

# EXHIBIT 4

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RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In the Matter of the )  
SUBPOENA DUCES TECUM )  
IN A CIVIL ACTION )  
ISSUED BY SMARTPHONE TECHS., LLC )  
TO FACEBOOK, INC. )

In the Matter of the )  
SUBPOENA DUCES TECUM )  
IN A CIVIL ACTION )  
ISSUED BY HUAWEI DEVICES USA, INC. )  
TO FACEBOOK, INC. )

**CV 13**

**80265**

**LHK**

**MISC.**

**PSG**

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

Facebook, Inc. (hereinafter, "Facebook"), Smartphone Technologies, LLC, (hereinafter, "Smartphone"), Huawei Devices USA, Inc. and Futurewei, Inc. (hereinafter collectively, "Huawei"), and ZTE Corporation, ZTE (USA), Inc., and ZTE Solutions, Inc. (hereinafter collectively, "ZTE") respectfully submit this Stipulated Protective Order ("hereinafter, "Protective Order"). Smartphone and Huawei are parties in the case *Smartphone Techs., LLC v. Huawei Devices USA Inc. et al.*, Civil Action No. 6:12-cv-00245, currently pending in the United States District Court for the Eastern District of Texas, Tyler Division. Smartphone and ZTE are parties in the case *Smartphone Techs., LLC v. ZTE Corp. et al.*, Civil Action No. 6:12-cv-350, currently pending in the United States District Court for the Eastern District of Texas, Tyler Division. Facebook is not a party in either of the actions. On July 22, 2013, Smartphone served on Facebook a Notice of Subpoena Duces Tecum (hereinafter, "Smartphone's Subpoena"). On September 26, 2013, Huawei served on Facebook a Notice of Subpoena Duces Tecum and Ad Testificandum (hereinafter, "Huawei's Subpoena"). Smartphone's Subpoena and Huawei's Subpoena request production of certain documents by Facebook. On August 6, 2013, Facebook served Smartphone with Facebook's Objections and Responses to Smartphone's Subpoena. On

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1 October 3, 2013, Facebook served Huawei with Facebook's Objections and Responses to  
2 Huawei's Subpoena. Facebook, SmartPhone, Huawei, and ZTE agree that the terms of this  
3 Protective Order shall govern the production of any documents or other information produced by  
4 Facebook. The September 6, 2012 Agreed Protective Order entered in *Smartphone Techs., LLC*  
5 *v. Huawei Devices USA Inc. et al.*, Civil Action No. 6:12-cv-00245, and the October 16, 2012  
6 Agreed Protective Order entered in *Smartphone Techs., LLC v. ZTE Corp. et al.*, Civil Action No.  
7 6:12-cv-350, do not govern the production of any documents or other information produced by  
8 Facebook. Nothing in this Protective Order shall be interpreted as implying that relevant  
9 documents or information are in the possession, custody or control of Facebook, or that Facebook  
10 is under any obligation to produce any documents or other information.

11 1. PURPOSES AND LIMITATIONS

12 This Protective Order governs the production of any confidential, proprietary, or private  
13 information for which special protection from public disclosure and from use for any purpose  
14 other than prosecuting the Underlying Actions is warranted. Accordingly, Facebook, Smartphone,  
15 Huawei, and ZTE hereby stipulate to and petition the court to enter the following Protective  
16 Order. Smartphone, Huawei, and ZTE further acknowledge, as set forth in Section 13.4, that this  
17 Protective Order does not entitle them to file confidential information under seal.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Receiving Party that challenges the designation of  
20 information or items under this Protective Order.

21 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is  
22 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
23 of Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
25 well as their support staff).

26 2.4 Court (capitalized) – the United States District Court for the Northern District of  
27 California.

28 2.5 Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among other things,  
2 testimony, transcripts, and tangible things), that are produced or generated in response to  
3 discovery in this matter.

