



Contract Number  
**23-343**

SAP Number

## Arrowhead Regional Medical Center

<b>Department Contract Representative</b>	<u>William L. Gilbert</u>
<b>Telephone Number</b>	<u>(909)-580-6150</u>
 <b>Contractor</b>	 <u>Alcon Vision, Inc.</u>
<b>Contractor Representative</b>	<u>Derek Parkey</u>
<b>Telephone Number</b>	<u>(866) 592-1343</u>
<b>Contract Term</b>	<u>May 23, 2023 through May 22, 2024</u>
<b>Original Contract Amount</b>	<u>NTE \$80,000</u>
<b>Amendment Amount</b>	<u></u>
<b>Total Contract Amount</b>	<u>NTE \$80,000</u>
<b>Cost Center</b>	<u></u>

**Briefly describe the general nature of the contract:** Agreement with Alcon Vision, including non-standard terms, for the Clareon Intraocular Lens surgical delivery system, in the amount not-to-exceed \$80,000 for the one-year term of May 23, 2023 through May 22, 2024.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► Bonnie Uphold  
Bonnie Uphold, Supervising Deputy County Counsel

Date 5-15-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► William L. Gilbert  
William L. Gilbert, Director

Date

5/16/23



# CONSIGNMENT AGREEMENT

This Consignment Agreement (this "Agreement") is entered into as of May 23 2023, by and between Alcon Vision, LLC, ("Alcon"), 6201 South Freeway, Fort Worth, Texas 76134-2099, and San Bernardino County on behalf of Arrowhead Regional Medical Center ("Customer"), with an address of 400 N Pepper Ave, Colton, CA 92324-1801. Alcon and Customer agree as follows:

