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THE HONORABLE KIMBERLEY PROCHNAU

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

MATTHEW J. MISZEWSKI, an
individual,

Defendant.

No. 11-2-04589-7

PLAINTIFF MICROSOFT'S MOTION FOR
PRELIMINARY INJUNCTION

NOTED FOR MOTION CALENDAR:
February 23, 2011, at 8:30 a.m.

WITH ORAL ARGUMENT

REDACTED VERSION

FILED UNDER SEAL

PURSUANT TO STIPULATED PROTECTIVE ORDER
FILED ON FEBRUARY 10, 2011

Unredacted Version Provided with "Judge's Working Copies" and
Service Copies to Defendant's Counsel Only

MICROSOFT'S MOTION FOR
PRELIMINARY INJUNCTION

41826-6033/LEGAL20152795.3

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I. INTRODUCTION

Plaintiff Microsoft Corporation ("Microsoft") seeks a preliminary injunction to enforce a clear noncompetition provision in the March 8, 2007, Employee Agreement ("Employee Agreement") between Microsoft and its former employee Defendant Matthew J. Miszewski ("Miszewski"). On January 18, 2011, Miszewski accepted employment with one of Microsoft's competitors, Salesforce.com, Inc. ("Salesforce.com") as its Senior Vice President, Global Public Sector. At Salesforce.com, Miszewski will offer the same cloud computing and customer relationship management ("CRM") solutions to Public Sector and government customers that were within Miszewski's area of responsibility at Microsoft. Miszewski is breaching his noncompete obligations, and is doing so at a time when, as he stated in the press release announcing his employment with Salesforce.com, the industry is at a critical "inflection point for cloud adoption in the global public sector." Microsoft's noncompete agreement with Miszewski was designed to protect against this very result.

Since obtaining a temporary restraining order, discovery has confirmed that Miszewski's breach of his noncompete obligation was willful.

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Moreover, in violation of his obligation to return confidential Microsoft materials, and contrary to his representations that he retained only personal items upon his resignation, Miszewski retained a host of highly confidential and proprietary Microsoft documents on his personal computer. These documents included Microsoft's confidential material for marketing its cloud computing solutions to the government sector.

Miszewski's breach of his noncompete obligation threatens immediate and substantial injury to Microsoft, and the Employee Agreement acknowledges Microsoft's entitlement to injunctive relief. Microsoft therefore respectfully requests that the Court enter its proposed preliminary injunction, barring Miszewski from breaching his Employee Agreement through his employment at Salesforce.com.

II. SUMMARY OF RELEVANT FACTS¹

A. The Emerging Cloud Computing Market

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Microsoft is a Washington corporation and an industry leader in the development, marketing, and distribution of a variety of computer software, services and solutions. *See* Declaration of Lynne Stockstad ("Stockstad Decl.") ¶ 2 (Dkt. No. 7) (Jan. 26, 2011). Microsoft's Worldwide Public Sector group is responsible for the strategic business development, marketing and sales of CRM and cloud computing solutions to Public Sector customers globally. *Id.* ¶ 4. CRM solutions are used by Public Sector customers to, for example, manage citizen, patient and student interactions so that public agencies can respond quickly and efficiently to their problems and needs. *Id.* ¶ 3. The Worldwide Public Sector group is also responsible for the strategic business development, marketing and sales of Microsoft's cloud computing solutions tailored to Public Sector customers. *Id.* ¶ 5.

Cloud computing refers generally to a computer system where the underlying software and infrastructure is not located with or owned by the customer. Instead, the customer accesses that infrastructure through the Internet. *Id.* Cloud computing solutions have characteristics that make them particularly well-suited for the government sector, which is currently facing significant budgetary pressure. Confidential Supplemental Declaration of Lynne Stockstad ("Supplemental Stockstad Decl.") ¶ 3. Cloud computing solutions offer "measured" service, allowing customers to pay on a per-user basis. *Id.* Cloud computing solutions rely on pooled resources, allowing a large number of users to share access to data centers and servers. *Id.* This pooled resource model offers significant savings in up-front spending for information technology ("IT") infrastructure—the customer is spared the expense of purchasing and maintaining its own servers and data centers, resulting in reduced IT costs. *Id.* Cloud computing solutions are also "scaleable," meaning that the customer can adjust the scope of service as needs change. *Id.* Finally, because

¹ Additional facts relevant the instant Motion are set forth in Microsoft's Motion for Temporary Restraining Order and supporting declarations (Dkt. Nos. 6-8) (Jan. 26, 2011). A courtesy copy of these materials has been submitted to the Court.