4       2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
5 the Underlying Actions who (1) has been retained by a Receiving Party or its counsel to serve as  
6 an expert witness or as a consultant in the Underlying Actions, (2) is not a past or current  
7 employee of Facebook, Smartphone, Huawei, or ZTE, and (3) at the time of retention, is not a  
8 current employee or anticipated to become an employee of Facebook, Smartphone, Huawei, or  
9 ZTE, or of their competitors.

10       2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
13 less restrictive means.

14       2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
15 extremely sensitive "Confidential Information or Items" representing computer code and  
16 associated comments and revision histories, formulas, engineering specifications, or schematics  
17 that define or otherwise describe in detail the algorithms or structure of software or hardware  
18 designs, disclosure of which to a Party or Non-Party would create a substantial risk of serious  
19 harm that could not be avoided by less restrictive means.

20       2.9 House Counsel: attorneys who are employees of a Party to the Underlying Actions  
21 (or its wholly-owned subsidiaries). House Counsel does not include Outside Counsel of Record  
22 or any other outside counsel.

23       2.10 Non-Party: Other than Facebook, any natural person, partnership, corporation,  
24 association, or other legal entity not named as a Party to the Underlying Actions.

25       2.11 Outside Counsel of Record: attorneys who are not employees of a Party to the  
26 Underlying Actions but are retained to represent or advise a Party to the Underlying Actions and  
27 have appeared in the Underlying Actions on behalf of that Party

28       2.12 Party: any party to the Underlying Actions, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
2 staffs).

3 2.13 Professional Vendors: persons or entities that provide litigation support services  
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
5 organizing, storing, or retrieving data in any form or medium) and their employees and  
6 subcontractors.

7 2.14 Protected Material: any Discovery Material that is designated as  
8 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as  
9 "HIGHLY CONFIDENTIAL – SOURCE CODE."

10 2.15 Receiving Party: a Party that receives Discovery Material from Facebook.

11 2.16 The Underlying Actions: the cases *Smartphone Techs., LLC v. Huawei Devices*  
12 *USA Inc. et al.*, Civil Action No. 6:12-cv-00245, and *Smartphone Techs., LLC v. ZTE Corp. et*  
13 *al.*, Civil Action No. 6:12-cv-350, filed in the United States District Court for the Eastern District  
14 of Texas, Tyler Division.

15 3. SCOPE

16 The protections conferred by this Protective Order cover not only Protected Material (as  
17 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
18 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
19 conversations, or presentations by Receiving Parties or their Counsel that might reveal Protected  
20 Material. However, the protections conferred by this Protective Order do not cover the following  
21 information: (a) any information that is in the public domain at the time of disclosure to a  
22 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
23 a result of publication not involving a violation of this Protective Order, including becoming part  
24 of the public record through trial or otherwise; and (b) any information known to the Receiving  
25 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source  
26 who obtained the information lawfully and under no obligation of confidentiality to Facebook.  
27 However, if the accuracy of information is confirmed only through the review of Protected  
28 Material, then the underlying information shall not be considered to be in the public domain. For

1 example, unsubstantiated media speculations or rumors that are later confirmed to be accurate  
2 only through access to Protected Material does not waive the confidentiality of such Protected  
3 Material. Such confirmatory information is explicitly included in the definition of Protected  
4 Material set forth above.

5 4. DURATION

6 Even after final disposition of the Underlying Actions, the confidentiality obligations  
7 imposed by this Protective Order shall remain in effect until Facebook agrees otherwise in writing  
8 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
9 dismissal of all claims and defenses in the Underlying Actions, with or without prejudice; and (2)  
10 final judgment after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
11 reviews of the Underlying Actions, including the time limits for filing any motions or applications  
12 for extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Manner and Timing of Designations. Except as otherwise provided in this  
15 Protective Order (see, e.g., second paragraph of Section 5.1(a)), or as otherwise stipulated or  
16 ordered, Discovery Material that qualifies for protection under this Protective Order must be  
17 clearly so designated before the material is produced.

