

# OUR POLICIES



AXYS CREATIVE, LLC

Updated: January 1, 2024

This Agreement, a legally binding contract between AXYS CREATIVE, LLC, a Utah-based limited liability company ("AXYS Creative"), and the client, either in a personal capacity or on behalf of an entity ("Client"), governs the use of AXYS Creative's website (<https://www.axyscreative.com>) and any associated media forms, channels, mobile websites, or mobile applications. By accessing or using these platforms, the Client agrees to adhere to the terms and conditions set forth herein. Non-compliance will result in immediate prohibition from using the Website, and the Client must cease all use forthwith. This cessation will nullify the ongoing relationship between AXYS Creative and the Client, save for the Client's continuing obligation to compensate AXYS Creative for any services already rendered.

## 1. Intellectual Property Rights

The Website, owned by AXYS Creative, hosts a diverse range of materials including, but not limited to, source code, databases, software, designs, audio, video, text, photographs, and graphics (collectively referred to as the "Content"), as well as trademarks, service marks, and logos (the "Marks"). These elements are the exclusive property of AXYS Creative, safeguarded under U.S. copyright, trademark laws, relevant foreign jurisdictions, and international conventions. The Content and Marks are presented "As-Is" solely for your informational and personal use. It is important to note that, except as explicitly stated in this Agreement, no part of the Website or its Content may be duplicated, replicated, compiled, published, uploaded, displayed, translated, transmitted, disseminated, sold, licensed, or utilized for any commercial purpose without the express, prior written consent of AXYS Creative. All rights not expressly granted are reserved by AXYS Creative in relation to the Website, its Content, and the Marks.

## 2. Content Ownership

Despite AXYS Creative's ownership of Submissions as outlined in Paragraph 6 ("Client Feedback"), all original design and development source files crafted for Client ("Projects") are the exclusive property of the Client. The Client holds full copyright ownership of all Projects. In any circumstance where AXYS Creative might inadvertently become the owner or part-owner of a Project due to legal reasons, AXYS Creative will unconditionally and permanently transfer all its rights in the Project to the Client. Furthermore, the Client guarantees that all materials supplied to AXYS Creative, whether as inspiration or as components of a project during the design process, are owned by the Client and do not violate or misappropriate any third-party rights. This includes, but is not limited to, intellectual property rights and rights of publicity. It should also be noted that AXYS Creative retains the right to publicly display the Client's design and development work (on social media, its website, etc.) unless otherwise specified and agreed upon as detailed in Paragraph 18 ("Sharing and Non-Disclosure Agreement (NDA) Provision") of this Agreement.

## 3. Fonts and Typeface

Should any Project include fonts not owned by AXYS Creative that necessitate a commercial license for the Client's legal reproduction, distribution, or public display ("Third-Party Fonts"), AXYS Creative will duly notify the Client in writing. This notification will confirm the inclusion of Third-Party Fonts in the Project and advise the Client of the need to acquire the appropriate licenses from the respective rights holders. The notice will provide sufficient details to enable the Client to identify the required licenses and contact information for purchasing them. Once AXYS Creative has informed the Client about the use of Third-Party Fonts as outlined above, it is then the Client's responsibility to procure these licenses. The Client will bear all responsibility for any legal implications or consequences stemming from not obtaining the necessary licenses for any Third-Party Fonts used in the Project.

## 4. User Representations

By accessing and using the Website, the Client affirms and guarantees the following: They possess the legal capacity and agree to adhere to these Terms of Use; they are not a minor in their jurisdiction of residence; they will not use automated or non-human methods to access the Website; they will not engage the Website in any illegal or unauthorized activities; and their use of the Website will be in full compliance with all relevant laws and regulations.

