

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-Q**

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

**For the quarterly period ended June 30, 2009**

**OR**

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

**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**

(I.R.S. Employer Identification No.)

**5615 Scotts Valley Drive, Suite 110**

**Scotts Valley, California**

(Address of Principal Executive Offices)

**95066**

(Zip Code)

**(831) 438-8200**

(Registrant's Telephone Number, Including Area Code)

**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 R 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 6, 2009 was 37,369,985.

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VIRNETX HOLDING CORPORATION

INDEX

	<u>Page</u>
PART I — FINANCIAL INFORMATION	
Item 1. Financial Statements (Unaudited)	3
Condensed Consolidated Balance Sheets at June 30, 2009 and December 31, 2008	3
Condensed Consolidated Statements of Operations for the three and six months ended June 30, 2009 and 2008	4
Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2009 and 2008	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations	12
Item 3. Quantitative and Qualitative Disclosures About Market Risk	16
Item 4. Controls and Procedures	16
PART II — OTHER INFORMATION	
Item 1. Legal Proceedings	17
Item 1A. Risk Factors	18
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	32
Item 3. Defaults Upon Senior Securities	32
Item 4. Submission of Matters to a Vote of Security Holders	32
Item 5. Other Information	33
Item 6. Exhibits	33
Signatures	34

## PART I — FINANCIAL INFORMATION

## ITEM 1 — FINANCIAL STATEMENTS

**VIRNETX HOLDING CORPORATION**  
(a development stage enterprise)  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

	June 30, 2009 (Unaudited)	December 31, 2008
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 414,735	\$ 457,155
Accounts receivable, net	3,630	1,154
Prepaid expense and other current assets	211,945	189,847
<b>Total current assets</b>	<b>630,310</b>	<b>648,156</b>
Property and equipment, net	28,255	32,565
Intangibles	192,000	204,000
Deferred offering costs	—	94,261
<b>Total assets</b>	<b>\$ 850,565</b>	<b>\$ 978,982</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities		
Accounts payable and accrued expenses	\$ 4,207,326	\$ 1,669,333
Current portion of long-term obligation	40,000	44,000
<b>Total current liabilities</b>	<b>4,247,326</b>	<b>1,713,333</b>
Long-term obligation, net of current portion	120,000	160,000
Commitments and contingencies		
Stockholders' equity		
Preferred stock, par value \$0.0001 per share, authorized 10,000,000 shares; issued and outstanding: 0 shares at June 30, 2009 and December 31, 2008, respectively	—	—
Common stock, par value \$0.0001 per share, authorized 100,000,000 shares, issued and outstanding: 37,369,985 shares at June 30, 2009 and 34,899,985 at December 31, 2008, respectively	3,737	3,489
Additional paid-in capital	26,857,772	22,150,321
Deficit Accumulated during the development stage	(30,378,270)	(23,048,161)
Total stockholders' equity (deficit)	<b>(3,516,761)</b>	<b>(894,351)</b>
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 850,565</b>	<b>\$ 978,982</b>

See accompanying notes to condensed consolidated financial statements

**VIRNETX HOLDING CORPORATION**  
**(a development stage enterprise)**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(Unaudited)**

	<b>Three months ended June 30, 2009</b>	<b>Three months ended June 30, 2008</b>	
Revenue — royalties	\$ 7,207	\$ 50,744	
Operating expense			
Research and development	220,558	240,109	
General and administrative	3,714,995	2,906,800	
<b>Total operating expense</b>	<b>(3,935,553)</b>	<b>(3,146,909)</b>	
Loss from operations	(3,928,346)	(3,096,165)	
Interest and other income, net	1,244	47,572	
Net loss	<u>\$ (3,927,102)</u>	<u>\$ (3,048,593)</u>	
Basic and diluted loss per share	<u>\$ (0.11)</u>	<u>\$ (0.09)</u>	
Weighted average shares outstanding	<u>37,369,985</u>	<u>34,899,688</u>	
			<b>For the period August 2, 2005 (Date of Inception) to June 30, 2009</b>
	<b>Six months ended June 30, 2009</b>	<b>Six months ended June 30, 2008</b>	
Revenue — royalties	\$ 10,361	\$ 84,050	\$ 218,971
Operating expense			
Research and development	442,257	417,823	2,582,084
General and administrative	6,901,684	5,864,707	28,132,552
<b>Total operating expense</b>	<b>(7,343,941)</b>	<b>(6,282,530)</b>	<b>(30,714,636)</b>
Loss from operations	<u>(7,333,580)</u>	<u>(6,198,480)</u>	<u>(30,495,665)</u>
Interest and other income, net	3,471	118,153	117,395
Net loss	<u>\$ (7,330,109)</u>	<u>\$ (6,080,327)</u>	<u>\$ (30,378,270)</u>
Basic and diluted loss per share	<u>\$ (0.20)</u>	<u>\$ (0.17)</u>	
Weighted average shares outstanding	<u>36,974,239</u>	<u>34,850,991</u>	

See accompanying notes to condensed consolidated financial statements

**VIRNETX HOLDING CORPORATION**  
**(a development stage enterprise)**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**

	<u>Six months ended June 30, 2009</u>	<u>Six months ended June 30, 2008</u>	<u>Cumulative Period from August 2, 2005 (Date of Inception) to June 30, 2009</u>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (7,330,109)	(6,080,327)	(30,378,270)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Stock-based compensation	1,434,036	1,145,322	5,947,085
Depreciation and amortization	19,738	8,536	114,659
<b>Changes in assets and liabilities:</b>			
Prepaid expenses and other assets	(24,574)	65,578	(325,070)
Accounts payable and accrued liabilities	2,537,993	543,776	4,207,534
Net cash used in operating activities	<u>(3,362,916)</u>	<u>(4,317,115)</u>	<u>(20,434,062)</u>
<b>Cash flows from investing activities:</b>			
Purchase of property and equipment	(3,429)	(15,610)	(81,876)
Cash acquired in acquisition	—	—	14,009
Net cash used in investing activities	<u>(3,429)</u>	<u>(15,610)</u>	<u>(67,867)</u>
<b>Cash flows from financing activities:</b>			
Issuance of notes payable	—	—	250,000
Repayment of notes payable	—	—	(250,000)
Proceeds from issuance of preferred stock, net of issuance costs	—	—	1,147,625
Proceeds from issuance of restricted stock units	—	—	2,180
Proceeds from advance from preferred stockholders	—	—	230,000
Proceeds from exercise of options	—	—	30,000
Proceeds from convertible debt	—	—	1,500,000
Payment of royalty obligation less imputed interest	(44,000)	(48,000)	(92,000)
Proceeds from sale of common stock and warrants, net	3,367,925	—	18,098,859
Net cash provided by (used in) financing activities	<u>3,323,925</u>	<u>(48,000)</u>	<u>20,916,664</u>
Net increase (decrease) in cash and cash equivalents	(42,420)	(4,380,725)	414,735
Cash and cash equivalents, beginning of period	457,155	8,589,447	—
Cash and cash equivalents, end of period	<u>\$ 414,735</u>	<u>\$ 4,208,722</u>	<u>\$ 414,735</u>
<b>Supplemental disclosure of cash flow information:</b>			
Cash paid during the period for taxes	\$ 2,173	\$ —	\$ 12,174
Cash paid during the period for interest	\$ 6,000	\$ —	\$ 53,252
<b>Supplemental disclosure of noncash investing and financing activities:</b>			
Conversion of advance into preferred stock	\$ —	\$ —	\$ 230,000
Royalty obligation assumed to obtain intangible assets	\$ —	\$ —	\$ 252,000

See accompanying notes to condensed consolidated financial statements

**VIRNETX HOLDING CORPORATION**  
**(a development stage enterprise)**  
**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 should be read in conjunction with the audited financial statements and related notes for the year ended December 31, 2008 which are contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission (“SEC”), on March 31, 2009.

These financial statements are prepared on a going concern basis that contemplates the realization of assets and discharge of liabilities in the normal course of business. We have incurred net operating losses and negative cash flows from operations. At June 30, 2009, we had a deficit accumulated in the development stage of \$30,378,270. Management believes that the second half 2009 average monthly cash requirement to fund our business is unlikely to change materially from our 2009 first half cash flow rate. As a result, we anticipate that our existing cash and cash equivalents will be insufficient to fund our operations through September 2009. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

**Note 2 — Formation and Business of the Company**

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

Under generally accepted accounting principles in the United States, the accompanying financial statements have been prepared as if VirnetX Inc., a company whose inception date was August 2, 2005 and who is our predecessor for accounting purposes, had acquired PASW, Inc. on July 5, 2007. Accordingly, the accompanying statements of operations include the operations of VirnetX Inc. from August 2, 2005 to June 30, 2009 and the operations of PASW, Inc. from July 5, 2007 to June 30, 2009. The historical share activity of VirnetX Inc. has been retroactively restated to account for the 12.454788-to-one exchange rate which was applicable to certain convertible instruments as explained in Note 10 and Note 11 to our Annual Report on Form 10-K for the year ended December 31, 2008 and for our one-for-three reverse stock split which was implemented on October 29, 2007.