18 Designation in conformity with this Protective Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents),  
20 that Facebook affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
21 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" or  
22 substantially similar language to each page that contains protected material.

23 Should Facebook make non-source code original documents or materials available for  
24 inspection, it need not designate them for protection until after the inspecting Party has indicated  
25 which material it would like copied and produced. During the inspection and before the  
26 designation, all of the material made available for inspection shall be deemed "HIGHLY  
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
28 documents it wants copied and produced, Facebook must determine which documents, or portions

1 thereof, qualify for protection under this Protective Order. Then, before producing the specified  
2 documents, Facebook must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY  
3 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE  
4 CODE" or substantially similar language) to each page that contains Protected Material.

5 (b) Receiving Parties shall give Facebook notice if they reasonably expect a  
6 deposition, hearing, or other proceeding in the Underlying Actions to include Protected Material  
7 so that Facebook can object to such disclosure or ensure that only authorized individuals who  
8 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present at those  
9 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its  
10 designation as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
11 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE."

12 Transcripts in the Underlying Actions containing Protected Material shall have an obvious  
13 legend on the title page that the transcript contains Protected Material. The Receiving Party shall  
14 inform the court reporter of these requirements. Any transcript containing Protected Material  
15 shall be treated as if it had been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
16 ONLY" in its entirety unless otherwise agreed by Facebook.

17 (c) for information produced in some form other than documentary and for any  
18 other tangible items, that Facebook affix in a prominent place on the exterior of the container or  
19 containers in which the information or item is stored the legend "CONFIDENTIAL" or  
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
21 SOURCE CODE" or substantially similar language.

22 5.2 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
23 information or items does not, standing alone, waive Facebook's right to secure protection under  
24 this Protective Order for such material, provided Facebook corrects the designation and provides  
25 the Receiving Party with the properly designated qualified information or item within a  
26 reasonable period of time following discovery of the inadvertent failure to designate. Upon timely  
27 correction of a designation, the Receiving Party must make reasonable efforts to assure that the  
28 material is treated in accordance with the provisions of this Protective Order and return all

1 improperly designated material to Facebook or destroy such material.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. The Receiving Party may challenge a designation of  
4 confidentiality within 30 days of receiving Protected Material.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
6 process by providing written notice of each designation it is challenging and describing the basis  
7 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
8 notice must recite that the challenge to confidentiality is being made in accordance with this  
9 specific paragraph of the Protective Order. Facebook and the Challenging Party shall attempt to  
10 resolve each challenge in good faith and must begin the process by conferring directly (in voice to  
11 voice dialogue; other forms of communication are not sufficient) within 14 days of the date of  
12 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
13 confidentiality designation was not proper and must give Facebook an opportunity to review the  
14 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
15 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
16 stage of the challenge process only if it has engaged in this meet and confer process first or  
17 establishes that Facebook is unwilling to participate in the meet and confer process in a timely  
18 manner.

19 6.3 Judicial Intervention. If Facebook and the Challenging Party cannot resolve a  
20 challenge without court intervention, the Challenging Party shall file and serve with this Court a  
21 motion challenging confidentiality within 21 days of the initial notice of challenge or within 14  
22 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
23 whichever is earlier. Each such motion must be accompanied by a competent declaration  
24 affirming that the Challenging Party has complied with the meet and confer requirements  
25 imposed in the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Challenging  
27 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
28 unnecessary expenses and burdens on other parties) may expose the Challenging Party to



1 sanctions. All parties shall continue to afford the material in question the level of protection to  
2 which it is entitled under Facebook's designation until this Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
5 or produced by Facebook only for prosecuting, defending, or attempting to settle the Underlying  
6 Actions, and not for any other litigation or business purpose. Such Protected Material may be  
7 disclosed only to the categories of persons and under the conditions described in this Protective  
8 Order. When the Underlying Actions have been terminated, a Receiving Party must comply with  
9 the provisions of Section 14.

