

1 EX-10.7 14 d287954dex107.htm

2 Facebook / Sheryl K. Sandberg

3 Amended & Restated Employment Agreement

4 EXHIBIT 10.7

5 EXECUTION COPY

6 January 27, 2012

7 Sheryl Sandberg  
8 Facebook, Inc.  
9 1601 Willow Road  
10 Menlo Park, CA 94025  
11  
12

13 Re: **EMPLOYMENT AGREEMENT**

14 Dear Sheryl:

15 This letter agreement amends and restates that certain  
16 offer letter entered into between you and Facebook, Inc. (the  
17 “Company”) on February 20, 2008.

18 You began your employment with the Company on  
19 March 24, 2008 (your “Start Date”).

20 Your continued employment by the Company shall be  
21 governed by the following terms and conditions (this “Agree-  
22 ment”).

23 1. **Duties and Scope of Employment.**

24 (a) **Position.** For the term of your employment  
25 (your “Employment”), the Company agrees to employ you in  
26 the position of Chief Operating Officer (“COO”).

27 You will report to Mark Zuckerberg  
28 and you will be working out of the Company’s of-  
29 fice in Menlo Park.

30 You will be responsible for managing sales, busi-  
31 ness development, marketing, communications and policy,  
32 human resources, and user operations.

**Commented [DT1]:** The original, unannotated agreement is available at the SEC’s Web site at <http://www.sec.gov/Archives/edgar/data/1326801/000119312512046715/d287954dex107.htm>

**Commented [DT2]: Date of agreement:** The Facebook IPO was in May 2012; Sandberg’s employment agreement was probably amended in anticipation of that event.

**Commented [DT3]: Amended and restated:** Amending and restating an agreement is a conventional (and convenient) way of making a lot of changes — without indicating what the original provisions were. (The latter could be a consideration if the company knew it would have to file the amended version with the SEC but could keep the original provisions confidential.)

**Commented [DT4]: Offer letter:** Some companies do their employment agreements in the form of an offer letter, which the prospective employee accepts by countersigning it.

**Commented [DT5]: You and Facebook:** Some drafters like to use the third person instead of the second person, e.g., *the Executive or Sandberg*, instead of *you*. (Po-TAY-toh, po-TAH-toh ....)

**Commented [DT6]: Start Date:** This is a convenient way of documenting Sandberg’s start date, which could come into play in various ways such as vesting for stock incentive awards. ¶ NOTE: If Sandberg signs the agreement (which presumably she did), arguably she gives up the right to claim that she actually started on a different date.

**Commented [DT7]: Reporting:** Nailing down the fact that Sandberg reports directly to Facebook’s founder and CEO can be important in establishing Sandberg’s authority inside the company. (It’s also a potential boost for her professional reputation.)

**Commented [DT8]: Office location:** Senior executives sometimes want to move to more congenial locations (CEOs have been known to move corporate headquarters to other cities). This clause can carve it in stone that Sandberg will work in Menlo Park, or within 50 miles of it (see [Involuntary Termination](#), below) unless the company agrees otherwise. (In some contracts, relocation expenses for the executive might have to be addressed. )

**Commented [DT9]: Responsibilities:** This recital of Sandberg’s responsibilities is a double-edged sword: It helps establish the scope of her authority, but it also establishes what she’ll be held accountable for.

33 You understand and agree that the Company is a  
34 rapidly growing and changing organization and the precise na-  
35 ture of the work you do for the Company as COO may be ad-  
36 justed from time to time

**Commented [DT10]: Adjusted duties:** As time goes on, internal corporate politics can often lead to an executive's duties and authority being increased – or decreased.

37 but, in any event, your duties and responsibilities  
38 always will be at least commensurate with those duties and re-  
39 sponsibilities normally associated with and appropriate for  
40 someone in the position of COO.

**Commented [DT11]: At least as commensurate:** This is typical for an executive's employment agreement – Sandberg doesn't want the duties of his or her office to be stripped away and given to someone else, and to be assigned to sweep the floors, without being able to "resign for good reason" (in this contract it's called Involuntary Termination) and collect a severance package.

41 (b) **Obligations to the Company.** While you ren-  
42 der services to the Company,

**Commented [DT12]: While you render services:** This language might be phrased this way so that it can be plugged into a consulting contract as well as an employment agreement.

43 (1) you may deliver lectures, fulfill speaking en-  
44 gagements and teach at educational institutions provided that  
45 such activities do not materially interfere with the perfor-  
46 mance of your duties to the Company, and

**Commented [DT13]: Lectures, etc.:** It's usually considered a good thing for a company to have its senior executives doing these things (and senior execs usually like the beneficial effect on their own careers).

**Commented [DT14]: Materially interfere:** The materiality qualifier is vague but it's the standard way of phrasing this concept.

47 (2) you agree that you will not engage in any other  
48 employment, consulting, or other business activity except as  
49 authorized by the Conflicts Committee or other written con-  
50 sent of the Company.

**Commented [DT15]: No other employment, etc.:** This is a no-moonlighting clause. **QUESTION:** Would this clause prohibit Sandberg from writing *Lean In*, the best-selling book she just published, without permission?

**Commented [DCT16]: "Or other written consent of the Company":** In theory, Sandberg could get one of her fellow Facebook officers to sign off on her outside employment. As a practical matter, though, she's likely to go either to the CEO (Mark Zuckerberg) or perhaps to the company's general counsel.

51 The Company has reviewed the activities that you  
52 are conducting at the time of this Agreement and agrees that  
53 they, and any substitute activities that are similar in nature and  
54 scope, will not significantly interfere with your performance  
55 of the responsibilities of your Employment under this Agree-  
56 ment.

**Commented [DT17]: Similar in nature:** There might be a proof problem down the road – what exactly were Sandberg's existing activities that Facebook reviewed at the time the Agreement was signed? For that reason, in some cases a drafter might want to include an exhibit containing a brief summary of those existing activities.

57 In addition, while you render services to the Com-  
58 pany, you will not assist any person or entity in competing  
59 with the Company, in preparing to compete with the Company  
60 or in hiring any employees or consultants of the Company.

**Commented [DT18]: In-term non-competition clause:** Under longstanding California law, *post-employment* non-competition clauses are essentially per se illegal.

61 As an employee, you will also be expected to  
62 comply with the Company's policies and procedures.

**Commented [DT19]: Hiring employees, etc.:** Under California law, Facebook can't prevent its employees from moving to a competitor except in extremely limited circumstances. Here, Facebook seems to be trying to prevent Sandberg from taking any of her colleagues with her, which could make her less appealing to a Facebook competitor wanting to hire her. Whether this type of provision is enforceable under California law is unclear; see generally [this article](#) by lawyers from Silicon Valley law firm Wilson Sonsini (August 2012).

63 (c) **No Conflicting Obligations.** You represent  
64 and warrant to the Company that you are under no obligations  
65 or commitments, whether contractual or otherwise, that are  
66 materially inconsistent with your obligations under this  
67 Agreement.

**Commented [DT20]: No conflicting obligations:** Facebook doesn't want to be sued by one of Sandberg's former employers, claiming that she stole trade secrets and brought them with her to Facebook. (Facebook also presumably hopes that this provision will give them some political cover in case they ever do get so sued by a former employer.) As a practical matter, though, if a former employer were going to sue Sandberg and/or Facebook, in all likelihood it would have happened by now, given how long Sandberg has been at Facebook.

68 In connection with your Employment, you shall  
69 not use or disclose any trade secrets or other proprietary in-  
70 formation or intellectual property in which you or any other  
71 person has any right, title or interest

**Commented [DT21]: No use of others' trade secrets, etc.:** What might Facebook's practical remedies be if Sandberg were to breach this obligation? (Hint: Consider whether such a breach might constitute "Cause.")

72 and your Employment will not infringe or violate  
73 the rights of any other person.

**Commented [DT22]: Your Employment will not infringe:** Who has what obligation? How could this phrase be improved? (Consider what the drafter might be trying to say in the context of this entire section.)

74 You represent and warrant to the Company that  
75 you have returned all property and confidential information  
76 belonging to any prior employer, other than confidential in-  
77 formation that has become generally known to the public or  
78 within the relevant trade industry.

**Commented [DT23]: All property of prior employers returned:** This representation pins down Sandberg – if later it turns out that she brought confidential documents with her from a former employer, then Facebook will have reason to terminate her for Cause – see [Section 6\(d\)\(iii\)](#) on page 7 below.

## 80 2. **Cash and Incentive Compensation.**

81 (a) **Salary.** The Company shall pay you as com-  
82 pensation for your services a base salary at a gross annual rate  
83 of \$300,000. Such salary shall be payable in accordance with  
84 the Company's standard payroll procedures.

**Commented [DT24]: Annual salary:** The drafter wants to be clear that Sandberg's salary is \$300K *per year*, not per month. The latter isn't unheard of in some industries, although it'd certainly be unusual in the tech industry.

85 (b) **Bonus.** You are eligible to receive a semi-  
86 annual discretionary bonus of up to a target of 45 % of your  
87 Base Eligible Earnings as defined in the Company's bonus  
88 plan. Based on your performance, you can over-achieve your  
89 bonus target pursuant to the Company's bonus plan.

**Commented [DT25]: Payroll procedures:** Facebook doesn't want to have to separately manage special payroll procedures for particular employees.

90 (c) **Restricted Stock Units.** The Company has  
91 granted you certain restricted stock units ("RSUs") under its  
92 2005 Stock Plan (the "Plan"), pursuant to that Notice of RSU

**Commented [DT26]: Bonus plans** are typically set by the compensation committee of a company's board of directors. (For public companies this may be a requirement.) Bonuses are often a big deal for senior executives because they can represent a major portion of the executives' compensation. (Try Google-searching "executive bonus plan.")

