

FreeTake Agreement

This FreeTake Agreement (this “**Agreement**”) is between Oncology Nursing Certification Corporation (“**ONCC**”) and the institution identified below (“**Employer**”). Each party, intending to be legally bound, signs this FreeTake Agreement on the date stated below that party’s signature. This Agreement incorporates the terms and conditions of the FreeTake Agreement attached hereto.

Oncology Nursing Certification Corporation	Employer:
By: _____	By: _____
Name: Tony Ellis, CAE, ICE-CCP	Name: _____
Title: Executive Director	Title: _____
Date: _____	Date: _____
For Notices or Questions to ONCC	Employer Address
FreeTake@oncc.org (877) 769-ONCC (ext. 6622) 125 Enterprise Drive Pittsburgh, PA 15275 Attn: FreeTake Program	Attn: _____

- **FreeTake Program.** By participating in ONCC’s FreeTake Program (“**Program**”), Employer’s Users 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. FreeTake is a registered trademark of ONCC.
- **Fees.** Fees are in effect and continuing until superseded/increased as provided in the Agreement. Member fees are available with respect to candidates who are members in good standing with Oncology Nursing Society (ONS), the Association of Pediatric Hematology/Oncology Nurses (APHON), or any other organization that ONCC may designate when ONCC generates an invoice.

Current Member Fees: | \$300.00 per ONCC exam

Current Nonmember Fees: | \$420.00 per ONCC exam

- **Administrators.** Administrators have oversight for Employer’s administration of the Program. Administrators are responsible for managing the dissemination of FreeTake codes to candidates, monitoring interim reports of candidates who apply to an ONCC exam using the codes, disseminating information about ONCC Exams and how to apply, and processing invoices and facilitating payment to ONCC. Please notify ONCC promptly of any changes to administrators.

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

FreeTake Agreement

1. Program

1.1. **Program Scope.** The Program covers 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.

1.2. **Users.** The term “User” means any individual whom Employer permits to use or administer the Program by Employer or on Employer’s behalf through Employer’s account, credentials, or codes, whether authorized or not.

1.3. **FreeTake Codes.** By participating in the Program, Employer may create codes by and for its Users. A code permits a User to apply to take or retake an ONCC exam. Employer is responsible for providing codes to Users, as well as the use, misuse, or failure to use codes by Employer and its Users.

1.4. **Employer Responsibility.** Employer is responsible for provisioning and managing its Users’ accounts, for its Users’ use and administration of the Program (whether authorized or not), and for their compliance with this Agreement. Employer will ensure that Users keep their account, credentials, and codes confidential and will promptly notify ONCC upon learning of any compromise thereof. ONCC may require that a User use an Employer-provided email with the Program.

1.5. **Restrictions.** Employer shall not interfere with or circumvent the Program’s integrity, operation, or security measures or access restrictions, commercially exploit a code (e.g., by charging candidates an additional fee), use the Program in violation of any applicable law or regulation, or use the Program to develop a competing product or service.

1.6. **Candidate Minimum.** Employer shall provide at least 5 unique candidates (“Candidate Minimum”). A candidate is a User who registers to take an ONCC exam by submitting a complete application to ONCC’s website using a code provided by Employer and whose registration is confirmed by ONCC by issuing the User an Authorization to Test (ATT).

1.7. **Change in User Status.** Employer shall notify ONCC via email to freetake@oncc.org if a User is no longer authorized to use or administer the Program (e.g., the User is no longer employed by Employer or is otherwise ineligible to take an ONCC exam). Employer acknowledges that a User may still be able to use or administer the Program even if no longer authorized, and Employer will be responsible for all fees incurred as a result of the User’s activities unless Employer notifies ONCC via email to freetake@oncc.org in advance. By way of example, if Employer fails to notify ONCC that a User’s employment has terminated, Employer will nevertheless have to pay the applicable fee when the User passes an ONCC exam. In addition, Employer is responsible for notifying ONCC via email to freetake@oncc.org if a User is no longer administering the Program on Employer’s behalf, and Employer is responsible for delays, fees, or inability to use the Program resulting from Employer’s failure to so notify ONCC.

