widespread market acceptance. The Internet may ultimately prove not to be a viable commercial marketplace for such applications for a number of reasons, including:

- unwillingness of consumers to shift to VoIP and use other such next-generation Internet-based applications;
- refusal to purchase security products to secure information transmitted through such applications;
- perception by the licensees of unsecure communication and data transfer;
- lack of concern for privacy by licensees and users;
- limitations on access and ease of use;
- congestion leading to delayed or extended response times;
- inadequate development of Internet infrastructure to keep pace with increased levels of use; and
- increased government regulations.

***If the market for IM, VoIP, mobile services, streaming video, file transfer and remote desktop does not grow as anticipated, our business would be adversely affected.***

The success of our products that secure IM, VoIP, mobile services, streaming video, file transfer and remote desktop, among other real-time communications applications, depends on the growth in the number of users, which in turn depends on the Internet gaining more widespread acceptance as the basis for these real-time communications applications. These real-time communications applications are still in early stages of market acceptance and we cannot assure you that they will continue to develop a broader audience. For example, potential new users may view VoIP as unattractive relative to traditional telephone services for a number of reasons, including the need to purchase computer headsets or the perception that the price advantage for VoIP is insufficient to justify the perceived inconvenience.

***While the use of IM and other next-generation Internet-based applications has grown rapidly in personal and professional use, there can be no assurance that users will pay to secure their use of such applications.***

Many services such as Microsoft, Yahoo! and America Online offer IM free of charge. However, security solutions for these services are not free, and OEMs may not want to adopt such security solutions if users of IM do not see the value and do not want to pay for such security solutions. If personal and professional users of IM and other next-generation Internet-based solutions do not want to pay for the security solutions, we will have difficulty marketing and selling our products and technologies.

***We expect that we will experience long and unpredictable sales cycles, which may impact our operating results.***

We expect that our sales cycles will be long and unpredictable due to a number of uncertainties such as:

- the need to educate potential customers about our patent rights and our product and service capabilities;
- customers' willingness to invest potentially substantial resources and modify their network infrastructures to take advantage of our products;
- customers' budgetary constraints;
- the timing of customers' budget cycles; and
- delays caused by customers' internal review processes.

***We expect that we will be substantially dependent on a concentrated number of customers. If we are unable to establish, maintain or replace our relationships with customers and develop a diversified customer base, our revenues may fluctuate and our growth may be limited.***

We expect that for the foreseeable future, a significant portion of our revenues will be generated from a limited number of customers. There can be no guarantee that we will be able to obtain such customers, or if we do so, to sustain our revenue levels from these customers. If we cannot establish, maintain or replace the limited group of customers that we anticipate will generate a substantial majority revenues, or if they do not generate revenues at the levels or at the times that we anticipate, our ability to maintain or grow our revenues will be adversely affected.

***If we do not successfully develop our planned products and services in a cost-effective manner to customer demand in the rapidly evolving market for Internet and IP-based communications services, our business may fail.***

The market for communications services is characterized by rapidly changing technology, evolving industry standards, changes in customer needs and frequent new service and product introductions. We are currently focused on developing products to provide security solutions for real-time communications. Our future success will depend, in part, on our ability to use new technologies effectively, to continue to develop our technical expertise, to enhance our existing services and to develop new services that meet changing customer needs on a timely and cost-effective basis. We may not be able to adapt quickly enough to changing technology, customer requirements and industry standards. If we fail to use new technologies effectively, to develop our technical expertise and new services, or to enhance existing services on a timely basis, either internally or through arrangements with third parties, our product and service offerings may fail to meet customer needs, which would adversely affect our revenues and prospects for growth.

In addition, if we are unable, for technological, legal, financial or other reasons, to adapt in a timely manner to changing market conditions or customer requirements, we could lose customers, strategic alliances and market share. Sudden changes in user and customer requirements and preferences, the frequent introduction of new products and services embodying new technologies and the emergence of new industry standards and practices could render our existing products, services and systems obsolete. The emerging nature of products and services in the technology and communications industry and their rapid evolution will require that we continually improve the performance, features and reliability of our products and services. Our success will depend, in part, on our ability to:

- design, develop, launch and/or license our planned products, services and technologies that address the increasingly sophisticated and varied needs of our prospective customers; and
- respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis.

The development of our planned products and services and other patented technology involves significant technological and business risks and requires substantial expenditures and lead time. We may be unable to use new technologies effectively. Updating our technology internally and licensing new technology from third-parties may also require us to incur significant additional expenditures.

***If our products do not gain market acceptance, we may not be able to fund future operations.***

A number of factors may affect the market acceptance of our planned products or any other products we develop or acquire, including, among others:

- the price of our products relative to other products that seek to secure real-time communication;
- the perception by users of the effectiveness of our products;
- our ability to fund our sales and marketing efforts; and
- the effectiveness of our sales and marketing efforts.

If our products do not gain market acceptance, we may not be able to fund future operations, including the development of new products and/or our sales and marketing efforts for our current products, which inability would have a material adverse effect on our business, financial condition and operating results.

***We may incur significant expenses and damages because of liability claims.***

An actual or perceived breach of our security solutions could result in a product liability claim against us. A substantial product liability claim against us could harm our operating results and financial condition. In addition, any actual or perceived breach of our security solution, whether or not caused by the failure of one of our products, could hurt our reputation and cause potential customers to turn to our competitors' products.