**Commented [DT27]: Stock incentive plans,** under which employees can be awarded stock options, restricted stock, restricted-stock units, etc., can be complicated, or straightforward, or somewhere in between. ¶ Interestingly, Sandberg seems to have been granted only RSUs, not stock options (which are available under the [Facebook 2005 Stock Plan](#)).

93 Award (Grant Number RS000300) dated August 1, 2008 (your  
94 “RSU Award”).

95

96 3. **Vacation/PTO, Employee Benefits and other In-**

97 **centive Compensation.** During your Employment you shall

98 be eligible to accrue paid vacation / paid time off in accord-

99 ance with the Company’s vacation / paid time off policy, as it

100 may be amended from time to time, and at the rate equal to

101 other similarly situated executives.

102 During your Employment, you shall be eligible to par-

103 ticipate in the employee benefit and incentive compensation

104 plans maintained by the Company and generally available to

105 similarly situated employees of the Company,

106 subject in each case to the generally applicable terms

107 and conditions of the plan in question and to the determina-

108 tions of any person or committee administering such plan.

109

110 4. **Business Expenses.** The Company will reimburse

111 you for your necessary and reasonable business expenses in-

112 curred in connection with your duties hereunder

113 upon presentation of an itemized account and appropri-

114 ate supporting documentation,

115 all in accordance with the Company’s generally applica-

116 ble policies.

117

118 5. **Termination.**

119 (a) **Employment at Will.** Your Employment shall

120 be “at will,” meaning that either you or the Company shall be

121 entitled to terminate your Employment at any time and for any

122 reason, with or without Cause (as defined below).

**Commented [DT28]:** PTO stands for paid time off (also for the U.S. Patent and Trademark Office).

**Commented [DT29]:** **Vacation policy:** Just as with payroll procedures, Facebook won’t want to separately manage a special vacation policy just for Sandberg.

**Commented [DT30]:** “**Similarly situated executives**” is arguably ambiguous but it’s a widely-used drafting approach.

**Commented [DT31]:** **Benefit plans** typically refers to things such as health insurance.

**Commented [DT32]:** **Subject in each case:** Facebook presumably wants it to be clear that this agreement doesn’t create any special rights for Sandberg under Facebook’s benefit plans, for example any sort of right to “Cadillac” health-insurance coverage. As another example, suppose that Facebook had a health-insurance plan that required employees to pay part of the monthly premium. Facebook wouldn’t want Sandberg to try to claim that her employment agreement implicitly required the company to pay all of the premium for her coverage, so that she paid nothing for her health insurance.

**Commented [DT33]:** **Business expense reimbursement:** This is a very compactly-worded provision; it bears study.

**Commented [DT34]:** **Generally applicable policies:** Note that this clause does not use the phrase “as amended from time to time,” unlike the Vacation policy paragraph immediately above, which does use that phrase. An aggressive trial counsel might try to argue that this means the only Business Expenses policies that count are those that were in effect when the agreement was signed, under the doctrine of *expressio unius est exclusio alterius* (“the mention of one thing excludes others”). I don’t think the argument should work, but that might not prevent the parties from having to litigate it.

**Commented [DT35]:** **At-will employment** is the norm in most U.S. jurisdictions (subject to various public-policy and statutory exceptions), but not so in many non-U.S. jurisdictions.

123 Any contrary representations that may have been  
124 made to you shall be superseded by this Agreement.

125 This Agreement shall constitute the full and com-  
126 plete agreement between you and the Company on the “at-  
127 will” nature of your Employment, which may only be changed  
128 in an express written agreement signed by you and a duly au-  
129 thorized officer of the Company.

130 (b) **Rights Upon Termination.** Except as ex-  
131 pressly provided in Sections 6 and 9(b), (c) and (d), upon the  
132 termination of your Employment, you shall only be entitled to  
133 the compensation and benefits earned and the reimbursements  
134 described in this Agreement for the period preceding the effec-  
135 tive date of the termination.

136

137 6. **Termination Benefits.**

138 (a) **General Release.** Any other provision of this  
139 Agreement notwithstanding, subsections (b) and (c) below  
140 shall not apply unless and until

141 (i) you have executed a full and complete general  
142 release of all claims substantially in the form attached hereto  
143 as Exhibit A within twenty-one (21) days of your termination

144 (and you do not revoke such general release in ac-  
145 cordance with its terms) and

146 (ii) you have returned all Company property (oth-  
147 er than property of inconsequential value, but the parties agree  
148 that among other things, any property capable of containing  
149 the Company’s confidential trade secret or proprietary infor-  
150 mation is material and must be returned) within twenty-one  
151 (21) days of your termination.

**Commented [DT36]: Contrary representation disclaimer:** Former employees sometimes claim that they were orally promised continued employment by an interviewer, by HR, etc. In some jurisdictions, such a claim, if supported by the employee’s sworn testimony, might create a genuine issue of material fact, precluding summary judgment and requiring a burdensome and expensive trial. This clause is an attempt to nip any such claim in the bud, to help Facebook get a such claim by Sandberg thrown out on summary judgment.

**Commented [DT37]: Entire agreement:** This is a separate and very-specific “entire agreement” clause, distinct from the one found in most general-provisions sections. **Which may only be changed . . . :** Courts sometimes don’t enforce provisions like this.

**Commented [DT38]: Only entitled to compensation and benefits earned:** This is a sound-bite clause, designed to put Facebook in a better position to move for a quick summary judgment without the need for a trial (or even judgment on the pleadings) if Sandberg were to sue for additional compensation.

**Commented [DT39]: Termination benefits:** Interestingly, there’s no provision for Sandberg to get a cash severance payment.

**Commented [DT40]: General release:** It’s a widespread practice for companies to require a departing employee to sign a release of any claims the employee might have against the company before getting any severance benefits. (Note that it would probably be illegal for a company to require the employee to sign a release before paying wages and benefits that the employee had already earned.)

**Commented [DT41]: Substantially in the form attached hereto:** Any time a party to a contract might later have to sign a type of document (such as a release), it’s always helpful to include the exact language of the document as an exhibit to the contract. ¶ Another possibility is to say in the contract that the document must be reasonably acceptable to each party’s counsel. That, though, could invite future disputes — especially if at the time in question the parties are no longer on friendly terms.

**Commented [DT42]: Revocation of general release:** Under federal law, a release of certain claims (for example, claims of age discrimination or racial discrimination) must be able to be revoked for a certain period of time, so that the employee can mull over whether she really wants to give up her right to assert the claim.

**Commented [DT43]: Returned all Company property:** If Facebook found out that Sandberg hadn’t returned (say) company papers, electronic files, etc., that could give Facebook a putative reason for withholding severance, or for trying to claw back severance compensation already paid.

152 (b) **Vesting Acceleration.** If the Company termi-  
153 nates your Employment for any reason other than Cause, death  
154 or Disability, then you shall be eligible to vest in the number  
155 of RSUs you would have vested in had your Continuous Ser-  
156 vice Status (as defined in the Plan) continued for the first half  
157 of the months remaining between the date of your termination  
158 and the fifth (5th) anniversary of your Start Date.

159 If the Company terminates your Employment as a  
160 result of your death or Disability, you will be eligible to vest  
161 in the number of additional shares you would have vested in  
162 had your Continuous Service Status continued for an addition-  
163 al twelve (12) months from your death or Disability.

164 *[Language omitted.]*

165 Any RSUs that vest pursuant to this Section 6(b)  
166 shall be settled within (30) days following the date of vesting  
167 but in no event later than March 15 of the calendar year fol-  
168 lowing the calendar year in which the later of the Initial Vest-  
169 ing Event or your termination of Employment occurs.

170 Any vesting acceleration related to termination of  
171 your Employment in connection with a Change of Control will  
172 be governed by Section 6(c) of this Agreement and will not re-  
173 sult in the vesting acceleration provided for in this subsection.

174 (c) **Change of Control Vesting Acceleration.** If  
175 you are Involuntarily Terminated by the Company, other than  
176 as a result of your death or Disability and within one  
177 (1) month prior to or within six (6) months following a  
178 Change of Control (as defined in the Plan), then you shall be  
179 eligible to receive accelerated vesting of the RSUs so that you  
180 will become vested in 100% of the RSUs.

**Commented [DT44]: Vesting acceleration:** Stock options and grants of restricted stock typically [vest over time](#); executive employment agreements often provide (as does this one) for at least some acceleration of vesting in various circumstances such as death, disability, or a corporate takeover.

**Commented [DT45]: No later than March 15:** This likely is a [Section 409A](#) provision designed to reduce the chance of having a severe tax penalty imposed on “deferred compensation.”

**Commented [DT46]: “Change of Control”:** This term typically relates to a corporate merger, acquisition, leveraged buy-out, etc. The term usually is defined in great detail somewhere; in Facebook’s case the definition is in section 2(g) of the [2005 Stock Plan](#).

**Commented [DT47]: Double trigger:** This is an example of a “double trigger” acceleration of vesting – for vesting to accelerate, both a Change of Control event and an Involuntary Termination must occur.

**Commented [DT48]: Within one month prior, etc.:** This gives Sandberg at least some protection if Facebook ever decided to do a corporate “housecleaning” prior to a Change of Control.

181 Any RSUs that vest pursuant to this Section 6(c)  
182 shall vest upon the later of the date the release of claims speci-  
183 fied in subsection (a) becomes effective and the Initial Vesting  
184 Event.

**Commented [DT49]: Vest upon the later of the date:** Sandberg would not be entitled to accelerated vesting unless and until (A) she signed the release and (B) she'd been at Facebook long enough for her stock options or RSUs have their initial vesting (often a one-year "cliff" vesting, as is the case with [the 2005 Facebook stock plan](#) mentioned in this agreement. Sandberg started at Facebook in 2008, so she presumably already satisfied requirement B.

185 Any RSUs that are eligible to vest pursuant to this  
186 Section 6(c) shall be settled within thirty (30) days following  
187 the date of vesting but in no event later than March 15 of the  
188 calendar year following the calendar year in which the later of  
189 the Initial Vesting Event and your Involuntary Termination  
190 occurs.

