

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CASE NO. 20-cr-539

UNITED STATES OF AMERICA

v.

ALCON PTE LTD

Defendant.

_____ /

DEFERRED PROSECUTION AGREEMENT

Defendant Alcon Pte Ltd (the “Company”), pursuant to the authority granted by the Company’s Board of Directors reflected in Attachment B, which is incorporated by reference into this Agreement, and the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) and the United States Attorney’s Office for the District of New Jersey (the “Office”), enter into this deferred prosecution agreement (the “Agreement”). Alcon Inc., which is not a defendant in this matter, also agrees, pursuant to the authority granted by Alcon Inc.’s Board of Directors, to certain terms and obligations of the Agreement as described below. The terms and conditions of this Agreement are as follows:

Criminal Information and Acceptance of Responsibility

1. The Company acknowledges and agrees that the Fraud Section and the Office will file the attached one-count criminal Information (the “Information”) in the United States District Court for the District of New Jersey charging the Company with conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, that is, to

violate the books and records provision of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a). In so doing, the Company: (a) knowingly waives its right to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect to venue to any charges by the United States arising out of the conduct described in the Statement of Facts attached hereto as Attachment A (the “Statement of Facts”), which is incorporated by reference into this Agreement, and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the District of New Jersey. The Fraud Section and the Office agree to defer prosecution of the Company pursuant to the terms and conditions described below.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the attached Statement of Facts, and that the allegations described in the Information and the facts described in the attached Statement of Facts are true and accurate. Should the Fraud Section or the Office pursue the prosecution that is deferred by this Agreement, the Company and Alcon Inc. stipulate to the admissibility of the attached Statement of Facts in any proceeding by the Fraud Section or the Office, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the attached Statement of Facts at any such proceeding.

Term of the Agreement

3. This Agreement is effective for a period beginning on the date on which the

Information is filed and ending three years from that date (the “Term”). The Company, and the parent company, Alcon Inc., agree, however, that, in the event the Fraud Section and the Office determine, in their sole discretion, that the Company or Alcon Inc. has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company’s or Alcon Inc.’s obligations under this Agreement, an extension or extensions of the Term of the Agreement may be imposed by the Fraud Section and the Office, in their sole discretion, for up to a total additional time period of one year, without prejudice to the Fraud Section’s or the Office’s right to proceed as provided in Paragraphs 14 to 18 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment D (the “Reporting Requirements”), for an equivalent period. Conversely, in the event the Fraud Section and the Office find, in their sole discretion, that there exists a change in circumstances sufficient to eliminate the Reporting Requirements, and that the other provisions of this Agreement have been satisfied, the Agreement may be terminated early. If the Court rejects the Agreement, all provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

Relevant Considerations

4. The Fraud Section and the Office enter into this Agreement based on the individual facts and circumstances presented by this case and by the Company and Alcon Inc., including:
 - a. the Company did not receive voluntary disclosure credit pursuant to the FCPA Corporate Enforcement Policy in the Department of Justice Manual 9-47.120, or pursuant to the United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”), because its disclosure of the conduct described in the attached Statement of Facts was not timely, there was

an imminent threat of disclosure to the Fraud Section and the Office, and the Company's former corporate parent, Novartis AG, was subject to reporting obligations under a prior resolution with the U.S. Securities and Exchange Commission ("SEC");

b. the Company received full credit for its cooperation, as well as Alcon Inc.'s and Novartis AG's cooperation, with the Fraud Section's and the Office's investigation, including conducting a thorough internal investigation; making regular factual presentations to the Fraud Section and the Office; producing extensive documentation, including documents located outside of the United States, after taking steps that the Company and its affiliates determined complied with applicable foreign data privacy, confidentiality, and discovery laws; and providing translations of foreign language documents;

c. the Company, Alcon Inc., and their former corporate parent companies and affiliates engaged in remedial measures, including implementing enhanced policies and procedures relating to, among other things, accounting, anti-corruption, payments to third parties, gifts, travel, and entertainment; conducting internal reviews and investigations, including site visits, audits, and risk assessments; working with outside counsel to conduct an extensive internal investigation of the Company's operations in Asia; terminating high-level executives of the Company and disciplining certain other employees of the Company and its affiliates; and terminating the Company's relationship with the third-party distributor company involved in the conduct described in the Statement of Facts;

d. the Company and Alcon Inc. have committed to continuing to enhance their compliance programs and internal controls, including ensuring that their compliance programs

satisfy the minimum elements set forth in Attachment C to the Agreement (the “Corporate Compliance Program”);

e. based on the Company’s and Alcon Inc.’s remediation and the state of their compliance programs, and the Company’s and Alcon Inc.’s agreement to report to the Fraud Section and the Office as set forth in the Reporting Requirements, the Fraud Section and the Office determined that an independent compliance monitor is unnecessary;

f. Novartis AG, the Company’s former parent company, has resolved with the SEC through a cease-and-desist proceeding relating to the conduct described in the attached Statement of Facts and other conduct, and has agreed to pay \$92,300,000 in disgorgement and prejudgment interest of \$20,500,000;

g. the nature and seriousness of the offense conduct, as described in the attached Statement of Facts, including the falsification of books, records, and accounts to conceal improper payments to health care providers (“HCPs”) employed by public institutions in Vietnam, as well as the duration of the misconduct and the involvement of high-level executives of the Company;

h. the Company has no prior criminal history;

i. the Company has agreed to continue to cooperate with the Fraud Section and the Office in any ongoing investigation as described in Paragraph 5 below;

j. accordingly, after considering (a) through (i) above, the Company received an aggregate discount of 25 percent off the bottom of the otherwise-applicable Sentencing Guidelines fine range.