1. **Consigned Inventory:** Alcon may provide Customer with a supply of certain Alcon-manufactured products ("Product(s)") that Customer may retain on consignment ("Consigned Inventory") within its owned and operated facility ("Consignment Facility"). Alcon is under no obligation to supply Customer with a minimum number of Products for consignment purposes and Alcon may refuse to deliver Products for any lawful reason, including, but not limited to, Customer's nonpayment of any outstanding invoice. This Agreement pertains only to consignment conditions and does not alter any applicable terms otherwise agreed to in writing governing Product purchases between Alcon and Customer.
2. **Shipping & Handling:** Products will be shipped using Alcon's then-current standard shipping and handling policy. All shipping-related claims for shortages, shipping errors, lost, stolen or damaged Products must be made to Alcon within 30 days of receipt or expected delivery.
3. **Taxes:** Unless Customer is exempt from applicable taxes and provides proof of such to Alcon, Customer shall be responsible for and will pay to Alcon all applicable sales and use taxes resulting from purchases of Products pursuant to this Agreement.
4. **Title:** Alcon will retain title to the Products in Consigned Inventory until the Product is used, opened, lost, or damaged, while in the Consignment Facility's possession ("Used Product(s)"), at which time the Used Product will be deemed to have been purchased, title will be transferred to Customer, title in the sale proceeds shall vest in and belong to Alcon, and Customer will be invoiced and obligated to pay Alcon for such Products. Customer hereby appoints Alcon or its agent as Customer's limited attorney-in-fact to execute and record all documents (including, without limitation, UCC financing statements) necessary to perfect or maintain the perfection of Alcon's ownership or security interest in the Consigned Inventory or proceeds, and as may be reasonably requested, Customer agrees to execute documents in this regard.
5. **Consigned Inventory Management:** Customer assumes all liability for the safe storage, handling and use of the Consigned Inventory in accordance with the applicable instructions for use and/or important safety information. In addition, Customer agrees not to deface or otherwise place any stickers, labels, or other markings on the Product packaging. Customer must use reasonable efforts to (i) identify all Consigned Inventory as being the property of Alcon, (ii) separate Consigned Inventory from other property of Customer, and (iii) maintain complete and accurate records concerning the Consigned Inventory. All shipments of Products will be accompanied by a packing sheet specifying applicable Product information. Customer acknowledges and agrees that Alcon may ship replacement Products that may differ from the original Product being replaced and that Alcon may adjust the Consigned Inventory at its sole and reasonable discretion. Customer agrees to allow Alcon representatives to access the Consigned Inventory for auditing ("Audit") the Consigned Inventory. If an Audit reflects a shortage of Products in the Consigned Inventory, Alcon will invoice Customer for the same. Customer agrees to notify Alcon immediately if Products are traded, borrowed or exchanged with any other entity (each, a "Transferred Product"); provided, however, that Customer agrees not to sell or donate lenses to any doctor, hospital, or any other entity. Customer is responsible for monitoring the expiration dates of the consigned Products, ordering Product replacements or adding new Products to its Consigned Inventory.
6. **RFID Technology:** Product packaging may include radio-frequency identification ("RFID") tags for use in the management of Consigned Inventory. Alcon may provide Customer with an RFID scanner ("Scanner") on loan to perform automated inventory scans of Consigned Inventory ("Scans"). Alcon shall retain title and ownership of the Scanner at all times; provided, however, that Customer shall assume all liability for the safe storage, handling, and use of the Scanner, excepting reasonable wear through normal use. Customer agrees to perform regular Scans as reasonably necessary to timely monitor inventory according to its business operations. Use of the RFID technology to assist in Consigned Inventory management shall not relieve Customer of the obligations and requirements hereunder.
7. **Insurance Requirements:** Customer is an authorized self-insured public entity for purposes of General Liability and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement. Without in anyway affecting the indemnity herein provided and in addition thereto, Alcon shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment 1, as attached hereto and incorporated herein.
8. **Implanted Used Products:** Customer agrees (as to each Product's style, power and size, if applicable) to implant consigned Products on a "first-in, first-out" basis as determined by the (1) Product's expiration and (2) delivery date. For each implanted Used Product, Customer will immediately provide Alcon with any information on such Product as required by regulatory agencies, including, but not limited to, the applicable serial number. Customer is solely responsible for checking each consigned Product's expiration date before implantation. Customer assumes all liability for the implantation of an expired or Transferred Product and agrees to indemnify and hold Alcon harmless with regard to any claims, demands, or damages arising out of the use of any such expired or Transferred Product.
9. **Invoicing Used Product:** Alcon will invoice Customer for Products hereunder pursuant to the most current Product pricing applicable to Customer. Payment shall be due Net 30days after the date of the invoice, unless otherwise agreed to in writing between Alcon and Customer. Delays in invoicing shall not excuse Customer's payment obligation. If Customer requires reference to a Customer-issued purchase order ("PO") on an invoice, Customer must provide the PO information when notifying Alcon of a Used Product. Customer agrees that the omission of a PO on any invoices shall not relieve Customer of its obligation to pay for any Products hereunder. For Customer's convenience, Customer may separately provide Alcon in writing with a standing PO for invoices issued pursuant to this Agreement. Customer may update the standing PO information at any time by notifying Alcon in writing.
10. **Returns and Exchanges:** Product returns will be subject to Alcon's then-current standard return goods policy.
11. **Term and Termination:** This Agreement is effective as of May 23, 2023 and expires May 22, 2024, unless terminated earlier. Either party may terminate this Agreement by giving at least 30 calendar days' advance written notice to the other party at the address specified in this Agreement. This Agreement may be immediately terminated by Alcon upon written notice to Customer for Customer's breach of any of the terms this Agreement. This Agreement may be terminated by either party, immediately upon written notice to the other, if the other party is adjudicated insolvent or seeks protection under any bankruptcy proceeding. Customer shall return all Consigned Inventory within 14 calendar days of the termination of this Agreement. Thereafter, Alcon may invoice Customer for all unreturned Products.
12. **Governing Law/Entire Agreement/Assignment:** This Agreement shall be governed by the laws of the State of California. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under indemnification and insurance obligations. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous negotiations or agreements. This Agreement is not assignable by either party to any other party without the prior written consent of the other party, other than to an Affiliate of the party assuming all of its rights and obligations under the Agreement. As used herein, "Affiliate" means, with respect to a party, any corporation or other business entity Controlled by, Controlling or under common Control with that party, whereby "Control" means the direct or indirect ownership of more than fifty percent (50%) of the equity interest in such corporation or business entity, or the ability in fact to control the management decisions of such corporation or business entity.
13. **Confidentiality:** In connection with the performance of this Agreement, Alcon may communicate certain data and information to Customer, and Customer agrees that such material shall be kept strictly confidential by Customer, and Customer agrees to not disclose any such data and information