## 5. Prohibited Activities

The Client is authorized to access and use the Website solely for its intended purposes. The Website is not to be employed for any commercial activities, except as directly related to the services provided by AXYS Creative for the Client. Additionally, the Client agrees to avoid the following actions:

- Unauthorized use of the Website.
- Gathering data or content to create or compile a database or directory without permission.
- Bypassing or tampering with any security features of the Website.
- Unauthorized framing or linking to the Website.
- Deceiving, defrauding, or misleading AXYS Creative or its users.
- Overburdening, disrupting, or causing harm to the Website or AXYS Creative's networks and servers.
- Using the Website to compete with AXYS Creative.
- Decoding, decompiling, disassembling, or reverse engineering any part of the Website's software.
- Circumventing any measures intended to limit access to the Website or any of its parts.
- Harassing, intimidating, or threatening any AXYS Creative employees, contractors, or agents.
- Removing copyright or other proprietary notices from any content.
- Copying or modifying the Website's software.
- Transmitting viruses, Trojan horses, or other harmful materials that interfere with the Website's operation.
- Employing any tool for passive or active data collection or transmission.
- Discrediting, damaging, or otherwise harming AXYS Creative's reputation.
- Using the Website in any way that violates applicable laws, statutes, or regulations.

## 6. Client Feedback

The Client acknowledges and agrees that any submissions they make, including questions, comments, suggestions, or other types of feedback ("Submission"), will become the exclusive property of AXYS Creative. AXYS Creative is not obligated to maintain the confidentiality of a Submission or to take measures to protect its secrecy. As the sole and exclusive owner of all rights related to the Submission, except as provided under Paragraph 2 ("Content Ownership"), AXYS Creative has the unrestricted right to use and disseminate the Submission for any lawful purpose, without needing permission, acknowledgment, or providing compensation to the Client. The Client confirms that they have the authority to make the Submission and hereby relinquishes any claims against AXYS Creative for its use of the Submission, as described herein and at its sole discretion in the future.

## 7. Management and Supervision

AXYS Creative maintains the authority to oversee the Website and ensure compliance with these Terms of Use. This includes the right to take appropriate legal actions against any breaches of these Terms or violations of relevant laws, statutes, or regulations. Additionally, AXYS Creative holds the discretion to limit or deny access to the Website or to disable the Client's use of it. Such decisions, made solely by AXYS Creative, will be executed without any obligation to provide notice or incur liability to the Client. All decisions concerning the Website's management are at the exclusive discretion of AXYS Creative, aimed at safeguarding its rights and property.

## 8. Privacy Policy

By accessing and utilizing the Website, the Client consents to adhere to and be governed by the Privacy Policy, with its terms explicitly recognized and integrated into this agreement. The Website is based in the United States of America, and accessing it from regions like the EU, Asia, or elsewhere may involve different legal standards pertaining to personal data handling compared to U.S. laws. By continuing to use the Website and transferring data to the United States, the Client explicitly agrees to the transference and processing of their data within the U.S. AXYS Creative is committed to not collecting or soliciting information from individuals under 18 years of age. In line with the U.S. Children's Online Privacy Protection Act, AXYS Creative will promptly remove any personally identifiable information provided by an individual under the age of 13 without parental consent, once this is known.

## 9. Refund Policy

AXYS Creative holds the right to determine refund eligibility at its own discretion, without the obligation to notify or bear liability towards the Client. Each refund request is evaluated individually. In instances where the Client seeks a refund within the first month of use, all materials produced by AXYS Creative during this period remain the exclusive property of AXYS Creative. The Client is strictly prohibited from using these materials in any capacity. If a refund is granted, a fee amounting to 20% of the outstanding billable period will be applied. Furthermore, AXYS Creative reserves the right to pursue legal measures against the Client for any violation of this policy.

## 10. Content Adjustments

AXYS Creative retains the authority to make changes, alterations, modifications, amendments, or removals to any aspect or content of the Website at its sole discretion and for any reason. Additionally, AXYS Creative reserves the right to modify or discontinue, in whole or in part, the Website at any time. These changes or discontinuations may occur without prior notice and will not incur liability to the Client.

## 11. Availability and Accessibility Disclaimer

AXYS Creative does not guarantee uninterrupted or constant availability of the Website. Occasional disruptions, delays, or errors may occur due to hardware, software, or other issues beyond the control of AXYS Creative. The Client acknowledges and agrees that AXYS Creative is not liable for any loss, damage, or inconvenience that may arise from the Client's inability to access or use the Website during such service interruptions.

## 12. Governing Law

These Terms of Use are governed by and interpreted in line with the laws of the State of Utah, without reference to its conflict of law principles.

