

# Credit Application & Agreement



For Expanded Access to AmerisourceBergen Products and Services

AmerisourceBergen takes great pride as the premier provider of health care products and services. We thank you for taking time to complete this Credit Application and Agreement. Welcome to the AmerisourceBergen family.

Name of Applicant (Business Legal Name)      Year Business Started      Owner(s) since (mm/yyyy)

D/B/A (if applicable)      State of Formation / Incorporation      Email      Phone #

Address      City, State, Zip

Billing Address (if different)      City, State, Zip (if different)

Shipping Address (if different)      City, State, Zip (if different)

Fax #      Monthly Estimated Volume      Federal Tax ID #      NCPDP #

Legal Entity Form      \*If Sole Proprietor, please provide copy of driver's license      If Other, please specify

## APPLICANT'S ACCOUNTS PAYABLE CONTACT INFORMATION

Name      Phone Number

Will Applicant have another party (example: a parent company, subsidiary, or management company of Applicant) place orders or coordinate payment to AmerisourceBergen on behalf of Applicant?    Yes    No    If yes, please provide legal name of such party

Will Applicant issue purchase orders?    Yes    No    Will Applicant prepay?    Yes    No

## OWNERSHIP (list each person owning 10% or more; attach additional pages if needed)

*The undersigned hereby consent(s) to and authorize(s) AmerisourceBergen to obtain a non-business consumer credit report on the undersigned in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s), and/or guarantor(s) of the Applicant in connection with the extension or continuation of business credit as represented by your credit application. The undersigned as an individual(s) hereby knowingly consent(s) to the use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. §1681 et seq.*

Owner's Name	Title with Applicant	Owner's Name	Title with Applicant
Address, City, State, Zip	Social Security #    Phone #	Address, City, State, Zip	Social Security #    Phone #
% Ownership	License #	% Ownership	License #
Owner's Signature		Owner's Signature	

## TRADE REFERENCES (list each person owning 10% or more; attach additional pages if needed):

Primary Supplier      Account #      Phone #      Contact Name

Secondary Supplier      Account #      Phone #      Contact Name

Bank      Account #      Phone #      Contact Name

## CREDIT AGREEMENT

This Credit Agreement, together with the credit application submitted by Applicant, any Prime Vendor Agreement, Purchase and Sale Agreement or any similar form of distribution or supply agreement or other account application (each a "Purchase Agreement"), and stated invoice terms, constitute an agreement among (i) Applicant and (ii) AmerisourceBergen Drug Corporation ("ABDC") and ASD Specialty Healthcare, LLC doing business as ASD Healthcare ("ASD"), Besse Medical ("Besse") and Oncology Supply ("OS" and together with ASD and Besse, each an "ASD Party" and together with ABDC, the "ABC Parties" and individually each an "ABC Party"). Applicant understands and agrees to the following terms and conditions of sale:

1. **Payment Terms.** If Applicant enters into a Purchase Agreement, the specific payment terms are as stated in such agreement or in Applicant's Payment Terms Agreement. Otherwise, specific payment terms are stated on the invoice delivered to Applicant. The following terms apply to all purchases of goods and services unless the Purchase Agreement provides otherwise, in which event the terms of the Purchase Agreement will control: (a) Applicant agrees to pay for all purchases, fees and other charges (including but not limited to any ACH draft fees) incurred by Applicant or an authorized user on any account of the Applicant. (b) All payments must be deposited to the respective ABC Party's account during normal business hours by the date due. (c) Prices quoted may include a discount in anticipation of payment within terms. Should payments be deposited to the respective ABC Party's account later than the due date, or if the payment is dishonored, the respective ABC Party will invoice Applicant for the unearned discount. A processing fee of \$50 will be invoiced for each dishonored payment. (d) If payment is delinquent, the respective ABC Party may, in addition to its right to exercise other remedies, (i) withhold any credits or payments to Applicant, (ii) assess a per-day late payment fee of the lower of 18% per annum or the maximum rate permitted by law on the outstanding balances until paid and/or (iii) adjust future Price of Goods or pricing on purchases of products to reflect Applicant's payment history. (e) Applicant agrees to promptly pay when invoiced all denied chargebacks for disallowed/ineligible contract pricing, and to look solely to the relevant manufacturer(s) and/or group purchasing organization(s) or buying group(s) for redress. (f) Billing disputes must be filed with the respective ABC Party's Accounts Receivable Department by the earlier of one year after receipt of the first statement containing the amount in dispute or the shorter period set by a manufacturer for chargebacks. Otherwise, Applicant will be deemed to accept the accuracy of such statements and to waive its right to dispute the amount. (g) Applicant acknowledges and understands that each ABC Party has the absolute right to change pricing or payment terms, require full or partial payment in advance or suspend delivery of products to Applicant without any liability being incurred by such ABC Party. (h) Drivers and ABC Parties' employees cannot accept payment. (i) Drivers are not authorized to verify contents or quantities of packages. Applicant agrees that a receipt signed by a driver for any tote or package does not constitute evidence of the contents or value of the package. (j) Applicant may be charged an additional shipping charge applicable to orders requesting upgraded, emergency and/or same day delivery. (k) All orders of controlled substances and listed chemicals are subject to the ABC Parties' Suspicious Order Monitoring Program ("OMP"). Orders identified by the OMP may be rejected and may result in future ordering restrictions. (l) Applicant acknowledges and agrees that, as a courtesy, ABDC may bill Applicant for products sold by any ASD Party that are ordered through ABDC and delivered by an ASD Party and payment for such products shall be made on the terms set forth herein.

2. **Security Agreement.** To secure all of Applicant's existing and future liabilities to the respective ABC Party and its affiliates, including the repayment of any amounts that such ABC Party may advance or spend for the maintenance or preservation of the Collateral (as defined below) or otherwise (collectively, the "Obligations"), Applicant grants to each ABC Party a lien upon and security interest in the following personal property, wherever located, and now owned or hereafter acquired or arising (collectively, the "Collateral"): all of Applicant's (a) Accounts; (b) Inventory; (c) Equipment; and (d) General Intangibles and all Proceeds of the foregoing. All capitalized terms used herein and not defined have the meaning set forth in the Uniform Commercial Code as in effect in any jurisdiction in which any of the Collateral may at the time be located (the "UCC"). Applicant hereby authorizes each ABC Party to file a UCC-1 financing statement with the applicable state agency in order to perfect the security interest granted hereby and take any actions necessary to remain perfected so long as the Obligations are outstanding. Each ABC Party may at any time enforce Applicant's rights against Account Debtors and Obligors. Applicant has the risk of loss of the Collateral. Applicant will not make any sales, leases or other disposition of any of the Collateral except in the ordinary course of business. Applicant will not grant any other security interest in any of the Collateral.

3. **Covenants.** (a) Applicant certifies that any information provided in the credit application or in connection with the credit application is true and complete. (b) Applicant will provide the ABC Parties with such financial information as may be requested by the ABC Parties, and Applicant certifies that any such information will be true and complete. (c) Applicant will provide the ABC Parties at least ten (10) days prior written notice of any change in its state of formation; the location or ownership of, or any intent to sell, close or materially modify its business operations; any name change or change of business form (e.g. sole proprietorship, partnership or corporation); and any legal action that in the event of an unfavorable outcome would jeopardize the ongoing viability of Applicant. (d) Upon reasonable notice, Applicant will allow any of the ABC Parties or any other third-party engaged by an ABC Party access to Applicant's premises to inspect the Collateral and Applicant's books and records. (e) Applicant authorizes the ABC Parties and any credit agency or any service engaged by the ABC Parties to obtain, verify or otherwise investigate any information, reference, statements, credit reports or other information obtained with respect to Applicant as any ABC Party deems appropriate. (f) Applicant will maintain insurance sufficient to insure the Collateral. (g) Applicant will comply with all applicable laws and all policies of the ABC Parties, as amended from time to time, related to such laws. (h) Applicant is responsible for any applicable sales, use, gross receipts, excise, privilege, value-added, business and occupation taxes, or any other assessments or charges, regardless of how labeled, imposed by federal, state, local or foreign governments on manufacture, sales, shipment, import, export or use of products or services (other than the ABC Parties' income taxes). Applicant will provide applicable exemption certificates to the ABC Parties. (i) The obligations, representations and covenants of Applicant to the ABC Parties under this Credit Agreement will survive until all Obligations are indefeasibly paid in full.