1 cloud based solutions often rely on these pooled resources, customers are able to rapidly
2 "migrate" from an existing IT infrastructure to a cloud based solution.

3 These advantages have led governments to place increasing emphasis on adoption of
4 cloud technologies. *Id.* ¶ 5. The Federal Office of Management and Budget has requested
5 that all federal agencies evaluate cloud computing alternatives for all major IT investments.
6 *Id.* ¶ 6, Ex. A (Vivek Kundra, Federal Chief Information Officer, "State of Public Sector
7 Cloud Computing" at 9 (May 20, 2010)). Similarly, the NASCIO, an organization
8 representing the Chief Information Officers of all fifty states, ranked "cloud computing" as
9 the second most important priority for state "Technologies, Applications and Tools" in 2011.
10 *Id.* ¶ 7, Ex. B. These same trends are also happening internationally. *Id.* ¶ 8. Microsoft
11 anticipates that 2011 will be a critical year in the adoption of cloud computing solutions by
12 government customers. *Id.* ¶ 5. Miszewski and Salesforce.com agree. Declaration of
13 Charles Sipos ("Sipos Decl.") ¶ 2, Ex. B (Dkt. No. 8) (Jan. 26, 2011).
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23 Microsoft is just one among a growing number of providers in the cloud computing
24 market; there is significant competition within that market. *Id.* ¶ 9. Because customers can
25 rapidly implement a cloud based solution to replace existing systems, the cloud computing
26 market is highly sensitive to product differentiation and is characterized by very fast moving
27 deals that transition large portions of existing IT systems to cloud based solutions. *Id.*
28 Microsoft therefore depends on an ability to differentiate its cloud computing offerings
29 quickly and cogently from the offerings of competitors. *Id.* Accordingly, Microsoft invests
30 significant resources in developing confidential and proprietary internal materials to
31 differentiate its offerings. *Id.* ¶ 10. It would be highly damaging to Microsoft if its
32 competitors had access to the confidential information contained in such materials. *Id.*
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41 **B. Miszewski's Noncompete Confidentiality Obligations to Microsoft**

42 On March 8, 2007, Miszewski signed a strict noncompetition and confidentiality
43 agreement as a condition of his employment with Microsoft. Sipos Decl. ¶ 2, Ex. A:
44 Paragraph 10 of the Employment Agreement prohibits Miszewski from accepting
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employment in a competitive position, or from rendering services for Microsoft customers, for a period of one year following the end of his employment:

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10. Non-Competition and Non-Solicitation. While employed at MICROSOFT and for a period of one year thereafter, I will not (a) engage in any competitive activities or accept employment by or agree to provide services to any person or entity that engages in competitive activities ("competitive activities" meaning the development, production or provision of any product, service, technology, product feature or project that is or is intended to be competitive with one or more products, services, technologies, product features or projects, including actual or demonstrably anticipated research or development, on which I worked or about which I learned confidential or proprietary information or trade secrets while employed at MICROSOFT or a MICROSOFT subsidiary).