***Our products are highly technical and may contain undetected errors, which could cause harm to our reputation and adversely affect our business.***

Our products are highly technical and complex and, when deployed, may contain errors or defects. In addition, we rely on third parties for software development and technology services, and there may be errors in the development processes used by our third party counterparts that may adversely affect our end products. Despite testing, some errors in our products may only be discovered after a product has been installed and used by customers. Any errors or defects discovered in our products after commercial release could result in failure to achieve market acceptance, loss of revenue or delay in revenue recognition, loss of customers and increased service and warranty cost, any of which could adversely affect our business, operating results and financial condition. In addition, we could face claims for product liability, tort or breach of warranty, including claims relating to changes to our products made by our channel partners. The performance of our products could have unforeseen or unknown adverse effects on the networks over which they are delivered as well as on third-party applications and services that utilize our services, which could result in legal claims against us, harming our business. Furthermore, we expect to provide implementation, consulting and other technical services in connection with the implementation and ongoing maintenance of our products, which typically involves working with sophisticated software, computing and communications systems. We expect that our contracts with customers will contain provisions relating to warranty disclaimers and liability limitations, which may not be upheld. Defending a lawsuit, regardless of its merit, is costly and may divert management's attention and adversely affect the market's perception of us and our products. In addition, if our business liability insurance coverage proves inadequate or future coverage is unavailable on acceptable terms or at all, our business, operating results and financial condition could be adversely impacted.

***Malfunctions of third-party communications infrastructure, hardware and software expose us to a variety of risks we cannot control.***

In addition, our business will also depend upon the capacity, reliability and security of the infrastructure owned by third parties that we will use to deploy our offerings. We have no control over the operation, quality or maintenance of a significant portion of that infrastructure or whether or not those third parties will upgrade or improve their equipment. We depend on these companies to maintain the operational integrity of our connections. If one or more of these companies is unable or unwilling to supply or expand its levels of service to us in the future, our operations could be severely interrupted. Also, to the extent the number of users of networks utilizing our future products suddenly increases, the technology platform and secure hosting services which will be required to accommodate a higher volume of traffic may result in slower response times or service interruptions. System interruptions or increases in response time could result in a loss of potential or existing users and, if sustained or repeated, could reduce the appeal of the networks to users. In addition, users depend on real-time communications; outages caused by increased traffic could result in delays and system failures. These types of occurrences could cause users to perceive that our solution does not function properly and could therefore adversely affect our ability to attract and retain licensees, strategic partners and customers.

***System failure or interruption or our failure to meet increasing demands on our systems could harm our business.***

The success of our license and service offerings will depend on the uninterrupted operation of various systems, secure data centers and other computer and communication networks that we establish. To the extent the number of users of networks utilizing our future products suddenly increases, the technology platform and hosting services which will be required to accommodate a higher volume of traffic may result in slower response times, service interruptions or delays or system failures. Our systems and operations will also be vulnerable to damage or interruption from:

- power loss, transmission cable cuts and other telecommunications failures;
- damage or interruption caused by fire, earthquake, and other natural disasters;
- computer viruses or software defects; and
- physical or electronic break-ins, sabotage, intentional acts of vandalism, terrorist attacks and other events beyond our control.

System interruptions or failures and increases or delays in response time could result in a loss of potential or existing users and, if sustained or repeated, could reduce the appeal of the networks to users. These types of occurrences could cause users to perceive that our solution does not function properly and could therefore adversely affect our ability to attract and retain licensees, strategic partners and customers.

Any significant problem with our systems or operations could result in lost revenue, customer dissatisfaction or lawsuits against us. A failure in the operation of our secure domain name registration system could result in the inability of one or more registrars to register and maintain secure domain names for a period of time. A failure in the operation or update of the master directory that we plan to maintain could result in deletion or discontinuation of assigned secure domain names for a period of time. The inability of the registrar systems we establish, including our back office billing and collections infrastructure, and telecommunications systems to meet the demands of an increasing number of secure domain name requests could result in substantial degradation in our customer support service and our ability to process registration requests in a timely manner.

***Our ability to sell our solutions will be dependent on the quality of our technical support, and our failure to deliver high-quality technical support services could have a material adverse effect on our sales and results of operations.***

If we do not effectively assist our customers in deploying our products, succeed in helping our customers quickly resolve post-deployment issues and provide effective ongoing support, or if potential customers perceive that we may not be able to achieve to the foregoing, our ability to sell our products would be adversely affected, and our reputation with potential customers could be harmed. In addition, as we expand our operations internationally, our technical support team will face additional challenges, including those associated with delivering support, training and documentation in languages other than English. As a result, our failure to deliver and maintain high-quality technical support services to our customers could result in customers choosing to use our competitors' products instead of ours in the future.

***Telephone carriers have petitioned governmental agencies to enforce regulatory tariffs, which, if granted, would increase the cost of online communication, and such increase in cost may impede the growth of online communication and adversely affect our business.***

Use of the Internet has over-burdened existing telecommunications infrastructures, and many high traffic areas have begun to experience interruptions in service. As a result, certain local telephone carriers have petitioned governmental agencies to enforce regulatory tariffs on IP telephony traffic that crosses over the traditional telephone networks. If any of these petitions or the relief that they seek is granted, the costs of communicating via online could increase substantially, potentially adversely affecting the growth in the use of online secure communications. Any of these developments could have an adverse effect on our business.

***The departure of Kendall Larsen, our Chief Executive Officer and President, and/or other key personnel could compromise our ability to execute our strategic plan and may result in additional severance costs to us.***

Our success largely depends on the skills, experience and efforts of our key personnel, including Kendall Larsen, our Chief Executive Officer and President. We have no employment agreements with any of our key executives that prevent them from leaving us at any time. In addition, we do not maintain key person life insurance for any of our officers or key employees. The loss of Mr. Larsen, or our failure to retain other key personnel, would jeopardize our ability to execute our strategic plan and materially harm our business.

***We will need to recruit and retain additional qualified personnel to successfully grow our business.***

Our future success will depend in part on our ability to attract and retain qualified operations, marketing and sales personnel as well as engineers. Inability to attract and retain such personnel could adversely affect our business. Competition for engineering, sales, marketing and executive personnel is intense, particularly in the technology and Internet sectors and in the regions where our facilities are located. We can provide no assurance that we will attract or retain such personnel.

***Growth of internal operations and business may strain our financial resources.***

We may need to significantly expand the scope of our operating and financial systems in order to build our business. Our growth rate may place a significant strain on our financial resources for a number of reasons, including, but not limited to, the following:

- the need for continued development of the financial and information management systems;
- the need to manage relationships with future licensees, resellers, distributors and strategic partners;
- the need to hire and retain skilled management, technical and other personnel necessary to support and manage our business; and
- the need to train and manage our employee base.