**Commented [DT50]: No later than March 15:** This likely is a [Section 409A](#) provision designed to reduce the chance of having a severe tax penalty imposed on "deferred compensation."

191 Notwithstanding any provision of this Agreement  
192 to the contrary,

193 if you sign and do not revoke the release  
194 mentioned herein

195 and thereafter file a lawsuit claiming you are  
196 entitled to additional RSUs or additional shares of the Compa-  
197 ny's common stock,

198 the Company, at its option, may unilaterally  
199 cancel any shares of the Company's common stock that you  
200 obtained in connection with the vesting acceleration provided  
201 for in this Section 6(c).

**Commented [DT51]: Cancellation of shares:** This creates a disincentive for Sandberg to sue claiming that she's entitled to more shares or RSUs. It's sort of like a provision in a will saying that anyone who challenges the will in court is automatically disinherited.

202 Notwithstanding the foregoing, if in connection with a  
203 Change of Control, the RSUs are not assumed or substituted  
204 for an equivalent award (within the meaning of Section 15(c)  
205 of the Plan), then you shall be eligible to receive accelerated  
206 vesting of the RSUs effective immediately prior to the Change  
207 of Control in accordance with the preceding paragraph.

**Commented [DT52]: Assumed or substituted:** A merger or acquisition transaction will sometimes include arrangements for employees of the target company to swap out their existing stock options (and/or restricted stock) for equivalent options in the acquiring company.

208 Any such RSUs shall be settled within thirty (30) days  
209 following the date of the Change of Control but in no event  
210 later than March 15 of the calendar year following the calen-  
211 dar year in which the Change of Control occurs.

**Commented [DT53]: Not later than March 15:** This is probably another clause designed to avoid problems with [Section 409A](#).

212 (d) **Definition of “Cause”**. For all purposes under  
213 this Agreement, “Cause” shall mean a determination by the  
214 CEO that any of the following have occurred:

215 (i) you committed an act of material dishon-  
216 esty in connection with your responsibilities as an employee;

217 (ii) you failed to comply with the material  
218 terms of any written Company policy or rule as they may be in  
219 effect from time to time during your employment and such  
220 failure is materially and demonstrably injurious to the Compa-  
221 ny;

222 (iii) you breached any material term of this  
223 Agreement, of the Confidential Information and Invention As-  
224 signment Agreement between you and the Company, or any of  
225 other written agreement between you and the Company and  
226 such breach is materially and demonstrably injurious to the  
227 Company;

228 (iv) you were convicted of, or entered a plea  
229 of guilty or *nolo contendere* to, a felony or crime of moral tur-  
230 pitude; or

231 (v) you engaged in gross misconduct or  
232 gross neglect of your duties and such misconduct or neglect is  
233 materially and demonstrably injurious to the Company.

234 The cessation of your Employment shall not be deemed  
235 to be for Cause unless and until you are sent a written notice  
236 of the ground for the termination for “Cause” by the CEO  
237 finding that, in the good faith opinion of the CEO, you are  
238 guilty of the conduct described above, and specifying the par-  
239 ticulars thereof in detail.

240 If the CEO does not deliver to you a notice of termina-  
241 tion within ninety (90) days after the later of the date the CEO  
242 has knowledge that an event constituting Cause has occurred

**Commented [DT54]: Definition of “Cause”:** The term “Cause” could have significant economic implications for Sandberg in case of an unfriendly termination. The term is usually defined in some detail in executive employment agreements, and sometimes is carefully negotiated by the company and the executive.

**Commented [DT55]: Determination by CEO:** There’s no provision here for Sandberg to appeal, for example to Facebook’s board of directors. ¶ As a practical matter, though, Facebook’s CEO isn’t likely to fire a senior executive like Sandberg for Cause without first lining up the support of the board. Not least, this is because the termination would have to be promptly disclosed in a Form 8-K filed with the SEC (because Facebook’s stock is publicly traded), and that could affect the company’s stock price.

**Commented [DT56]: “Material dishonesty”:** Note that the dishonesty must be in connection with Sandberg’s responsibilities as an employee,” and also that there’s a materiality qualifier. ¶ In a senior executive, even minor examples of workplace dishonesty could arguably be characterized as material in that they had the potential to do bad things to the [ethical] [“tone at the top.”](#)

**Commented [DT57]: “Materially and demonstrably injurious”:** This requirement is seen in several of the subparagraphs of this definition. It puts fences around Facebook’s ability to fire Sandberg for Cause.

**Commented [DT58]: Felony:** This excludes misdemeanors, but a given misdemeanor might come under the alternate category of “crime of moral turpitude.”

**Commented [DT59]: Gross misconduct:** Facebook could use this as a kind of morals clause, terminating Sandberg for Cause if her actions resulted in bad PR for Facebook. Note that there’s no specific requirement that the gross misconduct relate to Sandberg’s duties.

**Commented [DT60]: Good faith opinion:** This phrase could give Sandberg’s counsel an opening to explore possible *bad*-faith reasons for the CEO to terminate her. That might lead to expensive depositions, document production, etc.; it also could complicate the process for Facebook to try to get a claim by Sandberg dismissed on summary judgment.



243 and, where applicable, the date the CEO has knowledge of the  
244 materiality of the injury to the Company, the event will no  
245 longer constitute Cause.

246 You will have fifteen (15) days to cure from the date the  
247 notice is received by you.

248 (e) **Definition of “Involuntary Termina-**  
249 **tion”**. For purposes of this Agreement, “**Involuntary Termina-**  
250 **tion**” shall mean the termination of your Employment with the  
251 Company by reason of:

252 (i) Your involuntary dismissal or discharge by  
253 the Company, or by any acquiring or successor entity (or par-  
254 ent or any subsidiary thereof employing you) for reasons other  
255 than Cause, or

256 (ii) Your **voluntary resignation** after the occur-  
257 rence of one of the following conditions without your prior  
258 written consent:

259 (A) a **material** diminution in your base  
260 salary;

261 (B) a material change in geographic loca-  
262 tion at which you must perform services

263 (a change in location of your office will  
264 be considered material only if it increases your current one-  
265 way commute by more than fifty (50) miles);

266 (C) any **material failure** of the successors  
267 to the Company after a Change of Control to perform or cause  
268 the Company to perform the obligations of the Company un-  
269 der this Agreement;

270 (D) any action or inaction of the Company  
271 that constitutes a material breach of the terms of this Agree-  
272 ment; or

**Commented [DT61]: Involuntary Termination:** This definition comes into play in the severance provisions below.

**Commented [DT62]: Voluntary resignation:** This provision entitles Sandberg to “pull the plug” herself in certain events, yet still get the agreed severance benefits as though she had been terminated without Cause.

**Commented [DT63]: Material:** The materiality qualifiers in this and succeeding subdivisions can easily give rise to arguments, and possibly litigation, over whether Sandberg is entitled to the agreed severance benefits if she resigns.

**Commented [DT64]: Material failure of successor:** One such failure might be for a successor company to fail to give Sandberg a written assumption of Facebook’s obligations, as required by [Section 8\(a\)](#) below. That could allow Sandberg to resign voluntarily yet still be entitled to severance benefits.

273 (E) any other material adverse change in  
274 your duties, authorities or responsibilities as specified in Sec-  
275 tion 1(a), above,

276 in each case, **only if you**  
277 provide notice to the Company of the ex-  
278 istence of the applicable condition described in Section 6(e)(ii)  
279 within 90 days of the initial existence of the condition,  
280 the Company fails to remedy the condi-  
281 tion within 30 days thereafter, and  
282 within the 30 day period immediately fol-  
283 lowing such failure to remedy, you elect to terminate your  
284 Employment.

285 The parties intend that this trigger qualify as  
286 an involuntary separation from service trigger under Treasury  
287 Regulation Section 1.409A-1(n)(2).

288 (f) **Definition of “Disability”**. For all purposes  
289 under this Agreement, “Disability” shall mean your inability  
290 to perform the essential functions of your position with or  
291 without reasonable accommodation for a period of 120 con-  
292 secutive days because of your **physical or mental impairment**.

294 7. **Confidentiality Agreement**. You hereby reaffirm  
295 your obligations under the Confidential Information and In-  
296 vention Assignment Agreement between you and the Compa-  
297 ny, dated February 20, 2008, a copy of which is attached here-  
298 to as Exhibit B (the “Confidentiality Agreement”).

300 8. **Successors**.

301 (a) **Company’s Successors**. This Agreement shall  
302 be binding upon any successor (whether direct or indirect and  
303 whether by purchase, lease, merger, consolidation, liquidation

**Commented [DT65]: Notice and cure provision:** Facebook doesn't want Sandberg to be able to resign voluntarily and collect severance benefits without first giving Facebook a chance to fix whatever the problem was that led to Sandberg's claim that she was entitled to do so.

**Commented [DT66]: Section 409A** is an IRS regulation that imposes severe tax penalties on certain forms of deferred compensation regarded by the government as tax dodges.

**Commented [DT67]: Definition of Disability:** This is another provision that is sometimes carefully negotiated.

**Commented [DT68]: Physical or mental impairment:** It's not unthinkable that an executive might claim that (let's say) alcoholism or cocaine use was a “mental impairment” that qualified as a Disability.

304 or otherwise) to all or substantially all of the Company's busi-  
305 ness and/or assets.

306 Any such successor will within a reasonable peri-  
307 od of becoming the successor assume in writing and be bound  
308 by all of the Company's obligations under this Agreement.

309 For all purposes under this Agreement, the term  
310 "Company" shall include any successor to the Company's  
311 business or assets that becomes bound by this Agreement.

312 (b) **Your Successors.** This Agreement and all of  
313 your rights hereunder shall inure to the benefit of, and be en-  
314 forceable by, your personal or legal representatives, executors,  
315 administrators, successors, heirs, distributees, devisees and  
316 legatees.