Future Cooperation and Disclosure Requirements

5. The Company shall cooperate fully with the Fraud Section and the Office in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Fraud Section and the Office at any time during the Term, subject to applicable laws and regulations, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term. At the request of the Fraud Section and the Office, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks (the “MDBs”), in any investigation of the Company or any of its subsidiaries or affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Fraud Section and the Office. The Company’s cooperation pursuant to this Paragraph is subject to applicable laws and regulations, including relevant data privacy and national security laws, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, the Company must provide to the Fraud Section and the Office a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and the Company bears the burden of establishing the validity of any such assertion. The Company agrees that its cooperation pursuant to this Paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information with respect to its activities, those of its subsidiaries and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or

external investigations, about which the Company has any knowledge or about which the Fraud Section and the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Fraud Section and the Office, upon request, any document, record, or other tangible evidence about which the Fraud Section and the Office may inquire of the Company.

b. Upon request of the Fraud Section and the Office, the Company shall designate knowledgeable employees, agents, or attorneys to provide to the Fraud Section and the Office the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Fraud Section and the Office, present or former officers, directors, employees, agents, and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, all meetings requested by the Fraud Section and the Office, and interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters being investigated or prosecuted.

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Fraud Section and the Office pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable laws and regulations, to other governmental authorities, including United States authorities and those of a foreign government,

as well as the MDBs, of such materials as the Fraud Section and the Office, in their sole discretion, shall deem appropriate.

6. In addition to the obligations in Paragraph 5, during the Term, should the Company learn of any evidence or allegation of conduct that may constitute a violation of the FCPA anti-bribery or accounting provisions had the conduct occurred within the jurisdiction of the United States, the Company shall promptly report such evidence or allegation to the Fraud Section and the Office.

Payment of Monetary Penalty

7. The Fraud Section, the Office, and the Company agree that application of the Sentencing Guidelines to determine the applicable fine range yields the following analysis:

a. The November 1, 2018 version of the U.S.S.G. is applicable to this matter.

b. Offense Level. Based upon U.S.S.G. § 2B1.1, the total offense level is 27, calculated as follows:

| | |
|--|--|
| § 2B1.1(a)(1) Base Offense Level | 7 |
| § 2B1.1(b)(1)(J) Value of Benefit Received (more than \$3,500,000 but not more than \$9,500,000) | +18 |
| § 2B1.1 (b)(10)(B) Outside of the U.S. | +2 |
| TOTAL | <hr style="width: 100px; margin-left: auto; margin-right: 0;"/> 27 |

c. Base Fine. Based upon U.S.S.G. § 8C2.4(a)(2), the base fine is \$8,500,000.

d. Culpability Score. Based upon U.S.S.G. § 8C2.5, the culpability score is 7, calculated as follows:

| | |
|----------------------------|---|
| (a) Base Culpability Score | 5 |
|----------------------------|---|

| | |
|---|----------|
| (b)(2) The organization had 1,000 or more employees and an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense | +4 |
| (g)(2) The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct | -2 |
| TOTAL | <u>7</u> |

Calculation of Fine Range:

| | |
|-------------|-----------------------------|
| Base Fine | \$8,500,000 |
| Multipliers | 1.4(min)/2.8(max) |
| Fine Range | \$11,900,000 / \$23,800,000 |

The Company agrees to pay a total monetary penalty in the amount of \$8,925,000 (the “Total Criminal Fine”). The Total Criminal Fine will be paid to the United States Treasury within ten business days of the execution of this Agreement. The Company, the Fraud Section, and the Office agree that this penalty is appropriate given the facts and circumstances of this case, including the Relevant Considerations described in Paragraph 4 of this Agreement. The Total Criminal Fine is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Fraud Section and the Office that the Total Criminal Fine is the maximum penalty that may be imposed in any future prosecution, and the Fraud Section and the Office are not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Fraud Section and the Office agree that under those circumstances, they will recommend to the Court that any amount paid under this Agreement should be offset against any

fine the Court imposes as part of a future judgment. The Company acknowledges that no tax deduction may be sought in connection with the payment of any part of the Total Criminal Fine. The Company shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that the Company pays pursuant to this Agreement or any other agreement entered into with an enforcement authority or regulator, including the SEC, concerning the facts set forth in the attached Statement of Facts, except that the Company may seek reimbursement and indemnification from its parent company, Alcon Inc. Alcon Inc. shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that Alcon Inc. pays, directly or indirectly, including through reimbursement, to the Company, in association with this Agreement or any other agreement entered into with an enforcement authority or regulator, including the SEC, concerning the facts set forth in the attached Statement of Facts, except that Alcon Inc. may seek reimbursement and indemnification from Novartis AG. Alcon Inc. acknowledges and Novartis AG has acknowledged that no tax deduction may be sought in connection with the payment, reimbursement, or indemnification of any part of the Total Criminal Fine.

Conditional Release from Liability

8. Subject to Paragraphs 14 to 18, the Fraud Section and the Office agree, except as provided in this Agreement, that they will not bring any criminal or civil case against the Company, Alcon Inc., or any of their subsidiaries or affiliates, relating to any of the conduct described in the attached Statement of Facts or the Information filed pursuant to this Agreement. The Fraud Section and the Office, however, may use any information related to the conduct described in the attached

Statement of Facts against the Company, Alcon Inc., or any of their subsidiaries or affiliates: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company, Alcon Inc., or any of their subsidiaries or affiliates.

b. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Company, Alcon Inc., or any of their subsidiaries or affiliates.