The addition of new infrastructure services, networks, vertical categories and affinity websites and the attention they demand, may also strain our management resources. We cannot give you any assurance that we will adequately address these risks and, if we do not, our ability to successfully expand our business could be adversely affected.

***If we expand into international markets, our inexperience outside the United States would increase the risk that our international expansion efforts will not be successful, which would in turn limit our prospects for growth.***

We may explore expanding our business to outside the United States. Expansion into international markets requires significant management attention and financial resources. In addition, we may face the following risks associated with any expansion outside the United States:

- challenges caused by distance, language and cultural differences;
- legal, legislative and regulatory restrictions;
- currency exchange rate fluctuations;
- economic instability;

- longer payment cycles in some countries;
- credit risk and higher levels of payment fraud;
- potentially adverse tax consequences; and
- other higher costs associated with doing business internationally.

These risks could harm our international expansion efforts, which would in turn harm our business prospects.

## **Risks Related to Our Stock**

***We do not intend to pay regular future dividends on our common stock and thus stockholders must look to appreciation of our common stock to realize a gain on their investments.***

Although we paid a special cash dividend to holders of our common stock with a record date of July 1, 2010, we do not have any plans to continue paying dividends in the foreseeable future. Instead, we currently intend to retain any future earnings for funding growth. Our future dividend policy is within the discretion of our board of directors and will depend upon various factors, including our business, financial condition, results of operations, capital requirements, and investment opportunities. Accordingly, stockholders must look solely to appreciation of our common stock to realize a gain on their investment. This appreciation may not occur.

***The exercise of our outstanding warrants may result in a dilution of our current stockholders' voting power and an increase in the number of shares eligible for future resale in the public market which may negatively impact the market price of our stock.***

The exercise of some or all of our outstanding warrants could significantly dilute the ownership interests of our existing stockholders. As of July 30, 2010, we had outstanding warrants to purchase an aggregate of 2,814,002 shares of common stock, including (i) the warrant to purchase 180,000 shares of common stock issued to the underwriter of our December 2007 sale of common shares and warrants, (ii) the warrants to purchase 2,634,002 shares of common stock (as adjusted as a result of the declaration of a special cash dividend on July 1, 2010) underlying the Series I Warrants issued pursuant to our September 2009 private placement transaction. See Note 12 "Warrants" to the financial statements included in this Quarterly Report on Form 10-Q/A for additional information regarding the adjustment feature of the Series I Warrants. To the extent outstanding warrants are exercised, additional shares of common stock will be issued, and such issuance may dilute existing stockholders and increase the number of shares eligible for resale in the public market. Additionally, the issuance of up to 3,090,254 shares of common stock issuable upon exercise of vested stock options and other stock awards outstanding as of July 30, 2010 pursuant to our stock incentive plan may further dilute our existing stockholders' voting interest.

In addition to the dilutive effects described above, the exercise of those securities would lead to a potential increase in the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market could adversely affect the market price of our shares.

***The fair value of accounting for our Series I Warrants as derivative liabilities may materially impact our results of our operations in future periods.***

In connection with the restatement of our financial results to correct the accounting for the Series I Warrants, we recorded the Series I Warrants as a derivative liability in accordance with ASC 815-40, "Derivatives and Hedging – Contracts in Entity's Own Equity." These derivative liabilities are reported at fair value each reporting period with changes in the fair value recognized as gain or loss for each reporting period thereafter. An increase in our stock price or changes in the stock price volatility or other assumptions could result in changes to our warrant liability and a non-cash gain or loss and could materially impact our results of operations in future periods.

***Trading in our common stock is limited and the price of our common stock may be subject to substantial volatility, particularly in light of the instability in the financial and capital markets.***

Our common stock is listed on NYSE Amex, but its daily trading volume has been limited, sporadic and volatile. Over the past year the market price of our common stock has experienced significant fluctuations. Between December 31, 2008 and June 30, 2010, the reported last sale price for our common stock has ranged from \$7.00 to \$1.06 per share. We expect the price of our common stock to continue to be volatile as a result of a number of factors, including, but not limited to, the following:

- developments in any then-outstanding litigation;
- quarterly variations in our operating results;
- large purchases or sales of common stock;
- actual or anticipated announcements of new products or services by us or competitors;
- general conditions in the markets in which we compete; and
- economic and financial conditions.

***Because ownership of our common shares is concentrated, investors may have minimal influence on stockholder decisions.***

As of June 30, 2010, our executive officers and directors beneficially owned an aggregate of 9,426,120 shares, or approximately 20% of our then outstanding common stock. In addition, a group of stockholders that, as of December 31, 2007, held 4,766,666 shares, or approximately 12% of our then outstanding common stock, have entered into a voting agreement with us that requires them to vote all of their shares of our voting stock in favor of the director nominees approved by our Board of Directors at each director election going forward, and in a manner that is proportional to the votes cast by all other voting shares as to any other matters submitted to the stockholders for a vote. As a result, our existing officers and directors could significantly influence stockholder actions of which you disapprove or that are contrary to your interests. This ability to exercise significant influence could prevent or significantly delay another company from acquiring or merging with us.

***Securities analysts may not cover our common stock and this may have a negative impact on our common stock's market price.***

The trading market for our common stock may depend on the research and reports that securities analysts publish about us or our business. We do not have any control over these analysts. There is no guarantee that securities analysts will cover our common stock. If securities analysts do not cover our common stock, the lack of research coverage may adversely affect our common stock's market price. If we are covered by securities analysts, and our stock is downgraded, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to publish regularly reports on us, we could lose or fail to gain visibility in the financial markets, which could cause our stock price or trading volume to decline.