317 9. **Miscellaneous Provisions.**

318 (a) **Indemnification.** The Company agrees that  
319 if you are made a party or threatened to be made a  
320 party to any action, suit or proceeding, whether civil, criminal,  
321 administrative or investigative (other than an action brought  
322 against you by the Company)

323 by reason of the fact that you are or were  
324 an employee of the Company

325 or are or were serving at the request of  
326 the Company, as a director, officer, member, employee or  
327 agent of another corporation or a partnership, joint venture,  
328 trust or other enterprise,

329 you shall be indemnified by the Company  
330 to the fullest extent permitted by applicable law  
331 and the Company's certificate of incorporation and by-laws, as  
332 the same exists or may hereafter be amended,

**Commented [DT69]: All or substantially all of the Company's business assets:** In some cases Sandberg or Facebook or both might want this to apply to a sale, etc., of all or substantially all of Facebook's assets *associated with a particular line of business*, e.g., a particular corporate division.

**Commented [DT70]: Assume in writing:** A successor company's failure to provide Sandberg with a written assumption of Facebook's obligations could lead to her being able to resign for good reason and collect severance benefits, [as discussed above](#).

**Commented [DT71]: Indemnification:** Senior executives often insist on getting the broadest possible indemnification from their companies. Securities plaintiffs' lawyers typically sue everyone in sight when they bring a claim against a company; executives don't relish the prospect of having their personal net worth take a serious hit (from the legal fees alone).

**Commented [DT72]: Another corporation, etc.:** A company might ask one of its executives to serve as an officer or board member of an affiliate company or of a joint venture in which the company is participating.

**Commented [DT73]: To the fullest extent:** This is fairly typical language for a corporate indemnification provision.

333 against all reasonably and actually incurred legal  
334 expenses and related costs incurred or suffered by you in con-  
335 nection therewith

336 provided that you cooperate with the Company in  
337 connection with such actual or threatened action, suit, pro-  
338 ceeding or investigation,

339 and such indemnification shall continue even if  
340 you have ceased to be an officer or are no longer employed by  
341 the Company

342 and shall inure to the benefit of your heirs, execu-  
343 tors and administrators.

344 The Company shall provide you with

345 directors' and officers' liability insurance

346 at least as favorable as the insurance coverage provided to

347 other senior executive officers and directors of the Company  
348 respecting liabilities, and

349 reasonable legal fees and costs, charges  
350 and expenses incurred or sustained by you (or your legal rep-  
351 resentative or other successors) in connection with any such  
352 proceeding.

353 Unless otherwise provided in an indemnification  
354 agreement with the Company, no indemnity shall be paid by  
355 the Company

356 (i) if it shall be determined by a final judgment  
357 or other final adjudication that such remuneration was in vio-  
358 lation of law;

359 (ii) if it is finally determined that, in connection  
360 with the above action, suit or proceeding, that your conduct  
361 was finally adjudged to have been knowingly fraudulent, de-  
362 liberately dishonest or willful; or

**Commented [DT74]: Indemnification shall continue:** If an officer is terminated or resigns, for example after losing a corporate power struggle, the officer won't want to be thrown under the bus in a lawsuit and risk being financially ruined.

**Commented [DT75]: D&O insurance** is often a *sine qua non* for corporate officers, that is, they won't serve without it.

**Commented [DT76]: At least as favorable:** This tells Sandberg that she will get the same level of D&O insurance as Facebook's board of directors does — and it's *extremely* unlikely that the board members will allow the company to skimp on *their* insurance coverage.

**Commented [DT77]: No indemnity in certain circumstances:** This might be required by corporate law and/or by a company's articles of incorporation.

363 (iii) if a final decision by a Court having juris-  
364 diction in the matter shall determine that such indemnification  
365 is not lawful.

366 Unless otherwise provided in an indemnification  
367 agreement with the Company, you agree to reimburse the  
368 Company for all reasonable expenses paid by the Company in  
369 defending any civil or criminal action suit or proceeding  
370 against you

371 in the event and only to the extent that it  
372 shall be ultimately determined that you are not entitled to be  
373 indemnified by the Company for such expenses under the pro-  
374 visions of applicable law, the Company's bylaws, this Agree-  
375 ment or otherwise.

376 (b) **Legal Fees.** Following a Change of Control  
377 only, the Company shall pay the legal fees incurred by you to  
378 enforce the terms of this Agreement  
379 or to dispute the legality of your termination.

380 (c) **Parachute Payments.** If any payment or bene-  
381 fit you would receive pursuant to a Change of Control from  
382 the Company or otherwise ("Payment") would

383 (i) constitute a "parachute payment" within  
384 the meaning of Section 280G of the Internal Revenue Code of  
385 1986, as amended (the "Code"), and

386 (ii) but for this sentence, be subject to the  
387 excise tax imposed by Section 4999 of the Code (the "Excise  
388 Tax"),

389 then such Payment shall be reduced to the Re-  
390 duced Amount. [*Definition of "Reduced Amount" omitted.*]

**Commented [DT78]: Agree to reimburse the Company:** This agreement allows a company to front the money for an executive's litigation defense, even if it were to turn out later that the executive wasn't entitled to it.

**Commented [DT79]: Parachute payments:** The U.S. tax code imposes what amount to penalties on certain executive "golden parachutes."

391 Reduction in either cash payments or equity com-  
392 pensation benefits shall be made pro rata between and among  
393 benefits which are subject to Section 409A  
394 of the Code  
395 and benefits which are exempt from Sec-  
396 tion 409A of the Code.

397 [The accounting firm] engaged by the Company for  
398 general audit purposes as of the day prior to the effective date  
399 of the Change of Control shall perform the foregoing calcula-  
400 tions.

401 The Company shall bear all expenses with respect  
402 to the determinations by such accounting firm required to be  
403 made hereunder.

404 Any good faith determination of the accounting  
405 firm made hereunder shall be final, binding and conclusive  
406 upon the Company and you.

407 (d) **Compliance with Section 409A.** You and the  
408 Company intend to structure and operate  
409 the payments and benefits described in this  
410 Agreement,  
411 and your other compensation,  
412 to be exempt from or to comply with the require-  
413 ments of Section 409A of the Code to the extent applicable.

414 The Company and you intend that your RSUs and  
415 RSU Award have been structured to be exempt from or to  
416 comply with the requirements of Section 409A of the Code to  
417 the extent applicable.

418 The Company agrees not to take any action (or  
419 omit to take any action that is required to be taken) in respect  
420 of the RSUs (or any other similar award) that is materially in-

**Commented [DT80]: Determination by Company's accounting firm:**  
Sometimes an executive might negotiation to require a different account-  
ing firm to make the determination, but usually the company will hold out  
for having its regular accounting firm do so (because the cost of bringing in  
another accounting firm could be significant compared to the amount like-  
ly to be at stake).

**Commented [DT81]:** Section 409A: As noted above, this is a provision  
of the U.S. tax regulations that

421 consistent with, contrary to or in material breach of the terms  
422 of the RSUs (or any similar award),  
423 other than as required by applicable law,  
424 that causes you to incur tax in respect of a viola-  
425 tion of Section 409A of the Code with respect to such RSUs  
426 unless you request the action (or omission).

427 For the avoidance of doubt, the Company agrees  
428 that any failure to follow the payment terms under the RSUs  
429 (or any other similar award granted to you) will be considered  
430 a material breach.

431 If you or the Company believes, at any time, that  
432 any feature of your compensation or benefits (including your  
433 RSUs) does not comply with (or is not exempt from) Sec-  
434 tion 409A of the Code

435 or that any action taken or contemplated to  
436 be taken (including any failure to take action) in regards to  
437 your compensation or benefits caused or might cause a viola-  
438 tion of Section 409A of the Code,

439 you or the Company will promptly advise the  
440 other

441 and will reasonably negotiate in good faith to  
442 amend the terms of the payments or benefits or alter the action  
443 or contemplated action

444 in order that your payments or benefit ar-  
445 rangements comply with (or are exempt from) the require-  
446 ments of Section 409A of the Code

447 or in order to mitigate any additional taxes that  
448 may apply under Section 409A of the Code if compliance or  
449 exemption is not practicable.

450 For the avoidance of doubt, the Company is not re-  
451 sponsible for the payment of any taxes, including income and

**Commented [DT82]:** Material breach: This means that a failure by Facebook under this section would allow Sandberg to resign voluntarily yet still collect severance benefits, as provided in [Section 6](#).

452 excise taxes, that you may incur under Section 409A of the  
453 Code,

454 nor will the Company indemnify you for any  
455 such liability,

456 unless the Company breaches a material term of this  
457 Agreement or of any compensatory program in which you par-  
458 ticipate

459 and that breach is the cause of the 409A taxa-  
460 tion/penalties.

461 Notwithstanding the foregoing, the Company will in-  
462 demnify you to the greatest extent that it has indemnified or  
463 agrees to indemnify any current or former employee who has  
464 incurred or incurs the additional taxes under Section 409A in  
465 connection with an RSU or similar type of award due to the  
466 same or similar circumstances.

467 (e) **Notice.** Notices and all other communications  
468 contemplated by this Agreement shall be in writing  
469 and shall be deemed to have been duly given  
470 when personally delivered

471 or when mailed by U.S. registered or certi-  
472 fied mail, return receipt requested and postage prepaid.

473 In your case, mailed notices shall be addressed to you  
474 at the home address that you most recently communicated to  
475 the Company in writing.

476 In the case of the Company, mailed notices shall be  
477 addressed to its corporate headquarters, and all notices shall be  
478 directed to the attention of its Secretary.

479 (f) **Modifications and Waivers.** No provision of  
480 this Agreement shall be modified, waived or discharged unless  
481 the modification, waiver or discharge is agreed to in writing

**Commented [DT83]: Greatest extent:** This expressly forces Facebook to avoid disparate treatment (which can be a source of claims in employee lawsuits). The provision is diluted somewhat, though, by the end of the sentence.