Our principal business activities to date are our efforts to commercialize our patent portfolio. We also conduct the remaining activities of PASW, Inc., which are generally limited to the collection of royalties on certain internet-based communications through our wholly-owned Japanese subsidiary pursuant to the terms of a single license agreement. The revenue generated by this agreement is not significant.

Although we believe we may derive revenues in the future from our principal patent portfolio and are currently endeavoring to develop certain of those patents into marketable products, we have not done so to date. As such, we are in the development stage and consequently are subject to the risks associated with development stage companies, including the need for additional financings, the uncertainty that our licensing program development efforts will produce revenue-bearing licenses for us, the uncertainty that our development initiatives will produce successful commercial products as well as the uncertainty of marketing and customer acceptance of such products.

**Note 3 — Earnings Per Share**

SFAS No. 128 “Earnings Per Share” requires presentation of basic earnings per share and diluted earnings per share. Basic earnings per share are computed by dividing earnings available to common stockholders by the weighted average number of outstanding common shares during the period. Diluted earnings per share is computed by dividing net income by the weighted average number of shares outstanding including potentially dilutive securities such as options, warrants and convertible debt. Because we incurred a loss for each period presented, all such potentially dilutive securities have been excluded because their effect would be anti-dilutive.

**Note 4 — Patent Portfolio**

As of June 30, 2009, we had 12 issued U.S. technology related patents and eight issued foreign technology related patents. In addition, we have several pending U.S. and foreign patent applications. The expiration dates of our issued U.S. and foreign patents run from 2019 to 2024. Most of our issued patents were acquired by our principal operating subsidiary, VirnetX Inc., from Science Applications International Corporation (“SAIC”). We are required to make payments to SAIC based on the revenue generated from our ownership or use of these patents. Minimum annual royalty payments of \$50,000 began to be payable starting in 2008, and we have made payments of \$50,000 in each of February 2008 and January 2009. Royalty amounts vary depending upon the type of revenue generating activities, and certain royalty categories are subject to maximums and other limitations. SAIC is entitled to receive a portion of the proceed revenues, monies or any form of consideration paid for the acquisition of VirnetX or from the settlement of certain patent infringement claims of ours. We have granted SAIC a security interest in some of our intellectual property, including the patents and patent applications we obtained from SAIC, to secure these payment obligations.

Generally upon our default of our agreement with SAIC and certain other events, we are required to convey to SAIC our interests in the patents and patent applications acquired from SAIC without consideration.

**Note 5 — 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.

<b>For the Period</b>	<b>Minimum Required Lease Payments in Period</b>
July 1 through December 31, 2009	\$ 25,555
2010	54,595
2011	59,242
2012	30,202
	<u>\$ 169,594</u>

## Note 6 — Stock Plan

In 2005, VirnetX Inc. adopted the 2005 Stock Plan (the “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 2007 Stock Plan (the “Plan”) and our stockholders approved the Plan at our 2008 annual stockholders’ meeting. The Plan provides for the granting of stock options and restricted stock units to employees and consultants of ours. Stock options granted under the Plan may be incentive stock options or nonqualified stock options. Incentive stock options (“ISO”) may only be granted to our employees (including officers and directors). Nonqualified stock options (“NSO”) may be granted to our employees and consultants.

Options under the Plan may be granted for a period of up to ten years and at prices no less than 85% of the estimated fair market value of the shares on the date of grant as determined by the board of directors, provided, however, that the exercise price of an ISO and NSO shall not be less than 100% or 85% of the estimated fair market value of the shares at the date of grant, respectively, and the exercise price of an ISO and NSO granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant.

On April 3, 2009 there were 1,087,933 options granted to employees at a strike price of \$1.15 and 199,262 options granted to employees at a strike price of \$1.27. On May 28, 2009 there were 10,000 options granted each to our three outside directors at a strike price of \$1.58.

There were 5,785,790 options outstanding at June 30, 2009 and 4,468,595 at December 31, 2008 with an average exercise price of \$2.57 at June 30, 2009 and \$2.98 at December 31, 2008. As of June 30, 2009, there were 1,334,197 shares available to be granted under the Plan.

During the period January 1, 2009 through June 30, 2009, no options were exercised.

## Note 7 — Stock-Based Compensation

We account for equity instruments issued to employees in accordance with the provision of Statement of Financial Accounting Standards (“SFAS”) 123(R) (“SFAS 123(R)”), 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 instruments vest.

The following table summarizes the stock option activity for the six months ended June 30, 2009:

	Shares Available for Grant	Options Outstanding	
		Number of Shares	Weighted Average Exercise Price
<b>Balance at December 31, 2008</b>	2,651,392	4,468,595	\$ 2.98
Restricted stock units granted	—	—	—
Options granted	(1,317,195)	1,317,195	1.18
Options exercised	—	—	—
Options cancelled	—	—	—
<b>Balance at June 30, 2009</b>	1,334,197	5,785,790	\$ 2.57

We have elected to adopt the modified retrospective application method as provided by SFAS 123(R) and, accordingly, financial statement amounts for the periods presented herein reflect results as if the fair value method of expensing equity awards had been applied from inception.



Stock-based compensation expense is included in general and administrative expense for each period ended June 30, 2009. Total stock-based compensation expense was \$1,434,036 and \$1,145,322 for the six months ended June 30, 2009 and 2008, respectively.

As of June 30, 2009, the deferred stock-based compensation related to unvested stock options was \$7,311,504, which will be amortized as an expense over the related vesting period. As of June 30, 2009, the weighted average vesting period was approximately 2.51 years.

The fair value of option grants was estimated on the date of grant using the following assumptions:

	<b>Six months ended June 30, 2009</b>	<b>Year Ended December 31, 2008</b>
Volatility	120.00%	190.00%
Risk-free interest rate	2.93%	4.21%
Expected life	6.3 years	6.7 years
Expected dividends	0.00%	0.00%
Weighted-average grant date fair value of stock options granted	\$ 1.16	\$ 3.09

The expected life was determined using the simplified method outlined in Staff Accounting Bulletin (“SAB”) 107 extended by SAB 110, using 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 believes that all outstanding options at June 30, 2009 will vest. In the future, we may change this estimate based on actual and expected future forfeiture rates.

#### **Note 8 — Warrants**

During 2007, we issued warrants to purchase 266,667 shares of our common stock at \$0.75 per share. In 2008, these warrants were exercised in cashless exercise transactions, as a result of which a total of 232,771 shares of our common stock were issued.

During 2007, we issued warrants to purchase 300,000 shares of our common stock at \$4.80 per share to the underwriter of our December 2007 Stock issuance. The warrants issued to the underwriter in 2007 will expire in 2012.

In January 2009, we closed an underwritten public offering of 2,470,000 shares of our common stock. In addition to shares of common stock sold, we also issued warrants to the purchasers in the public offering to purchase 1,235,000 shares of our common stock at \$2.00 per share, warrants to purchase 1,235,000 shares of our common stock at \$3.00 per share, and warrants to purchase 1,235,000 shares of our common stock at \$4.00 per share. The warrants issued to the purchasers in January 2009 will expire on July 30, 2010, the 18-month anniversary of the closing date of the January offering.

Also in connection with the January 2009 offering, we issued a warrant to purchase 220,000 shares of our common stock at \$1.80 per share to the underwriter of that offering. The warrant issued to the underwriter in January 2009 will expire on January 30, 2014.

Copies of the forms of warrants issued to the purchasers and the underwriter of the January 2009 offering were filed as exhibits to our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009.

## Note 9 — Litigation

We believe Microsoft Corporation is infringing certain of our patents. Accordingly, we commenced a lawsuit against Microsoft on February 15, 2007 by filing a complaint in the United States District Court of the Eastern District of Texas, Tyler Division. Pursuant to the complaint, we allege 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.” We are seeking both damages, in an amount subject to proof at trial, and injunctive relief. Microsoft answered the amended complaint and asserted counterclaims against us on May 4, 2007. Microsoft counterclaimed for declarations that the three patents are not infringed, are invalid and are unenforceable. Microsoft seeks an award of its attorneys’ fees and costs. 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. Microsoft was ordered to provide further information regarding its non-infringement contentions and invalidity contentions in light of the amended infringement contentions. Microsoft was also ordered to provide additional e-mail discovery to us. A Markman hearing on claim construction was conducted on February 17, 2009.

