



## Kchecks™ License Agreement

Welcome to Kchecks™, a service provided by Kinney Services Inc. Kchecks™ provides comprehensive “Excluded Provider” monitoring services to enable customers, using the proprietary Kchecks™ software solution, to search the names of any employees, contractors and potential hires submitted by customers against names of individuals and entities that have been excluded from participating in programs such as Medicaid, Medicare and Child Health Plus.

By logging on to [www.kchecks.com](http://www.kchecks.com) (the “Website”), you can conduct unlimited searches of multiple databases, **including but not limiting the following:**

- the Excluded Parties List System (EPLS/SAM.gov) by General Services Administration (GSA);
- the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Service’s Office of Inspector General;
- the New York State Office of the Medicaid Inspector General’s List of Restricted, Terminated or Excluded Individuals or Entities;
- the Pennsylvania Department of Public Welfare’s Mediceck List that identifies providers, individuals, and other entities who are precluded from participation in the Medical Assistance (MA) Program.
- the New Jersey Treasurer’s exclusions database;
- the Connecticut Department of Social Services, Administrative Actions List;
- the Ohio Department of Job and Family Services List of Excluded Providers;
- the South Carolina Bureau of Compliance and Performance Review, List of Excluded Providers;
- the Texas Office of Inspector General, List of Excluded Individuals/Entities;
- the West Virginia MMIS, Sanctioned/Excluded Providers;
- the Idaho Department of Health and Welfare, Medicaid Provider Exclusion List;
- the Illinois Dept of Healthcare and Family Services OIG, Sanctions List;
- the Kentucky MMIS, Excluded Provider List;
- the Mississippi Division of Medicaid, Excluded Providers; and
- the Nebraska Medicaid Excluded Providers.

In the future, if any of these files are not available to the public as an electronic data file free of charge, they will cease to be included in Kchecks™.

You may also upload names and other identifying information to the Website in the specified format, and Kchecks™ will compare the names on a monthly basis against its databases and notify you via email that the monthly matches were completed. Kchecks™ will prepare a record of searches and any match resolutions for use in any federal or state audits.

Your use of Kchecks™ is subject to the terms of this License Agreement (this “Agreement”). You must agree to this Agreement before using Kchecks™. This Agreement constitutes a binding contract between you (“you”) and Kinney Services Inc. (“Kinney” or “we”).

## 1. LICENSE.

**1.1 Term.** The term of this Agreement shall commence upon your clicking "I accept" and paying the Annual License Fee, and shall continue for a term of one year, subject to termination in accordance with Section 8.

**1.2 License to Use Kchecks™.** Kinney hereby grants to you, and you hereby accept, a non-exclusive, nontransferable, limited right to access and use, and allow your Users and Administrations (defined below) to access and use, Kchecks™, subject to your full compliance with this Agreement. Kinney retains all other rights to Kchecks™ and all components thereof. You shall not obtain any rights to Kchecks™ except for the limited right to use Kchecks™ as expressly set forth herein.

**1.3 Confidentiality.** Kinney shall maintain in confidence all names and other personally identifiable information provided by you, and all reports and studies containing such information prepared or assembled by Kinney, and shall not use such information outside the scope of this Agreement or disclose such information to any third party, except on a need-to-know basis and upon appropriate assurances of confidentiality. Notwithstanding the foregoing, Kinney may disclose such information pursuant to the requirements of a governmental agency or operation of law.

## 2. USERS AND ADMINISTRATORS.

**2.1 Grant of Access.** When you sign up for Kchecks™, you will be granted a user name and password. You may designate employees within your organization who are authorized to (a) use Kchecks™ (each, a "User") and (b) set up new Users and deactivate Users (each, an "Administrator"). You may designate an unlimited number of Users and Administrators. You agree to restrict access to the Website to only those Users and Administrators who are properly registered using the Kchecks™ online registration process.

**2.2 User Compliance.** You are solely responsible for training your Users and Administrators and monitoring their use of Kchecks™. You are solely responsible to ensure that Users and Administrators keep their user names and passwords in a safe and secure place. Kinney may post additional terms of use on the Website from time to time, and any violation by a User or Administrator of this Agreement or any additional terms of use shall be cause for suspension or termination of their access to Kchecks™.

