

FreeTake Agreement

This FreeTake Agreement (this “**Agreement**”), effective as of the date of the last signature hereto (the “**Effective Date**”), is between ONCOLOGY NURSING CERTIFICATION CORPORATION (“**ONCC**”) and the following institution (the “**Employer**”):

Background

The Employer wishes to participate in ONCC’s FreeTake Program (the “**Program**”). By participating in the Program, the Employer’s employees may retake, at no charge, an ONCC exam that they did not pass on the first attempt, all subject to the terms and conditions of this Agreement. Intending to be legally bound, the parties agree as follows:

1. Program.

1.1. **Program Administration.** The Employer shall designate a primary administrator and may designate a secondary administrator to serve as the Employer’s administrator of the Program, as identified on Appendix A attached hereto and incorporated herein (each an “**Administrator**”). The Employer shall administer the Program through its Administrators and the Employer is responsible for the activities of its administrators. The Program covers only the following ONCC exams: OCN, AOCNP, CBCN, CPHON, and BMTCN, together with other ONCC exams that ONCC may add to the Program from time to time in its sole discretion.

1.2. **Candidates; Candidate Minimum.** The Employer shall provide a minimum of 10 candidates for registration during the Term (as hereinafter defined) to take an ONCC exam (the “**Candidate Minimum**”). A candidate is registered when the candidate: (a) has submitted a complete application to ONCC via www.oncc.org using an access code provided by the Employer via its Administrator; and (b) is issued an Authorization to Test (“**ATT**”). Candidates are subject to the then-current ONCC policies set forth at www.oncc.org/policies, and a candidate who violates any applicable ONCC policy becomes ineligible. Ineligible candidates do not count towards the Candidate Minimum.

1.3. **Change in Candidate Status.** The Employer shall notify ONCC if any candidate is no longer employed by the Employer or is otherwise not eligible to take an ONCC exam (by email to freetake@oncc.org). The Employer acknowledges that a candidate may still be able to apply to take an ONCC exam or take an ONCC exam after the candidate’s employment with the Employer has been terminated or otherwise changed (e.g., change of position or reassignment) and the Employer will still be responsible for all fees and amounts associated with the candidate, unless the Employer has notified ONCC in writing before the candidate starts to test that the candidate’s employment has been terminated or otherwise changed. By way of example only, if the Employer fails to notify ONCC that a candidate’s employment has terminated, the Employer will nevertheless have to pay the applicable fee if that candidate is no longer employed by the Employer when the candidate passes an ONCC exam.

1.4. **Codes.** A code permits a candidate to apply to take or retake, as applicable, an ONCC exam. The Employer is responsible for the use, misuse, or failure to use codes by the Employer, its administrator, and its candidates. The Employer shall not commercially exploit a code or attempt to circumvent any security measures associated with codes.

1.5. **Administration.** The Employer shall ensure that Administrators create unique user identification and login credentials to administer the Program. These credentials may not be shared or used by more than one Administrator. The Employer is solely responsible for ensuring the confidentiality of log-in accounts and passwords, and credentials. ONCC shall not be liable for any activities undertaken by anyone using any Administrator log-in accounts, passwords or credentials. The Employer shall immediately notify ONCC of any unauthorized use of the log-in accounts, passwords or credentials known to the Employer. The Employer shall notify ONCC if the Administrator leaves or stops serving in that role, and the Employer is solely responsible for its failure to so notify ONCC and any resulting delays, fees, or inability to use the Program or distribute codes to candidates. In addition, the Employer shall keep candidate information strictly confidential.

1.6. **Testing.** After receiving an ATT, the candidate must schedule a testing appointment within 90 days and comply with instructions in the ATT. If an ATT does not result in a passing score for the candidate for whatever reason (including but not limited to the candidate failing to schedule a testing appointment within the 90-day window or the candidate failing to show for the ONCC exam), the candidate will be deemed to have tested and failed the applicable ONCC exam. If a candidate does not achieve a passing score for an ONCC exam, the Employer is responsible for creating a new access code and providing it to the candidate for a second attempt. Access codes will not be provided for more than two attempts on the same ONCC exam by the same candidate.