On June 9, 2009, we entered into a fixed fee engagement with McKool Smith which confirmed McKool as our lead counsel in the litigation against Microsoft. McKool agreed to represent us in our litigation against Microsoft for a fixed fee of \$3 million and a contingency fee of 8% of the litigation proceeds. In the event of a judgment or settlement below an agreed upon amount (designed to approximate the total legal fees associated with the matter), McKool’s fixed fee will be limited to the actual time spent by McKool, up to a maximum of \$3 million, plus the contingency fee of 8% of the litigation proceeds. On June 26, 2009, we filed an unopposed motion with the court for an order granting an approximate ninety day continuance of the trial and to enter a new docket control in order to, among other things, allow our new lead counsel to complete the transition from the previous trial counsel as well as adequately prepare for all the upcoming submissions of the expert reports and the subsequent jury trial. This order was granted on June 30, 2009 and the new trial date has been set for March 8, 2010. With our permission, McDermott Will & Emery filed a motion to withdraw as our counsel from this case, which was granted by the court on July 8, 2009.

On July 30, 2009, the United States District Court for the Eastern District of Texas, Tyler Division, issued its Markman Order in the Microsoft litigation and adopted certain interpretations that we believe are favorable to us on many of the claim terms that were in dispute in the litigation. The trial in connection with the Microsoft litigation is scheduled to start on March 8, 2010.

Because we have determined that Microsoft’s alleged unauthorized use of our patents would cause us severe economic harm and the failure to cause Microsoft to discontinue its use of such patents could result in the termination of our business, we have dedicated a significant portion of our economic resources, to date, to the prosecution of the Microsoft litigation and expect to continue to do so for the foreseeable future.

Although we believe Microsoft infringes three of our patents and we intend to vigorously prosecute this case, at this stage of the litigation the outcome cannot be predicted with any degree of reasonable certainty. Additionally, the Microsoft litigation will be costly and time-consuming, and we can provide no assurance that we will obtain a judgment against Microsoft for damages and/or injunctive relief. Should the District Court issue a judgment in favor of Microsoft, such judgment could be adverse to us.

In the near term, we will dedicate significant time and resources to the Microsoft litigation. The risks associated with such dedication of time and resources are set forth in the “Risk Factors” section of this Quarterly Report on Form 10-Q.

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.

**Note 10 — Subsequent Event**

On July 19, 2009, the NYSE Amex LLC (the “Exchange”) notified us that it had accepted our previously submitted plan of compliance and, pursuant to the plan, had granted us an extension to regain compliance with the Exchange’s continued listing standards. In addition to approving the plan, the Exchange determined that we are not currently subject to the stockholders’ equity requirements, given our compliance with certain alternative listing standards relating, among other things, to our current market capitalization. Nonetheless, the Exchange continues to believe that it would be necessary and appropriate for us to take certain actions to strengthen our financial condition. As a result, the Exchange has granted us an extension until October 30, 2009 to regain compliance with the financial condition continued listing standard. We will be subject to periodic reviews by the Exchange during the extension period. Failure to make progress consistent with the plan or to regain compliance with the continued listing standards by the end of the extension period could result in our common stock being delisted from the Exchange.

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

*This Quarterly Report on Form 10-Q, 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 (“SEC”.) For this purpose, using the terms “believe,” “expect,” “expectation,” “anticipate,” “can,” “should,” “would,” “could,” “estimate,” “appear,” “based on,” “may,” “intend,” “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 a development stage company focused on commercializing a patent portfolio for securing real-time communications over the Internet. These patents were acquired by our principal operating subsidiary, VirnetX Inc., from Science Applications International Corporation (“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.

Our common stock trades under the ticker symbol “VHC” on the NYSE Amex. Our principal business activities to date are our efforts to commercialize our patent portfolio. 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 ours pursuant to the terms of a single license agreement. The revenue generated by this agreement is not significant.

Although we believe we may derive revenues in the future from our principal patent portfolio and are currently endeavoring to develop certain of those patents into marketable products, we have not done so to date. Because we have limited capital resources, our revenues are insignificant and our expenses, including but not limited to those we expect to incur in our patent infringement case against Microsoft, are substantial, we may be unable to successfully complete our business plans, our business may fail and your investment in our securities may become worthless. See “Risk Factors” for additional information.

We are in the development stage and consequently we are subject to the risks associated with development stage companies including: the need for additional financings; the uncertainty that our patent and technology licensing program development efforts will produce revenue bearing licenses for us; the uncertainty that our development initiatives will produce successful commercial products as well as the marketing and customer acceptance of such products; competition from larger organizations; dependence on key personnel; uncertain patent protection; and dependence on corporate partners and collaborators. To achieve successful operations, we will require additional capital to continue research and development and marketing efforts. No assurance can be given as to the timing or ultimate success of obtaining future funding.

## **Recent Developments in the three months ended June 30, 2009**

On June 9, 2009, we entered into an engagement letter with McKool Smith, confirming McKool as our lead counsel in our ongoing patent infringement litigation against Microsoft Corporation. McKool has agreed to represent us in the Microsoft Litigation for a fixed fee of \$3 million and a contingency fee of 8% of the litigation proceeds. In the event of a judgment or settlement below an agreed upon amount (designed to approximate the total legal fees associated with the matter), McKool's fixed fee will be limited to the actual time spent by McKool, up to a maximum of \$3 million, plus the contingency fee of 8% of the litigation proceeds. McKool's out-of-pocket expenses are not capped pursuant to the engagement letter but are estimated to be approximately \$1 million. Subsequently, with our permission, McDermott Will & Emery filed a motion to withdraw as our counsel from this case, which was granted by the court on July 8, 2009. A copy of the engagement letter with McKool is attached to this Quarterly Report on Form 10-Q for the quarter ended June 30, 2009. We have submitted a request for confidential treatment for certain portions of the engagement letter. Those portions have been redacted and have been provided separately to the Securities and Exchange Commission.

On June 26, 2009, we filed an unopposed motion with the United States District Court for the Eastern District of Texas for an order granting an approximate ninety day continuance of the trial and to enter a new docket control order in the ongoing patent infringement litigation with Microsoft Corporation. The continuance and an amended calendar of events will enable the McKool team to complete the transition from the previous trial counsel as well as adequately prepare for all the upcoming submissions of the expert reports and the subsequent jury trial. This order was granted on June 30, 2009 and the new trial date has been set for March 8, 2010.

On April 30, 2009, we received a letter from the NYSE Amex LLC (the "Exchange") stating that, based on the Exchange's review of publicly available information, we were considered to be below the Exchange's continued listing standards due to the fact that we do not satisfy the stockholders' equity requirements, as set forth in Sections 1003(a)(i) and 1003(a)(ii) of the Exchange's Company Guide, and given our current financial condition, which the Exchange cited in accordance with Section 1003(a)(iv). We were afforded the opportunity to submit a plan of compliance to the Exchange and, on June 1, 2009, submitted such a plan. See Note 10 to the financial statements included in this Quarterly Report on Form 10-Q for recent developments related to the strategic plan we submitted to the Exchange.

## **Application of Critical Accounting Policies**

There were no material changes in the application of our 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, 2008, filed with the SEC on March 31, 2009.

## **Recent Accounting Pronouncements**

There were no material updates to recent accounting pronouncements since the end of the most recent fiscal year. 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, 2008, filed with the SEC on March 31, 2009.

## Results of Operations

### Three and Six months ended June 30, 2009 Compared with Three and Six months ended June 30, 2008

#### *Revenue — Royalties*

Revenue generated decreased by \$43,537 for the three months ended June 30, 2009 from \$50,744 for the three months ended June 30, 2008. Revenue generated decreased by \$73,689 for the six months ended June 30, 2009 from \$84,050 for the six months ended June 30, 2008. 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.

#### *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 decreased by \$19,551 to \$220,558 for the three months ended June 30, 2009 from \$240,109 for the three months ended June 30, 2008. Research and development increased by \$24,434 to \$442,257 for the six months ended June 30, 2009, from \$417,823 for the six months ended June 30, 2008. This increase is primarily due to increased engineering activities for product development and the addition of one engineer. We expect research and development expenses to increase as employees are hired to provide in-house research and development. While we expect to use outside contractors for additional product development on a limited basis, we expect those costs to remain level or decline.

#### *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 \$808,195 to \$3,714,995 for the three months ended June 30, 2009 from \$2,906,800 for the three months ended June 30, 2008. Our general and administrative expenses increased by \$1,036,977 to \$6,901,684 for the six months ended June 30, 2009 from \$5,864,707 for the six month period ended June 30, 2008.

Within selling, general and administrative expenses, legal fees increased by \$728,273 to \$2,364,808 for the three months ended June 30, 2009 from \$1,636,535 for the three months ended June 30, 2008. Legal fees increased by \$958,891 to \$4,222,197 for the six months ended June 30, 2009 from \$3,263,306 for the six months ended June 30, 2008. The increase in fees incurred was due primarily to our patent infringement litigation against Microsoft.

