

# **Davis Digital User Agreement**

## **1: Davis Digital Platform**

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### **1. Your Rights to Access and Use the Service.**

When you register for Davis Digital and agree to these Terms, we grant you a non-exclusive, non-transferable right and subscription to remotely access and use Davis Digital via the internet, using a supported and properly configured web browser, either as a free trial user, as a paid individual user, or in connection with the education, contest, application, and/or training programs conducted by the company, educational institution, department, program, classroom, or agency or other legal entity ("Subscriber") where you are employed, enrolled, applying to, entering a contest, or have another affiliation. Pursuant to this subscription, we allow you to use the Davis Digital Technology to post, store, access, download and modify your own User Content, and access and use Davis Publications Content and the User Content of other Users, in accordance with these Terms and, if applicable, the further terms determined by Content Owners and your Subscriber. We endeavor to make Davis Digital available 24 hours a day, seven days a week; however, from time to time, we or our contractors may need to perform scheduled or unscheduled maintenance on Davis Digital to ensure its proper operation. Access to Davis Digital or User Content may be impaired or interrupted while such maintenance is performed.

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## **2. Privacy**

In addition to these Terms, our Privacy Policy applies to your access to and use of Davis Digital and forms an integral part of your Agreement with us. Due to its importance, we have placed our Privacy Policy in a separate section of our Website. You should read our Privacy Policy carefully before you access or use Davis Digital, because by accessing and using Davis Digital, you are agreeing to everything in these Terms, and to our practices described in the Privacy Policy.

## **3. Our Intellectual Property Rights**

We own all right, title and interest, including any related Intellectual Property Rights, in and to Davis Digital, excluding any User Content. This Agreement does not give you title to or ownership of any Davis Digital Technology or Davis Digital Content, or any copies thereof, but only a right of limited remote use under these Terms. This Agreement does not give Davis Digital title to or ownership of any User Content, or any copies thereof, but only a right of limited remote use under these Terms and further terms determined by the Users. Any permitted copies of Davis Digital Content must contain any copyright or other proprietary rights notices contained in the original and an original source attribution to Davis Publications Inc. with the applicable URL address. We own and have the unrestricted right to implement and use any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to Davis Digital Technology, which are provided by you or any other party.

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We may add to, update, delete from or modify Davis Digital at any time in our sole discretion. We also reserve the right, at any time and from time to time, for any reason and in our sole discretion, to change these Terms or our Privacy Policy. We will post or display notices of changes on our Website, and provide a single communication to notify the Subscriber of changes. Once we post them on our Website, the changes will become effective immediately. You should check our Website periodically so that you are aware of the most current rights and obligations applicable to your Agreement with us.

## **5. Your Obligations and Acknowledgements.**

You and all other Users select or are assigned a unique user identification code and password to access and use Davis Digital. This user identification code and password, and any other codes or passwords assigned or selected to access particular features of Davis Digital, are collectively referred to herein as "IDs." IDs are unique to each User. You must keep your IDs strictly confidential. You agree that you will not disclose any User's IDs or allow anyone else to use your IDs to access and use Davis Digital under any circumstances. You are solely responsible for maintaining the strict confidentiality of your IDs and for any charges, damages, liabilities or losses incurred or suffered as a result of your failure to do so. We are not liable for any harm or damage caused by or related to the theft of IDs, the unauthorized or improper disclosure of IDs or if you or any other User allows any individual other than a User to access and use Davis Digital using any User's IDs. You agree to notify us and your Subscriber (if your use of Davis Digital is in connection with a Subscriber) if you become aware of any unauthorized use of any IDs or other need to deactivate an ID due to security concerns.

As a User, you are required to enter your IDs to access and use Davis Digital. You may be required to provide us with additional information about yourself, in order for us to allow you to use certain features and functions of Davis Digital or to enable you to make your use of Davis Digital more effective. It is your responsibility to keep the information which you provide to us current and up to date. We cannot and will not be responsible for any problems or liability which may arise if you do not give us accurate, truthful or complete information or if you fail to update the information you give us. Please read our Privacy Policy posted on our Website, which describes how we collect and use any personal information you provide us. If your authorization to access and use Davis Digital is dependent on an affiliation with a Subscriber, you consent and authorize us to verify and confirm with your Subscriber any information we obtain from you in connection with your use of Davis Digital. If your Subscriber purchases a subscription to Davis Digital on your behalf, your access and use of Davis Digital is also subject to and contingent upon your Subscriber's compliance with the payment and other provisions of the agreement between us and your Subscriber. You are liable and fully responsible for your activity, behavior, use and conduct on our Website, and you are also liable and fully responsible for your access and use of Davis Digital and the activities and conduct of anyone else that accesses Davis Digital using your IDs. If your authorization to access and use Davis Digital is dependent on an affiliation with a Subscriber, you acknowledge and agree that we may grant your Subscriber access to any User Content or information you provide to us. You further acknowledge and agree that we may grant your Subscriber the right to alter, modify, or delete the User Content posted by you to Davis Digital and/or restrict or terminate your access to and use of Davis Digital. You hereby acknowledge and agree that we have no liability whatsoever to you for any alterations,

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You and other Users are able to post User Content on Davis Digital. Because each User posts his or her own User Content, we cannot in any way guarantee the accuracy, quality or appropriateness of any of this User Content.