1.7. **ONCC Policies.** The Employer acknowledges ONCC’s policies at www.oncc.org/policies. These policies are between ONCC and candidates and do not affect the Employer’s rights; thus, this Agreement does not restrict ONCC’s ability to modify its policies at any time without notice. A candidate who violates a policy may be ineligible to take an exam.

1.8. **Program Benefits.** ONCC shall: (a) provide the Employer with promotional materials for the Program at no cost to the Employer; (b) assist the Administrator in monitoring candidate applications; (c) provide the Administrator with a monthly invoice listing those candidates who have successfully passed an ONCC exam, including the name, ONCC exam name, and applicable fee; and (d) allow candidates to take an ONCC exam for which the candidate had an ATT issued pursuant to this Agreement at the

computer-based testing site of the candidate's choice. The Employer shall share information about ONCC exams and the Program with candidates (available on www.oncc.org or as provided by ONCC).

2. Fees

2.1. **Payment.** If the Employer satisfies the Candidate Minimum, the Employer shall pay ONCC the then-current member/non-member ONCC exam fee for each candidate who successfully passes an ONCC exam, even if the passing score is achieved after this Agreement terminates. If the Employer fails to satisfy the Candidate Minimum, the Employer shall pay ONCC (a) the then-current member/non-member ONCC exam fee for each candidate who successfully passes an ONCC exam, even if the passing score is achieved after this Agreement terminates, plus (b) the then-current non-member ONCC exam fee for each candidate by which the Employer fell short of the Candidate Minimum. The Employer will not be entitled to access codes in connection with the number of candidates by which the Employer fell short of the Candidate Minimum. Member fees are available with respect to candidates who are in good standing with Oncology Nursing Society (ONS) or the Association of Pediatric Hematology/Oncology Nurses (APHON) at the time an invoice is generated by ONCC. ONCC reserves the right to increase fees effective as of January 1, but any increase will not exceed 5% of the fees stated on Appendix A.

2.2. **Invoicing.** The Employer shall pay ONCC's invoices within 30 days of receipt, without setoff, counterclaim or deduction, except for amounts disputed in good faith by the Employer. Each ONCC invoice will be deemed undisputed unless ONCC receives written notice from the Employer within 30 days from the invoice date that the Employer is disputing an invoice. In a notice disputing an invoice, the Employer shall state with particularity the details as to which portion of the invoice is disputed and the reasons for the dispute. The Employer shall nevertheless pay all undisputed portions and amounts as required by this Agreement, and the parties shall use good faith efforts to reconcile the disputed amount as soon as practicable. The Employer is also responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting any amounts owed to ONCC.

2.3. **Taxes.** If ONCC has the legal obligation to pay or collect taxes for which the Employer is responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties ("**Taxes**") that are levied or imposed by the reason of performance of ONCC's obligations under this Agreement, the appropriate amount shall be invoiced to and paid by the Employer, unless the Employer provides ONCC with a valid tax exemption certificate authorized by the appropriate taxing authority and the Employer agrees to pay, and to indemnify and hold ONCC harmless from, any such Taxes excluding taxes based on ONCC's net income, employees, or property.

3. Term; Termination.

3.1. **Term.** The term of the Agreement begins on the Effective Date, and unless terminated earlier in accordance with Section 3.2, terminates on the 1-year anniversary of the Effective Date (the "**Term**").

3.2. **Termination.** Either party may terminate this Agreement: (a) for the other party's breach of this Agreement that remains uncured 30 days after the nonbreaching party notifies the other party of the breach; (b) immediately by written notice if ONCC operations as a certifying organization cease or materially change; (c) immediately by written notice if the other party makes an assignment for the benefit of creditors, becomes subject to a bankruptcy proceeding, is subject to the appointment of a receiver, or admits in writing its inability to pay its debts as they become due; or (d) for convenience upon 30 days' prior written notice, except that termination by the Employer for convenience will not relieve the Employer of any payment obligations hereunder (including but not limited to fees for candidates who pass an ONCC exam after the Agreement terminates and fees for failing to satisfy the Candidate Minimum).