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Id., Ex. A. Paragraph 10 contains Miszewski's acknowledgment that these obligations are "reasonable in light of, among other things, the global and highly competitive markets in which Microsoft and its subsidiaries operate." *Id.*

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Next, paragraph 3 of Miszewski's Employee Agreement prohibits him from disclosing any Microsoft confidential or proprietary information or trade secrets, stating in relevant part: "During [Miszewski's] employment and at all times thereafter, [Miszewski] will neither disclose to anyone outside Microsoft nor use for any purpose other than [his] work for Microsoft (a) any confidential or proprietary information or trade secrets of Microsoft or its subsidiaries." *Id.* Finally, paragraph 9 of the Agreement requires that upon his departure from Microsoft Miszewski must "immediately return to Microsoft all papers, drawings, notes, manuals, specifications, designs, devices, code, email, documents, diskettes, CDs and tapes created during or related to my employment with Microsoft, as well as any other material in any form or media containing any confidential or proprietary information or trade secrets." *Id.* (Employee Agreement ¶ 9). Miszewski's Employee Agreement states that any violation of paragraph 10 (noncompete), paragraph 3 (nondisclosure), or paragraph 9 (return of materials) "will cause irreparable injury to Microsoft and shall entitle Microsoft to equitable relief by a court, including without limitation temporary restraining orders and preliminary and permanent injunctions." *Id.*

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C. Miszewski's Negotiated His Employment with Salesforce.com in Willful Disregard of his Noncompete Obligations

Salesforce.com is one of Microsoft's direct competitors in the CRM and cloud computing market, and like Microsoft, Salesforce.com targets the Public Sector. Stockstad Decl. ¶ 7. At the time of his resignation from Microsoft on December 31, 2010, Miszewski was an Industry Market Development Manager in Microsoft's Worldwide Public Sector group, and responsible for the development of Microsoft's strategy for deploying its cloud computing solutions, including cloud-based CRM offerings, to the government portion of the Public Sector. *Id.* ¶¶ 8-15. Miszewski acknowledges that Salesforce.com and Microsoft are direct competitors: In May 2010, Miszewski attempted to email a Salesforce.com Vice President, Renny Monaghan, after meeting Mr. Monaghan at a "Government Cloud" session of an industry conference stating, "*We [Microsoft] continue our deep cloud push and see SalesForce as an incredible competitor.*" Declaration of Kevin J. Hamilton ("Hamilton Decl.") ¶ 5, Ex. E (emphasis added).

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On December 31, 2010, Miszewski notified his manager of his resignation, effective immediately, although did not disclose he was leaving to accept a competing position with Salesforce.com. In the same email message, he said that he had left his computer and

1 Microsoft documents in his office, and claimed to have taken with him "only [his] personal
2 items." *Id.* Ex. N. This was not true. Miszewski retained on his personal computer a large
3 trove of materials—600 megabytes of information comprising over 900 separate files
4 (estimated at over 25,000 pages). Many of these files consist of confidential and proprietary
5 Microsoft information.
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8 Less than three weeks later, on January 18, 2011, Salesforce.com announced that it
9 had hired Miszewski in a directly competitive position as its Vice President, Global Public
10 Sector, responsible for Salesforce.com's "global public sector initiatives" for cloud
11 computing and to "help governments understand the benefits of adopting cloud computing."
12 Sipos Decl., ¶ 3, Ex. A. Miszewski publicly acknowledged he was hired by Salesforce.com
13 at a critical time in the adoption of cloud computing technologies in the Public Sector,
14 stating: "I saw this as a unique opportunity to join the cloud computing leader at what is an
15 inflection point for cloud adoption in the global public sector." *Id.*, Ex. B.
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22 **D. Miszewski's Had Access to Microsoft Confidential Information and**
23 **Surreptitiously Retained It After His Resignation**
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25 Miszewski worked extensively on the development of Microsoft's confidential and
26 proprietary strategies for competing in the cloud computing market, including CRM
27 solutions, for government and Public Sector customers. *Id.* ¶¶ 10-12. Examples of the
28 confidential and proprietary information to which Miszewski either had direct access, or in
29 some instances helped author, include:
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- Confidential playbooks and business plans that Miszewski helped author in 2010 projecting Microsoft's fiscal year 2011 business plan for the Public Sector and reflecting its strategies for cloud computing and cloud-based CRM solutions;
 - A confidential memorandum that Miszewski helped author in December 2010—when he had all but finalized his employment with Salesforce.com—summarizing Microsoft's overall strategy for the Public Sector in 2011;
 - Analyses written for Microsoft's internal use, identifying the standing of Microsoft's competitors for cloud computing and CRM offerings, including Salesforce.com; and
 - The "Worldwide Public Sector Government Cloud Playbook," containing Microsoft's confidential and proprietary strategy and guidance for the sales and marketing of Microsoft's cloud computing offerings, and information on Microsoft's assessment of its competitors (including Salesforce.com) in the cloud computing market.