***Our protective provisions could make it difficult for a third party to successfully acquire us even if you would like to sell your shares to them.***

We have a number of protective provisions that could delay, discourage or prevent a third party from acquiring control of us without the approval of our Board of Directors. Our protective provisions include:



- **A staggered Board of Directors:** This means that only one or two directors (since we have a five-person Board of Directors) will be up for election at any given annual meeting. This has the effect of delaying the ability of stockholders to effect a change in control of us since it would take two annual meetings to effectively replace at least three directors which represents a majority of the Board of Directors.
- **Blank check preferred stock:** Our Board of Directors has the authority to establish the rights, preferences and privileges of our 10,000,000 authorized, but unissued, shares of preferred stock. Therefore, this stock may be issued at the discretion of our Board of Directors with preferences over your shares of our common stock in a manner that is materially dilutive to existing stockholders. In addition, blank check preferred stock can be used to create a “poison pill” which is designed to deter a hostile bidder from buying a controlling interest in our stock without the approval of our Board of Directors. We have not adopted such a “poison pill;” but our Board of Directors has the ability to do so in the future, very rapidly and without stockholder approval.
- **Advance notice requirements for director nominations and for new business to be brought up at stockholder meetings:** Stockholders wishing to submit director nominations or raise matters to a vote of the stockholders must provide notice to us within very specific date windows and in very specific form in order to have the matter voted on at a stockholder meeting. This has the effect of giving our Board of Directors and management more time to react to stockholder proposals generally and could also have the effect of disregarding a stockholder proposal or deferring it to a subsequent meeting to the extent such proposal is not raised properly.
- **No stockholder actions by written consent:** No stockholder or group of stockholders may take actions rapidly and without prior notice to our Board of Directors and management or to the minority stockholders. Along with the advance notice requirements described above, this provision also gives our Board of Directors and management more time to react to proposed stockholder actions.
- **Super majority requirement for stockholder amendments to the By-laws:** Stockholder proposals to alter or amend our By-laws or to adopt new By-laws can only be approved by the affirmative vote of at least 66 2/3% of the outstanding shares.
- **Elimination of the ability of stockholders to call a special meeting of the stockholders:** Only the Board of Directors or management can call special meetings of the stockholders. This could mean that stockholders, even those who represent a significant block of our shares, may need to wait for the annual meeting before nominating directors or raising other business proposals to be voted on by the stockholders.

In addition, the provisions of Section 203 of the Delaware General Corporate Law govern us. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a certain period of time.

These and other provisions in our amended and restated certificate of incorporation, our By-laws and under Delaware law could discourage potential takeover attempts, reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than it would be without these provisions.

***Our business and ability to grow are subject to risks associated with the ongoing financial crisis and weak global economy.***

The continuing turmoil in the financial markets and weak global economy impacts our ability to enter into licensing and other customer agreements. Further, these conditions and uncertainty about future economic conditions make it challenging for us to forecast our operating results, make business decisions and identify the risks that may affect our business, financial condition and results of operations. If we are not able to timely and appropriately adapt to changes resulting from the difficult macroeconomic environment, our business, financial condition, and results of operations may be significantly negatively affected.

**ITEM 2 — UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.**

We had no issuance of unregistered securities during the three months ended June 30, 2010.

**ITEM 6 — EXHIBITS.**

<b>Exhibit Number</b>	<b>Description</b>
10.1	Settlement and License Agreement, by and between Microsoft Corporation, a Washington corporation, and VirnetX, Inc., a Delaware corporation.(1)
31.1	Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certification of the President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**

(1) Pursuant to a request for confidential treatment, portions of Exhibit 10.1 have been redacted and have been provided separately to the U.S. Securities and Exchange Commission. A revised redacted copy is re-filed herewith.

\* Furnished herewith.

\*\* Filed herewith

**SIGNATURES**

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 thereunto duly authorized.

VIRNETX HOLDING CORPORATION

By: /s/ Kendall Larsen

Kendall Larsen  
Chief Executive Officer  
(Principal Executive Officer)

By: /s/ William E. Sliney

William E. Sliney  
Chief Financial Officer  
(Principal Accounting and Financial Officer)

Date: January 31, 2011

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.1</a>	Settlement and License Agreement, by and between Microsoft Corporation, a Washington corporation, and VirnetX, Inc., a Delaware corporation.(1)
<a href="#">31.1</a>	Certification of the President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
<a href="#">31.2</a>	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
<a href="#">32.1</a>	Certification of the President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**
<a href="#">32.2</a>	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**

(1) Pursuant to a request for confidential treatment, portions of Exhibit 10.1 have been redacted and have been provided separately to the U.S. Securities and Exchange Commission. A revised redacted copy is re-filed herewith.

\* Filed herewith.

\*\* Furnished herewith

## SETTLEMENT AND LICENSE AGREEMENT

This SETTLEMENT AND LICENSE AGREEMENT (together with all Exhibits attached hereto, the “Agreement”), is made and entered into as of May 14, 2010 (the “Effective Date”), by and among Microsoft Corporation, a Washington corporation (Microsoft Corporation together with its Affiliates, “Microsoft”), on the one hand, and VirnetX Inc., a Delaware corporation (VirnetX Inc. together with its Affiliates, “VirnetX”), on the other hand. As used herein, “Party” refers to any of VirnetX or Microsoft individually, and “Parties” refers to VirnetX and Microsoft collectively.

### RECITALS

- A. VirnetX Inc. has accused Microsoft of infringing U.S. Patent Nos. 6,502,135 B1 and 7,188,180 B2 (the “Patents-In-Suit”) in actions filed in the U.S. District Court for the Eastern District of Texas (“the Court”), designated Civ. Action No. 6:07CV80 (LED) and Civ. Action No. 6:10CV94 (LED) (“the Actions”).
- B. Microsoft Corporation has denied any such infringement of the Patents-in-Suit and challenged the validity thereof. Microsoft has also challenged the enforceability of the Patents-in-Suit to the extent allowed pursuant to the Order dated January 15, 2010 in Civ. Action No. 6:07CV80 (LED), Docket No. 274 (“the January 15, 2010 Order”).
- C. Microsoft admits no liability with respect to any of the claims asserted in the Actions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### AGREEMENT

1. **Compromise Only.** This Agreement is entered into for purposes of settlement and compromise only. Nothing contained in this Agreement, or done or omitted in connection with this Agreement, is intended as or shall be construed as an admission of or by any Party, or on behalf of any Microsoft Released Party (as hereinafter defined), of any fault, liability or wrongdoing whatsoever, or an admission of or by any Microsoft Released Party that any Licensed Patents (as hereinafter defined) are infringed, valid or enforceable.