Corporate Compliance Program

9. The Company and Alcon Inc. represent that they have implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA and other applicable anti-corruption laws throughout their operations, including those of their affiliates, agents, and joint ventures, and those of their contractors and subcontractors whose responsibilities include interacting with foreign officials or other activities carrying a high risk of corruption, including, but not limited to, the minimum elements set forth in Attachment C.

10. In order to address any deficiencies in their internal accounting controls, policies, and procedures, the Company and Alcon Inc. represent that they have undertaken, and will continue to undertake in the future, in a manner consistent with all of their obligations under this Agreement, a review of their existing internal accounting controls, policies, and procedures, regarding compliance with the FCPA and other applicable anti-corruption laws. Where necessary

and appropriate, the Company and Alcon Inc. agree to modify their existing compliance programs, including internal controls, compliance policies, and procedures in order to ensure that they maintain: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. The compliance programs, including the internal accounting controls systems, will include, but not be limited to, the minimum elements set forth in Attachment C.

Corporate Compliance Reporting

11. Alcon Inc. agrees that it will report to the Fraud Section and the Office annually during the Term regarding remediation and implementation of the compliance measures described in Attachment C. These reports will be prepared in accordance with Attachment D.

Deferred Prosecution

12. In consideration of the undertakings agreed to by the Company and Alcon Inc. herein, the Fraud Section and the Office agree that any prosecution of the Company for the conduct set forth in the attached Statement of Facts be and hereby is deferred for the Term. To the extent that there is conduct disclosed by the Company or Alcon Inc. that is not set forth in the attached Statement of Facts, such conduct will not be exempt from further prosecution and is not within the scope of or relevant to this Agreement.

13. The Fraud Section and the Office further agree that if the Company and Alcon Inc. fully comply with all of their obligations under this Agreement, the Fraud Section and the Office will not continue the criminal prosecution against the Company described in Paragraph 1 and, at

the conclusion of the Term, this Agreement shall expire. Within six months of the Agreement's expiration, the Fraud Section and the Office shall seek dismissal with prejudice of the Information filed against the Company described in Paragraph 1, and agree not to file charges in the future against the Company, Alcon Inc., or any of their subsidiaries or affiliates based on the conduct described in this Agreement and the attached Statement of Facts.

Breach of the Agreement

14. If, during the Term: (a) the Company commits any felony under U.S. federal law; (b) the Company or Alcon Inc. provides, in connection with this Agreement, deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) the Company fails to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (d) the Company or Alcon Inc. fails to implement a compliance program as set forth in Paragraphs 9 and 10 of this Agreement and Attachment C; (e) the Company commits any act that, had it occurred within the jurisdictional reach of the FCPA, would be a violation of the FCPA; or (f) the Company or Alcon Inc. otherwise fails to completely perform or fulfill each of the Company's and Alcon Inc.'s obligations under the Agreement, regardless of whether the Fraud Section and the Office become aware of such a breach after the Term is complete, the Company, Alcon Inc., and their subsidiaries and affiliates, shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section and the Office have knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Fraud Section and the Office in the United States District Court for the District of New Jersey or any other appropriate venue. Determination of whether the Company or Alcon Inc. has breached the Agreement and whether to pursue prosecution of the Company, Alcon Inc., or their

subsidiaries or affiliates, shall be in the Fraud Section's and the Office's sole discretion. Any such prosecution may be premised on information provided by the Company, Alcon Inc., their subsidiaries or affiliates, or their personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Fraud Section and the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, Alcon Inc., or their subsidiaries or affiliates, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company and Alcon Inc. agree that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Fraud Section and the Office are made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

15. In the event the Fraud Section and the Office determine that the Company or Alcon Inc. has breached this Agreement, the Fraud Section and the Office agree to provide the Company and Alcon Inc. with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, the Company and Alcon Inc. shall have the opportunity to respond to the Fraud Section and the Office in writing to explain the nature and circumstances of such breach, as well as the actions the Company and Alcon Inc. have taken

to address and remediate the situation, which explanation the Fraud Section and the Office shall consider in determining whether to pursue prosecution of the Company, Alcon Inc., or their subsidiaries or affiliates.

16. In the event the Fraud Section and the Office determine that the Company or Alcon Inc. has breached this Agreement: (a) all statements made by or on behalf of the Company, Alcon Inc., or their subsidiaries or affiliates to the Fraud Section and the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company, Alcon Inc., or their subsidiaries or affiliates before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Fraud Section and the Office against the Company, Alcon Inc., or their subsidiaries or affiliates; and (b) the Company, Alcon Inc., or their subsidiaries or affiliates shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company, Alcon Inc., or their subsidiaries or affiliates prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer, or employee, or any person acting on behalf of, or at the direction of, the Company, Alcon Inc., or their subsidiaries or affiliates will be imputed to the Company or Alcon Inc. for the purpose of determining whether the Company or Alcon Inc. has violated any provision of this Agreement shall be in the sole discretion of the Fraud Section and the Office.