1 See Supplemental Stockstad Decl., Exs. C-M.² These documents describe Microsoft's
2 strategies in the cloud computing and CRM solution markets, particularly as those products
3 and services relate to the Public Sector and government. *Id.* ¶¶ 11-25.

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5 When he resigned December 31, 2010, Miszewski represented to Microsoft that he
6 had only taken personal items with him. Hamilton Decl., Ex. N. He was again reminded by
7 Microsoft on January 4, 2011, of his obligations under the Employee Agreement. *Id.* Ex. P.
8 Yet, Microsoft has now learned through discovery that Miszewski's personal computer
9 contained a significant number of confidential and proprietary Microsoft documents,
10 including many that go to the heart of Microsoft's competitive strategies. Supplemental
11 Stockstad Decl. ¶ 19.

12
13 On February 7, 2011, in response to expedited discovery from Microsoft, Miszewski
14 produced over 600 megabytes worth of documents retained on his personal computer, much
15 of it confidential Microsoft material. Among the documents on Miszewski's personal
16 computer are multiple versions of the "Government Cloud Playbook" discussed above,
17 Microsoft's strategic guide for competing in the government portion of the cloud computing
18 market. *Id.* ¶ 24. Also on Miszewski's computer were "Compete Field Handbooks," for
19 Microsoft competitors Oracle, IBM and Google. *Id.* ¶¶ 20-23. These Handbooks, all
20 labeled "MICROSOFT CONFIDENTIAL. For internal use only," offer comprehensive
21 guidance on how to differentiate Microsoft's offerings from those competitors and contain
22 Microsoft's confidential messaging strategies. *Id.* ¶¶ 21-23. Microsoft invests significant
23 resources in the preparation of these "Compete Field Handbooks" and they would be highly
24 valuable to Microsoft's competitors, including Salesforce.com, both in terms of capitalizing
25 on Microsoft's efforts to prepare these materials, as well as revealing in detail Microsoft's
26 own competitive strategies. *Id.* ¶ 21.

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28 Miszewski's retention of these materials, in addition to confirming his access to
29 significant confidential and competitive information, constitutes a clear breach of paragraph
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² Microsoft has requested leave to file under seal the Supplemental Stockstad Declaration, attaching these exemplar documents for the Court's review. *See* Mot. for Filing Under Seal.

1 9 of his Employee Agreement requiring him to return all confidential materials to Microsoft
2 upon his departure from the company, Sipos Decl. Ex. A (Employee Agreement ¶ 9). More
3 fundamentally, it shows his disregard for the obligations in his Employee Agreement
4 regarding the treatment of confidential and proprietary Microsoft information.
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6 **E. Issuance of the Temporary Restraining Order**
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8 Alarmed about Miszewski's breach of his Employee Agreement, on January 21,
9 2011, counsel for Microsoft sent a letter to counsel for Salesforce.com notifying
10 Salesforce.com of the breach and demanding that Salesforce.com suspend Miszewski's
11 employment, and put in place measures to protect Microsoft's confidential information.
12 Hamilton Decl., ¶ 2, Ex. A. Given the seriousness of the breach, Microsoft asked that
13 Salesforce.com respond in substance by the close of business on Tuesday, January 25, 2011.
14 *Id.* Salesforce.com responded via telephone on Monday, January 24, 2010, asking for more
15 time to respond, but did not provide any assurance that it had or would suspend Miszewski's
16 employment or otherwise protect Microsoft's confidential information. *Id.* ¶ 3. In light of
17 this failure to provide a substantive response, Microsoft initiated this action and sought a
18 temporary restraining order ("TRO") to prevent Miszewski from engaging in employment
19 with Salesforce.com. See Dkt. No. 6 (Jan. 26, 2011). Commissioner Allred entered the
20 TRO that same day. Hamilton Decl., Ex. O.
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22 Commissioner Allred found that Salesforce.com is Microsoft's direct competitor in
23 the cloud computing and CRM solutions market, that Miszewski had Microsoft confidential
24 and proprietary information as a result of his employment at Microsoft, and that Miszewski
25 had accepted a competitive position with Salesforce.com. *Id.* Ex. O (TRO Findings of Fact
26 ¶¶ 5, 7). Commissioner Allred found that injunctive relief was warranted because, "in his
27 Employee Agreement, Defendant concedes that violation of the Agreement constitutes
28 'irreparable injury to Microsoft' and shall entitle Microsoft to a TRO." *Id.*, Finding of Fact ¶
29 11. Commissioner Allred therefore enjoined Miszewski from (1) engaging in employment
30 with Salesforce.com, (2) engaging in any competitive activities with Microsoft, (3)
31 rendering services for clients or customers of Microsoft whom Miszewski serviced while at
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1 Microsoft, and (4) directly or indirectly disclosing any of Microsoft's confidential or
2 proprietary information or trade secrets. *Id.* Ex. O, ¶ 1.