10 Protected Material must be stored and maintained by a Receiving Party at a location and  
11 in a secure manner that ensures that access is limited to the persons authorized under this  
12 Protective Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
14 ordered by this Court or permitted in writing by Facebook, a Receiving Party may disclose any  
15 information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in the Underlying Actions, as  
17 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
18 disclose the information for the purposes of the Underlying Actions;

19 (b) up to three (3) representatives (who are officers, directors, employees or House  
20 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for the purposes of  
21 the Underlying Actions and who have signed the "Acknowledgment and Agreement to Be  
22 Bound" (Exhibit A);

23 (c) Experts (as defined in this Protective Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for the purposes of the Underlying Actions and who have  
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (d) the court in the Underlying Actions and its personnel;

27 (e) court reporters in the Underlying Actions and their staff, professional jury or  
28 trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for the

1 Underlying Actions and who have signed the "Acknowledgment and Agreement to Be Bound"  
2 (Exhibit A);

3 (f) during their depositions, witnesses in the Underlying Actions to whom  
4 disclosure is reasonably necessary, with the express written consent of Facebook. Pages of  
5 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
6 separately bound by the court reporter in the Underlying Actions and may not be disclosed to  
7 anyone except as permitted under this Protective Order;

8 (g) the author or recipient of a document containing the information or a custodian  
9 or other person who otherwise possessed or knew the information.

10 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and  
11 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise  
12 ordered by this Court or expressly permitted in writing by Facebook, a Receiving Party may  
13 disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
14 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

15 (a) the Receiving Party's Outside Counsel of Record in the Underlying Actions, as well as  
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
17 information for the purposes of the Underlying Actions;

18 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for the  
19 purposes of the Underlying Actions, (2) who have signed the "Acknowledgment and Agreement  
20 to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4(a) have  
21 been followed;

22 (c) the court of the Underlying Actions and its personnel;

23 (d) court reporters of the Underlying Actions and their staff, professional jury or trial  
24 consultants, and Professional Vendors to whom disclosure is reasonably necessary for the  
25 Underlying Actions and who have signed the "Acknowledgment and Agreement to Be Bound"  
26 (Exhibit A); and

27 (e) the author or recipient of a document containing the information or a custodian or  
28 other person who otherwise possessed or knew the information.

1           7.4   Procedures for Approving or Objecting to Disclosure of "HIGHLY  
2 CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - SOURCE  
3 CODE" Information or Items to Experts.

4           (a) Unless otherwise ordered by this Court or agreed to in writing by Facebook, a Party  
5 that seeks to disclose to an Expert (as defined in this Protective Order) any information or item  
6 that has been designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or  
7 "HIGHLY CONFIDENTIAL - SOURCE CODE" pursuant to Section 7.3(b) first must make a  
8 written request to Facebook that (1) identifies the general categories of "HIGHLY  
9 CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - SOURCE  
10 CODE" information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
11 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
12 attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5)  
13 identifies each person or entity from whom the Expert has received compensation or funding for  
14 work in his or her areas of expertise or to whom the expert has provided professional services,  
15 including in connection with a litigation, at any time during the preceding five years, (6) identifies  
16 (by name and number of the case, filing date, and location of court) any litigation in connection  
17 with which the Expert has offered expert testimony, including through a declaration, report, or  
18 testimony at a deposition or trial, during the preceding five years, and (7) identification of any  
19 patents or patent applications in which the witness is identified as an inventor or applicant, is  
20 involved in prosecuting or maintaining, or has any pecuniary interest. With regard to the  
21 information sought through part (5) of this disclosure, if the Expert believes any of this  
22 information is subject to a confidentiality obligation to a third party, then the Expert should  
23 provide whatever information the Expert believes can be disclosed without violating any  
24 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to  
25 meet and confer with Facebook regarding any such engagement.