Also within selling, general and administrative expenses, expenses increased by \$78,086 for the six months ended June 30, 2009. The increase was due principally to an increase in rent over the same period in 2008 and the number of staff and resources in order to comply with the requirements associated with being an SEC reporting company.

Once we begin to generate royalty revenues, we expect that our selling expenses will increase significantly as we must make payments to SAIC with respect to such revenues and as we begin to expand our sales force.

## Liquidity and Capital Resources

In January 2009, we closed an underwritten public offering of 2,470,000 shares of our common stock, including 270,000 of which were issued pursuant to the underwriter's over-allotment option, plus warrants to purchase 1,235,000 shares of common stock at \$2.00 per share, including 135,000 of which were issued pursuant to the underwriter's over-allotment option, warrants to purchase 1,235,000 shares of common stock at \$3.00 per share, including 135,000 of which were issued pursuant to the underwriter's over-allotment option, and warrants to purchase 1,235,000 shares of common stock at \$4.00 per share, including 135,000 of which were issued pursuant to the underwriter's over-allotment option. The offering at \$1.50 per unit raised gross proceeds of approximately \$3,700,000 before deducting the underwriter's fees and other costs of the offering. The net cash raised was approximately \$3,300,000.

All warrants were exercisable on January 30, 2009 and remain exercisable through and including the 18-month anniversary date of the closing of the offering on January 30, 2009. All warrants include a call feature that gives us the right to require the holder of the warrant to exercise the warrant if our average closing stock price over five consecutive trading days is equal to or exceeds two times the applicable warrant's purchase price, failing which the warrants will terminate if not previously exercised by the holders of such warrants.

In December 2007, we closed an underwritten public offering of 3.45 million shares of our common stock, raising gross proceeds of \$13.8 million before underwriting discounts and commissions and offering expenses.

We are in the development stage and have raised capital since our inception through the issuance of our equity securities. As of June 30, 2009, we had approximately \$414,735 in cash as compared to approximately \$457,155 as of December 31, 2008. We expect to finance future cash needs primarily through proceeds from equity or debt financings, loans, and/or collaborative agreements with corporate partners. We have used the net proceeds from the sale of common and preferred stock for general corporate purposes, which have included funding research and development, litigation efforts and working capital needs.

We anticipate that our existing cash and cash equivalents are not currently sufficient to fund our operations through September 2009. In order to obtain additional capital, we are evaluating alternative financing sources, including, but not limited to, the issuance of equity or debt securities, corporate alliances, joint ventures and licensing agreements; however, there can be no assurance that funding will be available on favorable terms, if at all. We cannot assure you that we will successfully commercialize our products and services or that our products and services will gain sufficient market acceptance to enable us to earn a profit. If we are unable to obtain additional capital or generate sufficient revenue from such efforts in the short term, we may be required to cease operations or to reduce cash used in our business, including the termination of commercialization efforts that may appear to be promising, the sale of our patent portfolio or other assets, the abandonment of our litigation with Microsoft or others and the reduction in overall operating activities.

During fiscal year 2008, the cash flow for our operations was approximately \$8,064,000 (an average of approximately \$672,000 per month.) During the first two quarters of 2009, our cash used in operating activities averaged \$560,486 per month. We anticipate that our average monthly cash requirement to fund our operations in the third and fourth quarter of 2009 is unlikely to change materially from the cash flow rate of our first two quarters of 2009. As a result, we anticipate that our cash balance at June 30, 2009 of \$414,735 will be insufficient to fund our operations through September 2009. We anticipate that our monthly cash requirements will include for the second half of 2009 our expenditures for:

- our lawsuit against Microsoft;
- infrastructure;
- sales and marketing;
- research and development;
- personnel; and
- general business enhancements.

We may exceed those projected amounts if we increase these expenditures in response to business conditions we do not currently expect or for other reasons. The process of developing new security solutions is inherently complex, time-consuming, expensive and uncertain. We must make long-term investments and commit significant resources before knowing whether our patented technology offerings will achieve market acceptance. We are unable to predict when we will begin to generate material net cash inflows from our patent and technology licensing program and our secure domain name registry service.

### **Off-Balance Sheet Arrangements**

On June 9, 2009, we entered into an engagement letter with McKool Smith, confirming McKool as our lead counsel in our ongoing patent infringement litigation against Microsoft Corporation. McKool has agreed to represent us in the Microsoft Litigation for a fixed fee of \$3 million and a contingency fee of 8% of the litigation proceeds. In the event of a judgment or settlement below an agreed upon amount (designed to approximate the total legal fees associated with the matter), McKool's fixed fee will be limited to the actual time spent by McKool, up to a maximum of \$3 million, plus the contingency fee of 8% of the litigation proceeds. McKool's out-of-pocket expenses are not capped pursuant to the engagement letter but are estimated to be approximately \$1 million. A copy of the engagement letter with McKool is attached to this Quarterly Report on Form 10-Q for the quarter ended June 30, 2009. We have submitted a request for confidential treatment for certain portions of the engagement letter. Those portions have been redacted and have been provided separately to the Securities and Exchange Commission.

As of June 30, 2009, we did not have any further off-balance sheet arrangements except for an operating lease commitments and the contingent portion of our royalty obligation under our royalty agreement with SAIC as discussed in Note 5 "Commitments" and Note 6 "Patent Portfolio" to the financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2008.

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

Not Applicable.

### **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. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report are effective to ensure that information we are required to disclose in reports that we file or submit under the Exchange Act is 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 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

(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, 2009 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 believe Microsoft Corporation is infringing certain of our patents. Accordingly, we commenced a lawsuit against Microsoft on February 15, 2007 by filing a complaint in the United States District Court of the Eastern District of Texas, Tyler Division. Pursuant to the complaint, we allege 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.” We are seeking both damages, in an amount subject to proof at trial, and injunctive relief. Microsoft answered the amended complaint and asserted counterclaims against us on May 4, 2007. Microsoft counterclaimed for declarations that the three patents are not infringed, are invalid and are unenforceable. Microsoft seeks an award of its attorneys’ fees and costs. 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. Microsoft was ordered to provide further information regarding its non-infringement contentions and invalidity contentions in light of the amended infringement contentions. Microsoft was also ordered to provide additional e-mail discovery to us. Discovery has begun, a Markman hearing on claim construction was conducted on February 17, 2009.

On June 9, 2009, we entered into a fixed fee engagement with McKool Smith, a professional corporation, which confirmed McKool as our lead counsel in the litigation against Microsoft. On June 26, 2009, we filed an unopposed motion with the court for an order granting an approximate ninety day continuance of the trial and to enter a new docket control in order to, among other things, allow our new lead counsel to complete the transition from the previous trial counsel as well as adequately prepare for all the upcoming submissions of the expert reports and the subsequent jury trial. Subsequently, with our permission, McDermott Will & Emery filed a motion to withdraw from this case as our counsel, which was granted by the court on July 8, 2009. This order was granted on June 30, 2009 and the new trial date has been set for March 8, 2010.

On July 30, 2009, the United States District Court for the Eastern District of Texas, Tyler Division, issued its Markman Order in the Microsoft litigation and adopted certain interpretations that we believe are favorable to us on many of the claim terms that were in dispute in the litigation.

Because we have determined that Microsoft’s alleged unauthorized use of our patents would cause us severe economic harm and the failure to cause Microsoft to discontinue its use of such patents could result in the termination of our business, we have dedicated a significant portion of our economic resources, to date, to the prosecution of the Microsoft litigation and expect to continue to do so for the foreseeable future.

Although we believe Microsoft infringes three of our patents and we intend to vigorously prosecute this case, at this stage of the litigation the outcome cannot be predicted with any degree of reasonable certainty. Additionally, the Microsoft litigation will be costly and time-consuming, and we can provide no assurance that we will obtain a judgment against Microsoft for damages and/or injunctive relief. Should the District Court issue a judgment in favor of Microsoft, such judgment could be adverse to us.

In the near term, we will dedicate significant time and resources to the Microsoft litigation. The risks associated with such dedication of time and resources are set forth in the “Risk Factors” section of this Quarterly Report on Form 10-Q.

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 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 Existing and Future Litigation**

***We have commenced legal proceedings against Microsoft, and we expect such litigation to be time-consuming and costly, which may adversely affect our financial condition and our ability to operate our business.***

On February 15, 2007, we initiated a lawsuit by filing a complaint against Microsoft in the United States District Court for the Eastern District of Texas, Tyler Division, pursuant to which we allege that Microsoft infringes two of our patents regarding the creation of virtual private networks (“VPNs”). We seek damages and injunctive relief. On April 5, 2007, we filed an amended complaint, pursuant to which we allege that Microsoft infringes a third patent. On February 17, 2009, a Markman hearing on claim construction was conducted and on July 30, 2009, the court issued its Markman Order. Although we believe that the court adopted certain interpretations in the Markman Order that are favorable to us, we cannot assure you that the litigation will result in an outcome that is favorable to our company or our stockholders.