4. **Events of Default.** The occurrence of any of the following will be an Event of Default under this Credit Agreement: (a) Applicant fails to pay when due any amount owing to the respective ABC Party or its affiliates; (b) Applicant fails to comply with any of the provisions or covenants of this Credit Agreement or any other agreement now existing or hereafter entered into among Applicant and the ABC Parties or its affiliates; (c) Applicant makes any representation or warranty in this Credit Agreement, the credit application to which it is attached, any other agreement now existing or hereafter entered into between Applicant and the ABC Parties or their affiliates, or in any financial statement delivered to the ABC Parties or their affiliates that is untrue or incomplete in any aspect that an ABC Party or one of their affiliates deems to be material; (d) Applicant transfers or disposes of any of the Collateral other than in the ordinary course of business; (e) Applicant, voluntarily or involuntarily, becomes subject to any proceeding under the Bankruptcy Code or any insolvency or receivership proceeding under federal or state law; (f) Applicant fails to comply with, or becomes subject to any administrative or judicial proceeding under any federal, state or local hazardous waste or environmental law, asset forfeiture or similar law which can result in the forfeiture of property, or other law where non-compliance may have a significant, adverse effect on the Collateral or the ability of Applicant to perform its Obligations; (g) Applicant discontinues in the business presently operated by it for a period of more than ten (10) consecutive days; (h) the death or incapacity of Applicant (if applicable), or any guarantor of the Obligations or the dissolution or liquidation of Applicant; (i) the sale or transfer of the business of Applicant, in whole or in part, or a "Change in Control" in Applicant; or (j) determination by an ABC Party that there has been the occurrence of a material adverse change in the business, assets, financial condition or prospects of Applicant or guarantor of the Obligations or the occurrence of an event which could reasonably be expected to result in such a material adverse change. "Change in Control" means the sale, transfer or assignment if 25% or more of Applicant's assets, the voting equity or any other voting interest in Applicant.

5. **Remedies Upon Default.** Upon the occurrence of an Event of Default, the ABC Parties may (a) accelerate and declare all Obligations immediately due and payable without demand or notice; (b) exercise all rights and remedies of a secured party under the UCC; (c) obtain the appointment of a receiver for Applicant's business or properties, to be vested with the fullest powers permitted under applicable law, without regard to the adequacy of the Collateral for the Obligations or the solvency of Applicant and Applicant will be deemed to have consented to such appointment without the necessity of the ABC Parties to post a bond; and (d) exercise all other rights and remedies available to the ABC Parties at law or in equity. The rights and remedies provided in this Credit Agreement, in any other agreement among the ABC Parties and Applicant or afforded by law or equity are cumulative and may be exercised concurrently, independently or successively. The ABC Parties will not be deemed to have elected or waived any other remedies by the exercise of one or more remedies. Without limiting the ABC Parties' other legal rights, the ABC Parties may exercise a right of setoff against amounts due Applicant from the ABC Parties or any of their affiliates. Any forbearance or delay in the exercise of any right or remedy hereunder or as otherwise afforded by law will not be a waiver of or preclude the exercise of any such right or remedy.