3.3. **Effect of Termination.** Upon termination of this Agreement for any reason: (a) the Employer shall pay all amounts due or to become due to ONCC under this Agreement, including any fees due for failing to meet Candidate Minimum; (b) ONCC may but is not obligated to permit candidates who have been issued an ATT prior to the effective date of termination to take the applicable ONCC exam, and ONCC will invoice the Employer as provided by this Agreement; and (c) ONCC may disable any access codes and cease providing access codes to the Employer, except that for 120 days from the effective date of termination, ONCC may but is not obligated to permit the Employer via the Administrator to generate access codes that permit a candidate to retake an ONCC exam for which the candidate applied pursuant to this Agreement but did not pass. Termination of this Agreement will not relieve the Employer of liability for fees and amounts due or to become due under this Agreement, including but not limited to fees for candidates who pass an ONCC exam after the date of termination or the Employer's failure to satisfy the Candidate Minimum. Provisions that by their nature survive termination of this Agreement will so survive, including the Employer's payment obligations hereunder (including but not limited to fees for candidates who pass an ONCC exam after the Agreement terminates and fees for failing to satisfy the Candidate Minimum).

3.4. **Suspension.** ONCC may suspend use of the Program, in whole or in part, if (a) the Employer does not pay amounts due; (b) Employer violates this Agreement; (c) Employer's use of the Program risks material harm to the Program or others; (d) ONCC is requested to do so by a third-party provider, court, or regulator. Where practical, ONCC will give the Employer prior notice

so that the Employer can seek to resolve the issue and avoid suspension, but ONCC is not obligated to notify the Employer in exigent circumstances or for a suspension made to avoid material harm or violation of law. Fees remain payable during any suspension.

4. **Indemnification.** To the maximum extent permitted by applicable law, the Employer shall defend, indemnify, and hold ONCC harmless from and against any third-party claims (including but not limited to candidates) arising out of or relating to the acts or omissions of the Employer or a candidate, except to the extent caused by ONCC's negligence or willful misconduct.

5. **No Warranties. The Program is provided "as is" without warranty of any kind, whether express or implied. ONCC does not represent or warrant: (a) that the Program will meet the requirements or expectations of the Employer or a candidate, (b) that procurement or use of access codes will be uninterrupted or error-free operation; or (c) that a candidate will successfully pass an ONCC exam or achieve a particular score.**

6. **Limitations of Liability.**

6.1. To the maximum extent permitted by applicable law, ONCC's total liability for all claims under this Agreement is limited to direct damages up to the amount actually paid by the Employer under this Agreement.

6.2. **To the maximum extent permitted by applicable law, ONCC will not be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if ONCC knew they were possible or reasonably foreseeable.**

7. **General.**

7.1. **No Use of Names.** Except as necessary to perform this Agreement, neither party shall use the other's name without prior written consent. As between the parties, ONCC owns all intellectual property rights in the Program, as well as the following registered trademarks: ONCC, FreeTake, OCN, AOCNP, CBCN, CPHON, and BMTCN. The Employer shall not use these without ONCC's prior written consent and ONCC reserve all rights therein.

7.2. **Employer Status.** Employer represents and warrants that (a) Employer is not a prime contractor, and (b) does not have a contract with an entity that provides products or services to a prime contractor, but if the Employer does, ONCC's performance of this Agreement is not necessary to the performance of that contract, and ONCC's products or services are not required by that contract.

7.3. **Statistical Information.** ONCC may anonymously compile statistical information related to the Employer's use of the Program for purposes of improving the Program and ONCC's business offerings, provided that such information does not identify the Employer's data or include the Employer's name.

7.4. **Governing Law; Venue.** This Agreement is governed by Pennsylvania law, without regard to its conflict of laws principles. Any action to enforce this Agreement must be brought in the state or federal courts in Allegheny County, Pennsylvania. This choice of venue does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights.