26           (b) A Party that makes a request and provides the information specified in the preceding  
27 respective paragraphs may disclose the subject Protected Material to the identified Expert 14 days  
28 after providing the information required in paragraph (a) unless, within that 14 day period, the

1 Party receives a written objection from Facebook. Any such objection must set forth in detail the  
2 grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer with Facebook  
4 (through direct voice to voice dialogue) to try to resolve the matter by agreement within 7 days of  
5 the written objection. If no agreement is reached, the Receiving Party may file a motion seeking  
6 relief from this Court. Any such motion must describe the circumstances with specificity, and set  
7 forth in detail the reasons for the Receiving Party's need to disclose the Protected Material to the  
8 identified Expert. In addition, any such motion must be accompanied by a competent declaration  
9 describing the efforts to resolve the matter by agreement (i.e., the extent and the content of the  
10 meet and confer discussions).

11 In any such proceeding, the Receiving Party shall bear the burden of proof.

12 8. PROSECUTION BAR

13 Absent written consent from Facebook, any individual who accesses "HIGHLY  
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE  
15 CODE" information shall not be involved directly or indirectly (e.g., by consulting or advising  
16 those directly involved) in the prosecution of patents or patent applications relating to either the  
17 subject matter of the claimed inventions of the patents asserted in the Underlying Actions or the  
18 subject matter of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
19 CONFIDENTIAL – SOURCE CODE" information produced by Facebook, including without  
20 limitation the patents asserted in the Underlying Actions and any patent or application claiming  
21 priority to or otherwise related to the patents asserted in the Underlying Actions, before any  
22 foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent  
23 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,  
24 amending, advising, or otherwise affecting the scope or maintenance of patent claims.  
25 Prosecution includes, for example, representing a patent applicant or owner in original  
26 prosecution, reissue, reexamination, inter partes review, and other post-grant proceedings. To  
27 avoid any doubt, "prosecution" as used in this paragraph does not include representing a party  
28 challenging another's patent before a domestic or foreign agency (including, but not limited to, a

1 reissue protest, ex parte reexamination or inter partes reexamination or review). This Prosecution  
2 Bar shall begin when "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or  
3 "HIGHLY CONFIDENTIAL - SOURCE CODE" information is first accessed by the affected  
4 individual and shall end two (2) years after final termination of the Underlying Actions.

5 9. SOURCE CODE

6 (a) To the extent production of source code becomes necessary in this matter,  
7 Facebook may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it  
8 comprises or includes confidential, proprietary or trade secret source code.

9 (b) Protected Material designated as "HIGHLY CONFIDENTIAL - SOURCE  
10 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL -  
11 ATTORNEYS' EYES ONLY" information including the Prosecution Bar set forth in Section 8,  
12 and may be disclosed only to the individuals to whom "HIGHLY CONFIDENTIAL -  
13 ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in Sections 7.3 and 7.4.

14 (c) Any source code produced shall be made available for inspection on a  
15 stand-alone computer, in a format allowing it to be reasonably reviewed and searched, during  
16 normal business hours or at other mutually agreeable times, at the Palo Alto office of Facebook's  
17 counsel or another location agreeable to Facebook. The computer containing source code will be  
18 made available upon reasonable notice to Facebook, which shall not be less than 7 business days  
19 in advance of the requested inspection. The source code shall be made available for inspection on  
20 a secured computer in a secured room without Internet access or network access to other  
21 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of  
22 the source code onto any recordable media or recordable device. The computer shall be equipped  
23 with search and review tools as reasonably requested and provided by the Receiving Party.  
24 Facebook may visually monitor the activities of the Receiving Party's representatives during any  
25 source code review to ensure that there is no unauthorized recording, copying, or transmission of  
26 the source code, but will not visually inspect notes taken by the Receiving Party's representatives  
27 during any source code review, and any such monitoring by Facebook shall not waive any  
28 applicable privilege, work product protection, or confidentiality of the Receiving Party or its

1 representatives. All persons viewing source code shall sign on each day they view source code a  
2 log that will include the names of persons who enter the secured room to view the source code  
3 and when they enter and depart.

