

# Montessori Records Xpress Subscription Service Agreement

**IMPORTANT BY CHECKING “I accept your subscription service agreement which I have read and understand.” AND SUBSCRIBING TO MONTESSORI RECORDS XPRESS (“RABKIN & ASSOCIATES, INC.”, OR FOR THIS AGREEMENT “R&A”, OR THE “SERVICE”) AS THE SOLE USER OR IF YOU ARE SIGNING UP YOUR SCHOOL TO USE THE SERVICE, YOU REPRESENT THAT YOU HAVE COMPLETE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR SCHOOL. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR SCHOOL, THE TERM “YOU” IN THIS AGREEMENT MEANS YOUR SCHOOL, ALL OF ITS EMPLOYEES, AND MRX USERS EXCEPT AS OTHERWISE INDICATED HEREIN. IF YOU ARE SIGNING UP YOUR SCHOOL TO USE THE SERVICE, THE SCHOOL ALONE SHALL BE CONSIDERED THE MRX SUBSCRIBER. EITHER WAY, INDIVIDUALLY OR ON BEHALF OF YOUR SCHOOL, YOU ARE AGREEING TO ALL THE TERMS OF THIS SUBSCRIPTION SERVICE AGREEMENT (THE “SERVICE AGREEMENT” OR “THIS AGREEMENT”).**

IF YOU DO NOT AGREE TO THE TERMS OF THIS SERVICE AGREEMENT, DO NOT REQUEST A SUBSCRIPTION TO THE SERVICE.

## **Terms and Conditions**

### **1. The Service**

The Service consists of a browser interface, data encryption, data transmission, data access and data storage. As used in this Agreement the terms "You" and "Yours" encompasses each user accessing the Service by means of a valid account established by You including, if you are a corporation, all employees of Your corporation. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Service, and for paying all third-party access charges (e.g., kiosk, ISP, telecommunications) incurred while using the Service.

R&A makes no guarantees as to the continuous availability of the Service or of any specific feature(s) of the Service. R&A will inform You of any significant changes to the Service or the terms and conditions of this Agreement that it may make from time to time.

### **2. Use of Proprietary Software**

R&A grants to You subject to the terms and conditions of this Service Agreement, an individual, personal, non-sub licensable, non-exclusive and non-transferable license to use R&A's proprietary Software ("Montessori Records Xpress Software"), in object code form only, and only in accordance with the applicable end user documentation, if any, and solely in conjunction with this Service Agreement. Neither You (and if You are a school, none of Your employees) will, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to

discover the source code or underlying ideas or algorithms of the Montessori Records Xpress Software; modify, translate, or create derivative works based on the Montessori Records Xpress Software; or rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Montessori Records Xpress Software; use the Montessori Records Xpress Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels on the Montessori Records Xpress Software. Because the Montessori Records Xpress Software is proprietary, You agree not to publish or disclose to third parties any evaluation of R&A's Software without R&A's prior written consent. You acknowledge that R&A retains exclusive ownership throughout the world of all Montessori Records Xpress Software, any portions or copies thereof, and all rights therein. Upon termination of this Service Agreement for any reason, this License will terminate, and You, and any user accessing the Service by means of a school account, if applicable, will cease to use or have access to the Montessori Records Xpress Software.

### **3. Restrictions and Policies**

A. General Use. You will not use the Service in any way for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such. You agree not to transmit or permit Your employees to transmit through the Service any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind. You will only use the Service for lawful purposes, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm. You hereby agree to defend, indemnify and hold R&A harmless against any claim or action that arises from Your use of the Service in an unlawful manner or in any manner inconsistent with the restrictions and policies stated herein.