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4 **III. ISSUES PRESENTED**

5 Whether a preliminary injunction should issue prohibiting Miszewski from breaching
6 his Employee Agreement by working at Salesforce.com in a directly competitive position.

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8 **IV. EVIDENCE RELIED UPON**

9 Microsoft relies on the files and records in this matter and the attached Confidential
10 Supplemental Declaration of Lynne Stockstad and Declaration of Kevin J. Hamilton.

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12 **V. AUTHORITY AND ARGUMENT**

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14 **A. Microsoft Is Entitled to a Preliminary Injunction**

15 To obtain a preliminary injunction, the movant must show (1) a clear legal or equitable
16 right; (2) a well-grounded fear of an immediate invasion of that right by defendant; and (3) that
17 the acts constituting such an invasion are resulting, or will result, in actual and substantial injury
18 to plaintiffs. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209 (2000); *Tyler Pipe Indus. v. Dep't*
19 *of Revenue*, 96 Wn.2d 785, 792 (1982). Courts commonly issue injunctions to enforce
20 contractual noncompete agreements.³ See, e.g., *Riverview Floral Ltd. v. Watkins*, 51 Wn. App.
21 658, 661 (1988); *Wood v. May*, 73 Wn.2d 307, 314 (1968)f; see also *Minn. Mining & Mfg. Co.*
22 *v. Francavilla*, 191 F. Supp. 2d 270, 278 (D. Conn. 2002). Microsoft satisfies the requirements
23 for injunctive relief here.

24
25 **B. Microsoft Has a Clear Legal Right to Enforce Its Non-Compete Agreement**

26 To determine whether a party has a clear legal or equitable right to injunctive relief, the
27 court must examine "the likelihood that the moving party will prevail on the merits." *Rabon v.*
28 *City of Seattle*, 135 Wn.2d 278, 285 (1998). Reasonable noncompete provisions have, of
29 course, long been enforceable under Washington law. *Knight, Vale & Gregory v. McDaniel*, 37
30 Wn. App. 366, 369 (1984); see also *Perry v. Moran*, 109 Wn.2d 691, 696, 700 (1987); *Racine*

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³ On a similar set of facts, in 2005 Judge Erlick from this Court issued a preliminary injunction preventing the defendant, a cellular company executive, from accepting employment with a competing cellular company based on a noncompete provision restricting her from accepting employment in "a business that is substantially the same as or similar to Employer's Business or that competes with Employer's Business." See *T-Mobile USA, Inc. v. Swenson*, No. 05-2034832-1-SEA, 2005 WL 5087537 (Wash. Super. Ct. Nov. 30, 2005). A copy of the Court's order is attached as Exhibit C to the Hamilton Declaration.