4 (d) The Receiving Party may request paper copies of limited portions of source  
5 code that are reasonably necessary to attach to filings, pleadings, expert reports, or for use as an  
6 exhibit at deposition or trial, but shall not request paper copies for the purposes of reviewing the  
7 source code other than electronically as set forth in paragraph (c) in the first instance. At  
8 Facebook's sole discretion, Facebook may provide such source code on non-copyable paper  
9 including Bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The  
10 Receiving Party may challenge a refusal to provide source code on paper pursuant to the dispute  
11 resolution procedure and timeframes set forth in Section 6. In any case, Facebook will not  
12 unreasonably refuse a request for paper copies of source code to be used for the allowable  
13 purposes listed above and made in good faith under this paragraph. Any paper copies of source  
14 code will be provided to all three parties subject to this Protective Order—Smartphone, Huawei,  
15 and ZTE.

16 (e) The Receiving Party shall maintain a log of all paper copies of the source  
17 code. The log shall include the names of the reviewers and/or recipients of paper copies and  
18 locations where the paper copies are stored. Upon 1 day's advance notice to the Receiving Party  
19 by Facebook, the Receiving Party shall provide a copy of this log to Facebook. The Receiving  
20 Party shall maintain all paper copies of any printed portions of the source code in a secured,  
21 locked area. The Receiving Party shall only request additional paper copies if such additional  
22 copies are (1) necessary to attach to court filings, pleadings, or testifying expert's expert report,  
23 (2) necessary for deposition, or (3) necessary for trial. The Receiving Party shall not request  
24 paper copies for the purposes of reviewing the source code other than electronically as set forth in  
25 paragraph (c) in the first instance. Any paper copies used during a deposition shall be retrieved  
26 by the Receiving Party at the end of each day and must not be given to or left with a court  
27 reporter or any other individual.

28 (f) The Receiving Party's representatives may take notes during any source

1 code inspection but may not copy portions of the source code into such notes. Any such notes  
2 must be marked on each page with "HIGHLY CONFIDENTIAL - SOURCE CODE." In addition,  
3 the Receiving Party's representatives may not bring into the room housing the computer  
4 containing source code any analogue or electronic recording devices, including, but not limited  
5 to, laptops or other portable computers, audio, image or video recorders or wireless devices with  
6 data transmission capabilities, unless agreed otherwise by Facebook expressly in writing. The  
7 Receiving Party's representatives may not leave work product or other materials to which the  
8 Receiving Party claims privilege in the room used to inspect Facebook's source code or on the  
9 computer containing source code.

10 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
11 LITIGATION

12 If a Receiving Party is served with a subpoena or a court order issued in other litigation  
13 that compels disclosure of any information or items designated in this matter as  
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or  
15 "HIGHLY CONFIDENTIAL - SOURCE CODE" that Party must:

16 (a) immediately notify Facebook in writing. Such notification shall include a copy of the  
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
19 other litigation that some or all of the material covered by the subpoena or order is subject to this  
20 Protective Order. Such notification shall include a copy of this Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by Facebook.

22 If Facebook timely seeks a protective order, the Party served with the subpoena or court  
23 order shall not produce any information designated in this matter as "CONFIDENTIAL" or  
24 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -  
25 SOURCE CODE" before a determination by the court from which the subpoena or order issued,  
26 unless the Party has obtained Facebook's express written permission. Nothing in these provisions  
27 should be construed as authorizing or encouraging a Receiving Party in this matter to disobey a  
28 lawful directive from another court.

1 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Protective Order, the  
4 Receiving Party must immediately (a) notify Facebook in writing of the unauthorized disclosures,  
5 (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
6 person or persons to whom unauthorized disclosures were made of all the terms of this Protective  
7 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to  
8 Be Bound" that is attached hereto as Exhibit A.