B. Privacy Policy and Confidentiality. It is R&A's policy to respect the privacy of its users. R&A provides information such as your name, address, and credit card number to organizations (such as credit verification and billing services) to ensure that we receive proper payment for our services. R&A will not share, rent, sell, or trade personal information (including e-mail addresses) that identifies our customers or users to third parties without the consent of the MRX Subscriber or user. However, R&A may use this information to contact You to ensure that You are satisfied with R&A products or services, learn about any ideas you may have to improve our offerings, call your attention to additional offerings or services provided by R&A, and communicate other information that R&A believes will be useful. In addition, R&A may share e-mail address and other information required to ensure that R&A channel partners and contractors can provide service and support to you. In the case of a school, the MRX subscriber is the school and the school has the authority to grant R&A permission to share or disclose MRX user personal information entered under the school's Account. If a school grants R&A permission to share or disclose user personal information entered under the school's MRX account, R&A may rely on that permission and shall be under no obligation to obtain permission or consent from the user utilizing MRX under the school's Account and MRX subscription.

R&A may occasionally ask You to provide demographic or personal preference data. If You elect to provide such data, R&A may use them to analyze the characteristics of R&A customers and visitors to the R&A Web site. R&A may also use such data to customize the specific information provided to You, or tailor it to better meet Your needs. R&A may share information aggregated from such data with third parties without notifying you.

R&A will not share, rent, sell, or trade data contained in an MRX subscriber's account without the permission of the MRX subscriber. In the case of a school, the MRX subscriber is the school and the school alone has the authority to grant R&A permission to share or disclose data entered under the school's Account. If a school grants R&A permission to share or disclose data entered under the school's MRX account, R&A shall rely on that permission and shall be under no obligation to obtain permission or consent from the individual users that may be utilizing MRX under the school's Account and MRX subscription. R&A's privacy policy is subject only to R&A's obligation to comply with applicable laws and lawful government requests, to operate its business properly, and to protect its users or itself. R&A reserves the right to contact users of the Service via e-mail or other means to inform them of their account status or changes or alterations to the service, or to inform them about additional offerings or services being provided or contemplated. R&A reserves the right at any time to change its privacy policy upon thirty (30) days notice to users, which notice may be sent by e-mail.

C. Data Backup and Security. R&A shall use all reasonable efforts to protect Your data behind a secure firewall system, to conduct daily data backups, and to store monthly full-system backup in a separate, fire-safe facility.

#### **4. Support**

R&A, or its designee(s), shall provide phone or e-mail support as quickly as possible, but has no obligation to provide You with hard-copy documentation, upgrades, enhancements, modifications, or other support unless specifically contracted for.

#### **5. Provision of Contact and Billing Information and Payment of Fees**

If the terms of Your R&A Online account require You to pay for the Service, You agree to provide R&A with accurate billing information and with truthful, accurate, and complete contact information, including Your legal name, school name, street address, e-mail address, and telephone number, and to update this information within 30 days of any change to it. If the contact information You have provided is false or fraudulent, R&A reserves the right to terminate Your access to the Service immediately without any obligation to return Your data. You agree to pay R&A the then applicable fees (the "Fees") by a payment method to be determined by R&A in its sole discretion (credit card, invoice, purchase order, prepayment or other payment method). R&A reserves the right to change the form of payment upon reasonable prior notice to You. Fees include access to R&A's standard database storage and e-mail usage policies. Applicable fees for such use of the basic Service and additional services are available on the Buy It page of the Web Site or by contacting R&A. R&A reserves the right to change the Fees, applicable charges and usage policies and to institute new charges at any time, upon at least thirty (30) days prior notice to You (which may be sent by e-mail). You will be notified at least 30 days prior to your anniversary of Your signup date ("Billing Date") to renew your

subscription for another year. Payment by fraudulent means will result in immediate and permanent termination of the account, and possible criminal penalties.