17. The Company and Alcon Inc. acknowledge that the Fraud Section and the Office have made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company or Alcon Inc. breaches this Agreement and this matter proceeds to judgment. The Company and Alcon Inc. further acknowledge that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

18. On the date that the period of deferred prosecution specified in this Agreement expires, the Company, by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, will certify to the Fraud Section and the Office that the Company has met its disclosure obligations pursuant to Paragraphs 5 and 6 of this Agreement. Each certification will be deemed a material statement and representation by the Company to the executive branch of the United States for purposes of Title 18, United States Code, Sections 1001 and 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

Sale, Merger, or Other Change in Corporate Form of the Company

19. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company and Alcon Inc. agree that in the event that, during the Term, the Company or Alcon Inc. undertake any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's or Alcon Inc.'s consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the attached Statement of Facts, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a

provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the Fraud Section's and the Office's ability to declare a breach under this Agreement is applicable in full force to that entity. The Company and Alcon Inc. agree that the failure to include these provisions in the transaction will make any such transaction null and void. The Company and Alcon Inc. shall provide notice to the Fraud Section and the Office at least thirty days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Fraud Section and the Office shall notify the Company and Alcon Inc. prior to such transaction (or series of transactions) if they determine that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If, at any time during the Term, the Company or Alcon Inc. engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the Fraud Section and the Office may deem it a breach of this Agreement pursuant to Paragraphs 14 to 18 of this Agreement. Nothing herein shall restrict the Company or Alcon Inc. from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Fraud Section and the Office.

Public Statements by the Company and Alcon Inc.

20. The Company and Alcon Inc. expressly agree that they shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company or Alcon Inc., make any public statement, in litigation or otherwise, contradicting

the acceptance of responsibility by the Company or Alcon Inc. set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company and Alcon Inc. described below, constitute a breach of this Agreement, and the Company and/or Alcon Inc. thereafter shall be subject to prosecution as set forth in Paragraphs 14 to 16 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the attached Statement of Facts will be imputed to the Company and/or Alcon Inc. for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Fraud Section and the Office. If the Fraud Section and the Office determine that a public statement by any such person contradicts in whole or in part a statement contained in the attached Statement of Facts, the Fraud Section and the Office shall so notify the Company and Alcon Inc., and the Company and Alcon Inc. may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Company and Alcon Inc. shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the attached Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the attached Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company or Alcon Inc. in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company and/or Alcon Inc.

21. The Company and Alcon Inc. agree that if they or any of their direct or indirect subsidiaries or affiliates issue a press release or hold any press conference in connection with this Agreement, the Company and Alcon Inc. shall first consult with the Fraud Section and the Office

to determine: (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Fraud Section, the Office, the Company, and Alcon Inc.; and (b) whether the Fraud Section and the Office have any objection to the release or statement.

22. The Fraud Section and the Office agree, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's and Alcon Inc.'s cooperation and remediation. By agreeing to provide this information to such authorities, the Fraud Section and the Office are not agreeing to advocate on behalf of the Company, Alcon Inc., or their subsidiaries or affiliates, but rather are agreeing to provide facts to be evaluated independently by such authorities. Nothing in this Agreement restricts in any way the ability of the Fraud Section and the Office, any other federal department or agency, or any state or local government, from proceeding criminally, civilly, or administratively, against any current or former directors, officers, employees, or agents of the Company, Alcon Inc., its subsidiaries or affiliates, or against any other entities or individuals. The parties to this Agreement intend that the Agreement does not confer or provide any benefits, privileges, immunities, or rights to any other individual or entity other than the parties hereto.

Limitations on Binding Effect of the Agreement

23. This Agreement is binding on the Company, Alcon Inc., the Fraud Section, and the Office, but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Fraud Section and the Office will bring the cooperation of the

Company and Alcon Inc. and their compliance with their other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company or Alcon Inc.

Notice

24. Any notice to the Fraud Section and the Office under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Chief, FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, 11th Floor, Washington, D.C. 20530, and Chief, Health Care Fraud Unit, United States Attorney's Office for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, New Jersey 07102. Any notice to the Company and Alcon Inc. under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to R. Christopher Cook, Alcon Inc.'s Global Head of Litigation and Government Investigations, 6201 South Freeway, Fort Worth, Texas 76134-2099, and Patrick F. Stokes, Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW, Washington, D.C. 20036, or by electronic mail to those individuals or to other counsel or individuals identified to the Fraud Section and the Office by the Company and/or Alcon Inc. Notice shall be effective upon actual receipt by the Fraud Section and the Office or the Company and Alcon Inc.

Complete Agreement


25. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company, Alcon Inc., the Fraud Section, and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed

by the Fraud Section and the Office, the attorneys for the Company and Alcon Inc., and a duly authorized representative of the Company and Alcon Inc.


AGREED:

FOR ALCON PTE LTD:

Date: 6/24/20


By: 
R. Christopher Cook
Global Head of Litigation and
Government Investigations
Alcon Inc.

Date: 6/24/20


By: 
Patrick F. Stokes
F. Joseph Warin
John D. W. Partridge
Gibson, Dunn & Crutcher LLP
Counsel for Alcon Pte Ltd

FOR ALCON INC.:

Date: 6/24/20

By: 
R. Christopher Cook
Global Head of Litigation and
Government Investigations
Alcon Inc.

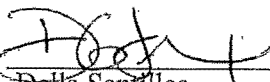
Date: 6/24/20

By: 
Patrick F. Stokes
F. Joseph Warin
John D. W. Partridge
Gibson, Dunn & Crutcher LLP
Counsel for Alcon Inc.