## 3. PAYMENT.

**3.1 Annual License Fee.** When you sign up for Kchecks™, you will be charged a fee to use Kchecks™ throughout the term (the "*Annual License Fee*"). Kinney will send you an invoice prior to expiration of the term if you wish to subscribe for a subsequent term.

**3.2 Suspension of Service.** Failure to pay the Annual License Fee prior to the expiration of the existing term may result in suspension of your access to Kchecks™. Kinney reserves the right to charge a reconnection fee to re-establish connection after suspension due to non-payment.

**3.3 Taxes.** All fees due hereunder shall be exclusive of federal, state, municipal or other government excise, sales, use, occupational or similar taxes existing as of the date of this Agreement or enacted in the future. You agree to pay any tax (excluding taxes on Kinney's net income) that Kinney may be required to collect or pay, now or at any time in the future, and that are imposed upon the sale or delivery of services provided under this Agreement.

## 4. INTELLECTUAL PROPERTY.

**4.1 Ownership.** You acknowledge that as between you and Kinney, Kinney will retain all right, title and interest in and to any software program, tools, specifications, ideas, concepts, know-how, processes, and techniques used by Kinney or its employees or agents in connection with Kchecks™, including all intellectual property rights therein. Nothing in this Agreement will be deemed to prohibit or limit Kinney's right to perform similar services for any other party during or after the term of this Agreement.

**4.2 Modifications; Derivative Works.** You shall not modify, reverse engineer, decompile, disassemble, re-engineer or otherwise create or permit or assist others to create or access Kchecks™, or to create any derivative works from Kchecks™. You shall not combine Kchecks™ with any other software or services not provided or approved by Kinney.

## 5. SECURITY.

**5.1 No Unauthorized Access.** You shall not access, or authorize or enable the Users or Administrators to access, the Website in a manner other than as explicitly authorized herein, and shall not access or seek to access data other than your data. Any attempt to interfere with Kinney's software or bypass the Kinney security is strictly prohibited.

**5.2 Security Limitations.** Kinney has physical, electronic and managerial procedures to help safeguard, prevent authorized access to, and maintain data security of, the Website. However, Kinney does not guarantee security. Neither people nor security systems are foolproof, including encryption systems. In addition, people can commit intentional crimes, make mistakes or fail to follow policies. If applicable law imposes any non-disclaimable duty, you hereby agree that intentional misconduct will be the standard used to measure Kinney's compliance with that duty.

## 6. CUSTOMER RESTRICTIONS.

**6.1 Terms of Use.** You shall comply with the terms of use and other policies of Kinney posted on the Website. Kinney reserves the right to change its terms of use or other policies at any time, provided that such changes shall be prospective only. You shall keep all email contact information correct and updated at all times. You should check back regularly to review any changes to the terms of use.

**6.2 No Unauthorized Use.** You may not, and may not permit your Users or Administrators to, use Kchecks™ for any unlawful activities or other purposes not expressly provided herein, including but not limited to attempting to compromise the security of any customer account. Appropriate legal remedies will be pursued if Kinney becomes aware of any such activities.

## 7. LIMITATIONS OF LIABILITY.

**7.1 Warranty Disclaimer.** KCHECKS™, THE WEBSITE AND ALL COMPONENTS THEREOF ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND. KINNEY FURTHER DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU ACKNOWLEDGE THAT YOU ARE SOLELY RESPONSIBLE FOR THE ACCURACY OF THE DATA PROVIDED TO KINNEY. YOU ALSO ACKNOWLEDGE THAT ANY DATA PROVIDED BY THE GOVERNMENT OR ANY THIRD PARTY SOURCES MAY BE ERRONEOUS, INCOMPLETE OR UNTIMELY, WHICH MAY ADVERSELY IMPACT THE ACCURACY OF THE SERVICES PROVIDED HEREUNDER.

**7.2 Limitation of Liability.** KINNEY SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND WHETHER OR NOT THE SERVICES HEREUNDER ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. KINNEY'S TOTAL LIABILITY FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY WILL IN NO EVENT EXCEED ONE YEAR'S ANNUAL LICENSE FEE.