In addition, although we have entered into a fixed fee engagement with McKool Smith on June 9, 2009 to act as our lead counsel in connection with the Microsoft lawsuit, we anticipate that the legal proceedings against Microsoft may continue for several years and may require significant expenditures for legal fees and other expenses. The time and effort required of our management to effectively pursue the Microsoft lawsuit may adversely affect our ability to operate our business, since time spent on matters related to the lawsuit will take away from the time spent on managing and operating our business. Microsoft has counterclaimed for declarations that the three patents are not infringed, are invalid and are unenforceable. If Microsoft’s counterclaims are successful, they may preclude our ability to commercialize our initial products. Additionally, we anticipate that our legal fees will be material and will negatively impact our financial condition and results of operations and may result in our inability to continue our business.

***While we believe Microsoft infringes our patents, we can provide no assurance that we will be successful in our lawsuit.***

We believe that Microsoft infringes on three of our patents, but obtaining and collecting a judgment against Microsoft may be difficult or impossible. Patent litigation is inherently risky and the outcome is uncertain. Microsoft is a large, well-financed company with substantially greater resources than us. We believe that Microsoft will devote a substantial amount of resources in an attempt to prove that either their products do not infringe our patents or that our patents are not valid and are unenforceable. At this time, we cannot predict the outcome of this litigation.

***We are devoting a substantial amount of our financial and management resources to the Microsoft litigation, and if we are unsuccessful in this lawsuit, our financial condition may be adversely affected and we may not survive.***

Currently, we are devoting substantial time, effort and financial resources to our lawsuit against Microsoft. We are a development stage company with no finished product, and, although our business strategy is focused primarily on bringing patented products to market, our business strategy also depends greatly on obtaining a judgment in our favor from the courts and collecting such judgment before our financial resources are depleted. In the event we are not awarded and do not subsequently obtain monetary and injunctive relief, we may not have enough financial resources to continue our operations.

***The burdens of being a public company may adversely affect our ability to pursue the Microsoft 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 pursue the Microsoft 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 Microsoft as well as any other 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.

***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 or end our business.***

Disputes regarding the ownership of technologies and intellectual property rights are common and we may have intellectual property infringement claims against other parties in addition to our claims against Microsoft. 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.

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

***We are a development stage company with virtually no revenues.***

We are a development stage company with a very small amount of revenue and do not expect to generate additional revenues unless and until our patent portfolio, or part of it, is commercialized. We anticipate that our existing cash and cash equivalents are insufficient to fund our operations for longer than through September 2009. We need to raise additional capital to fund our operations and our litigation against Microsoft and there can be no assurance that we will be successful in doing so on acceptable terms or at all. Our inability to generate sufficient cash flow or raise other funds to meet our expenses, obligations and sustain our operations raises substantial doubt about our ability to continue as a going concern. See the "Liquidity and Capital Resources" section in this Quarterly Report on Form 10-Q for additional information.

***We anticipate incurring operating losses and negative cash flows for the foreseeable future resulting in uncertainty of future profitability and limitations on our operations.***

We anticipate that we will incur operating losses and negative cash flows in the foreseeable future, and we will accumulate increasing deficits as we increase our expenditures for:

- our lawsuit against Microsoft;
- infrastructure;
- sales and marketing;
- research and development;
- personnel; and
- general business enhancements.

We need to significantly increase our revenue if we are to attain profitability and there is no assurance that we will be able to do so. As discussed in the notes to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q, in the event that we are unable to achieve profitability or raise sufficient funding to cover our losses in the near term, we will be unable to meet our expenses and obligations as they come due, and this raises substantial doubts as to our ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

***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.

***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. 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 will be able to capitalize on the potential market opportunity. 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 capital resources may be insufficient;
- 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; and
- the validity of our patents underlying the licensing opportunity is currently being challenged in our litigation against Microsoft.

***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.***

We cannot assure you that next-generation Internet-based applications such as instant messaging (“IM”), voice over Internet protocol (“VoIP”), mobile services, streaming video, file transfer and remote desktop will 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 quarterly 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 of 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.

***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 exposes 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.

***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.

***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 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.



***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.

***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 any such claims are valid or can be successfully asserted, defending against such claims could cause us to incur significant costs 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. Despite these efforts, any of the following may reduce the value of our intellectual property:

- 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 will likely continue to be, significant litigation in the industry regarding patent and other intellectual property rights.

***If we fail to meet our obligations to SAIC, we may lose our rights to key technologies on which our business depends.***

Our business depends on our rights to and under the patents we obtained from SAIC. Our agreements with SAIC impose various obligations on us, including payment obligations and minimum royalties that we must pay to SAIC. If SAIC believes that we have failed to meet these obligations, SAIC could seek to limit or reacquire the assigned patent rights, which could lead to costly and time-consuming litigation and, potentially, a loss of our rights in these patents. During the period of any such litigation, our ability to carry out the development and commercialization of potential products could be significantly and negatively affected. The loss or restriction of our rights in our patents would result in our inability to continue our business.

***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 (“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 (“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 (“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.

***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.***

The growing popularity and use of the Internet has burdened the 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 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 intend 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, on top of the attention demanded by our pending litigation with Microsoft, 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.

***We will continue to incur significant costs as a result of being a public company.***

As a public company, we will continue to incur significant legal, accounting and other expenses that VirnetX Inc. did not incur as a private company. We expect the laws, rules and regulations governing public companies to increase our legal and financial compliance costs and to make some activities more time-consuming and costly, and these costs could be material to us.

***Failing 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.***

In the future, our management may identify deficiencies regarding the design and effectiveness of our system of internal control over financial reporting that we engage in pursuant to Section 404 of the Sarbanes-Oxley Act ("Section 404") as part of our periodic reporting obligations. Such deficiencies could include those arising from turnover of qualified personnel or arising as a result of acquisitions, which we may not be able to remediate in time to meet the continuing reporting deadlines imposed by Section 404 and the costs of which may harm our results of operations. In addition, if we fail to maintain the adequacy of our internal controls, as such standards are modified, supplemented or amended from time to time, we may not be able to ensure that our management can conclude on an ongoing basis that we have effective internal controls. We also may not be able to retain an independent registered public accounting firm with sufficient resources to attest to and report on our internal controls in a timely manner. Moreover, our registered public accounting firm may not agree with our management's future assessments and may deem our controls ineffective if we are unable to remediate on a timely basis. If in the future we are unable to assert that we maintain effective internal controls, our investors could lose confidence in the accuracy and completeness of our financial reports which could cause our stock price to decline.

***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 achieve 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.

## **Risks Related to Our Stock**

***Our business is subject to risks associated with the ongoing financial crisis and weakening global economy.***

The recent severe tightening of the credit markets, turmoil in the financial markets, and weakening global economy impacts our ability to raise needed capital and enter into customer agreements. These slowdowns are expected to worsen if these economic conditions are prolonged or deteriorate further. 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.

***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, and we may be unable to maintain the standards for the continued listing of our common stock on the NYSE Amex.***

Our common stock is listed on NYSE Amex but its daily trading volume has been limited, sporadic and volatile, particularly in light of the ongoing financial crisis; economic uncertainty tends to exacerbate volatility in the financial markets. Over the past year, the market price of our common stock has experienced significant fluctuations. Between June 30, 2008 and June 30, 2009, the reported last sale price for our common stock has ranged from \$4.65 to \$1.06 per share. With such volatility, there can be no assurance that we will remain qualified to be listed on NYSE Amex.

On April 30, 2009, we received a letter from the NYSE Amex stating that, based on the NYSE Amex's review of publicly available information, we were considered to be below the NYSE Amex's continued listing standards due to the fact that we do not satisfy the stockholders' equity requirements, as set forth in Sections 1003(a)(i) and 1003(a)(ii) of the NYSE Amex Company Guide, and given our current financial condition, which NYSE Amex cited in accordance with Section 1003(a)(iv). We were afforded the opportunity to submit a plan of compliance to NYSE Amex and, on June 1, 2009, submitted such a plan. On July 19, 2009, NYSE Amex notified us that it had accepted our previously submitted plan of compliance and, pursuant to the plan, granted us an extension to regain compliance with NYSE Amex's continued listing standards. In addition to approving the plan, NYSE Amex determined that we are not currently subject to the stockholders' equity requirements, given our compliance with certain alternative listing standards relating, among other things, to our current market capitalization. Nonetheless, NYSE Amex continues to believe that it would be necessary and appropriate for us to take certain actions to strengthen its financial condition. As a result, NYSE Amex has granted us an extension until October 30, 2009 to regain compliance with the financial condition continued listing standard.