9 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

11 If Facebook inadvertently produces or provides discovery which it believes is subject to a  
12 claim of attorney-client privilege or work product immunity, Facebook may give written notice to  
13 the Receiving Party that the document or thing is subject to a claim of attorney client privilege or  
14 work product immunity and request that the document or thing be destroyed. The inadvertent  
15 production shall not constitute a waiver of the attorney client privilege or work product immunity.  
16 The Receiving Party shall destroy or return the document or thing (including all copies and any  
17 notes or summaries referring to or relating to such document or thing) immediately after receiving  
18 such notice. After destruction or return of the document or thing by the Receiving Party, the  
19 Receiving Party may challenge the claim of privilege or work product by moving this Court for  
20 an order that such document or thing has been improperly designated or should be producible for  
21 reasons other than a waiver caused by inadvertent production.

22 13. MISCELLANEOUS

23 13.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any  
24 person to seek its modification by this Court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
26 Order Facebook does not waive any right it otherwise would have to object to disclosing or  
27 producing any information or item on any ground not addressed in this Protective Order.  
28 Similarly, Facebook does not waive any right to object on any ground to the use in evidence of



1 any of the material covered by this Protective Order.

2 13.3 Export Control. In no event shall Protected Material be transported or otherwise  
3 accessed outside of the United States without the express written consent of Facebook.

4 13.4 Filing Protected Material. Without written permission from Facebook or a court  
5 order secured after following the procedures set forth in Section 6, a Receiving Party may not file  
6 in the public record any Protected Material. A Receiving Party that seeks to file under seal any  
7 Protected Material in the Underlying Actions must comply with the applicable local rules of the  
8 Underlying Actions for filing documents under seal. Any Receiving Party is authorized in  
9 accordance the applicable local rules of the Underlying Actions to file under seal with the court  
10 any brief, pertinent document or materials that are designated as Protected Material under this  
11 Protective Order. However, nothing in this Section shall in any way limit or detract from this  
12 Protective Order's requirements as to source code.

13 Before disclosing Protected Material in an open courtroom at trial or other court hearings  
14 in the Underlying Actions, a Receiving Party must provide written notice to Facebook and obtain  
15 Facebook's express written permission to disclose the Protected Material. The notice must be  
16 provided within a reasonable time prior to the trial or hearing, and no less than 30 days unless  
17 otherwise agreed to in writing by Facebook. The Receiving Party bears the burden of showing to  
18 this Court that Protected Material should be disclosed in an open courtroom in the Underlying  
19 Actions. The use of Protected Material at trial or other court hearings in the Underlying Actions  
20 shall not constitute a waiver of or operate in prejudice to any claim of confidentiality in the  
21 Protected Material.

22 13.5 Privilege Logs. Facebook shall not be required to produce a privilege log.

23 14. FINAL DISPOSITION

24 Within 60 days after the final disposition of the Underlying Actions, as defined in Section  
25 4, each Receiving Party must return all Protected Material to Facebook or destroy such material.  
26 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
27 summaries, and any other format reproducing or capturing any of the Protected Material.  
28 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a

1 written certification to Facebook by the 60-day deadline that (1) identifies (by category, where  
2 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
3 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
4 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
5 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
6 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
7 reports, attorney work product, and consultant and expert work product, even if such materials  
8 contain Protected Material, except there may be no archival copy of materials containing source  
9 code. Any such archival copies that contain or constitute Protected Material remain subject to this  
10 Protective Order as set forth in Section 4.

11 15. JURISDICTION

12 Facebook, SmartPhone, Huawei, and ZTE agree to submit to the jurisdiction of the United  
13 States District Court for the Northern District of California for the purpose of enforcing the terms  
14 of this Protective Order, even if such enforcement proceedings occur after termination of the  
15 Underlying Actions.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: November 14, 2013

/s/ Reuben H. Chen  
Reuben H. Chen  
Attorneys for Facebook, Inc.

18  
19  
20 DATED: November 14, 2013

/s/ Tom Cecil  
Tom Cecil  
Attorneys for SmartPhone Technologies, LLC

21  
22 DATED: November 14, 2013

/s/ Lon Outland  
Lon Outland  
Attorneys for Huawei Devices USA Inc. and  
Futurewei, Inc.