**Commented [DT84]: Similar, etc.:** This qualifier leaves considerable room for dispute, but it's a widely-used way of doing things.

**Commented [DT85]: Notice by mail:** Companies generally like to be able to give notice to their employees by doing a mass mailing.

**Commented [DT86]: Certified mail** provides proof of receipt of the notice. (Many notice provisions also allow notice by established overnight delivery service [e.g., FedEx] with trackable delivery.)

**Commented [DT87]: Employee's address for notice:** Some provisions like this say that Facebook can send notice to the employee's address as stated in Facebook's then-current payroll records.

**Commented [DT88]: Waivers must be in writing:** Courts don't always give effect to this kind of clause.



482 and signed by you and by an authorized officer of the Compa-  
483 ny (other than you).

484 No waiver by either party of any breach of, or of  
485 compliance with, any condition or provision of this Agreement  
486 by the other party shall be considered a waiver of any other  
487 condition or provision or of the same condition or provision at  
488 another time.

489 (g) **Whole Agreement.** No other agreements, rep-  
490 resentations or understandings (whether oral or written and  
491 whether express or implied) which are not expressly set forth  
492 in this Agreement have been made or entered into by either  
493 party with respect to the subject matter hereof.

**Commented [DT89]: Whole agreement:** The conventional heading for this clause is *entire* agreement.

494 This Agreement (including, for the avoidance of  
495 doubt, its Exhibits) and the Confidentiality Agreement contain  
496 the entire understanding of the parties with respect to the sub-  
497 ject matter hereof.

498 (h) **Withholding Taxes.** All payments made un-  
499 der this Agreement shall be subject to reduction to reflect tax-  
500 es or other charges required to be withheld by law.

501 (i) **Choice of Law and Severability.** This  
502 Agreement shall be interpreted in accordance with the laws of  
503 the State of California without giving effect to provisions gov-  
504 erning the choice of law.

**Commented [DT90]: Choice of law exclusion:** Without this proviso, conceivably choosing California law might trigger a separate choice-of-law rule requiring the application of another state's law.

505 If any provision of this Agreement becomes or is  
506 deemed invalid, illegal or unenforceable in any applicable ju-  
507 risdiction by reason of the scope, extent or duration of its cov-  
508 erage, then such provision shall be deemed amended to the  
509 minimum extent necessary to conform to applicable law so as  
510 to be valid and enforceable

511 or, if such provision cannot be so amended with-  
512 out materially altering the intention of the parties, then such

**Commented [DT91]: Without materially altering the parties' intention:** Of course this proviso is ripe for dispute.

513 provision shall be stricken and the remainder of this Agree-  
514 ment shall continue in full force and effect.

515 If any provision of this Agreement is rendered il-  
516 legal by any present or future statute, law, ordinance or regula-  
517 tion (collectively, the “Law”) then that provision shall be cur-  
518 tailed or limited only to the minimum extent necessary to  
519 bring the provision into compliance with the Law. All the oth-  
520 er terms and provisions of this Agreement shall continue in  
521 full force and effect without impairment or limitation.

522 (j) **No Assignment.** This Agreement and all of  
523 your rights and obligations hereunder are personal to you and  
524 may not be transferred or assigned by you at any time.

525 The Company may assign its rights under this  
526 Agreement to any entity that assumes the Company’s obliga-  
527 tions hereunder in connection with any sale or transfer of all or  
528 a substantial portion of the Company’s assets to such entity.

529 (k) **Authority.** The Company represents and war-  
530 rants that

531 (i) the execution of this Agreement has been  
532 duly authorized by the Company, including action of the  
533 Board,

534 (ii) the execution, delivery and performance  
535 of this Agreement by the Company does not and will not vio-  
536 late any law, regulation, order, judgment or decree or any  
537 agreement, plan or corporate governance document of the  
538 Company and

539 (iii) upon the execution and delivery of this Agree-  
540 ment, this Agreement shall be the valid and binding obligation  
541 of the Company, enforceable in accordance with its terms,  
542 except to the extent enforceability may be limited by

**Commented [DT92]: No assignment by employee:** Under the general law, an employee probably wouldn’t be able to assign an employment agreement anyway, but including this provision should remove any doubt.

543 bankruptcy, insolvency or similar laws af-  
544 fecting the enforcement of creditors' rights generally  
545 and by the effect of general principles of eq-  
546 uity (regardless of whether enforceability is considered in a  
547 proceeding in equity or at law).

548 (1) **Counterparts**. This Agreement may be exe-  
549 cuted in two or more counterparts; each of which shall be  
550 deemed an original, but all of which together shall constitute  
551 one and the same instrument.

552 To indicate your acceptance of the mutual promises con-  
553 tained in this letter agreement, please sign and date this letter  
554 in the space provided below and return it to me.

555 *[Signature block omitted]*

1 **EXHIBIT A**

2 **FORM OF GENERAL RELEASE**

3 **General Release of Claims**

4 This General Release of Claims (this “Release”), dated  
5 as of \_\_\_\_\_, 20\_\_, confirms the following understandings  
6 and agreements between Facebook, Inc., a Delaware corpora-  
7 tion (the “Company”) and Sheryl Sandberg (hereinafter re-  
8 ferred to as “you” or “your”).

9 In consideration of the promises set forth in that certain  
10 employment agreement between you and the Company dated  
11 February 20, 2008[, as amended] (the “Employment Agree-  
12 ment”) as well as any promises set forth in this Release, you  
13 agree as follows:

14 (1) Opportunity for Review and Revocation. [to be in-  
15 cluded if employee is age 40 or older].

16 You have twenty-one (21) days to review and consider  
17 this Release.

18 Notwithstanding anything contained herein to the con-  
19 trary, this Release will not become effective or enforceable for  
20 a period of seven (7) calendar days following the date of its  
21 execution, during which time you may revoke your acceptance  
22 of this Release by notifying the General Counsel of the Com-  
23 pany, in writing.

24 To be effective, such revocation must be received by the  
25 Company no later than 5:00 p.m. on the seventh (7<sup>th</sup>) calendar  
26 day following its execution.

27 Provided that the Release is executed and you do not re-  
28 voke it, the eighth (8<sup>th</sup>) day following the date on which this  
29 Release is executed shall be its effective date (the “Effective  
30 Date”).

31 In the event of your revocation of this Release pursuant  
32 to this Section 1, this Release will be null and void and of no  
33 effect, and the Company will have no obligations hereunder.

34 (2) Employee Release and Waiver of Claims.

35 (a) Notwithstanding the provisions of sec-  
36 tion 1542 of the Civil Code of California, and in accordance  
37 with Section 2(c) and Section 7(a) of the Employment Agree-  
38 ment,

39 you and your representatives, agents, estate, heirs,  
40 successors and assigns, absolutely and unconditionally hereby  
41 release, remise, discharge, indemnify and hold harmless

42 the Company Releasees ("Company Re-  
43 leasees" defined to include the Company and/or any of its par-  
44 ents, subsidiaries or affiliates, predecessors, successors or as-  
45 signs, and its and their respective current and/or former part-  
46 ners, directors, shareholders/stockholders, officers, employees,  
47 attorneys and/or agents, all both individually and in their offi-  
48 cial capacities),

49 from any and all legally waivable actions or caus-  
50 es of action, suits, claims, complaints, contracts, liabilities,  
51 agreements, promises, contracts, torts, debts, damages, con-  
52 troversies, judgments, rights and demands,

53 whether existing or contingent, known or un-  
54 known, suspected or unsuspected,

55 which arise out of your employment with, change  
56 in employment status with, and/or separation of employment  
57 from, the Company.

58 This release is intended by you to be all encom-  
59 passing and to act as a full and total release of any legally  
60 waivable claims, whether specifically enumerated herein or  
61 not,

62                   that you may have or have had against the Com-  
63   pany Releasees  
64                   arising from conduct occurring up to and through  
65   the date of this Release,  
66                   including, but not limited to, any legally waivable  
67   claims arising from any federal, state or local law, regulation  
68   or constitution dealing with either employment, employment  
69   benefits or employment discrimination  
70                   such as those laws or regulations concerning dis-  
71   crimination on the basis of race, color, creed, religion, age,  
72   sex, sex harassment, sexual orientation, national origin, ances-  
73   try, genetic carrier status, handicap or disability, veteran sta-  
74   tus, any military service or application for military service, or  
75   any other category protected under federal or state law;  
76                   including any claims or causes of action you have  
77   or may have relating to discrimination under federal, state or  
78   locate statutes (whether before a court or an administrative  
79   agency)  
80                   including, but not limited to,  
81                   the Age Discrimination in Employment Act of  
82   1967,  
83                   Title VII of the Civil Rights Act of 1964,  
84                   the Employee Retirement Income Security Act  
85   of 1974 (excluding all claims for accrued, vested benefits un-  
86   der any employee benefit or pension plan of the Company  
87   subject to the terms and conditions of such plan and applicable  
88   law),  
89                   the Americans with Disabilities Act,  
90                   the Family and Medical Leave Act,  
91                   the Fair Labor Standards Act,  
92                   the National Labor Relations Act,

93 the California Fair Employment and Housing  
94 Act,  
95 the California Constitution,  
96 the California Labor Code,  
97 and the California Civil Code,  
98 all as amended from time to time;  
99 any contract, whether oral or written, express or  
100 implied; any tort;  
101 any claim for equity or other benefits;  
102 or any other statutory and/or common law claim.

103 (b) You acknowledge that your execution of this  
104 Agreement shall be effective as a bar to each and every claim  
105 specified in Sections 4(a) and 5 of this Agreement.

106 Accordingly, you hereby expressly waive any and  
107 all rights and benefits conferred upon you by the provisions of  
108 Section 1542 of the California Civil Code  
109 and expressly consent that this Agreement  
110 shall be given full force and effect with respect to each and all  
111 of its express terms and provisions,  
112 including those related to unknown and/or unsus-  
113 pected claims, if any,  
114 as well as those relating to any other claims speci-  
115 fied in Sections 4(a) and 5 of this Agreement.

