

# Real Estate Standards Organization

## Member Intellectual Property Rights Agreement

This Member Intellectual Property Rights Agreement (“MIPRA”) is made and entered into, as of the Effective Date (as provided in the signature block), by and between the Real Estate Standards Organization (“RESO”), an Illinois not-for-profit corporation with its registered agent located 100 N. LaSalle Street, Suite 500, Chicago, IL 60602 and the company listed in the signature block (“Member”).

[Company members. If an individual is employed by a company and participates in RESO initiatives (such as developing RESO Products) in connection with such employment, then this Agreement may be signed by (or otherwise agreed to by) such employing company regarding such individual’s participation, and in such case “Member” in such agreement would be and describes employing company and not such individual.]

### BACKGROUND

A. RESO’s mission is to develop and publish standards, and software to certify compliance with those standards, for the real estate information industry. RESO standards are meant to facilitate software innovation, ensure portability, eliminate redundancies, and enable maximum efficiencies for all parties in a real estate data transaction.

B. This MIPRA has been created and adopted by RESO so RESO and Member understand their rights regarding disclosure and licensing of Comments (as defined below) and to encourage rapid development of new RESO Products (as defined below).

C. Member has the opportunity to provide Comments (as defined below), which may impact and be included in RESO Products, at the sole discretion of RESO, and RESO would like to solicit and receive the Comments from Member. This MIPRA has been created and adopted by RESO to clarify the process and conditions under which Member provides Comments relating to the development of RESO Products.

D. Member has the opportunity to object to the release of each RESO Product on the grounds that the RESO Product contains Member owned Intellectual Property Rights; and this MIPRA provides the framework for Member to provide such an objection.

### DEFINITIONS

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below.
  - a. “Comment” shall mean any input, data, content, information, remarks, or suggestions that Member communicates or delivers to RESO in any way that are provided (i) for purposes of contributing to RESO Products and (ii) while Member is bound by this MIPRA.
  - b. “End User” shall mean any person or company that is authorized by RESO to use a RESO Product pursuant to the RESO End User License Agreement as described in Section 11 (the “EULA”).
  - c. “Intellectual Property Rights” shall mean any and all proprietary rights under the patent laws, copyright laws, trade secret laws, and any and all other similar proprietary rights laws, whether statutory or under common law, of the United States of America or of any State or other political subdivision thereof.
  - d. “RESO Products” shall only mean the set of open real estate data standards developed and published by RESO, currently known as the “Real Estate Transaction Standards” (or, “RETS”), and software developed and published by RESO to certify compliance with those standards published by RESO.

Other defined terms are defined at their first use.

### MEMBER COMMENTS

2. Terms. Member through its representative(s) provides each Comment, if any, on the following terms.
  - a. With respect to trade secrets only, Member represents and warrants it has the authority under Member’s internal policies to provide the Comment to RESO and that, to the actual knowledge of Member’s representative(s) providing comment to RESO and Member’s CTO (or whoever is most closely filling that role), providing the Comment to RESO does not violate any trade secret rights.
  - b. Member represents and warrants that, to the actual knowledge of Member’s representative(s) providing comment to RESO and Member’s CTO (or whoever is most closely filling that role), the Comment, as and when provided by Member, does not infringe any third party Intellectual Property Rights.
  - c. Member disclaims all confidentiality rights in the Comment.

- d. EXCEPT FOR THE REQUIREMENTS OF THIS SECTION 2, MEMBER PROVIDES THE COMMENT ON AN “AS-IS” BASIS, WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.
  - e. Except as provided in this Agreement, Member will not be liable to RESO solely by virtue of having provided a Comment.
3. Rights granted. Member grants the following rights in each Comment it provides, and reserves all other rights not expressly granted.
- a. Member grants RESO a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to make, have made, sell, use, disclose, distribute, copy, publish, license, modify, sublicense through multiple tiers, and create derivative works of Member’s Comment solely for developing, distributing, adopting, promoting and using RESO Products, but such grant applies only to the extent of any Intellectual Property Rights Member might have in the Comment.
  - b. Member grants to each other member (“Other Member”) a perpetual, non-exclusive, worldwide, royalty-free license to use, disclose, copy, make, modify, distribute, and create derivative works of Member’s Comment solely for Other Members’ work with RESO developing RESO Products (“Member License”). This Member License shall terminate immediately for each Other Member upon that Other Member ending its membership with RESO. For avoidance of doubt, if Member ends its membership with RESO, the Member License to Other Members is not revoked.
  - c. Member agrees to execute any appropriate documents that are necessary to secure the rights in this Section 3 and that are consistent with the terms of this MIPRA.
  - d. Except as set forth in Section 3, Member grants no other rights or interest as to any Comment.