We will be subject to periodic reviews by NYSE Amex during the extension period. Failure to make progress consistent with our plan or to regain compliance with the continued listing standards by the end of the extension period could result in us being delisted from NYSE Amex.

If our securities were delisted from trading on NYSE Amex and we are unable to list our securities on another securities exchange, our securities may be able to be listed on the OTC Bulletin Board or the "Pink Sheets," which may adversely affect the liquidity and price of our common stock. In addition, 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 our pending litigation against Microsoft;
- 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, you and other investors will have minimal influence on stockholder decisions.***

As of June 30, 2009, our officers and directors beneficially owned an aggregate of 12,395,826 shares, or 30.56% of our outstanding common stock. In addition, a group of stockholders that, as of December 31, 2007, held 4,766,666 shares, or 13.7% of our 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.

***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 Bylaws:** Stockholder proposals to alter or amend our Bylaws or to adopt new Bylaws 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.

***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.

*We may seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing capital stock that would dilute your ownership.*

We have financed our operations, and we expect to continue to finance our operations, acquisitions and develop strategic relationships, by issuing equity or convertible debt securities, which could significantly reduce the percentage ownership of our existing stockholders. Furthermore, any newly issued securities could have rights, preferences and privileges senior to those of our existing stock. Moreover, any issuances by us of equity securities may be at or below the prevailing market price of our stock and in any event may have a dilutive impact on your ownership interest, which could cause the market price of stock to decline. We may also raise additional funds through the incurrence of debt or the issuance or sale of other securities or instruments senior to our common shares. The holders of any debt securities or instruments we may issue would have rights superior to the rights of our common stockholders.

*We have no current intention of declaring or paying any cash dividends on our common stock.*

We do not plan to declare or pay any cash dividends on our common stock. Our current policy is to use all funds and any earnings in the operation and expansion of our business.

## ITEM 2 — UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

We did not issue any unregistered securities during the three month period ended June 30, 2009.

## ITEM 3 — DEFAULTS UPON SENIOR SECURITIES

None.

## ITEM 4 — SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

### a) *Annual stockholder meeting.*

Our annual meeting of the stockholders was held on May 28, 2009.

### b) *Board of Directors.*

At our annual meeting, the stockholders approved the election of Thomas O'Brien and Edmund C. Munger pursuant to the votes cast below. The terms of office for the remaining directors on our Board, Michael F. Angelo, Scott Taylor, and Kendall Larsen, continued after the meeting.

### c) *Matters voted upon at the meeting and the results of each vote.*

1. Our stockholders approved the election of the nominees for the Class II directors to our Board who are to serve a term of office that will expire at our 2012 Annual Meeting of Stockholders or until their earlier resignation or removal. The nominees were Thomas O'Brien and Edmund C. Munger.

The Inspector of Election certified the following vote tabulations:

<u>Directors:</u>	<u>Votes For</u>	<u>Votes Withheld</u>
Thomas O'Brien	30,594,406	2,052,249
Edmund C. Munger	32,642,135	4,520

2. Our stockholders approved a proposal ratifying the selection of Farber Hass Hurley LLP as our independent registered public accounting firm for fiscal year 2009.

The Inspector of Election certified the following vote tabulations:

<u>For</u>	<u>Against</u>	<u>Abstaining</u>
32,389,999	255,990	666



## ITEM 5 — OTHER INFORMATION

None.

## ITEM 6 — EXHIBITS

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended Form of Stock Option Agreement to the Company's 2007 Stock Plan.*
10.1	Engagement Letter dated June 9, 2009, by and between McKool Smith, a professional corporation, and the Company.*
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.**

<sup>(1)</sup>Pursuant to a request for confidential treatment, portions of this Exhibit have been redacted and have been provided separately to the Securities and Exchange Commission.

\*Filed herewith.

\*\*Furnished 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: August 10, 2009

## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended Form of Stock Option Agreement to the Company's 2007 Stock Plan.*
10.1	Engagement Letter dated June 9, 2009, by and between McKool Smith, a professional corporation, and the Company.*
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.**

<sup>(1)</sup> Pursuant to a request for confidential treatment, portions of this Exhibit have been redacted and have been provided separately to the Securities and Exchange Commission.

\* Filed herewith.

\*\* Furnished herewith.

## VIRNETX HOLDING CORPORATION

## 2007 STOCK PLAN

NOTICE OF STOCK OPTION GRANT

CSO - \_\_\_\_\_

Optionee Name  
 Optionee Address Line 1  
 Optionee Address Line 2

You have been granted an option to purchase Common Stock of VirnetX Holding Corporation, a Delaware corporation (the "Company"), as follows:

Date of Grant: \_\_\_\_\_

Exercise Price Per Share: \$ \_\_\_\_\_

Total Number of Shares: \_\_\_\_\_

Total Exercise Price: \$ \_\_\_\_\_

Type of Option: \_\_\_\_\_ Shares Incentive Stock Option

\_\_\_\_\_ Shares Nonstatutory Stock Option

Expiration Date: \_\_\_\_\_

First Vesting Date: \_\_\_\_\_

Vesting/Exercise Schedule: So long as your Continuous Service Status does not terminate, the Shares underlying this Option shall vest and become exercisable in accordance with the following schedule: \_\_\_\_\_ of the Total Number of Shares shall vest and become exercisable on \_\_\_\_\_ and \_\_\_\_\_ of the Total Number of Shares shall vest and become exercisable on the \_\_\_\_\_ day of each month thereafter.

Termination Period: You may exercise this Option for 1 month after termination of your Continuous Service Status except as set out in Section 5 of the Stock Option Agreement (but in no event later than the Expiration Date). You are responsible for keeping track of these exercise periods following the termination of your Continuous Service Status for any reason. The Company will not provide further notice of such periods.

Transferability: You may not transfer this Option.

This Option is granted under and governed by the terms and conditions of the VirnetX Holding Corporation 2007 Stock Plan and the Stock Option Agreement, both of which are attached to and made a part of this document.

In addition, your rights to any Shares underlying this Option will be earned only as you provide services to the Company over time, that the grant of this Option is not as consideration for services you rendered to the Company prior to your date of hire, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company's right to terminate that relationship at any time, for any reason, with or without cause.

**THE COMPANY:**

VIRNETX HOLDING CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFER AGENT:**

CORPORATE STOCK TRANSFER

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:

3200 Cherry Creek Drive South  
Suite 430  
Denver, CO 80209

VIRNETX HOLDING CORPORATION

2007 STOCK PLAN

STOCK OPTION AGREEMENT

1. **Grant of Option.** VirnetX Holding Corporation, a Delaware corporation (the “Company”), hereby grants to \_\_\_\_\_ (“Optionee”), an option (the “Option”) to purchase the total number of shares of Common Stock (the “Shares”) set forth in the Notice of Stock Option Grant (the “Notice”), at the exercise price per Share set forth in the Notice (the “Exercise Price”) subject to the terms, definitions and provisions of the VirnetX Holding Corporation 2007 Stock Plan (the “Plan”) adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice, and to the extent it is not so designated or to the extent this Option does not qualify as an Incentive Stock Option, it is intended to be a Nonstatutory Stock Option.

Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Parent or Subsidiary, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of \$100,000, the Shares in excess of \$100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 5(c) of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting/Exercise Schedule set out in the Notice and with the provisions of Section 10 of the Plan as follows:

(a) **Right to Exercise.**

(i) This Option may not be exercised for a fraction of a share.

(ii) In the event of Optionee’s death, Disability (as defined in Section 22(e)(3) of the Code) or other termination of Continuous Service Status, the exercisability of this Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

(iii) In no event may this Option be exercised after the Expiration Date set forth in the Notice.

(b) **Method of Exercise.**

(i) This Option shall be exercisable by execution and delivery of the Exercise Agreement attached hereto as Exhibit A (the "Exercise Agreement") or of any other form of written notice approved for such purpose by the Company which shall state Optionee's election to exercise this Option, the number of Shares in respect of which this Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the aggregate Exercise Price for the purchased Shares.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the grant, vesting or exercise of this Option, or disposition of Shares, whether by withholding, direct payment to the Company, or otherwise.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of this Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. This Option may not be exercised until such time as the Plan has been approved by the holders of capital stock of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such Shares would constitute a violation of any Applicable Laws, including any applicable U.S. federal or state securities laws or any other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Optionee on the date on which this Option is exercised with respect to such Shares.

(iv) Subject to compliance with Applicable Laws, this Option shall be deemed to be exercised upon receipt by the Company or its stock transfer agent as specified in the Exercise Agreement of the appropriate written notice of exercise accompanied by the Exercise Price and the satisfaction of any applicable withholding obligations.