to any third party without Alcon's prior written consent. Notwithstanding the foregoing, Alcon acknowledges that Customer is subject to local and state open meetings and public records laws, including without limitation, the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250) (collectively, "Regulations"), and Customer's obligations hereunder cannot conflict with its compliance with the Regulations.

**Indemnity:** Alcon will indemnify, defend, and hold harmless Customer and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), ("Claims") and losses for infringement of any United States patent, copyright, trademark or trade secret ("Intellectual Property Rights") by the Products. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will use reasonable efforts to notify Alcon promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Alcon of its

obligations only if and to the extent that such delay or failure materially prejudices Alcon's ability to defend such lawsuit or claim. Customer will give Alcon sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Alcon may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Products that are the subject of the claim. Notwithstanding the foregoing, this indemnification does not apply to Claims arising from: (a) the negligence of any person other than an employee or agent of Alcon; (b) the failure of any person other than an employee or agent of Alcon to follow any labeling, manuals and/or instructions for use of the Products; (c) the use of any product (or any accessories) not purchased from Alcon, or (d) Product that has been modified, altered, or repaired by any person other than an employee or agent of Alcon. Customer agrees to indemnify Alcon against any Claims to the extent arising from (a) through (d) above due to the negligent acts or omissions of Customer or its officers, employees, representatives or agents.

#### ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

San Bernardino County on behalf of Arrowhead  
Regional Medical Center

By Dawn Rowe Date MAY 23 2023

Print Name Dawn Rowe

Title Chair, Board of Supervisors

ALCON VISION, LLC

By Heather Stoehr Date 17-May-2023

Print Name

Title A D, Customer Service Surgical

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MONELL  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By



**Exhibit A**  
**Consignment Facilities**

Consignment Facility Name	Ship-to Address	Alcon Account Number
Arrowhead Reg Med Ctr	400 N Pepper Ave Colton, CA 92324-1801	100047607

**Attachment 1**  
**Insurance Requirements**

Alcon agrees to provide insurance set forth in accordance with the requirements herein. If Alcon uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Alcon agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Alcon shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
  - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Alcon and all risks to such persons under this Agreement. If Alcon has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
  - b. Commercial/General Liability Insurance – Alcon shall carry General Liability Insurance covering all operations performed by or on behalf of Alcon providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
    - i. Premises operations and mobile equipment.
    - ii. Products and completed operations.
    - iii. Broad form property damage (including completed operations).
    - iv. Explosion, collapse and underground hazards.
    - v. Personal injury.
    - vi. Contractual liability.
    - vii. \$2,000,000 general aggregate limit.
  - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Alcon is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Alcon owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
  - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
2. **Additional Insured.** All policies, except for Worker's Compensation, policies shall contain additional endorsements including Customer and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the Consignment Agreement. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy.
3. **Waiver of Subrogation Rights.** Alcon shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Alcon and Alcon's employees or agents from waiving the right of subrogation prior to a loss or claim. Alcon hereby waives all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** Alcon agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Alcon and Customer or between Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Alcon shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be cancelled without thirty (30) days written notice to the Department, and Alcon shall maintain such insurance from the time Alcon commences performance of services hereunder until the completion of such services.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Intentionally omitted.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement.
10. **Insurance Review.** Intentionally omitted.