**MEMBER NOTICE OF CLAIMED INTELLECTUAL PROPERTY**

4. Draft RESO Product Review. Prior to the publication of each RESO Product, RESO will release a draft of the RESO Product (“Draft RESO Product”) for comment and notify Member of the same. Within 60 days of RESO’s release and notification of each Draft RESO Product, Member shall provide notice to RESO of any Intellectual Property Rights Member claims to own or control that may be infringed by the Draft RESO Product (“Member Claimed Intellectual Property”) if Member is unwilling to provide the Section 5 license to RESO. Such a notice shall include the following information for each Member Claimed Intellectual Property:

- a. the title (*example: ABC Software Suite*);
- b. the type of Intellectual Property Right (*example: copyright*);
- c. the registration number (*example: PA0101882816*); and
- d. an explanation of how the Draft RESO Product infringes Member Claimed Intellectual Property (*example: RESO RETS DD 9.3 copies expression of ABC Software Suite compilation*).

5. License to use Member Claimed Intellectual Property. Member acknowledges that choosing without good cause to not provide or failing without good cause to provide a Section 4 notice to RESO of Member Claimed Intellectual Property will result in Member granting to RESO a non-exclusive, worldwide, perpetual, irrevocable, royalty-free license to any Member Claimed Intellectual Property to make, have made, sell, use, disclose, distribute, copy, publish, license, modify, sublicense through multiple tiers, and create derivative works of the Draft RESO Product as a RESO Product. Such a license requires at least two warning notifications from RESO to the Member during the 60-day period, at least ten (10) business days apart.

6. No Claims. Member agrees that it will not initiate any legal action against, or demand for royalties from RESO, Other Members, or any End User for use of the Draft RESO Product if it chooses not to or fails to provide notice of objection under Section 4 and subsequently grants the Section 5 license, all subject to RESO’s compliance with Sections 4 and 5.

7. Non-confidential. Notices provided by Member under Section 4 are not confidential, and will be made available to End Users and Members upon request to RESO at RESO’s sole discretion and may otherwise be made available at RESO’s sole discretion. However, if a Member has filed a provisional or non-provisional patent application with the USPTO or patent application with the Canadian Intellectual Property Office that has not yet become public prior to RESO’s receipt of a Section 4 notice, that Member may note on the notice that the Member Claimed Intellectual Property is contained in a non-public patent application. Member shall provide further explanation of that Member Claimed Intellectual Property and how the RESO Product may infringe it under a separate confidentiality agreement with RESO.

**OWNERSHIP, LICENSES, MODIFICATION OF RESO PRODUCTS**

8. RESO owns RESO Products. Member acknowledges that, except for Intellectual Property Rights licensed by Member and Other Members, RESO claims it owns all Intellectual Property Rights in RESO Products, including but not limited to all rights in any collective work embodied in a RESO Product.

9. RESO Products free. RESO represents and warrants that RESO Products shall be free for Member and that RESO will not charge RESO members now or in the future for the RESO Products, except that RESO may charge for standards compliance certification when and if ordered by Member and such order specifies such charges.

10. Modification of RESO Products. RESO in its sole discretion may at any time modify a RESO Product for any reason or no reason.

11. End User License Agreement. The EULA, which may be modified from time to time, will govern the license of RESO Products granted to End Users. RESO warrants that the EULA will include the following provision or a provision substantially similar to it.

- a. *Sole Recourse.* End User agrees that End User's sole recourse in the event of any claim, loss, injury, damages, fees, cost, expense, complaint or liability concerning the Stated Subject Matter is to and against only RESO and not to or against any Covered Person nor to or against any other company or person. The "Stated Subject Matter" means any RESO Product, this Agreement and any subject matter of, or any acts or omissions under or arising from, this Agreement. "Covered Person" means any member, licensor, service provider, supplier or contractor of RESO (whether retained by RESO or otherwise involved in the design, development, assembly, offering, marketing, sale, promotion, provision, delivery, support, accessibility, use, quality, performance or availability of any of the Stated Subject Matter). End User agrees to in no event threaten or assert any claim or action against any Covered Person regarding any of the Stated Subject Matter. End User also agrees that each Covered Person shall be entitled to the benefit and protection of any provision of this Agreement that disclaims, excludes, qualifies or limits express or implied warranties, representations, guarantees, promises, remedies, liability or other responsibility to End User or others. End User further agrees that each Covered Person has the right to directly enforce such provisions, and this paragraph, although RESO reserves the right (as between End User and RESO) to also enforce such provisions on behalf of any Covered Person. End User agrees to indemnify RESO and each Covered Person from all claims, losses, injuries, damages, fees, costs, expenses, complaints and liabilities incurred or required as a result of a breach by End User of any of the terms of this paragraph. Each reference in this paragraph to a Covered Person or any other company or person shall be construed broadly and shall include also any affiliate of any of them and any director, officer, equity owner, employee or representative of any of them or of any such affiliate. THIS PARAGRAPH APPLIES NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT.

12. Member Intellectual Property Rights. Member shall have exclusive ownership of any Intellectual Property Rights in or to any Comment licensed to RESO under this MIPRA. Nothing in this MIPRA shall inhibit Member from exploiting its Intellectual Property Rights. Member grants no ownership interest in any Comment nor in any Intellectual Property Rights related thereto.