4. **Method of Payment.** Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

(a) cash or check;

(b) cancellation of indebtedness;

(c) at the discretion of the Plan Administrator on a case by case basis, by surrender of other shares of Common Stock of the Company (either directly or by stock attestation) that Optionee previously acquired and that have an aggregate Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Shares as to which this Option is being exercised; or

(d) if the Company is at such time permitting “same day sale” cashless brokered exercises, by delivery of a properly executed Exercise Agreement together with irrevocable instructions to a broker participating in such cashless brokered exercise program to deliver promptly to the Company the amount required to pay the Exercise Price (and applicable withholding taxes).

5. **Termination of Relationship.** Following the date of termination of Optionee’s Continuous Service Status for any reason (the “Termination Date”), Optionee may exercise this Option only as set forth in the Notice and this Section 5. If Optionee does not exercise this Option within the Termination Period set forth in the Notice or the termination periods set forth below, this Option shall terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of this Option as set forth in the Notice.

(a) **Termination.** In the event of termination of Optionee’s Continuous Service Status other than as a result of Optionee’s Disability or death or for Cause, Optionee may, to the extent Optionee is vested in the Optioned Stock at the date of such termination, exercise this Option during the Termination Period set forth in the Notice.

(b) **Other Terminations.** In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise this Option only as described below:

(i) **Termination upon Disability of Optionee.** In the event of termination of Optionee’s Continuous Service Status as a result of Optionee’s Disability, Optionee may, but only within 6 months following the date of such termination, exercise this Option to the extent Optionee is vested in the Optioned Stock.

(ii) **Death of Optionee.** In the event of termination of Optionee’s Continuous Service Status as a result of Optionee’s death, or in the event of Optionee’s death within 1 month following Optionee’s Termination Date, this Option may be exercised at any time within 12 months following the date of death (or, if earlier, the date Optionee’s Continuous Service Status terminated) by Optionee’s estate or by a person who acquired the right to exercise this Option by bequest or inheritance, but only to the extent Optionee is vested in this Option.

(iii) **Termination for Cause.** In the event Optionee’s Continuous Service Status is terminated for Cause, the Option shall terminate immediately upon such termination for Cause. In the event Optionee’s employment or consulting relationship with the Company is suspended pending investigation of whether such relationship shall be terminated for Cause, all Optionee’s rights under the Option, including the right to exercise the Option, shall be suspended during the investigation period.

6. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by him or her. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Lock-Up Agreement.** To the extent you have agreed to execute a lock-up agreement with respect to your Shares, either in favor of the Company, its underwriters or otherwise, upon exercise of this Option, your Shares will bear the appropriate restrictive legend as specified in your Exercise Agreement.



8. **Change of Control.** Notwithstanding the above, irrespective of whether this Option is being assumed, substituted, exchanged or terminated in connection with a Change of Control, the vesting and exercisability of this Option shall accelerate such that this Option shall become vested and exercisable to the extent of \_\_\_% of the Shares then unvested, effective as of immediately prior to consummation of the Change of Control.

9. **Effect of Agreement.** Your signature on the Exercise Agreement will be deemed your counterpart signature to this Option Agreement and by such signature Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Plan Administrator regarding any questions relating to this Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail.

10. **Miscellaneous.**

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

(b) **Entire Agreement; Enforcement of Rights.** This Agreement, together with the Notice to which this Agreement is attached, the Exercise Agreement and the Plan, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and therein and merges all prior discussions between the parties. Except as contemplated under the Plan, no modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under Applicable Laws, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms.

(d) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by email or fax (upon customary confirmation of receipt), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address or fax number as set forth on the signature page or as subsequently modified by written notice.

(e) **Counterparts.** This Option may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Optionee under this Agreement may not be assigned without the prior written consent of the Company.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their officers thereunto duly authorized, effective as of the Date of Grant set forth in the accompanying Notice of Stock Option Grant.

**THE COMPANY:**

VIRNETX HOLDING CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

5615 Scotts Valley Drive, Suite 110 \_\_\_\_\_

Scotts Valley, California 95066 \_\_\_\_\_

Attn: Chief Executive Officer \_\_\_\_\_

Fax: (831) 438-0378 \_\_\_\_\_

email: jon\_weaklend@virnetx.com \_\_\_\_\_

**TRANSFER AGENT:**

CORPORATE STOCK TRANSFER

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

3200 Cherry Creek Drive South \_\_\_\_\_

Suite 430 \_\_\_\_\_

Denver, CO 80209 \_\_\_\_\_

**EXHIBIT A**

**VIRNETX HOLDING CORPORATION**

**2007 STOCK PLAN**

**EXERCISE AGREEMENT**

This Exercise Agreement and counterpart signature page to Option Agreement (this "Agreement") is made as of \_\_\_\_\_, by and between VirnetX Holding Corporation, a Delaware corporation (the "Company"), and \_\_\_\_\_ ("Purchaser"). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Company's 2007 Stock Plan (the "Plan").

1. **Exercise of Option.** Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of the Company under and pursuant to the Plan and the Stock Option Agreement granted \_\_\_\_\_ (the "Option Agreement"). The purchase price for the Shares shall be \$ \_\_\_\_\_ per Share for a total purchase price of \$ \_\_\_\_\_. The term "Shares" refers to the purchased Shares and all securities received as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Time and Place of Exercise.** The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company's stock transfer agent simultaneously with the execution and delivery of this Agreement, the payment of the aggregate Exercise Price by any method listed in Section 4 of the Option Agreement, and the satisfaction of any applicable tax withholding obligations, all in accordance with the provisions of Section 3(b) of the Option Agreement. The Company shall issue the Shares to Purchaser by entering such Shares in Purchaser's name as of such date in the books and records of the Company or, if applicable, a duly authorized transfer agent of the Company, against payment of the Exercise Price therefor by Purchaser. If applicable, the Company will deliver to Purchaser a certificate representing the Shares as soon as practicable following such date. This Agreement, together with payment of the Exercise Price must be mailed to the Company's stock transfer agent at the following address:

Carylyn K. Bell  
President  
Corporate Stock Transfer  
3200 Cherry Creek Drive South  
Suite 430  
Denver, CO 80209  
Tel: (303) 282-4800  
Fax: (303) 282-5800

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the Company's insider trading policy as in effect from time to time and all Applicable Laws.

4. **Taxation Representations.** Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

5. **Restrictive Legends and Stop-Transfer Orders.**

(a) **Legends.** The certificate or certificates representing the Shares shall bear any legends required by applicable state and federal corporate and securities laws.

(b) **Stop-Transfer Notices.** Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its stock transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser's employment or consulting relationship, for any reason, with or without cause.

7. **Lock-Up Agreement.** To the extent you have agreed to execute a lock-up agreement with respect to your Shares, either in favor of the Company, its underwriters or otherwise, upon exercise of this Option, your Shares will bear the appropriate restrictive legend as specified in your Exercise Agreement.

8. **Miscellaneous.**

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

(b) **Entire Agreement; Enforcement of Rights.** This Agreement, together with the Option Agreement and the Notice attached thereto and the Plan, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under Applicable Laws, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by email or fax (upon customary confirmation of receipt), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address or fax number as set forth on the signature page or as subsequently modified by written notice.

(e) **Counterparts.** This Agreement shall be deemed a counterpart signature page to the Option Agreement, which two documents may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

*[Signature Page Follows]*

The parties have executed this Exercise Agreement as of the date first set forth above.

**THE COMPANY:**

VIRNETX HOLDING CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

5615 Scotts Valley Drive, Suite 110

Scotts Valley, California 95066

Attn: Chief Executive Officer

Fax: (831) 438-0378

email: jon\_weaklend@virnetx.com

**OPTIONEE:**

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

email: \_\_\_\_\_

I, \_\_\_\_\_, spouse of \_\_\_\_\_ (“Purchaser”), have read and hereby approve the foregoing Agreement. In consideration of the Company’s granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be irrevocably bound by the Agreement and further agree that any community property or similar interest that I may have in the Shares shall be similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

\_\_\_\_\_  
Spouse of Purchaser (if applicable)



Samuel F. Baxter  
Direct Dial: (214) 978-4016  
sbaxter@mckoolsmith.com

**McKool Smith**

Telephone: (214) 978-4000  
Telecopier: (214) 978-4044

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A PROFESSIONAL CORPORATION • ATTORNEYS  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201

June 8, 2009

Kendall Larsen  
Chief Executive Officer  
VirnetX, Inc.  
5615 Scotts Valley Drive, Suite 110  
Scotts Valley, CA 95066

RE: Microsoft Litigation

Dear Kendall:

We are pleased to confirm McKool Smith's (the "Firm's") representation of VirnetX, Inc. (the "Client") as counsel in the above-referenced matter. It is the Firm's policy to set forth at the beginning of our representation the scope and terms of our representation and the manner in which we bill for our legal services, related ancillary services and disbursements advanced by the firm. We believe that a clear understanding of these matters is helpful in maintaining a harmonious, professional relationship. I encourage you to consider carefully the contents of this letter and to ask any questions that you have about the terms of the letter.