2. **Definitions.**

“**Licensed Patents**” shall mean all VirnetX patents and patent applications in existence and owned by or assigned to VirnetX Inc. or its current Affiliates as of the Effective Date (including, without limitation, the Patents-In-Suit and the patents and applications set forth on Exhibit A) and all patents and applications related to such patents and applications (including, without limitation, parents, continuations, continuations in part, and divisionals).

“**Affiliate**” means any entity that Controls, is Controlled by or under common Control with Microsoft Corporation or VirnetX Inc.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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“**Control**” means direct or indirect ownership of at least fifty percent (50%) of the voting power, capital or other securities of an entity.

“**Licensees**” means Microsoft’s distributors and customers, but only to the extent such third parties exploit any Microsoft software which (i) has been licensed, created or developed by Microsoft and (ii) is licensed under this Agreement.

### 3. **Releases**

- 3.1 VirnetX, on behalf of itself and its predecessors, successors, assigns, attorneys, directors, shareholders, employees, and officers (collectively with VirnetX, the “VirnetX Releasing Parties”), hereby voluntarily, irrevocably and unconditionally fully and forever releases, discharges, covenants not to sue, and holds harmless Microsoft and its predecessors, successors, assigns, attorneys, insurers, agents, servants, subcontractors, officers, directors, shareholders, representatives, employees, and Licensees (collectively, the “Microsoft Released Parties”) from and for any and all rights, claims, debts, liabilities, demands, obligations, promises, damages, causes of action and claims for relief of any kind, manner, nature and description, known or unknown (collectively, “Claims”), which any of the VirnetX Releasing Parties have, may have had, might have asserted, may now have or assert, or may hereafter have or assert against the Microsoft Released Parties, or any of them, arising, accruing or occurring, in whole or in part, at any time prior to the Effective Date, including, without in any way limiting the generality of the foregoing, any claims or causes of action arising out of or related to any of the facts, transactions, matters or occurrences giving rise to or alleged, or that could have been alleged in or discovered in, the Actions or under any of the Licensed Patents.
- 3.2 Microsoft, on behalf of itself and its predecessors, successors, assigns (collectively with Microsoft, the “Microsoft Releasing Parties”), hereby voluntarily, irrevocably and unconditionally fully and forever releases, discharges, covenants not to sue, and holds harmless VirnetX and its predecessors, successors, assigns, attorneys, insurers, agents, servants, subcontractors, officers, directors, representatives, and employees (collectively, the “VirnetX Released Parties”) from and for any and all Claims which any of the Microsoft Releasing Parties have, may have had, might have asserted, or may now have or assert prior to the Effective Date arising out of or related to any of the facts, transactions, matters or occurrences giving rise to or alleged, or that could have been alleged in or discovered in, the Actions as to VirnetX’s assertion of the Patents-in-Suit, except that Microsoft does not release or discharge (or grant a covenant or hold harmless as to) its Claims that the Licensed Patents are invalid, unenforceable, and/or not infringed by Microsoft.
- 3.3 The VirnetX Releasing Parties and Microsoft Releasing Parties expressly waive any and all statutes, legal doctrines and other similar limitations upon the effect of general releases. By way of example, and without limitation, the foregoing parties waive the benefit of California Civil Code Section 1542, which states as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

The VirnetX Releasing Parties and Microsoft Releasing Parties, with the advice of their counsel, waive any rights and/or benefits that they, or any of them, might otherwise have under Civil Code Section 1542 and any and all other statutes, legal doctrines and/or principles of similar effect in California, Washington, and any other state, federal or foreign jurisdiction, to the full extent that such rights and benefits may be waived.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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4. **Grant of Licenses and Covenant**

- 4.1 [\*\*\*], VirnetX hereby grants to Microsoft, and Licensees, a worldwide, irrevocable, nonexclusive, non-sublicensable fully paid up license and covenant not to sue under the Licensed Patents.
- 4.2 Notwithstanding the foregoing, (i) the license granted under this Section 4 [\*\*\*] and (ii) the covenant not to sue granted under this Section 4 [\*\*\*]
- 4.3 The license and covenant not to sue granted herein [\*\*\*]
- 4.4 Definitions [\*\*\*]

5. **Consideration.**

- 5.1. **Dismissals.** VirnetX shall dismiss with prejudice (and cause Science Applications International Corporation (“SAIC”) to join in such dismissal) all claims in the Actions, and Microsoft shall dismiss with prejudice all counterclaims in the Actions (except Microsoft’s affirmative defenses and counterclaims of (i) non-infringement and invalidity shall be dismissed without prejudice and (ii) unenforceability shall be dismissed without prejudice but continue to be subject to the January 15, 2010 Order), by filing (and VirnetX causing SAIC to file) on or before May 21, 2010, Stipulations of Dismissal that provide that each of VirnetX Inc., Microsoft Corporation and SAIC will bear its own costs, expenses and attorney’s fees in connection with the Actions. In addition, VirnetX Inc. and Microsoft Corporation agree to execute such additional papers and motions as may be necessary to cause the Court to effect a disposal of all issues before it and a dismissal of the Actions.
- 5.2 **Payment.** In full and complete settlement of all claims asserted against Microsoft in the Actions, and in full and complete consideration of the licenses, releases, waivers, and other covenants and rights in this Agreement, Microsoft Corporation shall within twenty (20) business days after the later of the Effective Date or the provision by VirnetX Inc. and its counsel of an IRS Form W-9 and a letter on its letterhead with payment instructions consistent with this paragraph pay to VirnetX Inc., in U.S. dollars, a total payment of two hundred million U.S. Dollars (US\$ 200,000,000) by wire transfer into the following account:

Account Name: Texas IOLTA Trust Account -McKool Smith  
Bank Name and Address: Bank of America, N.A., 100 Crescent Court, Dallas, TX 75201  
Beneficiary Name: VirnetX Inc.