1.8. **User Information.** Employer agrees that ONCC may process a User’s personal data as necessary for storage and processing in accordance with this Agreement, processing initiated by Employer or its Users, and processing to comply with other documented reasonable instructions provided by Employer (e.g., via email or support tickets) where such instructions are consistent with this Agreement. Employer has sole responsibility for the legality of personal data and the means by which Employer acquired personal data, including providing legally adequate notices to and obtaining any necessary consent from its Users. Employer shall maintain the confidentiality of User information.

1.9. **ONCC Policies.** Candidates are subject to the then-current ONCC policies on ONCC’s website. A candidate who violates an ONCC policy may become ineligible to take an exam. Ineligible candidates do not count towards the Candidate Minimum. These policies are between ONCC and candidates and do not affect Employer’s right hereunder.

2. Fees

2.1. **Fees.** Employer shall pay invoiced amounts within 30 days of receipt, without setoff, counterclaim, or deduction.

2.2. **Calculation of Fees.** If Employer fails to satisfy the Candidate Minimum, ONCC reserves the right to charge Employer either (a) the applicable exam fee for all candidates, regardless of pass, fail, or no-show outcome, or (b) the member fee for each candidate by which Employer fell short of the Candidate Minimum. Due to the nature of the Program, a candidate may still be eligible to take or retake an exam even after this Agreement terminates, so a passing score may still be achieved after this Agreement terminates, and Employer will be responsible for applicable fees in connection with any such candidate.

2.3. **Fee Increases.** Fees are subject to change at any time. However, it is ONCC’s general practice, and ONCC will use reasonable efforts, to: (a) notify Employer of any fee increases; (b) limit fee increases to once per calendar year; (c) make fee increases effective as of January 1st; and (d) limit fee increases to no more than 5% of the previous calendar year.

2.4. **Disputed Invoices.** To dispute an invoice, Employer must notify ONCC within 25 days from the date Employer receives the invoice, describe the dispute in detail, work diligently and in good faith to resolve the dispute, and pay the undisputed portion.

- 2.5. **Late Payment.** To the extent permitted by applicable law, late payments are subject to a charge of 1.5% per month or the maximum amount allowed by applicable law, whichever is less, and to the extent permitted by applicable law, Employer will be responsible for ONCC's reasonable collection costs.
- 2.6. **Taxes.** Fees are exclusive of taxes. Employer is responsible for all applicable duties, taxes, and levies, including sales, use, VAT, GST, and withholding, other than ONCC's income tax. If Employer claims tax exempt status, Employer shall provide a valid tax exemption certificate. ONCC's failure to include any applicable tax in an invoice will not waive or dismiss any rights or responsibilities under this paragraph. If applicable law requires withholding or deduction of any tax or duty, Employer shall separately pay ONCC the withheld or deducted amount, over and above fees due.
- 2.7. **Billing Information.** Employer is responsible for providing complete and accurate billing and contact information to ONCC and notifying ONCC of any changes to such information.
3. **Term; Termination**
- 3.1. **Term.** The term of the Agreement begins on date of the last signature ("**Effective Date**"), and unless terminated earlier as contemplated by this Agreement, terminates on the 1-year anniversary of the Effective Date.
- 3.2. **Mutual 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; or (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.
- 3.3. **Termination for Convenience.** Employer may terminate this Agreement for convenience upon notice to ONCC, subject to Employer's payment obligations under Section 2 (Fees), including Employer's obligation to satisfy the Candidate Minimum.
- 3.4. **Effect of Termination.** Upon termination of this Agreement, Employer shall stop using the Program and pay all amounts due or to become due. The following provisions will survive termination of this Agreement: Employer's obligation to pay fees due or to become due, Section 2 (Fees); Section 3.4 (Effect of Termination); Section 4 (Disclaimers); Section 5 (Indemnification); Section 6 (Limitations of Liability);, Section 7 (General); and any provision that must survive to fulfill its essential purpose.
- 3.5. **Suspension.** ONCC may suspend use of the Program, in whole or in part, if (a) Employer does not pay amounts due; (b) Employer violates this Agreement; or (c) Employer's use of the Program risks material harm to the Program or others. Where practical, ONCC will give Employer prior notice so that Employer can seek to resolve the issue and avoid suspension, but ONCC is not obligated to notify Employer in exigent circumstances or for a suspension made to avoid material harm or violation of law. Fees remain payable during any suspension.
4. **Disclaimers.** The Program is provided "as is" without warranty of any kind, whether express, implied, or arising from statute, course of dealing, course of performance, or usage of trade, including but not limited to any warranty of merchantability, fitness for a particular purpose, availability, reliability, or noninfringement. Further, ONCC does not represent or warrant that the Program will meet the requirements or expectations of Employer or a User, that procurement or use of codes will be uninterrupted or error-free, or that a candidate will pass an ONCC exam or achieve a particular score.
5. **Indemnification.** To the maximum extent permitted by applicable law, Employer shall defend, indemnify, and hold ONCC harmless from and against any damages or costs awarded against ONCC (including reasonable legal fees) or agreed in settlement by Employer resulting from a third-party claim arising from Employer's or a User's use of the Program or breach of this Agreement, except to the extent caused by ONCC's negligence or willful misconduct. ONCC shall notify Employer promptly of the claim for which indemnification is sought. Employer may not settle a claim without ONCC's prior approval if settlement would require ONCC to admit fault or take or refrain from taking any action. ONCC may participate in a claim with its own counsel at its own expense.
6. **Limitations of Liability**
- 6.1. **Mutual Damages Cap.** To the maximum extent permitted by applicable law, each party's entire liability arising out of or relating to this Agreement will not exceed the amounts paid or payable by Employer under this Agreement.
- 6.2. **Mutual Consequential Damages Waiver.** To the maximum extent permitted by applicable law, neither party will 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 informed of the possibility in advance.
- 6.3. **Exceptions.** Section 6.1 and Section 6.2 will not apply to: (a) Employer's obligations under Section 5 (Indemnification); (b) Employer's breach of Section 1.5 (Restrictions) or Section 1.9 (Candidate Information); (c) Employer's violation of ONCC's intellectual property rights; or (d) ONCC's right to collect unpaid fees due.