#### **DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY**

13. Limitation of liability; disclaimer of warranties. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER ARISING FROM ANY BREACH OF THIS MIPRA, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL NOT EXCEED \$10,000. RESO PRODUCTS ARE PROVIDED "AS IS." RESO AND MEMBERS MAKE NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. RESO AND MEMBERS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, TITLE, AVAILABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS PARAGRAPH SETS OUT MEMBER'S EXCLUSIVE REMEDIES. NOTWITHSTANDING ANY OTHER TERMS OF THIS PARAGRAPH OR THE REST OF THIS MIPRA, HOWEVER, THIS PARAGRAPH SHALL NOT APPLY IN THE EVENT OF ANY BREACH OF SECTIONS 2, 3, OR 5 OF THIS AGREEMENT.

#### **TERM AND TERMINATION**

14. Term. This agreement shall begin on the date last executed by all parties and shall remain in effect for a period of 5 (five) years, unless terminated under this section. This Agreement shall automatically renew for two successive one-year periods unless either party provides written notice to the other of their intention not to renew, at least 60 days prior to the end of the then-current term.

15. Termination.

- a. This Agreement shall automatically terminate if Member discontinues membership in RESO.

- b. Either party may terminate this agreement at any time without cause, on sixty (60) days written notice to the other party.
- c. Either party may terminate this Agreement on thirty (30) days written notice to the other party: (i) Upon the voluntary or involuntary petition in bankruptcy, entry into receivership, or assignment of assets for the benefit of creditors by either party; or (ii) if either party has breached a material term of this agreement, and has not remedied the breach within thirty (30) days of receiving written notice of the breach.

16. Consequences of Termination. If RESO terminates this Agreement, Member will be entitled to a prorated refund of annual member fees paid by the member for the year the Agreement was terminated, but no other fees paid by Member to RESO will be due to Member. If Member terminates this Agreement, Member is not entitled to a refund of any fees paid to RESO.

## **GENERAL TERMS**

17. Survival. Sections 1, 2, 3, 4, 6, 7, 8, 9, 11, 14, and 17 through 24 shall survive termination of this Agreement.

18. Dispute resolution. The laws of the State of Illinois shall govern this MIPRA and its interpretation. Any action to enforce or interpret this MIPRA shall have venue in Cook County, Illinois, and the parties hereby submit to personal jurisdiction in that venue.

19. Severability. Each provision of this MIPRA is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event a court having jurisdiction over the parties holds any provision of this MIPRA invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provision, if possible, with a valid provision that most closely approximates the intent and economic effect of the invalid provision. If any provision of the limitation of liability or exclusion of warranty is held invalid or unenforceable, this MIPRA shall immediately terminate unless the parties agree to the contrary.

20. Entire agreement; amendment. This MIPRA contains the full and complete understanding of the parties regarding the subject matter of this MIPRA and supersedes all prior representations and understandings, whether oral or written, relating to the same subject matter. This MIPRA supersedes and replaces the RESO Standards Contributor License, if any, that Member executed upon application for membership to RESO. This Agreement may not be amended except by way of a written amendment signed by the parties hereto (RESO and Member).

21. No third party beneficiaries. There are no third party beneficiaries of this agreement.

22. Relationship of the Parties. The relationship of RESO to Member is that of independent contractor. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of RESO or have any authority to make any agreements or representations on the behalf of RESO.

23. No waiver. Failure of any party to enforce any provision of this MIPRA shall not be deemed a waiver of future enforcement of that or any other provision.

24. Notices. Any notice given under this agreement shall be in writing and shall be valid and sufficient if dispatched by email (with confirmation of receipt), registered mail (postage prepaid), or delivered personally to the other party at the address listed in the signature block. All notices, disclosures, and other communications made between RESO and Member electronically satisfy any legal requirement that such communications be in writing.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have entered into this Agreement and make it effective as of the Effective Date.

Real Estate Standards Organization, " <b>RESO</b> "	_____, " <b>Member</b> "
Signature	Signature
Signer's name	Signer's name
Signer's Title	Signer's Title
Effective Date	Date
<p><b>Contact for notices and operations matters</b></p> <p>Name: Sam DeBord, Chief Executive Officer                  Address: Real Estate Standards Organization                  PO Box 10824                  Raleigh, NC                  Phone: 919.504.9898                  Email: <a href="mailto:info@reso.org">info@reso.org</a></p> <p>With copy to:</p> <p>Name: Mitchell Skinner                  Address: Larson Skinner PLLC                  2701 University Ave. SE #201                  Minneapolis, MN 55414                  Phone: 612.424.6775                  Email: <a href="mailto:miskinner@larsonskinner.com">miskinner@larsonskinner.com</a></p>	<p><b>Contact for notices and operations matters</b></p> <p>Name: _____                  _____                  _____</p> <p>Phone: _____                  _____                  _____</p> <p>Email: _____                  _____                  _____</p> <p>Mailing: _____                  _____                  _____                  _____                  _____</p>