FOR THE DEPARTMENT OF JUSTICE:

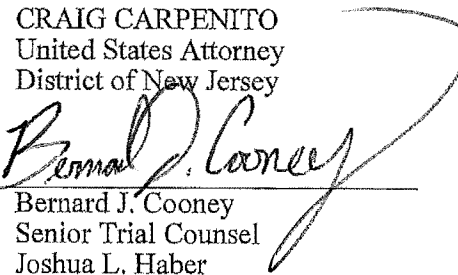
ROBERT A. ZINK
Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: 06/25/2020

By: 
Della Sentilles
Trial Attorney

CRAIG CARPENITO
United States Attorney
District of New Jersey

Date: 6/25/2020

By: 
Bernard J. Cooney
Senior Trial Counsel
Joshua L. Haber
Assistant United States Attorney

COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Alcon Pte Ltd (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Company. I have advised and caused outside counsel for the Company to advise the Board of Directors fully of the rights of the Company, of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Global Head of Litigation and Government Investigations for Alcon Inc. and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: 6/24/20

By:




R. Christopher Cook
Alcon Inc.

CERTIFICATE OF COUNSEL FOR ALCON PTE LTD

I am counsel for Alcon Pte Ltd (the “Company”) in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company’s Board of Directors. Based on my review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Board of Directors and the Head of Legal and Compliance, APAC. I have fully advised them of the rights of the Company, of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 6/24/20

By: 

Patrick F. Stokes
Gibson, Dunn & Crutcher LLP

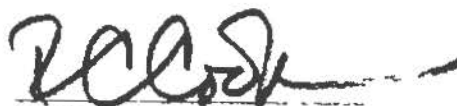
ALCON INC. OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Alcon Inc. I understand the terms of this Agreement and voluntarily agree, on behalf of Alcon Inc., to each of its terms. Before signing this Agreement, I consulted outside counsel for Alcon Inc. Counsel fully advised me of the rights of Alcon Inc., of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of Alcon Inc. I have advised and caused outside counsel for Alcon Inc. to advise the Board of Directors fully of the rights of Alcon Inc., of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of Alcon Inc., in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Global Head of Litigation and Government Investigations for Alcon Inc. and that I have been duly authorized by Alcon Inc. to execute this Agreement on behalf of Alcon Inc.


Date: 6/24/20

By: 
R. Christopher Cook
Alcon Inc.

CERTIFICATE OF COUNSEL FOR ALCON INC.

I am counsel for Alcon Inc. in the matter covered by this Agreement. In connection with such representation, I have examined relevant Alcon Inc. documents and have discussed the terms of this Agreement with Alcon Inc.'s Senior Vice President, General Counsel and Corporate Secretary, and Alcon Inc.'s Global Head of Litigation and Government Investigations. Based on my review of the foregoing materials and discussions, and on my discussions with the Senior Vice President, General Counsel and Corporate Secretary, and the Global Head of Litigation and Government Investigations, I am of the opinion that the representative of Alcon Inc. has been duly authorized to enter into this Agreement on behalf of Alcon Inc. and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of Alcon Inc. and is a valid and binding obligation of Alcon Inc. Further, I have carefully reviewed the terms of this Agreement with the Senior Vice President, General Counsel and Corporate Secretary, and the Global Head of Litigation and Government Investigations of Alcon Inc. I have fully advised them of the rights of Alcon Inc., of possible defenses, of the provisions of the U.S. Sentencing Guidelines, and of the consequences of entering into this Agreement. To my knowledge, and based on my discussions with the Senior Vice President, General Counsel and Corporate Secretary, and the Global Head of Litigation and Government Investigations, the decision of Alcon Inc. to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 6/24/20

By: 

Patrick F. Stokes
Gibson, Dunn & Crutcher LLP

ATTACHMENT A
STATEMENT OF FACTS

The following Statement of Facts is incorporated as part of the Deferred Prosecution Agreement (the “Agreement”) between the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”), the United States Attorney’s Office for the District of New Jersey (the “Office”), and Alcon Pte Ltd (the “Company”). The Company hereby agrees and stipulates that the following facts and conclusions of law are true and accurate. The Company admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. Should the Fraud Section and the Office pursue the prosecution that is deferred by this Agreement, the Company agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. The following facts took place during the relevant time period and establish beyond a reasonable doubt the charges set forth in the Information attached to this Agreement:

Relevant Entities

1. Alcon, Inc. was a multinational eye care company with headquarters in Fort Worth, Texas, and incorporated in Hünenberg, Switzerland. In or about April 2011, Alcon, Inc. merged with Novartis AG, a global pharmaceutical company based in Basel, Switzerland, after which Alcon, Inc. (hereinafter, the “Alcon Division”) became a wholly owned subsidiary of Novartis AG. Novartis AG’s American Depository Shares were listed and traded on the New York Stock Exchange under the symbol “NVS.” Novartis AG was an issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act and was required to file periodic reports with the United States Securities and Exchange Commission (the “SEC”) under

Section 13 of the Securities Exchange Act. Thus, Novartis AG was an “issuer” within the meaning of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1(a) and 78m(b). The Alcon Division’s books, records, and accounts were included in the consolidated financial statements of Novartis AG filed with the SEC.

2. In or about April 2019, Novartis AG spun off the Alcon Division, including Alcon Pte Ltd, and the newly established independent parent company was named Alcon Inc. Alcon Inc. is the lawful successor-in-interest to Alcon, Inc. (i.e., the Alcon Division).

3. In or about and between 2011 and 2014 (the “relevant time period”), Alcon Pte Ltd was an affiliate of the Alcon Division with headquarters in Singapore. Among other functions, Alcon Pte Ltd provided financial services and managerial oversight for the Alcon Division’s operations in Asia, including for two representative offices in Vietnam. Alcon Pte Ltd’s books, records, and accounts were included in the consolidated financial statements that Novartis AG filed with the SEC.

4. “Distributor Company,” an entity whose identity is known to the Fraud Section, the Office, and the Company, was a limited liability company incorporated in Vietnam. Among other business, Distributor Company marketed and sold Alcon Division products to health care providers (“HCPs”) and hospitals in Vietnam.

