



Terms of Service for Quadratica X-Screen®

Last updated: 08/04/2020

Welcome to Quadratica X-Screen®. Please read these terms of service ("**Terms**") carefully as they form a contract between You and Quadratica (UK) Limited, a company incorporated in England and Wales registration number 07866175 whose registered office is at Europarc Innovation Centre, Innovation Way, Grimsby, South Humberside, DN37 9TT ("**Quadratica**") that governs your access and use of the Service.

Quadratica reserves the right to change these Terms at any time, effective upon the posting of modified Terms and Quadratica will make every effort to communicate these changes to You. It is likely these Terms will change over time. It is Your obligation to ensure that You have read, understood and agree to the most recent terms available on the Service.

By proceeding to use the Service you acknowledge that You have read and understood these Terms and have the authority to act on behalf of any entity for whom You are using the Service. You are deemed to have agreed to these Terms on behalf of any entity for whom You use the Service.

1. DEFINITIONS

1.1 In these Terms:

"Activation Date"	means the date the Service is activated and made available to the You;
"Business Day"	means any day, other than a Saturday, Sunday or bank or public holiday in the United Kingdom;
"Business Hours"	means between 09:00 and 17:00 London time on a Business Day;
"Change of Control"	means the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions;
"Confidential Information"	means all information exchanged between the Parties whether in writing, electronically or orally, that is marked as "confidential", described as "confidential" or is confidential in nature; including these Terms but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other Party;
"Documentation"	means the documentation produced by Quadratica and made available on the Platform and which sets out a description of the Service and the user instructions for the Service;
"Effective Date"	means the date of these Terms;
"Intellectual Property Right"	means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "Intellectual Property Rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents and petty patents);



"Platform"	means the platform managed by Quadratica and used by Quadratica to provide the Service;
"Privacy Policy"	means Quadratica's privacy policy as updated from time to time available via https://www.quadratica.co.uk/Pages/PrivacyPolicy ;
"Service"	means the Software to be provided by Quadratica to You under these Terms via the Platform or any other website notified to You by Quadratica from time to time as more particularly described in the Documentation;
"Software"	means the online software applications known as X-Screen® that is owned and operated by Quadratica, and that will be made available to You as part of the Service via the internet under these Terms;
"Support Services Policy"	means Quadratica's policy from time to time for providing support in relation to the Service, the current version of which is set out in Schedule 1;
"Subscriber"	Means the entity that has paid the Subscription Fee.
"Subscriber Data"	means any data input into the Software by You or Quadratica on the Your behalf for the purpose of using the Service or facilitating the Your use of the Service;
"Subscription Fee"	means the annual fee (excluding any taxes and duties) payable by the Subscriber to Quadratica each year in advance;
"Subscription Term"	means the term from the Activation Date until these Terms are terminated;
"Virus "	means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

2. THE SERVICE

- 2.1 Subject to the restrictions set out in this clause 2 and the other terms and conditions of these Terms, and providing the Subscription Fee has been paid, Quadratica hereby grants You a non-exclusive, non-transferable right to use and to permit You to use the Service and the Documentation on the Platform during the Subscription Term solely for the Purpose.
- 2.2 You shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- 2.2.1 subject to clause 2.1, licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make the Software, Service and/or Documentation available to any third party;
 - 2.2.2 attempt to reverse - compile, disassemble, reverse engineer or otherwise reduce to having perceivable form, all or any part of the Software;
 - 2.2.3 except and to the extent permitted by these Terms, attempt to copy, modify, duplicate, create destructive works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Software and/or Documentation in any form or media or by any means;