6. **Costs and Expenses.** Applicant agrees to pay all reasonable attorneys' fees and expenses or costs incurred by the ABC Parties in enforcing their rights to collect amounts due from Applicant and, until paid, such fees, expenses and costs will be additional Obligations under this Credit Agreement.
7. **ASD Party Credits and Returns:** Credit for returned merchandise will be assessed upon receipt of the merchandise and only for items that are authorized for return by the applicable ASD Party. Issuance of a return authorization does not guarantee credit will be issued. All credits will be reflected in Applicant's account to apply toward future purchases. For all ASD Parties, Applicant must report any errors and/or discrepancies within 48 hours of receipt for all items. The respective ASD Party is not obligated to issue credit for errors or discrepancies not reported within such time period. Credits will be issued at the original purchase price shown on the invoice, less the amount of off-invoice allowances or adjustments, if any. Items returned due to Applicant error or overstocking are subject to a handling charge. All returns must comply with these terms and conditions and all applicable laws, rules and regulations.
8. **Equal Credit Opportunity Act.** The Federal Equal Credit Opportunity Act and similar state laws prohibit creditors from discriminating against credit applicant on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, familial status, age, because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.
9. **Own Use.** Except as provided in writing by the applicable ABC Party, Applicant hereby represents and warrants that all products purchased from the ABC Parties are intended for Applicant's "Own Use" as that term is defined by the United States Supreme Court in *Abbott Labs. v. Portland Retail Druggists Assoc.*, 425 U.S. 1 (1976).
10. **Time to Assert Claims, Limitation on Damages.** Any claim against an ABC Party will be barred unless commenced within one (1) year from the date the cause of action has accrued. THE ABC PARTIES WILL NOT BE LIABLE TO APPLICANT FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS OPPORTUNITIES, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER.
11. **Prescription Drug Marketing Act of 1987.** In accordance with the requirements of the Prescription Drug Marketing Act of 1987, as amended, Applicant does hereby, and will, so long as it purchases products from an ABC Party, continue to certify, represent, warrant, agree and covenant to the ABC Parties, with respect to all products to be returned to an ABC Party for credit on and after the date of this Credit Agreement, that (1) all such products were purchased by Applicant from an ABC Party; (2) the credit amount claimed by Applicant and indicated on the credit memorandum and/or transmitted electronically to an ABC Party is no greater than the actual net acquisition price invoiced to or paid by Applicant for each product; (3) Applicant must provide any and all data and information, written or otherwise, requested by an ABC Party, including information requested by the product manufacturer; (4) until products are received by an ABC Party, such products have been properly stored, handled and shipped in accordance with all applicable laws, rules, regulations and standards; (5) Applicant must maintain documents that evidence each return of product to an ABC Party and the source from which the product was originally purchased for a period of three (3) years from the date such documents are created; and (6) Applicant has established and will maintain sufficient and appropriate business policies and processes, including periodic audits and reviews, to ensure Applicant's compliance with the foregoing certifications with respect to each product returned by Applicant to an ABC Party.
12. **Governing Law.** This Credit Agreement and the rights and obligations of the parties will be construed, interpreted, and enforced in accordance with and governed by the internal laws and regulations, as amended, of the State of Delaware, without reference to conflict of laws principles.
13. **Waiver of Jury Trial.** THE PARTIES WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS CREDIT AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.
14. **Successors and Assigns.** This Credit Agreement will inure to the benefit of and be binding upon the heirs, successors and assigns of each of the parties; provided, however, Applicant may not assign this Credit Agreement without the prior written consent of the ABC Parties. Assignment of all or any part of this Credit Agreement by either party will not relieve it of responsibility of performing its obligations to the extent that they are not satisfied in full.
15. **Miscellaneous.** This Credit Agreement cannot be modified except by writing and signed by the party or parties to be bound. Nothing herein is intended to amend the terms of any outstanding agreement or transaction between Applicant and ABDC or ASD or in any way diminish, relinquish or terminate any of ABDC's or ASD's rights to previously-provided collateral intended to secure any obligations of Applicant to either ABDC or ASD or their predecessors including, without limitation, any guaranty, letter of credit or other forms of collateral. For ABDC and ASD, to the extent there is a discrepancy between the credit terms in this Credit Agreement and the credit terms in any Purchase Agreement, the credit terms in this Credit Agreement shall control. For Besse and OS, to the extent there is a discrepancy between the terms in this Credit Agreement and the terms in any Purchase Agreement, the terms in the Purchase Agreement shall control. If any provision of this Credit Agreement is held to be invalid, illegal or unenforceable under any applicable law, such provision will be deemed severable and the remainder of this Credit Agreement will be unaffected. Captions are for convenience of reference only. This Credit Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Credit Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Credit Agreement.