7.5. **Dispute Resolution.** Except with respect to a violation of ONCC's intellectual property rights, the parties shall use their best efforts in good faith to settle any dispute with respect to this Agreement, or any subject matter referred to in or governed by this Agreement from the date such dispute is claimed. If settlement cannot be reached within 60 days and the parties do not agree to extend such period or settle such dispute through a mutually agreed form of alternative dispute resolution involving a disinterested third party, then each party may pursue any available remedies at law or in equity.

7.6. **Notices.** The parties shall provide all required notices in writing to the addresses set forth herein (or otherwise designated by a party through a written notice) by nationally recognized overnight courier or hand delivery and will be deemed given upon receipt.

7.7. **Amendments; Waivers.** This Agreement may be modified, or any rights under it waived, only by a written document executed by both parties.

7.8. **Authorization.** The persons executing this Agreement for and on behalf of each of the parties each represent that they have the requisite authority to bind the respective entities on whose behalf they are signing.

7.9. **No Assignment.** Neither party may assign this Agreement or any rights hereunder, whether by merger (whether that party is the surviving or disappearing entity), consolidation, operation of law, or any other manner, except with the other party's prior written consent. Any purported assignment in violation of this prohibition will be void. For purposes of this Agreement, a "change in control" is deemed an assignment.

7.10. **No Agency.** This agreement does not create an agency, partnership, or joint venture.

7.11. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

7.12. **Force Majeure.** Except for financial obligations, neither party will be liable for any failure or delay in performing under this Agreement due to any circumstances beyond its reasonable control, including but not limited to natural disasters, labor strikes or shortages, acts of civil or military authority, war, terrorism, government regulation, pandemics, public health emergencies, acts or omissions of carriers or suppliers, internet outage, loss of any necessary utility, or test center unavailability or closure.

7.13. **Severability.** If any provision of this Agreement is illegal or unenforceable, the parties intend that the other provisions of this Agreement remain in force and the provision at issue be reformed and enforced to the maximum extent permissible under law.

7.14. **Interpretation.** This Agreement will be construed as if jointly drafted, without regard for which party was generally responsible for preparing the Agreement.

7.15. **Counterparts.** This Agreement may be signed electronically and in counterparts, each of which will be deemed an original, but which together will constitute one instrument.

7.16. **Entire Agreement.** This Agreement is the entire and exclusive agreement of the parties relating to the subject matter hereof, superseding all other oral or written agreements relating thereto. Any additional or different terms or conditions stated in any document issued by the Employer (including but not limited to a purchase order) are rejected, will not be binding on ONCC, and do not become part of this Agreement.

[Signature page follows]

Each party, intending to be legally bound, signs this FreeTake Agreement on the date stated below that party's signature.

Oncology Nursing Certification Corporation

By: _____

By: _____

Name: Tony Ellis, CAE

Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Address for notice to ONCC:

Address for notice to the Employer:

125 Enterprise Drive

Pittsburgh, PA 15275

Attn: FreeTake Program

Attn: _____

FreeTake Agreement

Appendix A

Fees:

Calendar Year	Member Fees*	Nonmember Fees
January 1, 2023	\$300.00 per ONCC Exam	\$420.00 per ONCC Exam

* Member fees are available with respect to candidates who are in good standing with Oncology Nursing Society (ONS) or the Association of Pediatric Hematology/Oncology Nurses (APHON) at the time an invoice is generated by ONCC. ONCC reserves the right to increase fees effective as of January 1, but any increase will not exceed 5% of the fees stated on Appendix A.

Administrator:

The Administrator has oversight for the Employer's administration of the Program. The Administrator is responsible for (a) managing the dissemination of access codes to candidates, (b) monitoring interim reports of candidates who apply to an ONCC exam using the access codes, (c) disseminating information about ONCC Exams and how to apply, and (d) receiving invoices and facilitating payment to ONCC. Please notify ONCC within 7 days if any of the contact information below changes.

	Primary Administrator	Secondary Administrator (optional)
Name		
Title		
Phone		
Email		
Mailing Address (include any mail stops/codes or special room or building instructions)		

For Questions Regarding the Program:

ONCC FreeTake Certification Program
FreeTake@oncc.org
(877) 769-ONCC (ext. 6622)