Relevant Individuals

5. “Alcon Pte Ltd Executive 1,” an individual whose identity is known to the Fraud Section, the Office, and the Company, was a high level executive of the Company and, at various times, was located in the United States or Singapore. For fiscal year 2014, Alcon Pte Ltd Executive

I signed two Sarbanes-Oxley sub-certifications that were false. These false sub-certifications were maintained as part of Novartis AG's books, records, and accounts.

6. "Alcon Pte Ltd Executive 2," an individual whose identity is known to the Fraud Section, the Office, and the Company, was an employee of the Company and, at various times, was located in the United States or Singapore.

7. "Distributor Company Executive 1," an individual whose identity is known to the Fraud Section, the Office, and the Company, was a high level executive of Distributor Company during the relevant time period.

8. "Distributor Company Executive 2," an individual whose identity is known to the Fraud Section, the Office, and the Company, was a high level accounting executive of Distributor Company during the relevant time period.

Operations in Vietnam

9. Vietnam owned and operated state-owned and state-controlled hospitals and clinics, and these hospitals and clinics performed a government function. Employees of state-owned and state-controlled hospitals and clinics in Vietnam ("Vietnam State HCPs") were "foreign officials" within the meaning of the FCPA, 15 U.S.C. § 78dd-3(f)(2)(A).

10. The Alcon Division conducted business operations in Vietnam through two representative offices located in Hanoi, Vietnam, and Ho Chi Minh City, Vietnam ("Alcon Vietnam Representative Offices"). The Company provided management and financial reporting oversight for the Alcon Vietnam Representative Offices.

11. The Alcon Vietnam Representative Offices did not directly conduct sales to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in

Vietnam. Rather, sales to end-customers in Vietnam were conducted through Distributor Company.

12. Among other lines of the Alcon Division's eye care business, the Alcon Vietnam Representative Offices, through Distributor Company, sold surgical equipment and devices such as lasers and intraocular lenses ("IOLs") to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in Vietnam. IOLs are artificial replacement lenses that are implanted in the eye as part of a treatment for a variety of ailments such as cataracts.

Overview of the Conspiracy

13. Beginning in or about 2007, the Alcon Vietnam Representative Offices and Distributor Company engaged in a scheme to bribe Vietnam State HCPs in order to increase sales of IOLs. Participants in the scheme referred to it as the "consultancy program."

14. Under the guise of the consultancy program, Distributor Company made corrupt payments to HCPs, including Vietnam State HCPs, in connection with sales of Alcon Division IOLs by Distributor Company. Distributor Company made the payments directly to HCPs, including to Vietnam State HCPs, and the Alcon Vietnam Representative Offices, with the approval of employees of the Company, reimbursed Distributor Company for up to 50 percent of the costs associated with the improper payments to HCPs.

15. The scheme continued after the Alcon Division merged with Novartis AG in April 2011. Thereafter, between in or about April 2011 and June 2014, the Company, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to cause Novartis AG to maintain false accounting records, by, among other things, falsely recording partial reimbursements to Distributor Company for improper payments made to Vietnam State

HCPs in the Company's internal financial records, which were consolidated into Novartis AG's financial records, and by transmitting false Sarbanes-Oxley sub-certification letters to Novartis AG. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

16. In total, from 2011 through 2014, as a result of the improper payments to Vietnam State HCPs, the Company realized approximately \$8,500,000 in profits.

Details of the Scheme

17. In or around April 2007, prior to Novartis AG's merger with the Alcon Division, the Alcon Vietnam Representative Offices, with the knowledge and involvement of Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others, began providing money to Distributor Company, disguised as consultancy payments and in the form of credit notes, that Distributor Company used to make corrupt payments to HCPs, including Vietnam State HCPs.

18. In furtherance of the scheme, on or about April 3, 2007, Distributor Company Executive 2 sent an email to Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others. In the email, Distributor Company Executive 2 referenced a meeting from March 2007 in which details of the corrupt consultancy program were discussed. The email attached a list of approximately 35 HCPs, including Vietnam State HCPs, who were designated to receive payments in exchange for purchasing Alcon Division IOLs. The email—and other contemporaneous communications—also outlined a proposal for the consultancy program as follows:

a. The consultancy program would cover two types of Alcon Division IOLs: IQ and Restore;

b. HCPs would be paid 200,000 VND (equivalent to then approximately \$12.50 USD) per IQ IOL purchased and 400,000 VND (equivalent to then approximately \$25.00 USD) per Restore IOL purchased;

c. Distributor Company would make the payments to HCPs through bank transfers; and

d. Alcon Vietnam Representative Offices would reimburse Distributor Company for up to 50 percent of the costs associated with the consultancy program.

19. The consultancy program targeted doctors and nurses, many of whom were Vietnam State HCPs. As explained in an attachment to an email from an Alcon Vietnam Representative Offices executive dated July 21, 2008, the “[t]arget customer[s]” for the scheme consisted of the following: “[d]octor[s] in the consulta[tion] room,” “[d]octor[s] in the exam room,” “[n]urse[s] in the consulta[tion] room,” and the “[c]hief[s] of [Operating Rooms] in” two specific eye hospitals in Vietnam.

20. Furthermore, the purpose of the consultancy program, as explained in an email dated July 26, 2008 from a Distributor Company employee to an Alcon Vietnam Representative Offices executive, among others, was to “encourage[] doctors to introduce and use Alcon’s IOLs and . . . speed up IOLs sales.”

