

# DAVIS PUBLICATIONS, INC. USER AGREEMENT

Updated 9/16/2019

## **Davis Digital Platform**

These Terms of Use ("Terms") govern your access to and use of our Davis Digital platform and all content and services contained therein. In order for you to access and use these materials, you must agree to these Terms. Please click on the "Agree" button to accept these Terms. If you continue to access our website, you are deemed to have accepted these terms.

By registering for or using these materials, you agree to abide by these Terms. These Terms constitute a legally binding agreement ("Agreement") between you and Davis Publications, Inc. ("Davis").

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

#### **A. Davis Digital**

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 programs conducted by an authorized company, educational institution, department, program, classroom, or agency or other legal entity ("Subscriber") where you are employed, enrolled or have another affiliation. 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 Digital 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.

You understand and agree that you are entitled only to access and use Davis Digital as described in these Terms. You are not entitled to download or otherwise copy any Davis Digital content, software or Davis Digital Technology. You are solely responsible for establishing, maintaining, and operating, at your own expense, a connection to the Internet (the speed of which may have a significant impact on the responsiveness of Davis Digital), including all computer hardware and software, modems and telephone access lines. As a condition of your right to access and use Davis Digital, you agree that you will not use Davis Digital for any purpose that is fraudulent, unlawful or otherwise prohibited by these Terms. Without our written consent, you may not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise in any manner commercially exploit or make available to any third party any Davis Digital Technology or Content; (ii) modify or make derivative works based upon any Davis Digital Technology or Davis Digital; (iii) create internet "links" to or "frame" or "mirror" any Davis Digital Content on any other server or wireless or internet-based device; or (iv) reverse engineer or access any Davis Digital Technology in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of Davis Digital, or (c) copy ideas, features, functions or graphics of Davis Digital.

You also may not: (i) share an individual User account with anyone other than the individual registrant; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or post infringing, obscene, threatening, libelous, or otherwise unlawful or inappropriate material, including material harmful to children or in violation of third party privacy rights; (iv) send or post material containing software viruses, worms, malware, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of Davis Digital or the data contained therein; or (vi) attempt to gain unauthorized access to Davis Digital or its related systems or networks. If you breach any of these Terms, your authorization to access and use Davis Digital will automatically terminate, and you must immediately destroy any downloaded or printed materials. Unauthorized or prohibited use of Davis Digital may also subject you to civil liability and/or criminal prosecution under applicable laws. We reserve all rights not expressly granted to you in these Terms.

## **B. Specific Rights**

(a) Access to the Davis Digital Content shall be used solely for display in the course of systematic instruction by Subscriber of its students enrolled in the grades and classrooms. Use of the Davis Digital Content by you shall be limited to: i) display on computer monitors, or projected on screens, located in the places, grades and classrooms, and ii) your preparation for use as described in section i) above. No transmission or access to any portion of the Davis Digital Content in or to any other persons or locations shall be provided or permitted by you.

(b) No downloading of any portion of the DDC shall be made by you in any form or media, including without limitation any computer drives, memory or storage media, except that the text appearing in the DDC, and specific individual images which are expressly so designated, may be printed in hardcopy by you solely in classroom quantities and not for further distribution.

(c) You acknowledge that access to the DDC may be afforded at Davis' website by means of web platform software and web hosting (the "Web Platform") owned and operated by Davis and/or a third party designated by Davis, and that any features which Davis or any third party may provide, as distinct from providing the platform for access to the DDC, may be enhanced, modified or terminated by Davis at any time. Use of the Web Platform is subject to Davis's 'Terms of Use', which are presented upon your initial login. You assume all risk and responsibility arising out of use of the Web Platform.

## **C. Images**

All Images are copyrighted by Davis or its sources and all interest in and to the Images and their copyrights throughout the World are retained by Davis or its sources. Your permission to use the Images is limited as provided below.

You acknowledge and agree that your use of the Images, including all use by your faculty and students who are users, shall be strictly limited to educational purposes by means of display through classroom projection and closed network, (i.e., display on computer monitors only through authenticated password entry), for instruction and study solely by users who are faculty

and registered students of your educational institution [and by registered on-line students in your credit granting distance learning programs (in respect of which you have previously provided information to Davis) who obtain access to the Images only through authenticated password entry].

Any open access use and any publication (including scholarly publication) of the Images for any purpose is strictly prohibited. Any request for any such use, or any other use not expressly authorized in this Agreement, must be directed to Davis in writing and approved in writing by Davis.

You shall inform all permitted users of the copyright status of the Images and the restrictions on their use as set forth in this Agreement.

Davis confirms that it has received from its sources the authority to grant permission for use of the Images as specifically provided and limited under the terms of this Agreement. Such permission is non-exclusive, extends only to such rights as Davis and its sources have to authorize digital reproduction of the Images, and does not purport to include any rights which others may have under laws of various countries.

Neither this Agreement nor the permission granted under it may be transferred to any other person or entity, whether by assignment, operation of law, or otherwise, without the prior written consent of Davis.

## **2. Privacy**

In addition to these Terms, our Privacy applies to you. Due to its importance, we have placed our Privacy Policy in a separate document. You should read our Privacy Policy carefully before you access or use anything from Davis because by doing so you are agreeing to everything in these Terms and to the Privacy Policy.

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

Davis owns all right, title and interest, including any related Intellectual Property Rights, in and to everything covered by this Agreement. This Agreement does not give you title to or ownership of anything covered by this Agreement. Any permitted use hereunder must contain a copyright and other proprietary rights notices contained in the original and an original source attribution to Davis Publications Inc. with the applicable URL address.