## 13. Jurisdiction and Legal Venue

All legal actions, regardless of their nature, arising under these Terms of Use must be initiated in the state courts of Salt Lake County, Utah, or the United States District Court for the District of Utah. By agreeing to these Terms, both parties consent to personal jurisdiction in these courts and waive any objections to jurisdiction or venue, including the defense of forum non conveniens. Furthermore, the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from these Terms of Use.

## 14. Disclaimer of Warranties and Limitation of Liability

The Website is provided on an "as-is" and "as-available" basis. The Client acknowledges that their use of the Website and Services is solely at their own risk. AXYS Creative expressly disclaims all warranties, whether express or implied, related to the Website and the Client's use thereof. This includes, but is not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. AXYS Creative does not guarantee the accuracy or completeness of the Website's content, nor the content of any linked websites. AXYS Creative shall not be liable for errors, inaccuracies, personal injury, property damage, unauthorized access to its servers, loss of data, interruption of service, or the presence of harmful components such as viruses or Trojan horses transmitted through the Website or by third parties. Furthermore, AXYS Creative does not endorse, warrant, or assume responsibility for any products or services advertised or offered by third parties through the Website or any hyperlinked or featured sites in advertising.

## 15. Limitation of Liability and Indemnification

AXYS Creative, including its directors, employees, members, independent contractors, and agents, shall not bear liability to the Client or any third party for any direct, indirect, consequential, incidental, special, or punitive damages. This encompasses losses such as lost profits, lost revenue, lost data, legal fees, court costs, fines, and forfeitures, arising from the Client's use of the Website. The Client agrees to defend, indemnify, and hold harmless AXYS Creative, its subsidiaries, affiliates, officers, members, agents, partners, employees, and independent contractors against any losses, damages, liabilities, claims, or demands. This includes reasonable legal fees and expenses incurred due to or arising out of the Client's use of the Website, breach of these Terms of Use, violation of any third-party rights, including intellectual property rights, or any breach of the Client's representations and warranties. AXYS Creative, however, reserves the right to take over the defense of any claim for which the Client is bound to provide indemnification, at the Client's expense. In such cases, the Client is expected to cooperate fully with AXYS Creative in defending against such claims.

## 16. Data Responsibility and Waiver of Liability

The Client bears exclusive responsibility for all data transmitted or associated with their activities conducted through the Website. AXYS Creative is not liable for any loss or corruption of such data, and the Client explicitly waives the right to take legal action against AXYS Creative for any loss or corruption of this data.

## 17. Electronic Communications Consent and Waiver

The Client consents to receiving electronic communications from AXYS Creative and agrees that all forms of agreements, notices, disclosures, and other communications provided via email or through the Website fulfill any legal obligation for such communications to be in writing. The Client also agrees to the use of electronic signatures, contracts, orders, and records, as well as the electronic delivery of notices, policies, and records for transactions initiated or completed by AXYS Creative or via the Website. Additionally, the Client waives any rights or requirements that may exist under any laws or regulations in any jurisdiction which mandate an original signature, the retention of non-electronic records, or non-electronic methods for payments or credits.

## 18. Sharing and Non-Disclosure Agreement (NDA) Provision

AXYS Creative retains the right to showcase design work on digital platforms, such as social media and its website, unless an alternative agreement is reached. The Client has the option to establish a Non-Disclosure Agreement (NDA) with AXYS Creative. If such an NDA is executed, it will override AXYS Creative's right to publicly share or discuss the Client's work.

## 19. Entire Agreement and Enforceability

These Terms of Use, along with any additional policies displayed on the Website, represent the complete agreement and understanding between the Client and AXYS Creative. The failure of AXYS Creative to exercise any right or enforce any provision of these Terms of Use does not constitute a waiver of such right or provision. Should any part of these Terms be deemed unlawful, void, or unenforceable, that specific provision will be severed from these Terms of Use, but this will not affect the validity or enforceability of the remaining provisions. Furthermore, nothing within these Terms of Use, the Privacy Policy, or on the Website should be interpreted as establishing a joint venture, partnership, employment, or agency relationship between the Client and AXYS Creative.

## 20. Contact Information

Should you have any questions or complaints concerning the Website, please feel free to reach out to AXYS Creative at the following email address: [info@axyscreative.com](mailto:info@axyscreative.com).