21. At the consultancy program’s peak, in or around 2011, Distributor Company made corrupt payments to approximately 200 HCPs, a number of whom were Vietnam State HCPs, and the Alcon Vietnam Representative Offices disguised reimbursement for those payments as legitimate payments made pursuant to the consultancy program. These payments aggregated over time. For example, during 2010, a proposed payment schedule showed one Vietnam State HCP

was scheduled to receive more than 360,000,000 VND (equivalent to then approximately \$18,450 USD) pursuant to the consultancy program, while another Vietnam State HCP was scheduled to receive more than 450,000,000 VND (equivalent to then approximately \$23,352 USD).

22. Between in or about 2007 and June 2014, the Alcon Vietnam Representative Offices, with the approval of employees of the Company and others, partially reimbursed Distributor Company periodically for improper payments that Distributor Company made to HCPs, including to Vietnam State HCPs (for instance, reimbursing approximately \$180,000 USD in 2010 and up to approximately \$100,000 USD in 2013 and 2014).

The False Records

23. Prior to 2012, the Alcon Vietnam Representative Offices partially reimbursed Distributor Company for improper payments made through the consultancy program by causing another Alcon entity to issue credits to Distributor Company that offset its outstanding debt balances. These credits were referred to as “credit notes.”

24. The typical system for issuing the credit notes included the following steps: (a) Distributor Company employees would regularly send emails to an Alcon Vietnam Representative Offices employee requesting a credit note for a certain amount related to the consultancy program; (b) the Alcon Vietnam Representative Offices employee reviewed and forwarded the requests to regional management, including Alcon Pte Ltd Executive 2; and (c) once approved by regional management, credit notes were issued to Distributor Company with the stated reason for the credit note as “consultancy fees.”

25. After 2011, Distributor Company, with the knowledge of certain employees of the Company, continued to make improper payments to HCPs, including to Vietnam State HCPs, in

order to increase sales of Alcon Division IOLs, and the Company continued to reimburse Distributor Company indirectly for a portion of those payments.

26. Between in or around August 2011 and 2012, the Alcon Vietnam Representative Offices, with the approval of employees of the Company and others, changed the methodology for reimbursing Distributor Company for a portion of the improper payments made through the consultancy program. Specifically, rather than reimburse Distributor Company by issuing credit notes for “consultancy fees,” the Alcon Vietnam Representative Offices partially reimbursed Distributor Company for the payments through other, inflated reimbursable costs, such as marketing, human resources, or margin reconciliation costs.

27. In furtherance of the scheme, in an email dated August 15, 2011, an Alcon Vietnam Representative Offices executive wrote to Alcon Pte Ltd Executive 2 and others about continued financial support for the consultancy program and suggested using Distributor Company’s margin in order to cover the consultancy program costs. The email noted that “[Distributor Company Executive 1] agreed to remain their activities to secure business as much as possible but [Distributor Company Executive 1] need[s] our support more in term[s] of finance.” In the email, an Alcon Vietnam Representative Offices executive noted further, “I also discuss[ed] with [Distributor Company Executive 1] our scenario of increasing the margin to cover USD 120K . . .With this support, [Distributor Company] will propose the marketing plan for next year for Alcon[’s] review and agree[ment] before implementation.”

28. Employees of the Company and the Alcon Vietnam Representative Offices also discussed using a marketing budget to cover the costs of reimbursing Distributor Company in connection with the improper payments made under the consultancy program. For example, on

November 23, 2011, a Distributor Company employee sent an email to two Alcon Vietnam Representative Offices executives, among others, summarizing a November 9, 2011 meeting, during which personnel from Distributor Company and from the Alcon Vietnam Representative Offices discussed various ways that the consultancy program would operate in 2012. Specifically, the Distributor Company employee wrote: “Consultant Program in 2012: Alcon will consider and share the finance difficulties of [Distributor Company] by:

- Increasing the ratio[] share of Loss of exchange rate . . .
- [P]aying sample for [Distributor Company]
- [U]sing some money from marketing budget to support [Distributor Company].”

29. Furthermore, during a phone call in or around late summer 2014, Distributor Company Executive 1 told an Alcon Pte Ltd employee that Distributor Company had used up all of its funds to pay for Alcon Division’s surgical equipment and could no longer pay the “usual considerations” to Vietnamese HCPs to ensure they purchased Alcon Division products.

30. In or around May or June 2014, Alcon Pte Ltd Executive 1 told an Alcon Pte Ltd employee, who was responsible for reviewing the financials for the Alcon Division’s business in Vietnam, that no one needed to know about Distributor Company’s 2014 profit and loss analysis (“Distributor Company’s P&L Analysis”).

31. Shortly thereafter, on or about June 11, 2014, an Alcon Vietnam Representative Offices executive sent an Alcon Pte Ltd employee a copy of Distributor Company’s P&L Analysis, which included a number of line items that concealed improper payments to HCPs, including to Vietnam State HCPs, in FY 2013 and FY 2014, including: purported “[c]onsultant cost” of approximately \$111,157 USD for FY 2013, purported “[c]onsultant cost” of approximately

\$97,000 USD for FY 2014, purported “HR” cost of approximately \$800,000 USD for FY 2013, purported “HR” cost of approximately \$740,000 USD for FY 2014, purported “[a]dministration cost” of approximately \$514,000 USD for FY 2013, and purported “[a]dministration cost” of approximately \$572,000 USD for FY 2014.

32. Together, these entries in Distributor Company’s P&L Analysis correlated to ongoing efforts by the Company to conceal the reimbursement of Distributor Company for improper payments made to Vietnam State HCPs and others.