116 Section 1542 provides as follows:

117 **“A general release does not extend to claims**  
118 **which the creditor does not know or suspect**  
119 **to exist in his or her favor at the time of ex-**  
120 **ecuting the release, which if known by him**  
121 **or her must have materially affected his or**  
122 **her settlement with the debtor.”**

123           You further represent that you understand and  
124 acknowledge the significance and consequence of such release  
125 as well as the specific waiver of Section 1542.

126           (c) This Release does not include any claim  
127 which, as a matter of law, cannot be released by private  
128 agreement.

129           Nor does this Release prohibit or bar you from  
130 providing truthful testimony in any legal proceeding or from  
131 cooperating with, or making truthful disclosures to, any gov-  
132 ernmental agency.

133           Notwithstanding the foregoing, with respect to  
134 any claim that cannot be released by private agreement,  
135           you agree to release and waive your right (if any)  
136 to any monetary damages or other recovery as to such claims,  
137           including any claims brought on your behalf,  
138           either individually or as part of a collective action,  
139           by any governmental agency or other third party.

140           (d) Notwithstanding any provision of this Release  
141 to the contrary, by executing this Release, you are not releas-  
142 ing any claims relating to

143           (i) your rights or any other benefits express-  
144 ly provided under the Employment Agreement including, but  
145 not limited to, those provided for in Sections 11(b), 11(c) and  
146 11(d),

147           (ii) any rights relating to the restricted stock  
148 units (the “RSUs”) granted to you pursuant to the Employment  
149 Agreement or otherwise or any rights relating to any other  
150 outstanding equity awards or

151           (iii) any indemnification or similar rights  
152 you may have as a current or former officer or director of the  
153 Company,



154 including, without limitation, any and all  
155 rights thereto referenced in the Employment Agreement, the  
156 Company's bylaws, plan of reorganization or liquidation, oth-  
157 er governance documents, or any rights with respect to the  
158 Company's directors' and officers' insurance policies.

159 (3) Company Release and Waiver of Claims. The  
160 Company covenants that,

161 except for any claim that could be asserted by the  
162 Company or its shareholders against you

163 (1) for fraud, breach of fiduciary duty, embez-  
164 zlement, breach of trust, theft, violation of state or federal se-  
165 curities laws, conversion, misuse or unauthorized disclosure of  
166 the Company's confidential, proprietary or trade secret infor-  
167 mation;

168 (2) brought to enforce the terms and provisions  
169 of this Release or the Employment Agreement (including the  
170 Exhibits thereto); or

171 (3) based upon a claim that conduct in which you  
172 engaged constituted grounds for termination of your employ-  
173 ment for "Cause", as defined in the Employment Agreement,  
174 it hereby waives any non-excluded claims and  
175 releases you from such non-excluded claims.

176 (4) No Suit. You represent that you have not filed any  
177 complaints or charges against the Company with any federal,  
178 state, or local administrative agency arising out of your em-  
179 ployment with the Company on or prior to the Effective Date.

180 (5) Prior Agreement. You understand and agree that you  
181 have continuing obligations under the Confidential Infor-  
182 mation and Inventions Assignment Agreement between you  
183 and the Company dated as of February 20, 2008 (hereinafter,

184 the “CIIAA”). A copy of the CIIAA is attached hereto as Ex-  
185 hibit A and incorporated herein by reference.

186 You reaffirm your commitment under the CIIAA in this  
187 Release, and agree that, as part of this Release, you will com-  
188 ply fully with the terms of the CIIAA.

189 You also confirm that you have not violated the CIIAA.

190 (6) Restricted Stock Units. The Company previously  
191 granted you RSUs under the Company’s 2005 Stock Plan (the  
192 “Stock Plan”). Pursuant to the Employment Agreement, as of  
193 the Effective Date you will be vested in [NUMBER] of the  
194 RSUs. All of your rights and obligations with respect to the  
195 RSUs are governed by the terms and conditions of the Re-  
196 stricted Stock Unit Agreement.

197 (7) Confidentiality. You agree that you will not disclose  
198 to others the fact or terms of this Release, except that you may  
199 disclose such information to your attorney or accountant in or-  
200 der for such individuals to render services to you.

201 (8) Successors and Assigns. The provisions hereof shall  
202 inure to the benefit of your heirs, executors, administrators,  
203 legal personal representatives and assigns and shall be binding  
204 upon your heirs, executors, administrators, legal personal rep-  
205 resentatives and assigns.

206 (9) Severability. If any provision of this Release, or part  
207 thereof, is held invalid, void or voidable as against public pol-  
208 icy or otherwise, the invalidity shall not affect other provi-  
209 sions, or parts thereof, which may be given effect without the  
210 invalid provision or part. To this extent, the provisions and  
211 parts thereof of this Release are declared to be severable.

212 Any waiver of any provision of this Release shall not  
213 constitute a waiver of any other provision of this Release un-  
214 less expressly so indicated otherwise.

215        The language of all parts of this Release shall in all cas-  
216        es be construed according to its fair meaning and not strictly  
217        for or against either of the parties.

218            (10) Governing Law. Any claims arising out of this Re-  
219        lease (or any other claims arising out of the relationship be-  
220        tween the parties) shall be governed by and construed in ac-  
221        cordance with the laws of the state of California

222            and shall in all respects be interpreted, enforced and  
223        governed under the internal and domestic laws of California,  
224            without giving effect to the principles of conflicts of  
225        laws of such state.

226            Any claims or legal actions by one party against the oth-  
227        er shall be commenced and maintained in a court of competent  
228        jurisdiction in Santa Clara County, California,

229            and you hereby submit to the jurisdiction and venue of  
230        any such court.

231            (11) Counterparts. This Agreement may be executed in  
232        two or more counterparts, each of which will be deemed an  
233        original, but all of which taken together will constitute one and  
234        the same instrument.

235            (12) This Agreement shall not be construed as an admis-  
236        sion by you or the Company of any wrongful act, unlawful  
237        discrimination, or breach of contract.

238        IN WITNESS WHEREOF, the undersigned parties have exe-  
239        cuted this Release as of the date first written above.

240        *[Signature block for Mark Zuckerberg omitted]*

241

242        I REPRESENT THAT I HAVE READ THE FOREGOING  
243        RELEASE,

244            THAT I FULLY UNDERSTAND THE TERMS

245        AND CONDITIONS OF SUCH RELEASE

**Commented [DT93]:** Language: This clause represents an attempt to negate the *contra proferentem* rule, under which (other things being equal) an ambiguity in contract language is construed against the party that drafted the language.

246 AND THAT I AM KNOWINGLY AND VOLUN-  
247 TARILY EXECUTING THE SAME  
248 WITHOUT DURESS OR COERCION FROM ANY  
249 SOURCE.

250 IN ENTERING INTO THIS RELEASE, I DO NOT  
251 RELY ON ANY REPRESENTATION, PROMISE OR IN-  
252 DUCEMENT MADE BY THE COMPANY OR ITS REPRE-  
253 SENTATIVES WITH THE EXCEPTION OF THE CON-  
254 sideration DESCRIBED IN THIS DOCUMENT.

255 *[Sheryl Sandberg signature block omitted]*

**Commented [DT94]:** Non-reliance clauses are typically included in contracts to try to preclude later claims that the other side induced the signing party to sign the document by fraud, e.g., by lying about facts or by making promises the inducing party had no intention of keeping.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

**EXHIBIT B**

**CONFIDENTIAL INFORMATION AND  
INVENTION ASSIGNMENT AGREEMENT**

**EXECUTION COPY**

**FACEBOOK, INC.**

**CONFIDENTIAL INFORMATION AND  
INVENTION ASSIGNMENT AGREEMENT  
FOR EMPLOYEES**

As a condition of my becoming employed (or my employment being continued) by or retained as a consultant (or my consulting relationship being continued) by Facebook, Inc., a Delaware corporation ("Facebook") or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the "Company"),

and in consideration of my employment or consulting relationship with the Company and my receipt of the compensation now and hereafter paid to me by the Company,

I agree to the following:

1. **Employment or Consulting Relationship.** I understand and acknowledge that this Agreement does not alter, amend or expand upon any rights I may have to continue in the employ of, or in a consulting relationship with, or the duration of my employment or consulting relationship with, the Company under any existing agreements between the Company and me or under applicable law.

Any employment or consulting relationship between the Company and me, whether commenced prior to or upon or after the date of this Agreement, shall be referred to herein as the "Relationship."

32

33           2. **At-Will Relationship.** I understand and acknowledge  
34 that my Relationship with the Company is and shall continue  
35 to be at-will, as defined under applicable law, meaning that ei-  
36 ther I or the Company may terminate the Relationship at any  
37 time for any reason or no reason,

38           without further obligation or liability, except as set forth  
39 in the employment agreement between me and the Company,  
40 dated February 20, 2008.

41

42           3. **Confidential Information.**

43           (a) **Company Information.** I agree at all times  
44 during the term of my Relationship with the Company and  
45 thereafter,

46           to hold in strictest confidence,

47           and not to use,

48           except for the benefit of the Company to the ex-  
49 tent necessary to perform my obligations to the Company un-  
50 der the Relationship,

51           or to disclose to any person, firm, corporation or  
52 other entity

53           without written authorization of the Board of Di-  
54 rectors of the Company,

55           any Confidential Information of the Company  
56 which I obtain or create.

57           I further agree not to make copies of such Confi-  
58 dential Information except as authorized by the Company.

59           I understand that "Confidential Information"  
60 means any Company proprietary information, technical data,  
61 trade secrets or know-how,

**Commented [DT95]: Without written authorization of the Board:**  
Huh??? Company executives and employees routinely disclose confiden-  
tial information to other companies without board approval.