1 v. *Bender*, 141 Wash. 606 (1927). Washington courts apply a three-factor reasonableness
2 analysis to non-compete provisions:

3 (1) whether restraint is necessary for the protection of the business or goodwill of the
4 employer, (2) whether it imposes upon the employee any greater restraint than is
5 reasonably necessary to secure the employer's business or goodwill, and (3) whether
6 the degree of injury to the public is such loss of the service and skill of the employee
7 as to warrant nonenforcement of the covenant.
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9 *Perry*, 109 Wn.2d at 699. The protection of a former employer's confidential information is
10 well recognized as a protectable interest warranting enforcement of a noncompete provision.
11 *See id.* at 702 (a noncompete covenant may prevent "competitive use, for a time, of
12 information or relationships which pertain peculiarly to the employer and which the
13 employee acquired in the course of the employment"); *Copier Specialists, Inc. v. Gillen*, 76
14 Wn. App. 771, 774 (1995). Miszewski has already agreed that his noncompete obligations
15 are reasonable, stating unequivocally that "I [Miszewski] agree that the restrictions in this
16 paragraph [Non-Competition and Non-Solicitation] are reasonable in light of, among other
17 things, the global and highly competitive markets in which Microsoft . . . operate[s]." Sipos
18 Decl., Ex. A (Employee Agreement ¶ 10).
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27 Next, the time and geographic restrictions here are reasonable: non-compete agreements
28 with post-termination periods far longer than the one-year period here are routinely enforced.
29 *See, e.g., Knight*, 37 Wn. App. at 370 (three-year period); *Alexander & Alexander, Inc. v.*
30 *Wohlman*, 19 Wn. App. 670, 688-89 (1978) (two-year period). Similarly, courts recognize that
31 global businesses that compete globally may enforce global noncompetes. *See, e.g., Cole v.*
32 *Champion Enters., Inc.*, 305 Fed. Appx. 122, 130, 2008 WL 5427803, at *6 (4th Cir. 2008)
33 ("[A]n unlimited geographical scope may be reasonable if the business's scope is sufficiently
34 national or international."); *Francavilla*, 191 F. Supp. 2d at 280 (same). Finally, the public
35 interest is not harmed simply because Miszewski cannot compete against Microsoft for a
36 limited period. *See Knight*, 37 Wn. App. at 371 (defendants may have been "exceptionally
37 skilled, [but] the service they offer is neither unique nor incomparable").
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This authority confirms that Paragraph 10 of Miszewski's Employee Agreement is enforceable and reasonable. For one year, Miszewski may not engage in "any competitive

1 activities" with Microsoft. Sipos Decl., Ex. A, (Employee Agreement ¶ 10). There can be no
2 dispute that Salesforce.com competes directly with Microsoft in the CRM and cloud computing
3 market. *Id.* ¶ 3, Ex. B. It is, indeed, conceded. *Id.* Likewise, Miszewski "learned confidential
4 or proprietary information" regarding CRM and cloud computing for the Public Sector while at
5 Microsoft, and has in fact retained Microsoft's proprietary and confidential information on his
6 own personal computer on these very subjects. Supplemental Stockstad Decl. ¶¶ 11-25.
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10 It is highly likely Microsoft will prevail on the merits of its breach of contract claim,
11 given that (1) Salesforce.com is, in Miszewski's words, "an incredible competitor" of
12 Microsoft's, (2) the cloud computing industry, in Miszewski's own words stands at a critical
13 "inflection point" with respect to government adoption; (3) Miszewski had access to, and has
14 surreptitiously retained in violation of paragraph 9 of his Employee Agreement, Microsoft's
15 confidential strategic business plans for cloud computing and CRM solutions, specifically
16 for the Public Sector and government market; (4) the time and geographic restrictions in the
17 Employment Agreement are reasonable; and (5) it defies reason to assume that Miszewski
18 could perform his new role at Salesforce.com without using Microsoft's extensive
19 confidential information, and Miszewski has already evidenced a clear disregard for both his
20 noncompete obligation and the integrity of Microsoft's confidential materials.
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30 **C. Microsoft Has a Well-Founded Fear of an Immediate Invasion of Its Rights**