Each of the lawyers in the Firm has, through experience and training, developed certain expertise. In order to provide you with cost-effective legal service, it is our practice, as time and work schedules permit, to refer matters internally to those individuals who can perform the highest quality work at the lowest cost. In addition, we employ staff members who are not licensed to practice law, but who are capable of performing (under the supervision of a licensed attorney) legally related tasks requiring a lower level of experience or expertise so as to facilitate the most efficient rendering of services. As a result, in addition to my services, VirnetX will find services being performed by other individuals within the Firm. Although Luke McLeroy will handle the day-to-day responsibilities on this case, I will ultimately be responsible for assuring that the work performed on VirnetX's behalf is performed to your satisfaction. While I certainly do not expect that VirnetX will find the legal representation of our firm unsatisfactory in any respect, I do encourage VirnetX to discuss any problems that may arise so that we may resolve them promptly.

I presently charge for my services an hourly rate of [\*\*\*], and Luke McLeroy charges an hourly rate of [\*\*\*] for his services. Currently other attorneys in the firm have rates ranging from [\*\*\*] to [\*\*\*]. These rates are subject to change with 30 days notice. Our statements for legal services will include the current billing rates for all lawyers involved in the matter.

**Confidential Treatment Requested**

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In addition to legal fees, we will bill you on a monthly basis for any ancillary services such as messenger delivery, photocopying by us or outside copy services, document imaging, computerized research, etc., if needed and used for your matter. In the case of certain hearings, mediations, arbitrations and at trial there will be charges for the preparation of graphics and multimedia presentations. These charges can be significant. Invoices for significant out-of-pocket expenses, in excess of \$\_\_\_\_\_ may be sent to you from time to time for payment direct to our suppliers. All charges by outside suppliers will be billed to you at our cost. If cost is not readily determinable from the invoice because of shared services or other reasons, we will use reasonable methods to estimate or determine the cost included in our bills.

We will bill you for our services on a monthly basis. Among other things, this allows you to monitor both current and cumulative legal fees. If you dispute any charge, please deduct the amount and pay the remainder of the invoice. The billings are due within thirty days of when you receive them. Moreover, if, during the course of our representation, billing disputes arise which remain unresolved or if timely payment is not made, we reserve the right to withdraw from further representation after appropriate notice in accordance with ethical standards and court requirements.

Notwithstanding anything else herein to the contrary, the terms of the Term Sheet attached hereto as Exhibit A shall be incorporated herein by this reference and in the event of any conflict between this engagement letter and the Term Sheet, the terms in the Term Sheet shall supersede the terms of this engagement letter.

We understand that Kendall Larsen will be responsible for approval and processing of all invoices in this matter. Accordingly, all original invoices regarding this matter will be forwarded directly to Kendall Larsen for your review, approval and transmittal to the appropriate company representative for payment. I urge you and VirnetX to raise questions with me regarding our invoices as soon as you have any questions, so that we can resolve any problems promptly.

Client agrees that the Firm has not been retained to review or advise VirnetX with respect to insurance coverage for the event or transaction in question. We strongly recommend that VirnetX conduct a review of any potentially applicable insurance coverage and place appropriate carriers on notice of any potential claim. Should you desire additional advice in this area, we agree that you will make such request in writing.

Client agrees that the Firm does not assume responsibility for advising Client about community property issues, tax consequences or deductibility of any recovery or expenses, or estate planning or investment issues with regard to the payment of any claimed amount or recovery if any, or administrative benefits and/or remedies available to Client due to disability. The attorneys make no representations or guarantees regarding the tax consequences of any payment or recovery obtained on behalf of the Client, and are offering no tax advice with regard to these matters. Client agrees to rely on other advisers for advice on those matters, and Client acknowledges that the Firm has informed the Client that the Client should seek such advice in this case and that this case could have unanticipated financial or tax consequences for the Client.

**Confidential Treatment Requested**

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If it becomes necessary or advisable to secure the services of others in connection with our representation of you, such as expert witnesses, jury consultants, accountants or attorneys to represent you in other localities, we will normally discuss these needs with you prior to retaining outside persons. These persons typically determine their own fees, and will ordinarily provide a separate engagement letter with either you or the Firm. We will provide you with a copy of such engagement letter. We normally ask that these types of outside professionals bill you directly. Whether you are billed directly or receive bill forwarded from the Firm, you will be ultimately responsible for paying the amounts billed.

It is expressly understood and agreed that this Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Texas and shall be performable in Dallas County, Texas. All claims, disputes, or other differences between Client and the Firm or any of its attorneys regarding the above-referenced litigation, our engagement or services related thereto, or this Agreement shall first be referred to a business person selected jointly by you and the Firm. The parties shall explain their respective claims, disputes, or differences to the business person selected who shall render a non-binding recommendation to them for resolving such claims, disputes, or differences. If the parties are unable to agree on a business person, or if, at least, one of the parties is unwilling to accept and abide by the non-binding recommendation of the business person, then any and all such claims, disputes, or differences shall be exclusively resolved by binding arbitration pursuant to the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), with arbitration to occur at Dallas, Texas. The arbitration shall be before a single arbitrator selected from the complex business or commercial cases panel of the AAA, and each party shall bear its own attorney fees and costs in connection with the arbitration, including the costs of the AAA and the arbitrator, which shall be equally divided. The AAA shall, promptly after receipt of a demand for arbitration from one of the parties, proceed to select the arbitrator. In doing so, the AAA shall submit a list of 5 potential arbitrators to the parties who, within five days thereafter, shall be entitled to strike two names and rank the remaining names. **You acknowledge that you have been advised by independent counsel that submission to binding arbitration typically results in the waiver of significant rights, including the waiver of the right to file a lawsuit in a different venue, waiver of the right to a jury trial, the possible waiver of broad discovery, and the loss of the right to appeal.** In the event that, for any reason, the arbitration provision set forth in this paragraph is deemed to be unenforceable, such unenforceability shall have no effect on any other provision of this Agreement and the parties in such event shall be free to pursue whatever other remedies are otherwise available to them.

Because we are a party to this Agreement and have a material economic interest in it, we have a conflict of interest and cannot give you any advice with respect to it. We therefore strongly advise you to seek independent legal representation regarding this Agreement and the arbitration provision contained in it.

**Confidential Treatment Requested**

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If, after review of this letter, you find the foregoing to be acceptable, I request that you sign and return the original to me, which, when executed, will indicate VirnetX's agreement to this fee arrangement and will authorize us to undertake legal services on the terms set forth herein.

Sincerely,

McKOOL SMITH, P.C.

By: /s/ Sam Baxter  
Samuel F. Baxter

**Confidential Treatment Requested**

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AGREED AND APPROVED:

VIRNETX, INC.

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

**Confidential Treatment Requested**

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**EXHIBIT A**

**TERM SHEET**

Terms of engagement of McKool Smith by VirnetX, Inc. for the Microsoft case, including appeal, if any:

- Engagement letter to be signed ASAP in June with no contingencies to engagement
- VirnetX will seek transitional support from Chris Bright at McDermott for a few weeks while McKool is getting up to speed, but McKool will take over the lead on the case immediately (responses to expert reports are due June 19th)
- Although not a contingency to the engagement, both parties think it's a good idea to move the trial date out a couple months if the judge permits, which is reasonably likely
- McKool's fee will be fixed at \$3M (the fixed amount) plus 8% of case proceeds (the contingency fee) unless the case proceeds are [\*\*\*] or less, in which case, McKool's fee will be their actual time (up to the fixed amount) plus 8% of case proceeds
- Expenses are not capped, but are estimated to be approximately \$1M
- McKool will bill for actual time (up to the fixed amount) and expenses, with the first bill to be sent out after the first full month of the engagement (*i.e.*, in August covering the month of July as well as the June stub time), and any fixed amount remaining unbilled as well as the contingency fee will be assessed and billed upon final resolution of the case (*i.e.*, after trial and any appeal or settlement)

A-1

**Confidential Treatment Requested**

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## CERTIFICATIONS

I, Kendall Larsen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VirnetX Holding Corporation for the quarter ended June 30, 2009;
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: August 10, 2009

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## CERTIFICATIONS

I, William E. Sliney, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VirnetX Holding Corporation for the quarter ended June 30, 2009;
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. Sliney

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

Date: August 10, 2009

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**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 Quarterly Report of VirnetX Holding Corporation (the "Company") on Form 10-Q for the quarter ended June 30, 2009 as filed with the Securities and Exchange Commission on August 10, 2009 (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

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

Date: August 10, 2009

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**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 Quarterly Report of VirnetX Holding Corporation (the "Company"), on Form 10-Q for the quarter ended June 30, 2009 as filed with the Securities and Exchange Commission on August 10, 2009 (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

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

Date: August 10, 2009

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