62 including, but not limited to, research, product  
63 plans, products, services, suppliers, customer lists and custom-  
64 ers (including, but not limited to, customers of the Company  
65 on whom I called or with whom I became acquainted during  
66 the Relationship), prices and costs, markets, software, devel-  
67 opments, inventions, laboratory notebooks, processes, formu-  
68 las, technology, designs, drawings, engineering, hardware con-  
69 figuration information, marketing, licenses, finances, budgets  
70 or other business information disclosed to me by  
71 the Company  
72 either directly or indirectly  
73 in writing, orally or by drawings or observation of  
74 parts or equipment  
75 or created by me  
76 during the period of the Relationship,  
77 whether or not during working hours.

78 I understand that Confidential Information in-  
79 cludes, but is not limited to, information pertaining to any as-  
80 pect of the Company's business,  
81 which is either information not known by actual  
82 or potential competitors of the Company or other third parties  
83 not under confidentiality obligations to the Company,  
84 or is otherwise proprietary information of the  
85 Company or its customers or suppliers,  
86 whether of a technical nature or otherwise.

87 I further understand that Confidential Information  
88 does not include any of the foregoing items which has become  
89 publicly and widely known and made generally available  
90 through no wrongful act of mine or of others who were under  
91 confidentiality obligations as to the item or items involved.

**Commented [DT96]: Publicly and widely known, etc.:** This is a pretty limited carve-out.

92 (b) **Prior Obligations.** I represent that my per-  
93 formance of all terms of this Agreement as an employee or  
94 consultant of the Company has not breached and will not  
95 breach any agreement to keep in confidence proprietary in-  
96 formation, knowledge or data acquired by me prior or subse-  
97 quent to the commencement of my Relationship with the  
98 Company,

99 and I will not disclose to the Company or use any  
100 inventions, confidential or non-public proprietary information  
101 or material belonging to any current or former client or em-  
102 ployer or any other party.

103 I will not induce the Company to use any inven-  
104 tions, confidential or non-public proprietary information, or  
105 material belonging to any current or former client or employer  
106 or any other party. I acknowledge and agree that I have listed  
107 on Exhibit A all agreements (e.g., non-competition agree-  
108 ments, non-solicitation of customers agreements, non-  
109 solicitation of employees agreements, confidentiality agree-  
110 ments, inventions agreements, etc.) with a current or former  
111 employer, or any other person or entity, that may restrict my  
112 ability to accept employment with the Company or my ability  
113 as an employee or consultant to recruit or engage customers or  
114 service providers on behalf of the Company, or otherwise re-  
115 late to or restrict my ability to perform my duties as an em-  
116 ployee of the Company or any obligation I may have to the  
117 Company.

118 (c) **Third Party Information.** I recognize that the  
119 Company has received and in the future will receive confiden-  
120 tial or proprietary information from third parties subject to a  
121 duty on the Company's part to maintain the confidentiality of  
122 such information and to use it only for certain limited purpos-

**Commented [DT97]: Prior confidentiality obligations:** Companies don't want to be sued by former employers for misappropriation of trade secrets or other confidential information. (Some prior employers' executives might secretly relish the prospect of making mischief for a former employee's new company, especially if the new company is a competitor.)



123 es. I agree to hold all such confidential or proprietary infor-  
124 mation in the strictest confidence and not to disclose it to any  
125 person, firm or corporation or to use it except as necessary in  
126 carrying out my work for the Company consistent with the  
127 Company's agreement with such third party.

128 **4. Inventions.**

129 (a) **Inventions Retained and Licensed.** I have at-  
130 tached hereto, as Exhibit A, a list describing with particularity  
131 all inventions, original works of authorship, developments,  
132 improvements, and trade secrets which were made by me prior  
133 to the commencement of the Relationship (collectively re-  
134 ferred to as "Prior Inventions"), which belong solely to me or  
135 belong to me jointly with another, which relate in any way to  
136 any of the Company's proposed businesses, products or re-  
137 search and development, and which are not assigned to the  
138 Company hereunder; or, if no such list is attached, I represent  
139 that there are no such Prior Inventions. If, in the course of my  
140 Relationship with the Company, I incorporate into a Company  
141 product, process or machine a Prior Invention owned by me or  
142 in which I have an interest, the Company is hereby granted  
143 and shall have a non-exclusive, royalty-free, irrevocable, per-  
144 petual, worldwide license (with the right to sublicense) to  
145 make, have made, copy, modify, make derivative works of,  
146 use, sell and otherwise distribute such Prior Invention as part  
147 of or in connection with such product, process or machine.

148

149 -2-

150

---

151 (b) **Assignment of Inventions.** I agree that I will  
152 promptly make full written disclosure to Facebook, will hold  
153 in trust for the sole right and benefit of Facebook, and hereby

154 assign to Facebook, or its designee, all my right, title and in-  
155 terest throughout the world in and to any and all inventions,  
156 original works of authorship, developments, concepts, know-  
157 how, improvements or trade secrets, whether or not patentable  
158 or registrable under copyright or similar laws, which I may  
159 solely or jointly conceive or develop or reduce to practice, or  
160 cause to be conceived or developed or reduced to practice,  
161 during the period of my Relationship with the Company (col-  
162 lectively referred to as “Inventions”), except as provided in  
163 Section 4(e) below. I further acknowledge that all Inventions  
164 which are made by me (solely or jointly with others) within  
165 the scope of and during the period of my Relationship with the  
166 Company are “works made for hire” (to the greatest extent  
167 permitted by applicable law) and are compensated by my sala-  
168 ry (if I am an employee) or by such amounts paid to me under  
169 any applicable consulting agreement or consulting arrange-  
170 ments (if I am a consultant), unless regulated otherwise by the  
171 mandatory law of the state of California.

172 (c) **Maintenance of Records.** I agree to keep and  
173 maintain adequate and current written records of all Inventions  
174 made by me (solely or jointly with others) during the term of  
175 my Relationship with the Company. The records may be in the  
176 form of notes, sketches, drawings, flow charts, electronic data  
177 or recordings, laboratory notebooks, and any other format. The  
178 records will be available to and remain the sole property of the  
179 Company at all times. I agree not to remove such records from  
180 the Company’s place of business except as expressly permit-  
181 ted by Company policy which may, from time to time, be re-  
182 vised at the sole election of the Company for the purpose of  
183 furthering the Company’s business. I agree to return all such  
184 records (including all copies thereof) to Facebook at the time

185 of termination of my Relationship with the Company as pro-  
186 vided for in Section 5.

187 (d) **Patent and Copyright Rights.** I agree to as-  
188 sist Facebook, or its designee, at its expense, in every proper  
189 way to secure Facebook's, or its designee's, rights in the In-  
190 ventions and any copyrights, patents, trademarks, mask work  
191 rights, moral rights, or other intellectual property rights relat-  
192 ing thereto in any and all countries, including the disclosure to  
193 Facebook or its designee of all pertinent information and data  
194 with respect thereto, the execution of all applications, specifi-  
195 cations, oaths, assignments, recordations, and all other instru-  
196 ments which Facebook or its designee shall deem necessary in  
197 order to apply for, obtain, maintain and transfer such rights, or  
198 if not transferable, waive such rights, and in order to assign  
199 and convey to Facebook or its designee, and any successors,  
200 assigns and nominees the sole and exclusive rights, title and  
201 interest in and to such Inventions, and any copyrights, patents,  
202 mask work rights or other intellectual property rights relating  
203 thereto. I further agree that my obligation to execute or cause  
204 to be executed, when it is in my power to do so, any such in-  
205 strument or papers shall continue after the termination of this  
206 Agreement until the expiration of the last such intellectual  
207 property right to expire in any country of the world. If Face-  
208 book or its designee is unable because of my mental or physi-  
209 cal incapacity or unavailability or for any other reason to se-  
210 cure my signature to apply for or to pursue any application for  
211 any United States or foreign patents, copyright, mask works or  
212 other registrations covering Inventions or original works of  
213 authorship assigned to Facebook or its designee as above, then  
214 I hereby irrevocably designate and appoint Facebook and its  
215 duly authorized officers and agents as my agent and attorney

216 in fact, to act for and in my behalf and stead to execute and  
217 file any such applications and to do all other lawfully permit-  
218 ted acts to further the application for, prosecution, issuance,  
219 maintenance or transfer of

220

221 -3-

222

---

223 letters patent, copyright or other registrations thereon with the  
224 same legal force and effect as if originally executed by me. I  
225 hereby waive and irrevocably quitclaim to Facebook or its de-  
226 signee any and all claims, of any nature whatsoever, which I  
227 now or hereafter have for infringement of any and all proprie-  
228 tary rights assigned to Facebook or such designee.

229 (e) **Exception to Assignments.** I understand that  
230 the provisions of this Agreement requiring assignment of In-  
231 ventions to Facebook do not apply to any invention which  
232 qualifies fully under the provisions of California Labor Code  
233 Section 2870 (attached hereto as Exhibit B). I will advise the  
234 Company promptly in writing of any inventions that I believe  
235 meet such provisions and are not otherwise disclosed  
236 on Exhibit A.

237 **5. Company Property; Returning Company Docu-**  
238 **ments.** I acknowledge and agree that I have no expectation of  
239 privacy with respect to the Company's telecommunications,  
240 networking or information processing systems (including,  
241 without limitation, stored company files, e-mail messages and  
242 voice messages) and that my activity and any files or messag-  
243 es on or using any of those systems may be monitored at any  
244 time without notice. I further agree that any property situated  
245 on the Company's premises and owned by the Company, in-  
246 cluding disks and other storage media, filing cabinets or other

247 work areas, is subject to inspection by Company personnel at  
248 any time with or without notice. I agree that, at the time of  
249 termination of my Relationship with the Company, I will de-  
250 liver to the Company (and will not keep in my possession, rec-  
251 reate or deliver to anyone else) any and all devices, records,  
252 data, notes, reports, proposals, lists, correspondence, specifica-  
253 tions, drawings, blueprints, sketches, laboratory notebooks,  
254 materials, flow charts, equipment, other documents or proper-  
255 ty, or reproductions of any of the aforementioned items devel-  
256 oped by me pursuant to the Relationship or otherwise belong-  
257 ing to the Company, its successors or assigns. In the event of  
258 the termination of the Relationship, I agree to sign and deliver  
259 the "Termination Certification" attached hereto as Exhibit C;  
260 however, my failure to sign and deliver the Termination Cer-  
261 tificate shall in no way diminish my continuing obligations  
262 under this Agreement.