I/We have read and agree to the terms specified above, certify that all information provided is true and complete and intending to be legally bound hereby enter into this Credit Agreement on behalf of Applicant. I/We hereby authorize, by signing below, any ABC Party to order a consumer report related to the Applicant and the business principal(s) to determine credit eligibility or otherwise investigate any information, reference, statements, credit reports or other information obtained with respect to Applicant as any ABC Party deems appropriate.

**Name of Applicant**

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**Authorized Signature**

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**Name of Authorized Representative**

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**Title**

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**Date**

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**Authorized Signature**

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**Name of Authorized Representative**

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**Title**

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**Date**

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## PERSONAL GUARANTY

Each undersigned principal of Applicant (as defined in the attached Credit Agreement), by reason of his or her financial interest in Applicant and as an inducement for AmerisourceBergen Drug Corporation ("ABDC") and/or ASD Specialty Healthcare, LLC doing business as ASD Healthcare, Besse Medical and Oncology Supply (each an "ASD Party" and together with ABDC, the "ABC Parties" and individually each an "ABC Party") to extend credit to Applicant, and intending to be legally bound, hereby jointly and severally, irrevocably and unconditionally guarantee, as sureties, to each ABC Party and its successors and assigns the prompt and full payment (and not merely the ultimate collection) and performance of all Obligations (as defined in the attached Credit Agreement) of Applicant to the ABC Parties, whether now existing or hereafter arising. Each undersigned further agrees that his or her liabilities and obligations under this guaranty will be primary, absolute and unconditional, irrespective of, and unaffected by: (a) the genuineness or enforceability of any future amendment or change in this guaranty, any agreement between one or more ABC Parties and Applicant or any other agreement to which any undersigned or Applicant is or may become a party; (b) the absence of any action to enforce this guaranty or any other document evidencing or securing the Obligations or the waiver or consent by an ABC Party with respect to any provision hereof or thereof; (c) the existence, value or condition of, or the failure to perfect an ABC Party's lien on any Collateral for the Obligations (including any Collateral under the attached Credit Agreement) or any action or failure to act by an ABC Party with respect to any such collateral; (d) the insolvency of Applicant; or (e) any other action or circumstance that might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor.

Each undersigned authorizes each ABC Party and any credit agency or other service engaged by an ABC Party to obtain and verify any reference, statement, credit report or other information about him or her that such ABC Party deems appropriate. Each undersigned waives any and all rights of subrogation, reimbursement, indemnification and contribution and any other rights and defenses that are or may be available to any undersigned, including defenses based upon statutes or rules of law providing for the marshalling of assets, changes in the principal obligation or those of another guarantor or surety and an inability to participate in, or the benefit of, any collateral for the Obligations now or hereafter held by the ABC Parties. Paragraphs 10 (Time to Assert Claims; Limitation on Damages), 12 (Governing Law) and 15 (Miscellaneous) of the Credit Agreement are hereby incorporated in this guaranty as if set forth at length and, in each case, all references in such paragraphs to the Applicant or parties will be deemed to include the undersigned and all references to the Credit Agreement will be deemed to include this guaranty.

THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS GUARANTY OR ANY OTHER AGREEMENT BETWEEN THE PARTIES.

Guarantor's Signature

Name of Guarantor

\_\_\_\_\_  
Address, City, State, Zip

Phone #

Date

Spouse's Signature

Name of Spouse

\_\_\_\_\_  
Address, City, State, Zip

Phone #

Date

Guarantor's Signature

Name of Guarantor

\_\_\_\_\_  
Address, City, State, Zip

Phone #

Date

Spouse's Signature

Name of Spouse

\_\_\_\_\_  
Address, City, State, Zip

Phone #

Date