6. **Term.** This Agreement shall remain in full force and effect until six years after the expiration of the last to expire of the Licensed Patents.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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7. Miscellaneous.

7.1 Confidentiality. The mere existence of this Agreement (including, without limitation, the identification of the Parties and any Licensed Patents) is not confidential. On or after a mutually agreed time, the Parties agree to issue the joint press release in the form attached as Exhibit B. Subject to the foregoing, no Party may issue a press release or otherwise affirmatively attempt to publicize the terms or existence of this Agreement. The Parties further agree that the terms and conditions of this Agreement are confidential and shall not be disclosed by any Party to any other person except (a) as may be required by law (including, without limitation, SEC reporting requirements, or any other United States or foreign regulatory requirements) or stock exchange rule (after prior written notice to the other Party with opportunity to comment on the disclosure), (b) during the course of litigation so long as the disclosure of such terms and conditions are restricted in the same manner as is the confidential information of the litigating Party, which includes designating the Agreement under the highest available level of protection under a protective order; (c) in confidence to the professional legal, advisory, and financial counsel representing or auditing such Party; (d) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; (e) in confidence, in connection with a merger or acquisition or proposed merger or acquisition of a Party, or the like; (f) in confidence by Microsoft to Licensees and any third parties covered by the terms of this Agreement; (g) in confidence, to potential acquirers of all or substantially all of VirnetX; (h) in confidence to the insurers and third party claim administrators of Microsoft; (i) in confidence to any person covered by the releases, licenses, waivers or other covenants and rights granted herein; or (j) as otherwise agreed in writing by the Parties executing this Agreement. Prior to any disclosure by VirnetX pursuant to the foregoing subsection (a), VirnetX will provide Microsoft with a draft copy of the proposed disclosure or filing (including, without limitation, any filing with the SEC) at least twenty-four (24) hours before such disclosure or filing is made, and the Parties will consult in good faith with respect to the content of the proposed disclosure and the potential for VirnetX to request confidential treatment with respect to portions of the Agreement that VirnetX reasonably believes must be disclosed or filed.

7.2 Representations and Warranties. VirnetX represents, warrants, and covenants to Microsoft that:

(a) VirnetX Inc. is the sole, exclusive, and lawful owner of the Licensed Patents (including, without limitation, the Patents-in-Suit) and has all rights to enforce and license them and, thus the right to enter into this Agreement and grant all of the releases, licenses, waivers, and other covenants and rights under this Agreement.

(b) Subject to its Patent License and Assignment Agreement between VirnetX Inc. and SAIC, dated August 15, 2005 (and the amendments thereto as of November 2, 2006 and March 12, 2008), VirnetX Inc. is the sole, exclusive, and lawful owner of all interest in and to the Licensed Patents (including, without limitation, the Patents-in-Suit).

(c) No Claim released herein, and no portion of any such Claim, has been assigned or otherwise transferred by VirnetX to any other person or entity, either directly, indirectly, or by subrogation or operation of law. VirnetX has not filed, commenced, served, or otherwise instituted (in each case, either on its own, or in conjunction with any third party) any complaints, claims, causes of action, or demands against Microsoft other than those asserted in connection with the Actions.

(d) During the term of this Agreement any consideration required to be paid to any other person, corporation, or entity if any, on account of any or all of the releases, licenses, waivers, or other covenants or rights granted under this Agreement to any Microsoft Released Parties shall be paid by VirnetX, and no additional consideration shall be required of any of the Microsoft Released Parties. VirnetX has not granted and will not grant any licenses, covenants, and/or other rights, under the Licensed Patents and/or otherwise, that would conflict with, impair, and/or prevent any or all of the releases, licenses, waivers, or other covenants or rights granted under this Agreement. VirnetX Inc. will cause its Affiliates to comply with the terms and conditions of this Agreement.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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(e) VirnetX has been represented by competent and independent counsel of its own choice throughout all negotiations preceding the execution of the Agreement, and has executed this Agreement upon the advice of said competent and independent counsel regarding the meaning and legal effect of this Agreement, and regarding the advisability of making the agreements provided for herein, and fully understands the same.

7.3. Representations and Warranties. Microsoft represents, warrants, and covenants to VirnetX that:

(a) No Claim released herein, and no portion of any such Claim, has been assigned or otherwise transferred by Microsoft to any other person or entity, either directly, indirectly, or by subrogation or operation of law. Microsoft has not filed, commenced, served, or otherwise instituted (in each case, either on its own, or in conjunction with any third party) any complaints, claims, causes of action, or demands against VirnetX other than those asserted in connection with the Actions or the current reexamination proceedings of the Patents-In-Suit.

(b) Microsoft has been represented by competent and independent counsel of its own choice throughout all negotiations preceding the execution of the Agreement, and has executed this Agreement upon the advice of said competent and independent counsel regarding the meaning and legal effect of this Agreement, and regarding the advisability of making the agreements provided for herein, and fully understands the same.

7.4. Mutual Representations and Warranties. Each Party and each person signing this Agreement on behalf of a Party represents and warrants to the other that:

(a) Such Party has not entered this Agreement in reliance upon any promise, inducement, agreement, statement, or representation other than those contained in this Agreement.

(b) Such Party has the full right and power to enter into this Agreement, and the person executing this Agreement has the full right and authority to enter into this Agreement on behalf of such Party and the full right and authority to bind such Party to the terms and obligations of this Agreement.