**7.3 Carrier Lines.** You acknowledge that access to the Website is to be provided over various facilities and communications lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, "carrier lines") owned, maintained, and serviced by third-party carriers, utilities, and internet service providers, all of which are beyond Kinney's control. Kinney assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines, or any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at your own risk and is subject to all applicable local, state, national, and international laws.

## 8. TERMINATION.

**8.1 Termination.** This Agreement may be terminated as follows: (a) by either party, upon giving written notice to the other party, if the other party breaches any material provision of this Agreement and fails to cure such breach within five (5) days after receipt of written notice thereof specifying the breach; or (b) by you, at your option, for any reason or no reason, to be exercised by providing written notice to Kinney.

**8.2 Effect of Termination.** Sections 1.3, 3.3 and 4 through 9 shall survive any termination or expiration of this Agreement. Upon the expiration or termination of this Agreement for any reason, (a) all access to Kchecks™ by you and your Users and Administrators shall cease. In no event shall any fees or portions thereof paid to Kinney be refunded.

## **9. GENERAL PROVISIONS.**

**9.1 Agreement to Conduct Transactions Electronically.** All of your transactions with Kinney or through the Website may, at our option, be conducted electronically from start to finish. If the law allows you to withdraw this consent or if we are ever required to deal with you non-electronically, we reserve the right to charge or increase fees and you agree to print or make an electronic copy of this Agreement and any other contract or disclosure that we are required to provide to you.

**9.2 Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws. Both parties agree to submit to jurisdiction in the State of New York and further agree that any cause of action arising under this Agreement shall be brought exclusively in a court in Albany County, New York.

**9.3 Waiver.** The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**9.4 Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

**9.5 Assignment.** Neither party may transfer, assign or sublicense this Agreement or any rights or obligations they are under without the other party's prior written consent; provided that the foregoing will not be deemed to restrict a party from assigning this Agreement, without the other party's consent: (a) to any affiliate; or (b) to any entity which acquires all or substantially all of the assigning party's assets or to any successor in a merger or acquisition involving the assigning party.

**9.6 Independent Contractors.** The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**9.7 Notices.** Kinney may send notices to the Administrators on record via email or regular mail. Kinney may also provide notice of changes to the terms or other matters by displaying notices, or links to notices, on the Website.

**9.8 Force Majeure.** Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

**9.9 Entire Agreement.** This Agreement, including the Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

**9.10 Export Limitations.** Kchecks™ is controlled by us from our offices in the United States of America and is directed to U.S. users. If you access the Website from locations outside the U.S., you do so at your own risk and you are responsible for compliance with applicable local laws. You may not use or export anything from the Website in violation of U.S. export laws and regulations or this Agreement.

**9.11** KINNEY further represents that neither it nor any of its employees has been excluded or debarred from participation in any federal or state health care program; neither it nor any of its employees currently appears on the Office of Inspector General's List of Excluded Individuals/Entities

Please forward this completed form with your check to the following address:

**Kinney Services Inc.  
Kchecks™ Licensing Fee  
1205 Troy Schenectady Road  
Riverhill Center – Suite 106  
Latham, New York 12110**

- Single License - \$850.00 annual licensing fee.  
(Includes the following: Nursing Home, Assisted Living Facility, Independent Agencies/Providers, etc...)
- Multiple Licenses – Large Block (10 accounts) - \$4,950.00 annually  
Mini-Block (5 accounts) - \$2,500.00 annually  
(Note: Must be part of the same legal entity).
- Hospital – Based on “GROSS” annual revenue:  
Under \$500 Million \$2,500.00 yearly\*  
Over \$500 Million \$4,950.00 yearly\*\*  
(\* Up to 5 separate accounts.)  
(\* \*\*Up to 10 separate accounts.)
- County Government - \$850.00 annual licensing fee per Agency or Department (Countywide maximum annual fee of \$4,950.00 – Up to 10 separate accounts).  
(Not applicable to Government hospital or other multi-NPI operated providers.)

Annual Licensing Fee: \$ \_\_\_\_\_ Indicate discount code, if any. \_\_\_\_\_  
If purchasing under state contract attach a copy of the Purchase Order.

**Licensee:**

Name of Entity: \_\_\_\_\_  
(e.g. Government Department, Health care provider, etc.)

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Client’s Kchecks Administrator:** (if same person as above leave blank)

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

***You will be notified by email as soon as your account is activated.***