## **4. Changes to These Terms or Context**

We may add to, update, delete from or modify our offerings hereunder at any time in our sole discretion. We also reserve the right, at any time, for any reason and in our sole discretion, to change these Terms. 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 username and password to access and use Davis Digital. This user identification 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, deletions, modifications, restrictions or terminations of your user Content or right to use Davis Digital that are made by us or your Subscriber.

## **6. User Content**

You and other Users are able to post User Content. 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.

You hereby grant Davis all necessary rights to store, display and distribute (but not to sell) your User Content in accordance with your and your Subscriber's instructions and permissions in the course of our operations, by posting your User Content. We also have the right to utilize data capture, syndication and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze data or information concerning access and use of our offering (but not User Content) by you and other Users. We solely own the results of such extractions, compilations, syntheses and analyses, may use them for any lawful business purpose without accounting to you or any other User, and may distribute them without accounting to you or any other User as long as no User Content or other personally identifiable information is revealed and the information is reported only in aggregated form. You represent and warrant that: (i) you own the User Content posted by you or otherwise have the right to grant the rights set forth in this section, and (ii) the posting of your User Content does not violate the privacy rights, publicity rights, copyrights, trademarks, contract rights or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing to any person by reason of any User Content. We are committed to ensuring that this remains a safe place to view content. To that end, you may not post or process User Content that is prohibited (see Section 1 above). We and your Subscriber (if your use is in connection with a Subscriber) have the sole discretion to determine whether User Content is prohibited, and any User Content submitted may be subject to examination from time to time. Although we do not and will not examine or otherwise review all User Content, we may delete, move, and edit any content for any reason, at any time, without notice, if you are an individual paid user and grant your Subscriber the right to examine and review your User Content.

## **7. Linked Websites**

Any Internet sites that are linked are provided only as a matter of convenience and are not endorsed by us, and we are not responsible for any content, products or services on or available from such sites. A third-party providing products, services or content linked may require your agreement to different terms or additional subscription terms or other license prior to your access or use of such additional products, services or content.

## **8. Copyright Complaints**

We respect the intellectual property of others, and we expect you to do the same. We and/or your Subscriber (if your use of Davis Digital is in connection with a Subscriber), in our sole discretion, may suspend or terminate access by Users who infringe the copyrights of others. If you believe that your work has been copied and is accessible in a way that constitutes copyright infringement, or that our Website contains links or other references to another online location that contains material or activity that infringes your copyright rights, you must notify us by providing our copyright agent the information required by the U.S. Online Copyright Infringement Liability Limitation Act of the U.S. Digital Millennium Copyright Act, 17 U.S.C. §512. Our agent for notice of claims of copyright infringement on or regarding our Website can be reached as follows:

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

BY MAIL: Davis Publications, Inc.  
50 Portland Street  
Worcester, MA 01608

BY PHONE: 1.800.533.2847

## **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**

This site is provided "as is," with all faults, and without any representations or warranties of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Your use is at your sole risk. We do not warrant that the functions provided hereunder will be uninterrupted or error-free, that defects will be corrected, or that any site will be free of viruses or other harmful components or that Davis or any advertised or hyperlinked site will be accessible at all times. You assume total responsibility and risk for your access and use, and any advertised or hyperlinked website. No oral or written information or advice given by us or our authorized representatives shall create a warranty or in any way increase the scope of this warranty. We do not warrant or make any representations regarding your access hereunder with respect to correctness, accuracy, reliability, graphics, links or otherwise. To the extent that applicable law may not allow the exclusion of implied warranties, the above exclusions may not apply to you.

## **12. Limitation of Liability**

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 hereunder.

In no event shall our total liability to you or any third party for all claims, damages or losses, regardless of the cause 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 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 hereunder.

### **14. Choice of Law and Venue**

These Terms, and your access and use hereunder, shall be governed by the laws of the Commonwealth of Massachusetts, without regard to any choice of law principles that would dictate the application of the laws of another jurisdiction, and you hereby agree to the exclusive jurisdiction of the federal and state courts of Massachusetts for resolution of any disputes arising from or related to these Terms.

### **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 hereunder must be filed within one year after such claim or cause of action arises, or be forever barred.

### **16. Definitions**

As used in these Terms:

"Davis Digital" means the online platform, eBooks, Curriculum Builder, Lesson Library Fine Art Images, portfolio, assessment management system, and all content and services developed, operated and maintained by Davis Digital, Inc. and content owners and accessible on the Website. Davis Digital includes, without limitation, Davis Digital Technology and Davis Digital Content.

"Davis Digital Content" means all materials and content within Davis Digital that are not User Content, regardless of the identity of the content owner including, without limitation, the text, images, photographs, object code, source code, graphics, audio, animation and video, and any materials accessed through or made available for use or download within Davis Digital.

"Davis Digital Technology" means all of the proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Davis Publications, Inc. in providing Davis Digital.

"Davis Publications, Inc." means us, Davis Publications, Inc., a Massachusetts corporation, with a principal place of business at 50 Portland Street, Worcester, MA 01608 or such other location as we from time to time may designate, and any successor or permitted assignee of Davis Publications, Inc.

"IDs" has the meaning provided in Section 5.

"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.

"Subscriber" means the company, educational institution, department, program, classroom or agency or other legal entity where you are employed, enrolled, applying to, entering a contest, or have another affiliation and which conducts education, contest, application, and/or training programs.

"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.

"User Content" means any content, messages, text files, images, photos, profiles, works of authorship, or other materials posted to Davis Digital by you and other Users.

"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.