7.5. Notices. All notices and requests which are required or permitted to be given in connection with this Agreement shall be in writing and shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows, or to such other address as the Party to receive the notice or request so designates by written notice to the other:

If to VirnetX Inc.:

Attn: Kendall Larsen, Chief Executive Officer VirnetX Inc. 5615 Scotts Valley Drive, Suite 110 Scotts Valley, California 95066 Facsimile: (831) 438-3078

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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with a copy to:

Samuel F. Baxter McKool Smith, P.C. 300 Crescent Court, Suite 1500 Dallas, TX 75201 Fax: (214) 978-4044

If to Microsoft Corporation:

Attn: Director of Licensing, LCA Patent Group Microsoft Corporation One Microsoft Way Redmond, WA 98052 Fax: (425) 936-7329

with a copy to: Attn: Law & Corporate Affairs Microsoft Corporation One Microsoft Way Redmond, Washington 98052 Fax: (425) 936-7329

- 7.6. Governing Law; Venue. This Agreement shall be construed and controlled by the internal laws of the State of Texas (excluding conflict of laws principles) and applicable federal laws. The sole and exclusive venue for any lawsuit arising out of or relating to this Agreement shall be the United States District Court for the Eastern District of Texas.
- 7.7. Costs. Each Party shall bear its own costs, expenses and attorneys' fees incurred in connection with the Actions, the making of this Agreement, and its performance under this Agreement. Each Party expressly waives any claim of costs and attorneys' fees from or against the other Party.
- 7.8. Successors and Assigns. The terms, covenants, conditions, provisions and benefits of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 7.9. No Construction Against Drafter. This Agreement results from negotiations between the Parties and their respective legal counsel, and each Party acknowledges that it has had the opportunity to negotiate modifications to the language of this Agreement. Accordingly, each Party agrees that in any dispute regarding the interpretation or construction of this Agreement, no statutory, common law or other presumption shall operate in favor of or against any Party by virtue of his, her or its role in drafting or not drafting the terms and conditions set forth herein.
- 7.10. Captions. Captions or headings used in this Agreement are for the convenience of the Parties only, and shall not be considered part of this Agreement or used to construe the terms of this Agreement.
- 7.11. Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable or otherwise in conflict with law, the remaining provisions shall remain in full force and effect. If any provisions of this Agreement are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Provisions shall apply, as applicable, to current and successive events, parties, and transactions.
- 7.12. Counterparts. This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Execution of this Agreement may be accomplished by signing this Agreement and transmitting the signature page to opposing counsel by facsimile or email. The Parties so executing and delivering shall promptly thereafter deliver signed originals of at least the signature page(s), but no failure to do so shall affect the validity or enforceability of this Agreement.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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- 7.13. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless expressly stated in writing by the Party making the waiver. No waiver of any provision shall be binding in any event unless executed in writing by the Party making the waiver.
- 7.14. Entire Agreement. This Agreement (including, without limitation, all Exhibits attached hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral agreements, memorandums of understanding (including the Memorandum of Understanding between Microsoft Corporation and VirnetX Inc. dated May 12, 2010), or communications as to such subject matter, all of which are superseded, merged and fully integrated into this Agreement. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of the Parties by their respective duly authorized representatives.
- 7.15. Declaratory Judgment Action. Subject to VirnetX's compliance with the releases, licenses and covenants set forth in this Agreement, Microsoft agrees not to file a declaratory judgment action challenging the Licensed Patents against VirnetX for thirty (30) months following the Effective Date.
- 7.16. Reexamination. [\*\*\*] Microsoft will also cause to be filed with the United States Patent and Trademark Office notifications in the current reexamination proceedings of the Patents-In-Suit indicating that Microsoft Corporation will not participate in those reexamination proceedings.

[\*\*\*] Indicates portions of this exhibit that have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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IN WITNESS WHEREOF, VirnetX Inc. and Microsoft Corporation, being fully authorized and empowered to bind themselves to this Agreement, have caused this Agreement to be made and executed by duly authorized officers as of the Effective Date.

VIRNETX INC.

MICROSOFT CORPORATION

Name: /s/ Kendall Larsen

Name: /s/ Frank H Brod

Title: President, Chairman and CEO

Date: 5/14/2010

Title: Corp Vice President

Date: 5-14-2010

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Exhibit A Certain Licensed Patents

Country	App. No.	Filing date	Patent No.	Issue Date
WO	PCT/US99/25325	10/29/1999		
AU	00/14553	10/29/1999	761,388	09/18/2003
CA	2,349,519	10/29/1999		
EP	99971606.1	10/29/1999	1125419	08/26/2009
EP-GB	99971606.1	10/29/1999	1125419	08/26/2009
EP-DE	99971606.1	10/29/1999	1125419	08/26/2009
EP-FR	99971606.1	10/29/1999	1125419	08/26/2009
EP-IT	46406/BE/2009	10/29/1999	1125419	08/26/2009
JP	2000-580350	10/29/1999	4,451,556	02/05/2010
JP	2009-246033	10/29/1999		
US	09/429,643	10/29/1999	7,010,604	03/07/2006
US	10/401,551	03/31/2003	7,133,930	11/07/2006
US	11/301,022	12/13/2005		
US	11/839,937	08/16/2007		
US	09/429,643	02/15/2000	6,502,135	12/31/2002
WO	PCT/US01/04340	02/12/2001		
EP	01910528.7	02/12/2001		
JP	2001-560062	02/12/2001		
US	10/082,164	02/26/2002	6,618,761	09/09/2003
US	10/401,888	03/31/2003	6,907,473	06/14/2005
US	10/082,285	02/26/2002	6,834,310	12/21/2004
US	10/259,494	09/30/2002	7,490,151	02/10/2009
US	11/839,969	08/16/2007		
US	11/924,460	10/25/2007		
WO	PCT/US99/25323	10/29/1999		
AU	00/16003	10/29/1999	765914	01/15/2004
CA	2,349,520	10/29/1999		
EP	99958693.6	10/29/1999		
JP	2000-580354	10/29/1999		
US	09/558,209	04/26/2000		
WO	PCT/US01/13261	04/25/2001		
EP	01932629.7	04/25/2001		
EP	06014499.5	04/25/2001		
EP	06014500.0	04/25/2001		
HK	07109112.7	08/21/2007		
HK	07109113.6	08/21/2007		
JP	2001-583006	04/25/2001		
US	10/702,486	11/07/2003	7,188,180	03/06/2007
US	11/679,416	02/27/2007		
US	11/839,987	08/16/2007		
US	10/702,522	11/07/2003	6,839,759	01/04/2005
US	10/702,580	11/07/2003	6,826,616	11/30/2004
US	09/558,210	04/26/2000		
WO	PCT/US01/13260	04/25/2001		
EP	01932628.9	04/25/2001	1284079	01/18/2006
EP CH	01932628 9	04/25/2001	1284079	01/18/2006