263 **6. Notification to Other Parties.**

264 (a) **Employees.** In the event that I leave the em-  
265 ploy of the Company, I hereby consent to notification by the  
266 Company to my new employer about my rights and obliga-  
267 tions under this Agreement.

268 (b) **Consultants.** I hereby grant consent to notifi-  
269 cation by the Company to any other parties besides the Com-  
270 pany with whom I maintain a consulting relationship, includ-  
271 ing parties with whom such relationship commences after the  
272 effective date of this Agreement, about my rights and obliga-  
273 tions under this Agreement.

274 **7. Solicitation of Employees, Consultants and Other**

275 **Parties.** I agree that during the term of my Relationship with  
276 the Company, and for a period of twenty-four (24) months  
277 immediately following the termination of my Relationship

278 with the Company for any reason, whether with or without  
279 cause, I shall not either directly or indirectly solicit, induce,  
280 recruit or encourage any of the Company's employees or con-  
281 sultants to terminate their relationship with the Company, or  
282 attempt to solicit, induce, recruit, encourage or take away em-  
283 ployees or consultants of the Company, either for myself or  
284 for any other person or entity. Further, during

285  
286 -4-

287  
288 my Relationship with the Company and at any time following  
289 termination of my Relationship with the Company for any rea-  
290 son, with or without cause, I shall not use any Confidential In-  
291 formation of the Company to attempt to negatively influence  
292 any of the Company's clients or customers from purchasing  
293 Company products or services or to solicit or influence or at-  
294 tempt to influence any client, customer or other person either  
295 directly or indirectly, to direct his or its purchase of products  
296 and/or services to any person, firm, corporation, institution or  
297 other entity in competition with the business of the Company.

298 **8. Representations and Covenants.**

299 (a) **Facilitation of Agreement.** I agree to execute  
300 promptly any proper oath or verify any proper document re-  
301 quired to carry out the terms of this Agreement upon the  
302 Company's written request to do so.

303 (b) **Conflicts.** I represent that my performance of  
304 all the terms of this Agreement does not and will not breach  
305 any agreement I have entered into, or will enter into with any  
306 third party, including without limitation any agreement to keep  
307 in confidence proprietary information acquired by me in con-  
308 fidence or in trust prior to commencement of my Relationship

309 with the Company. I agree not to enter into any written or oral  
310 agreement that conflicts with the provisions of this Agree-  
311 ment.

312 (c) **Voluntary Execution.** I certify and  
313 acknowledge that I have carefully read all of the provisions of  
314 this Agreement and that I understand and will fully and faith-  
315 fully comply with such provisions.

316 9. **General Provisions.**

317 (a) **Governing Law.** The validity, interpretation,  
318 construction and performance of this Agreement shall be gov-  
319 erned by the laws of the State of California, without giving ef-  
320 fect to the principles of conflict of laws.

321 (b) **Entire Agreement.** This Agreement sets forth  
322 the entire agreement and understanding between the Company  
323 and me relating to the subject matter herein and merges all  
324 prior discussions between us. No modification or amendment  
325 to this Agreement, nor any waiver of any rights under this  
326 Agreement, will be effective unless in writing signed by both  
327 parties. Any subsequent change or changes in my duties, obli-  
328 gations, rights or compensation will not affect the validity or  
329 scope of this Agreement.

330 (c) **Severability.** If one or more of the provisions  
331 in this Agreement are deemed void by law, then the remaining  
332 provisions will continue in full force and effect.

333 (d) **Successors and Assigns.** This Agreement will  
334 be binding upon my heirs, executors, administrators and other  
335 legal representatives, and my successors and assigns, and will  
336 be for the benefit of the Company, its successors, and its as-  
337 signs.

338 (e) **Survival.** The provisions of this Agreement  
339 shall survive the termination of the Relationship and the as-

340 signment of this Agreement by the Company to any successor  
341 in interest or other assignee.

342

343 -5-

344

---

345 (f) **Remedies.** I acknowledge and agree that viola-  
346 tion of this Agreement by me may cause the Company irrepa-  
347 rable harm, and therefore agree that the Company will be enti-  
348 tled to seek extraordinary relief in court, including but not lim-  
349 ited to temporary restraining orders, preliminary injunctions  
350 and permanent injunctions without the necessity of posting a  
351 bond or other security and in addition to and without prejudice  
352 to any other rights or remedies that the Company may have for  
353 a breach of this Agreement.

354 (g) **ADVICE OF COUNSEL.** I  
355 ACKNOWLEDGE THAT, IN EXECUTING THIS AGREE-  
356 MENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE  
357 ADVICE OF INDEPENDENT LEGAL COUNSEL,  
358 AND I HAVE READ AND UNDERSTOOD  
359 ALL OF THE TERMS AND PROVISIONS OF THIS  
360 AGREEMENT.

361 THIS AGREEMENT SHALL NOT BE CON-  
362 STRUED AGAINST ANY PARTY BY REASON OF THE  
363 DRAFTING OR PREPARATION HEREOF.

364 [Signature Page Follows]

365

366 -6-

367

---

368 The parties have executed this Agreement on the respec-  
369 tive dates set forth below:

370



COMPANY:

EMPLOYEE:

FACEBOOK, INC. \_\_\_\_\_, an Individual:

By: /s/ Mark Zuckerberg  
\_\_\_\_\_

Name: Mark Zuckerberg /s/ Sheryl Sandberg  
\_\_\_\_\_

Signature

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

Date: Feb. 20, 2008  
\_\_\_\_\_

Date: 2/20/08  
\_\_\_\_\_

371

372

-7-

373

374

EXHIBIT A

375

**LIST OF PRIOR INVENTIONS**

376

**AND ORIGINAL WORKS OF AUTHORSHIP**

377

**EXCLUDED UNDER SECTION 5**

378

Identifying Number

Title

Date

or Brief Description

379

\_\_ No inventions or improvements

380

\_\_ Additional Sheets Attached

381

Signature of Employee/Consultant: /s/ Sheryl

Sandberg  
\_\_\_\_\_

Print Name of Employee/Consultant: Sheryl

Sandberg  
\_\_\_\_\_

Date: 2/20/08  
\_\_\_\_\_

383

384

EXHIBIT B

385 Section 2870 of the California Labor Code is as follows:

386 (a) Any provision in an employment agreement which  
387 provides that an employee shall assign, or offer to assign, any  
388 of his or her rights in an invention to his or her employer shall  
389 not apply to an invention that the employee developed entirely  
390 on his or her own time without using the employer's equip-  
391 ment, supplies, facilities, or trade secret information except for  
392 those inventions that either:

393 (1) Relate at the time of conception or reduction to  
394 practice of the invention to the employer's business, or actual  
395 or demonstrably anticipated research or development of the  
396 employer; or

397 (2) Result from any work performed by the em-  
398 ployee for the employer.

399 (b) To the extent a provision in an employment agree-  
400 ment purports to require an employee to assign an invention  
401 otherwise excluded from being required to be assigned under  
402 subdivision (a), the provision is against the public policy of  
403 this state and is unenforceable.

404 

---

1 EXHIBIT C

2 **TERMINATION CERTIFICATION**

3 This is to certify that I do not have in my possession, nor  
4 have I failed to return, any devices, records, data, notes, re-  
5 ports, proposals, lists, correspondence, specifications, draw-  
6 ings, blueprints, sketches, laboratory notebooks, flow charts,  
7 materials, equipment, other documents or property, or copies  
8 or reproductions of any aforementioned items belonging to  
9 Facebook, Inc., its subsidiaries, affiliates, successors or as-  
10 signs (together the "Company").

11 I further certify that I have complied with all the terms  
12 of the Company's Confidential Information and Invention As-  
13 signment Agreement signed by me, including the reporting of  
14 any inventions and original works of authorship (as defined  
15 therein), conceived or made by me (solely or jointly with oth-  
16 ers) covered by that agreement.

17 I further agree that, in compliance with the Confidential  
18 Information and Invention Assignment Agreement, I will pre-  
19 serve as confidential all trade secrets, confidential knowledge,  
20 data or other proprietary information relating to products, pro-  
21 cesses, know-how, designs, formulas, developmental or exper-  
22 imental work, computer programs, data bases, other original  
23 works of authorship, customer lists, business plans, financial  
24 information or other subject matter pertaining to any business  
25 of the Company or any of its employees, clients, consultants  
26 or licensees.

27 I further agree that for twenty-four (24) months from the  
28 date of this Certificate, I shall not either directly or indirectly  
29 solicit, induce, recruit or encourage any of the Company's  
30 employees or consultants to terminate their relationship with  
31 the Company, or attempt to solicit, induce, recruit, encourage

32 or take away employees or consultants of the Company, either  
33 for myself or for any other person or entity. Further, I shall not  
34 at any time use any Confidential Information of the Company  
35 to negatively influence any of the Company's clients or cus-  
36 tomers from purchasing Company products or services or to  
37 solicit or influence or attempt to influence any client, customer  
38 or other person either directly or indirectly, to direct his or its  
39 purchase of products and/or services to any person, firm, cor-  
40 poration, institution or other entity in competition with the  
41 business of the Company.

42

Date:

43

\_\_\_\_\_

\_\_\_\_\_  
(Employee's Signature)

\_\_\_\_\_  
(Type/Print Employee's

Name)

44

45