

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX, INC. and
SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION,**

Plaintiffs,

vs.

MICROSOFT CORPORATION

Defendant.

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Civil Action No. 6:13-cv-351

JURY TRIAL DEMANDED

AGREED PROTECTIVE ORDER

IT IS HEREBY AGREED by Plaintiffs VirnetX, Inc. (“VirnetX”) and Science Applications International Corporation (“SAIC”) and Defendant Microsoft Corporation (“Microsoft”), as follows:

The terms and conditions of this Protective Order shall govern the handling of documents, answers to interrogatories, deposition testimony, pleadings, exhibits of any kind, presentations, computer readable data storage media (including, but not limited to, source code), the information contained or disclosed therein, schematics, any form of discovery contemplated by Rules 26-37 and 45 of the Federal Rules of Civil Procedure and all other information or things generated, produced, served or otherwise provided to a party, on the one hand, by any other party or entity or person not a party to this action (“third party”) on the other (hereinafter referred to as “Material”) in the above captioned action (the “Action”). For the purposes of this Protective Order, the terms “document” and “documents” carry their broadest possible meaning

VIRNETX EXHIBIT 2020

consistent with the Federal Rules of Civil Procedure and the Local Rules of the U.S. District Court for the Eastern District of Texas.

In complying with discovery requests served pursuant to the Federal Rules of Civil Procedure, any party or third party may designate any Material as “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.” Such Material shall be subject to the following restrictions:

A. Definitions.

1. “Party”: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).
2. “Designating Party”: any Party or third party to this Action that designates Material that it or another party has produced or provided.
3. “Receiving Party”: any Party to this Action that receives Designated Material.
4. “CONFIDENTIAL” Material: information, documents, and things that have been so designated by the Designating Party and includes non-public information that the Designating Party: (i) has not revealed to any third party; or (ii) is protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy.
5. “ATTORNEYS’ EYES ONLY” Material: information, documents, and things that have been so designated by the Designating Party and includes non-public information that is extremely confidential and/or sensitive in nature and for which the Designating Party reasonably believes that a mere CONFIDENTIAL designation would cause economic harm or significant competitive disadvantage to the Designating Party. The following information, if non-public, shall be presumed to merit the “ATTORNEYS’ EYES

ONLY” designation: trade secrets, pricing information, financial data, sales information, sales or marketing forecasts or plans, business plans, sales or marketing strategy, product development information, engineering documents, testing documents, strategic plans, employee information, information disclosed under a non-disclosure agreement, commercially sensitive competitive information that the producing party maintains as highly confidential in its business, including information obtained from a non-party pursuant to a current Nondisclosure Agreement, settlement agreements or settlement communications, the disclosure of which is likely to cause harm to the competitive position of the producing party, and other non-public information of similar competitive and business sensitivity. This list is not exhaustive of all information that might merit the “ATTORNEYS’ EYES ONLY” designation.

6. “OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE” Material: non-public materials that have been so designated by the Designating Party, which includes human-readable programming language text that defines software, or firmware. Files containing source code shall hereinafter be referred to as “source code.” Software source code files include, but are not limited to, files containing source code in “C”, “C+”, “C++”, BREW, Java ME, J2ME, assembler, digital signal processor (DSP) programming languages, and other human readable text programming languages. Software source code files further include “include files,” “make” files, “link” files, and other human-readable text files used in the generation and/or building of software directly executed on a microprocessor, micro-controller, or DSP. OUTSIDE COUNSEL EYES ONLY SOURCE CODE shall be subject to the restrictions provided in paragraph 24 herein.

7. “Designated Material”: Material that is designated “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.”
8. “Outside Counsel”: (i) outside counsel for a Party in this Action, (ii) partners, principals, counsel, associates, employees and contract attorneys of such outside counsel to whom it is reasonably necessary to disclose the information for this Action, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters, and/or (iii) independent legal translators retained to translate in connection with this Action, or independent shorthand reporters retained to record and transcribe testimony in connection with this Action.
9. “Designated In-House Counsel”: attorneys who are employees of a Party to this action and licensed to practice law in the United States.
10. “Outside Consultant”: a person with specialized knowledge or experience in a matter pertinent to this Action who has been retained by Outside Counsel to serve as an expert witness or as a litigation consultant in this Action, and who is not a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of, or a non-litigation consultant of: 1) a Party or 2) a competitor of a Party.
11. “Professional Vendors”: persons or entities that provide litigation support services (*e.g.*, photocopying; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors who have been retained by Outside Counsel in this Action, and who are not current employees of a Party or of a competitor of a Party and who, at the time of retention, are not anticipated to become employees of: 1) a Party or 2)

a competitor of a Party. This definition includes ESI vendors and professional jury or trial consultants, including mock jurors, retained in connection with this Action and others retained by such consultants to assist them in their work. Professional vendors do not include consultants who fall within the definition of Outside Consultant.

12. The following information is not “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE”:

a. any information which, at the time of disclosure to a Receiving Party, is in the public domain;

b. any information which, after disclosure to a Receiving Party, becomes part of the public domain as a result of publication not involving a violation of this Protective Order or any violation of law or an agreement;

c. any information which a Receiving Party can show was received by it, whether before or after the disclosure, from a source who obtained the information lawfully and under no obligation of confidentiality; and

d. any information which a Receiving Party can show was independently developed by it after the time of disclosure by personnel who have not had access to the producing party’s “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.”

B. Scope

13. The protections conferred by this Protective Order cover not only Designated Material (as defined above), but also any information contained therein.

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