Country	App. No.	Filing date	Patent No.	Issue Date
WO	PCT/US99/25325	10/29/1999		
AU	00/14553	10/29/1999	761,388	09/18/2003
CA	2,349,519	10/29/1999		
EP	99971606.1	10/29/1999	1125419	08/26/2009
EP-GB	99971606.1	10/29/1999	1125419	08/26/2009
EP-DE	99971606.1	10/29/1999	1125419	08/26/2009
EP-FR	99971606.1	10/29/1999	1125419	08/26/2009
EP-IT	46406/BE/2009	10/29/1999	1125419	08/26/2009
JP	2000-580350	10/29/1999	4,451,556	02/05/2010
JP	2009-246033	10/29/1999		
US	09/429,643	10/29/1999	7,010,604	03/07/2006
US	10/401,551	03/31/2003	7,133,930	11/07/2006
US	11/301,022	12/13/2005		
US	11/839,937	08/16/2007		
US	09/429,643	02/15/2000	6,502,135	12/31/2002
WO	PCT/US01/04340	02/12/2001		
EP	01910528.7	02/12/2001		
JP	2001-560062	02/12/2001		
US	10/082,164	02/26/2002	6,618,761	09/09/2003
US	10/401,888	03/31/2003	6,907,473	06/14/2005
US	10/082,285	02/26/2002	6,834,310	12/21/2004
US	10/259,494	09/30/2002	7,490,151	02/10/2009
US	11/839,969	08/16/2007		
US	11/924,460	10/25/2007		
WO	PCT/US99/25323	10/29/1999		
AU	00/16003	10/29/1999	765914	01/15/2004
CA	2,349,520	10/29/1999		
EP	99958693.6	10/29/1999		
JP	2000-580354	10/29/1999		
US	09/558,209	04/26/2000		
WO	PCT/US01/13261	04/25/2001		
EP	01932629.7	04/25/2001		
EP	06014499.5	04/25/2001		
EP	06014500.0	04/25/2001		
HK	07109112.7	08/21/2007		
HK	07109113.6	08/21/2007		
JP	2001-583006	04/25/2001		

Exhibit B

Press Release  
FOR IMMEDIATE RELEASE

MICROSOFT AND VIRNETX SETTLE PATENT INFRINGEMENT CASES

REDMOND, WA and SCOTTS VALLEY, CA – May 14 2010 – VirnetX Holding Corp. (AMEX:VHC) and Microsoft Corp. today announced that they have settled the patent infringement cases brought by VirnetX before the U.S. District Court for the Eastern District of Texas. Pursuant to the settlement, both lawsuits will be dismissed.

As part of the settlement, Microsoft takes a license to the VirnetX patents for Microsoft's products and will make a one-time payment of \$200 million to VirnetX. All other aspects of the settlement and license were not disclosed.

"This Agreement highlights the need for VirnetX's Secure Domain Name Initiative, and we believe that this successful resolution of our litigation with Microsoft will allow us to focus on the upcoming pilot system that will showcase VirnetX's automatic Virtual Private Network technology," said Kendall Larsen, Chief Executive Officer and Chairman of VirnetX Holding Corp. "We look forward to our continued work with our Secure Domain Name Initiative partners in that effort."

"We are pleased to work with VirnetX to bring these cases to a successful resolution through this settlement," said Tom Burt, corporate vice president and deputy general counsel, Microsoft Corporation. "We look forward to VirnetX's continued progress as it develops its technologies."

About Microsoft Founded in 1975, Microsoft (Nasdaq 'MSFT') is the worldwide leader in software, services and solutions that help people and businesses realize their full potential.

**About VirnetX**

VirnetX Holding Corporation, an Internet security software and technology company, is engaged in commercializing its patent portfolio, developed from work done for the Central Intelligence Agency, by developing a licensing program as well as developing software products designed to create a secure environment for real-time communication applications such as instant messaging, VoIP, smart phones, eReaders and video conferencing. The Company's patent portfolio includes over 48 U.S. and international patents and pending applications that were recently declared as essential for 4G security specifications and provide the foundation for the Company's unique GABRIEL Connection Technology. For more information, please visit [www.virnetx.com](http://www.virnetx.com).

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EXHIBIT 31.1

CERTIFICATIONS

I, Kendall Larsen, certify that:

1. I have reviewed this amended quarterly report on Form 10-Q/A of VirnetX Holding Corporation for the quarter ended June 30, 2010;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15 (e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15 (f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Kendall Larsen

Kendall Larsen

*President and Chief Executive Officer*

*(Principal Executive Officer)*

Date: January 31, 2011

EXHIBIT 31.2

CERTIFICATIONS

I, William E. Slincy, certify that:

1. I have reviewed this amended quarterly report on Form 10-Q/A of VirnetX Holding Corporation for the quarter ended June 30, 2010;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15 (e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15 (f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ William E. Slincy

William E. Slincy

Chief Financial Officer

(Principal Accounting and Financial Officer)

Date: January 31, 2011

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**EXHIBIT 32.1**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the amended Quarterly Report of VirnetX Holding Corporation (the "Company") on Form 10-Q/A for the quarter ended June 30, 2010 as filed with the Securities and Exchange Commission on January 31, 2011 (the "Report"), I, Kendall Larsen, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Kendall Larsen

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Kendall Larsen  
*President and Chief Executive Officer*  
*(Principal Executive Officer)*

Date: January 31, 2011

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EXHIBIT 32.2

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the amended Quarterly Report of VirnetX Holding Corporation (the "Company"), on Form 10-Q/A for the quarter ended June 30, 2010 as filed with the Securities and Exchange Commission on January 31, 2011 (the "Report"), I, William E. Sliney, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ William E. Sliney

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William E. Sliney

*Chief Financial Officer*

*(Principal Accounting and Financial Officer)*

Date: January 31, 2011

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