- 2.2.4 use the Service in any way that causes, or may cause, damage to the Software or impairment of the availability or accessibility of the Software or Service, or any of the areas of the Software or Service
 - 2.2.5 reproduce any content forming part of the Service other than for its own internal business purposes;
 - 2.2.6 attempt to undermine the security or integrity of Quadratica's computing systems or networks or, where the Service is hosted by a third party, that third party's computing systems and networks;
 - 2.2.7 access all or any part of the Software, Service and/or Documentation in order to build a product or service which competes with the Software, Service and/or Documentation; or
 - 2.2.8 attempt to obtain or assist third parties in obtaining access to the Service and/or Documentation other than as permitted by this clause 2.
- 2.7 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or Documentation and, in the event of any such unauthorised access or use, promptly notify Quadratica.
- 2.8 The rights provided under this clause 2 are granted to the You only.
3. SERVICE PROVISION
- 3.1 Quadratica shall, during the Subscription Term, provide the Service available to You on and subject to the terms of these Terms.
- 3.2 Quadratica shall use commercially reasonable endeavours to make the Service available twenty four hours a day, seven days a week, except for:
- 3.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and
 - 3.2.2 unscheduled maintenance performed outside Business Hours, provided that Quadratica has used reasonable endeavours to give You at least 6 Business Hours' notice in advance.
 - 3.2.3 In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Quadratica. If You still need technical help, please email support@quadratica.co.uk or call +44 1472 898751
- 3.3 Quadratica will, as part of the Service and at no additional cost to You provide You with Quadratica's standard customer support Service during Business Hours in accordance with the Support Service Policy in effect at the time that the Service is provided. Quadratica may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 3.4 You acknowledge that:
- 3.4.1 Quadratica does not guarantee; the timeliness, completeness or performance of the Software or Platform or any of the content of the Platform or that the Software or Platform is free from bugs, defects, errors, omissions or inaccurate content;
 - 3.4.2 Quadratica does not warrant that the use of the Service will be uninterrupted or error free or that information obtained by You through the Service will meet Your requirements;
 - 3.4.3 Quadratica is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications, networks and facilities, including the internet, and You acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
 - 3.4.4 You are responsible for assessing the suitability of the Service for its requirements and for ensuring that it will be suitable for any particular purpose.
- 4 SUBSCRIBER DATA
- 4.1 As between the Subscriber and Quadratica, the Subscriber shall own all right, title and interest in and to the Subscriber Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Subscriber Data. For the avoidance of doubt You shall be responsible for checking the accuracy of the information stored on the Platform whether it is input by an Administrative User or is populated by Quadratica.
- 4.2 Quadratica shall follow its archiving procedures for Subscriber Data to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of data. In the event of any loss or damage to Subscriber Data, Your sole and exclusive remedy shall be for Quadratica to use reasonable commercial endeavours to restore the lost or damaged Subscriber Data from the latest back-up of such Subscriber Data maintained by Quadratica in accordance with its archiving procedure. Quadratica shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data.
- 4.3 Quadratica shall, in providing the Service, comply with its Privacy Policy available on the Platform from time to time, as such document may be amended from time to time by Quadratica in its sole discretion.



5. YOUR OBLIGATIONS

5.1 You shall:

- 5.1.1 provide Quadratica with all necessary co-operation in relation to these Terms
- 5.1.2 comply with all applicable laws and regulations with respect to its activities under these Terms;
- 5.1.3 carry out all Your other responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Quadratica may adjust any agreed timetable or delivery schedule as reasonably necessary;

6. FEES AND CHARGES

- 6.1 In order for You to access the Service the Subscriber must have paid the Subscription Fee.
- 6.2 If the Subscriber does not pay any amount properly due to Quadratica when due, Quadratica may in its sole discretion and without prejudice to any other remedies it may have suspend or terminate Your access to the Service and the Subscriber Data.

7. TERM AND TERMINATION

- 7.1 These Terms shall commence on the Activation Date and, unless terminated as provided below or as otherwise provided in law, shall continue in force whilst a valid Subscription Fee is in place.

- 7.2 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate these Terms without liability to the other if:

- 7.2.1 the other party commits a material breach of any of the terms of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 7.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- 7.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 7.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- 7.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- 7.2.6 the other party ceases, or threatens to cease, to trade; or
- 7.2.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

- 7.3 Quadratica shall have the right to terminate these Terms without liability to You if there is a Change of Control of the Subscriber.

- 7.4 On termination of these Terms for any reason:

- 7.4.1 all licences granted under these Terms shall immediately terminate;
- 7.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 7.4.3 Quadratica may destroy or otherwise dispose of any of the Subscriber Data in its possession unless Quadratica receives, no later than ten days after the effective date of the termination of these Terms, a written request for the delivery to the Subscriber of the then most recent back-up of the Subscriber Data. Quadratica shall use reasonable commercial endeavours to deliver the back-up to the Subscriber within 30 days of its receipt of such a written request, provided that the Subscriber has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Subscriber shall pay all reasonable expenses incurred by Quadratica in returning or disposing of Subscriber Data;
- 7.4.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.



8. CONFIDENTIALITY

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:

8.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

8.1.2 was in the other party's lawful possession before the disclosure;

8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

8.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence;
or

8.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.

8.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.

8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5 You acknowledges that details of the Service, and the results of any performance tests of the Service, constitute Quadratica's Confidential Information.

8.6 Quadratica acknowledges that the Subscriber Data is the Confidential Information of the Subscriber.

8.7 This clause 8 shall survive termination of these Terms, however arising

9. INDEMNITY

9.1 You will indemnify and will keep Quadratica indemnified against all losses, costs, claims, expenses or, damages which Quadratica may incur or for which it may become liable as a result of or in connection with any claim or allegation relating to or arising from:

9.1.1 any breach by You of the terms of these Terms, including (but not limited to) any costs relating to the recovery of any amounts due to be paid to Quadratica;

9.1.3 any breach by You of any regulatory requirements with which it is required to comply.

9.2 Quadratica shall defend You against any claim that the Service or Documentation infringes any United Kingdom patent effective as of the Activation Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:

9.2.1 Quadratica is given prompt notice of any such claim;

9.2.2 You provide reasonable co-operation to Quadratica in the defence and settlement of such claim, at Quadratica's expense; and

9.2.3 Quadratica is given sole authority to defend or settle the claim.

9.3 In the defence or settlement of any claim, Quadratica may (in its discretion) procure the right for You to continue using the Service, replace or modify the Service so that they become non-infringing or, if such remedies are not reasonably available, terminate these Terms on 2 Business Days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You.