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## **8. Copyright Complaints.**

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BY E-MAIL: [DavisDigital@DavisArt.com](mailto:DavisDigital@DavisArt.com)

BY MAIL: Davis Publications, Inc.,

50 Portland Street

Worcester, MA 01608

BY PHONE: 1.800.533.2847

Repeat infringers will be blocked from accessing and using Davis Digital.

## **9. Children's Privacy.**

By accepting these Terms, you represent and warrant to us that either: (i) you are 13 years of age or older; or (ii) if you or your child is under 13, that you have either obtained or given parental consent to your or your child's school for the collection of the personal information necessary to register for and use Davis Digital.

## **10. Warranty Disclaimer.**

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## **11. Limitation of Damages.**

We are not liable for any direct, indirect, incidental, consequential, special, exemplary, punitive, or other damages whatsoever (including, without limitation, those resulting from lost profits, lost data, or business interruption) arising out of or relating in any way to the access or use, or inability to access and use, Davis Digital, Davis Digital Content, or any User Content or other information contained within Davis Digital or on any advertised and/or hyperlinked website, whether based on warranty, contract, tort, or any other legal theory and whether or not we have been advised of the possibility of such damages.

## **12. Limitation of Liability.**

In no event shall our total liability to you or any third party for all damages, losses, and causes of action (whether in contract, tort, including without limitation negligence, or otherwise) exceed the greater of: (a) One Hundred (\$100.00) Dollars; or (b) the amounts paid to us by you or your Subscriber as subscription or user fees for the 12 month period prior to the event giving rise to such claim. To the extent that applicable law may not allow the foregoing limitations, the above exclusions may not apply to you.

## **13. Indemnity.**

You agree to defend, indemnify, and hold harmless us, and our affiliated entities, and each of our and their respective officers, directors, managers, members, employees and agents from and against any claims, actions or demands, including, without limitation reasonable legal and accounting fees, arising or resulting from your access and use of Davis Digital, including the Davis Digital Technology and Davis Digital Content, your access and use of any User Content contained in Davis Digital, or your breach of these Terms.

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## **15. Limitation on Actions.**

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to these Terms or your access and use of Davis Digital must be filed within one year after such claim or cause of action arises, or be forever barred.

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"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

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"Users" means you and all other individuals, affiliated or not affiliated with a Subscriber, who access and use Davis Digital and agree to these Terms of Use.

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"Website" means the website where Davis Digital can be accessed, located at [www.DavisArtSpace.com](http://www.DavisArtSpace.com) or such other address or addresses as we from time to time may designate.

You acknowledge that you have read these Terms and understand them, and that by clicking the "accept" button or accessing Davis Digital, you agree to be bound by these Terms and any amendments to these Terms that we post to Davis Digital.

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2. Term: The term of the License granted hereunder shall commence immediately on the user's acceptance of the terms of this agreement and expire in 30 Days or according to the length of the License purchased by the user, user's school or other organization that the user is affiliated with.



The License may be renewed on such terms as may be set forth in a new purchase executed by Davis and the Licensee prior to the foregoing expiration date. Upon expiration of the term, Davis shall discontinue access of Users to the Works, and the Licensee shall cease, and shall cause all Users to cease, all access to the Works.

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(a) Davis represents and warrants that it has the right to permit access to the Works and the Web Platform pursuant to the terms of this Agreement. No representation or warranty, express or implied, is made by Davis in respect of the Web Platform, its use, or its fitness for any particular purpose or functionality, nor does Davis warrant that the operation of the Web Platform shall be uninterrupted, virus-free or error-free.

(b) The Licensee represents and warrants that: it has the authority to enter into this Agreement; it and the Users shall adhere to the terms of this Agreement; and that it and the Users shall comply with all Federal, State and local laws relating to privacy or use of personal information in respect of or relating to the Users or their access to and use of the Works and Web Platform.

(c) Davis and the Licensee shall each indemnify and hold harmless the other, their successors and assigns, from and against any and all losses, damages, liabilities, claims, demands, suits, expenses, and any other out-of-pocket costs (including reasonable attorney's fees and expenses) that the indemnified party may incur or be liable for arising from or relating to any claim or asserting facts inconsistent with any representation or warranty made by, or any breach of this Agreement by, the indemnifying party.

(d) Except for indemnification obligations contained in this agreement, neither Davis nor the Licensee shall be liable to each other for any indirect, incidental, special, punitive, exemplary or consequential damages arising out of or in connection with the Agreement, including without limitation, inability to use the Works or the Web Platform, whether in an action in contract, tort, warranty or negligence even if advised of the possibility of such damages. Anything to the contrary notwithstanding, the liability of Davis to the licensee shall be no greater than ten percent (10%) of the fee charged for access as set forth in §3].

4. Designated Contacts: The parties each designate the following person to act as their respective contacts for all communications and notices relating to this Agreement, subject to substitution by notice at any time:

Davis Publications, Inc.

Address: 50 Portland Street, Worcester, MA 01608

Email: ContactUs@DavisArt.com

Telephone: 508-754-7201

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Davis Publications, Inc.

### **3: Digital Images**

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