For credit card payments, Your account will be considered delinquent if Your credit card company refuses for any reason to pay the amount billed to it and that amount remains unpaid 30 days following the billing cycle. For invoices, full payment for invoices issued in any given month must be received by R&A within thirty (30) days after the mailing date of the invoice, or Your R&A account will be considered delinquent. Your access to the Service may be suspended if Your account is delinquent. R&A may impose a charge to restore archived data from delinquent accounts. Unpaid charges are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Any account which is suspended for more than 30 days will be terminated without any obligation on the part of R&A to maintain Your data.

If You believe R&A has billed You incorrectly, You must contact R&A in writing no later than thirty (30) days after the Billing Date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit.

## **6. Publicity and Marketing**

If You become a paying subscriber of the Service, R&A may, at its discretion, issue a press release announcing the use of the Service by You. As of the effective date of paid subscription activation, You hereby grant R&A the right to reference You, along with Your logo, on the customers section of R&A's web site until such time as: (a) this agreement is terminated or (b) You discontinue use of the Service.

## **7. Passwords and Security**

You will choose or be given all applicable passwords to use in connection with the Service. You are entirely responsible for maintaining the confidentiality of Your passwords and account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by You). Furthermore, You are entirely responsible for any and all activities that occur under Your account (including, if applicable, the accounts of each user accessing the Service by means of an account established by You), and You shall ensure that You exit from Your account at the end of each session. You shall notify R&A immediately of any unauthorized use of Your account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by You) or any other breach of security. R&A cannot and will not be liable for any loss or damage arising from Your failure to comply with these requirements.

## **8. Termination**

This Service Agreement is an annual agreement and is not automatically renewable. If You have purchased the Services, You will pay in full for the Service up to and including the last day of the current billing cycle. To cancel the Service during the subscription period, You must contact R&A in writing. All such requests received prior to ten (10) days of the end of the customer billing cycle will incur no additional charges. Requests for cancelled or reduced service received

within ten (10) days of the end of the customer billing cycle may incur one additional month of charges. R&A may, but is not obligated to, delete archived data, but will not do so until thirty (30) days after the termination of this Agreement. R&A reserves the right to cease offering the Service to no-charge users having no activity on the Service within the ninety (90) day period prior to such cessation.

Upon expiration or termination, You will immediately cease all use of the Service, including the Montessori Records Xpress Software and any documentation. Termination is not an exclusive remedy and all other remedies will be available whether or not the license granted herein is terminated. Notwithstanding the foregoing, if You are dissatisfied with the Service, the materials available on or through the Service, or with any of R&A's terms and conditions, Your sole and exclusive remedy is to discontinue using the Service.

## **9. Warranty and Disclaimer**

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND R&A DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. R&A DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS SITE OR THE SERVER THAT MAKES IT AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM USE OF THE SERVICE.

## **10. Limitation of Liability**

R&A'S TOTAL LIABILITY WITH RESPECT TO THE SUBJECT MATTER OF THIS SERVICE AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY YOU TO R&A FOR THE SERVICE UNDER THIS SERVICE AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER R&A NOR ITS LICENSORS SHALL BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF R&A HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **11. U.S. Government Matters**

You may not remove or export from the United States or allow the export or re-export of any part of the Software or applicable documentation, if any, or any direct product thereof in

violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the software and documentation licensed in this Service Agreement are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Service Agreement.

**12. Trademarks :** You acknowledge that Rabkin & Associates, Inc., Montessori Records Xpress( ) and related logos and designs are trademarks of Rabkin & Associates, Inc. and that no rights in such trademarks are granted to you by this Agreement.

### **13. Miscellaneous**

This Agreement is between R&A and You, and is not for the benefit of any third party, whether directly or indirectly (including, if applicable, any user accessing the Service by means of an account established by You). The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sub licensable by You except with R&A's prior written consent. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF. YOU AND R&A AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE COUNTY OF LAKE IN THE STATE OF ILLINOIS. You and R&A agree that any cause of action arising out of or related to this Service must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all modifications must be in writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and You do not have any authority of any kind to bind R&A in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. It is the express will of the parties that this Agreement and all related documents have been drawn up in English.