9.4 In no event shall Quadratica, its employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on:

9.4.1 a modification of the Service or Documentation by anyone other than Quadratica; or

9.4.2 Your use of the Service or Documentation in a manner contrary to the instructions given to You by Quadratica; or



- 9.4.3 Your use of the Service or Documentation after notice of the alleged or actual infringement from Quadratica or any appropriate authority;
- 9.5 Clauses 9.2 to 9.4 state Your sole and exclusive rights and remedies, and Quadratica's (including Quadratica's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Right.
10. LIMIT OF LIABILITY
- 10.1 Subject to clause 10.2 in no event shall Quadratica be liable to You in contract, tort, misrepresentation, restitution or otherwise for any loss of profit, loss of data, loss of business, anticipated savings or business opportunities, depletion of goodwill or for any type of indirect, economic or consequential loss even if that loss or damage was reasonably foreseeable or Quadratica had been advised of the possibility of that loss or damage arising.
- 10.2 Under these Terms, neither of the Parties excludes or limits its liability to any other Party for death or personal injury caused by its negligence, for fraud or for fraudulent misrepresentation.
- 10.3 Subject to clause 10.2 Quadratica shall have no liability whatsoever in respect of any matter, event or circumstance arising out of the provision of the Platform, Software, Documentation or Service by or any acts or omissions of any other entity than Quadratica or its agents and subcontractors.
- 10.4 Except as expressly and specifically provided in these Terms:
- 10.4.1 You assume sole responsibility for results obtained from the use of the Service and the Documentation by You, and for conclusions drawn from such use. Quadratica shall have no liability for any damage caused by errors or omissions in the Subscriber Data, any information, instructions or scripts provided to Quadratica by You in connection with the Service, or any actions taken by Quadratica at Your direction;
- 10.4.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and
- 10.4.3 the Service and the Documentation are provided to You on an "as is" basis.
- 10.5 Subject to clause 10.2, Quadratica's total liability to You under these Terms shall be limited to the total Subscription Fees paid by the Subscriber to Quadratica under these Terms in the twelve (12) months period immediately preceding the date on which the event giving rise to the claim took place.
11. INTELLECTUAL PROPERTY
- 11.1 You acknowledge and agree that Quadratica owns all Intellectual Property Rights in the Software, Service and Documentation and except as expressly stated herein, these Terms does not grant You any rights to, or in, the Intellectual Property Rights in the Software, Service and/or Documentation.
- 11.2 Title to, and all Intellectual Property Rights in, the Subscriber Data shall be and remain the property of the Subscriber as appropriate.
- 11.3 You grant to Quadratica a royalty-free licence during the Subscription Term to use, copy, transmit, process, store, and back-up the Subscriber Data for the purposes of providing the Service.
12. DATA PROTECTION
- 12.1 You warrant that you have complied, and shall continue to comply, with the Data Protection Act 1998 (the "Act")
- 12.2 To the extent that the Subscriber Data includes personal data (as defined by the Act) You warrant that you have obtained consent from all data subjects (as also defined by the Act) to pass their personal data to Quadratica and for Quadratica to process it in accordance with the Privacy Policy.
- 12.3 You shall indemnify and hold Quadratica harmless from and against all losses, costs, claims, expenses or damages which Quadratica may incur or for which it may become liable as a result of or in connection with any breach by You of clauses 12.1 or 12.2.



13. FORCE MAJEURE

Quadratica shall have no liability to You under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Quadratica or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that You is notified of such an event and its expected duration.

14. GENERAL

14.1 IT IS HEREBY DECLARED that the foregoing paragraphs, sub paragraphs and clauses of these Terms shall be read and construed independently of each other. Should any part of these Terms or its paragraphs, sub paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub paragraphs and clauses.

14.2 You warrants to Quadratica that it has the legal right and authority to enter into and perform its obligations under these Terms.

14.3 Quadratica warrants to You that it has the legal right and authority to enter into and perform its obligations under these Terms.

14.4 Failure by either Party to enforce any accrued rights under these Terms is not to be taken as or deemed to be a waiver of those rights unless the waiving Party acknowledges the waiver in writing.

14.5 No addition to or modification of any clause in these Terms shall be binding on the Parties unless made in writing and signed by the signatories to these Terms or their duly authorised representatives.

14.6 Reference to any Statutory Provisions in these Terms shall include any Statutory Provisions, which amends or replaces it.

14.7 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14.8 You shall not, without the prior written consent of Quadratica, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms. Quadratica may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

14.9 Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.10 These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

15. GOVERNING LAW AND JURISDICTION

15.1 These Terms shall be governed by and construed in all respects in accordance with the Laws of England and each Party hereby submits to the exclusive jurisdiction of the English Courts.