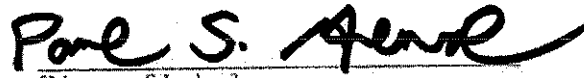
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25 DATED: November 14, 2013

/s/ Ali Karimipour  
Ali Karimipour  
Attorneys for ZTE Corporation, ZTE (USA), Inc.  
and ZTE Solutions, Inc.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 21, 2013



[Name of Judge]  
United States District/Magistrate Judge  
Hon. Paul S. Grewal

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury under the laws  
of the United States that I have read in its entirety and understand the Stipulated Protective Order  
that was issued by the United States District Court for the Northern District of California on  
\_\_\_\_\_ [date] in the matter of \_\_\_\_\_ [insert formal name of matter and the number  
and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms  
of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the provisions of this  
Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

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

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]


1 written certification to Facebook by the 60-day deadline that (1) identifies (by category, where  
2 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
3 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
4 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
5 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
6 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
7 reports, attorney work product, and consultant and expert work product, even if such materials  
8 contain Protected Material, except there may be no archival copy of materials containing source  
9 code. Any such archival copies that contain or constitute Protected Material remain subject to this  
10 Protective Order as set forth in Section 4.

11 15. JURISDICTION

12 Facebook, SmartPhone, Huawei, and ZTE agree to submit to the jurisdiction of the United  
13 States District Court for the Northern District of California for the purpose of enforcing the terms  
14 of this Protective Order, even if such enforcement proceedings occur after termination of the  
15 Underlying Actions.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: November 14, 2013

  
\_\_\_\_\_  
Reuben H. Chen (228725)  
COOLEY LLP  
3175 Hanover Street  
Palo Alto, CA 94306  
Attorneys for Facebook, Inc.

21 DATED: November 14, 2013

/s/ Tom Cecil  
\_\_\_\_\_  
Tom Cecil  
Attorneys for SmartPhone Technologies, LLC

24 DATED: November 14, 2013

/s/ Lon Outland  
\_\_\_\_\_  
Lon Outland  
Attorneys for Huawei Devices USA Inc. and  
Futurewei, Inc.

27 DATED: November 14, 2013

/s/ Ali Karimipour  
\_\_\_\_\_  
Ali Karimipour  
Attorneys for ZTE Corporation, ZTE (USA), Inc.

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District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of the Underlying Actions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Facebook, Inc.

DATED: 11.12.13

\_\_\_\_\_  
Attorneys for SmartPhone Technologies, LLC

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Huawei Devices USA Inc. and Futurewei, Inc.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for ZTE Corporation, ZTE (USA), Inc., and ZTE Solutions, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[Name of Judge]  
United States District/Magistrate Judge

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District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of the Underlying Actions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: \_\_\_\_\_ Attorneys for Facebook, Inc.

DATED: \_\_\_\_\_ Attorneys for SmartPhone Technologies, LLC

DATED: 11/12/2013 \_\_\_\_\_  
Attorneys for Huawei Devices USA Inc. and Futurewei, Inc.

DATED: \_\_\_\_\_ Attorneys for ZTE Corporation, ZTE (USA), Inc., and ZTE Solutions, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_ [Name of Judge]  
United States District/Magistrate Judge

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District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of the Underlying Actions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: \_\_\_\_\_ Attorneys for Facebook, Inc.

DATED: \_\_\_\_\_ Attorneys for SmartPhone Technologies, LLC

DATED: \_\_\_\_\_ Attorneys for Huawei Devices USA Inc. and Futurewei, Inc.

DATED: 14 Nov 2012 \_\_\_\_\_  
Attorneys for ZTE Corporation, ZTE (USA), Inc., and ZTE Solutions, Inc. *Gregory V. Novak*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_ [Name of Judge]  
United States District/Magistrate Judge