31 The evidence overwhelmingly shows that Miszewski accepted a competitive position
32 with Salesforce.com, **REDACTED**
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35 Hamilton Decl., Exs. H-K. The evidence also shows that Miszewski takes his confidentiality
36 obligations far too lightly. Microsoft's discovery that Miszewski retained a trove of confidential
37 Microsoft materials on his home computer has intensified its concern that Miszewski may share
38 confidential information with Salesforce.com. Even without the benefit of the discovery
39 revealing that Miszewski was aware of, and simply disregarded, his noncompete obligation
40 Commissioner Allred drew the same conclusion: "Microsoft has established that it has a clear
41 legal and equitable right and *a well-founded fear of an immediate invasion of that right by*
42 *Miszewski.*" *Id.* Ex. O (TRO, Conclusion of Law ¶ 6)(emphasis added).
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D. Miszewski's Conduct Threatens, and Will Result in, Actual and Substantial Injury to Microsoft

The irreparable harm required for preliminary injunctive relief exists when, as here, damages are inadequate or cannot be accurately calculated. *Lamken v. Miller*, 181 Wn. 544, 551-52 (1935). Washington courts have recognized, "[t]he harm caused by the breach of a covenant not to compete is very difficult to accurately quantify." *Perry*, 111 Wn.2d at 887.

It is difficult to track, much less remediate, the impact that Miszewski's breach would have on Microsoft. Avoiding such a task is precisely why Miszewski and Microsoft entered into the Agreement in the first place. Miszewski's knowledge of Microsoft's confidential and proprietary information, much of it reflected in documents that Miszewski has retained without authorization, would improve Salesforce.com's competitive position in the field of CRM solutions and cloud computing in the Public Sector. And as Commissioner Allred found in issuing the TRO, any breach of the noncompete (paragraph 10) or nondisclosure (paragraph 3) obligation entitles Microsoft to injunctive relief: "In his Employee Agreement, Defendant concedes that violation of the Agreement constitutes 'irreparable injury to Microsoft' and shall entitled Microsoft to a TRO." Hamilton Decl. Ex. O (TRO, Finding of Fact ¶ 11). This same provision also states these breaches likewise entitle Microsoft to "preliminary and permanent injunctions." Sipos Decl., Ex. A (Employee Agreement ¶ 13).⁴

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VI. CONCLUSION

For the reasons discussed above, Microsoft respectfully requests that the Court issue a preliminary injunction pending trial, in the form attached, secured by the existing \$35,000 bond.

⁴ CR 65(c) requires that the applicant for a preliminary injunction provide security "in such sum as the Court deems proper." Here, any harm suffered by Miszewski is of his own choosing. Miszewski chose to violate the noncompete provision in his Employee Agreement by not only competing in the same competitive cloud computing sphere, but for the exact same government and Public Sector market. Commissioner Allred set the bond at \$35,000, an amount that Microsoft has already tendered to the Clerk and submits is sufficient security for issuance of the preliminary injunction as well.

DATED this 10th day of February, 2011.

PERKINS COIE LLP

By /s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648

Charles C. Sipos, WSBA No. 32825

William B. Stafford, WSBA No. 39849

Attorneys for Microsoft Corporation

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CERTIFICATE OF SERVICE

On February 10, 2011, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

**PLAINTIFF MICROSOFT'S MOTION FOR PRELIMINARY INJUNCTION
(Redacted and Unredacted Versions)**

William F. Cronin	<u> X </u>	Via hand delivery
Steven W. Fogg	<u> </u>	Via U.S. Mail, 1st Class, Postage Prepaid
Christina Dimock	<u> </u>	Via Overnight Delivery
CORR CRONIN MICHELSON	<u> </u>	Via Facsimile
BAUMGARDNER & PREECE LLP	<u> </u>	Via E-Filing
1001 Fourth Avenue, Suite 3900	<u> </u>	Other: _____
Seattle, WA 98154-1051		

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 10th day of February, 2011.

 /s/ Kevin J. Hamilton
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