6.4. **Nature of Claims.** The waivers and limitations in this Section 6 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability, common law indemnity, breach of statutory duty, or otherwise.

7. General

7.1. **Employer Statement.** Employer states that: (a) it is duly organized, validly existing, and in good standing under the applicable laws of the jurisdiction of its origin; (b) it has accurately identified itself in this Agreement; and (c) the individual signing this document on behalf of Employer is duly authorized to act for Employer and bind Employer hereto.

7.2. **No Use of Names.** Except as necessary to perform this Agreement, neither party shall use the other's name, logos, or trademarks without prior written consent. As between the parties, ONCC owns all intellectual property rights in the Program, as well as the following trademarks: ONCC, FreeTake, OCN, AOCNP, CBCN, CPHON, and BMTCN, and ONCC reserves all rights therein.

7.3. **Governing Law.** This Agreement is governed by Pennsylvania law (excluding its conflict of laws principles), unless Customer is a state or local governmental entity or instrumentality, in which case this Agreement is governed by the laws of that state. Neither the Uniform Computer Information Transactions Act as adopted in any jurisdiction nor the United Nations Convention on Contracts for the International Sale of Goods (CISG) will apply to this Agreement.

7.4. **Venue.** Unless prohibited by applicable law, 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.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date (with transmission confirmed), or date on the courier confirmation of delivery. ONCC may send notices to Employer's Users who are administering the Program on Employer's behalf (i.e., administrators).

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

7.8. **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.

7.9. **Relationship.** This agreement does not create an agency, partnership, or joint venture. There are no third-party beneficiaries to this Agreement.

7.10. **Force Majeure.** The Program is subject to circumstances beyond ONCC's reasonable control, including but not limited to test center rules, regulations, and availability.

7.11. **Severability.** If any part 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.

7.12. **Government Rights.** To the extent applicable, the Program is "commercial computer software" or a "commercial item" for purposes of FAR 12.212 for and DFARS 227.7202. Use, reproduction, release, modification, disclosure, or transfer of the Program is governed solely by this Agreement, and all other use is prohibited. This Agreement is not associated with, or required by, a U.S. federal government contract.

7.13. **Entire Agreement.** This Agreement, which may be signed electronically and in counterparts, is the final, complete, and exclusive expression of the agreement between the parties regarding its subject matter, and apply to the exclusion of any other terms that you seek to impose or incorporate, or that are implied by trade, custom, practice, or course of dealing. This Agreement will prevail over terms and conditions of any Employer-issued purchase order or other ordering documents, which will have no force and effect, even if ONCC accepts or does not otherwise reject the purchase order or other ordering document. Any handwritten, typewritten, or redlined/blacklined changes to this Agreement are invalid.

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