33. The Company, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to falsely record in the Company’s internal financial records partial reimbursement of the improper payments that Distributor Company made to HCPs, including to Vietnam State HCPs, pursuant to the consultancy program. By recording reimbursements for these payments as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs, the Company, through its executives, employees, and agents, concealed the true nature of these payments and caused Novartis AG to maintain false financial records.

34. Furthermore, as part of the conspiracy, Alcon Pte Ltd Executive 1, who participated in the scheme and knew of the corrupt payments to Vietnam State HCPs, signed and transmitted two false Sarbanes-Oxley sub-certification letters dated July 4, 2014, and October 7, 2014, to the Alcon Division’s Chief Executive Officer and Chief Financial Officer. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTIONS FOR ALCON PTE LTD

WHEREAS, Alcon Pte Ltd (the “Company”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) and the United States Attorney’s Office for the District of New Jersey (the “Office”) regarding issues arising in relation to a conspiracy to falsify books, records, and accounts to conceal improper payments to health care providers (“HCPs”) employed by public institutions in Vietnam; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a deferred prosecution agreement with the Fraud Section and the Office (the “Agreement”); and

WHEREAS, the Global Head of Litigation and Government Investigations for Alcon Inc., R. Christopher Cook, together with outside counsel for the Company, has advised the Board of Directors of the Company of its rights, possible defenses, the provisions of the U.S. Sentencing Guidelines, and the consequences of entering into such the Agreement with the Fraud Section and the Office;

Therefore, the Board of Directors has RESOLVED that:

1. The Company: (a) acknowledges the filing of the Information charging the Company with one count of conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the books and records provision of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a); (b) waives indictment on such charges and enters into the Agreement with the Fraud Section and the Office; and (c) agrees to accept a monetary

penalty against the Company with respect to the conduct described in the Information totaling \$8,925,000, and to pay such penalty to the United States Treasury within ten business days of the execution of the Agreement;

2. The Company accepts the terms and conditions of this Agreement, including, but not limited to: (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); (b) a knowing waiver for purposes of this Agreement and any charges by the United States arising out of the conduct described in the attached Statement of Facts of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the District of New Jersey; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the attached Statement of Facts, or relating to conduct known to the Fraud Section and the Office prior to the date on which this Agreement was signed, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement;

3. The Global Head of Litigation and Government Investigations for Alcon Inc., R. Christopher Cook, is hereby authorized, empowered, and directed, on behalf of the Company, to execute this Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the Global Head of Litigation and Government Investigations for Alcon Inc. may approve;

4. The Global Head of Litigation and Government Investigations for Alcon Inc., R. Christopher Cook, is hereby authorized, empowered, and directed to take any and all actions as may be necessary or appropriate, and to approve the forms, terms, or provisions of any agreement

or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Global Head of Litigation and Government Investigations for Alcon Inc., R. Christopher Cook, which would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 23 June 2020



By: _____
Sunil Vasanth
Director of the Board of Directors
Alcon Pte Ltd

CERTIFICATE OF CORPORATE RESOLUTIONS FOR ALCON INC.

WHEREAS, Alcon Inc. has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) and the United States Attorney’s Office for the District of New Jersey (the “Office”) regarding issues arising in relation to a conspiracy to falsify books, records, and accounts to conceal improper payments to health care providers (“HCPs”) employed by public institutions in Vietnam; and

WHEREAS, in order to resolve such discussions, it is proposed that Alcon Inc. (on behalf of itself and its subsidiaries and affiliates) agree to certain terms and obligations of the deferred prosecution agreement among Alcon Pte Ltd, the Fraud Section, and the Office (the “Agreement”); and

WHEREAS, Alcon Inc.’s Global Head of Litigation and Government Investigations, R. Christopher Cook, along with Alcon Inc.’s Senior Vice President, General Counsel and Corporate Secretary and outside counsel for Alcon Inc., has advised the Board of Directors of Alcon Inc. of its rights, possible defenses, the provisions of the U.S. Sentencing Guidelines, and the consequences of agreeing to such terms and obligations of the Agreement among Alcon Pte Ltd, the Fraud Section, and the Office;

Therefore, the Board of Directors has RESOLVED that:

1. Alcon Inc. (a) acknowledges the filing of the Information against its indirect subsidiary, Alcon Pte Ltd, charging Alcon Pte Ltd with one count of conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371, that is, to violate the books and records provision of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a); (b)

undertakes certain obligations under the Agreement among Alcon Pte Ltd, the Fraud Section, and the Office; and (c) agrees to accept a monetary penalty against Alcon Pte Ltd totaling \$8,925,000, and to pay such penalty to the United States Treasury with respect to the conduct described in the Information if Alcon Pte Ltd does not pay such monetary penalty within the time period specified in the Agreement;


2. Alcon Inc. accepts the terms and conditions of this Agreement, including, but not limited to: (a) a knowing waiver of Alcon Pte Ltd's right to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); (b) a knowing waiver for purposes of this Agreement and any charges by the United States arising out of the conduct described in the attached Statement of Facts of any objection with respect to venue and consents to the filing of the Information against Alcon Pte Ltd, as provided under the terms of this Agreement, in the United States District Court for the District of New Jersey; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the attached Statement of Facts, or relating to conduct known to the Fraud Section and the Office prior to the date on which this Agreement was signed, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement;

3. The Global Head of Litigation and Government Investigations of Alcon Inc., R. Christopher Cook, is hereby authorized, empowered, and directed, on behalf of Alcon Inc. and its subsidiaries and affiliates, to agree to certain terms and obligations of the Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the Global Head of Litigation and Government Investigations of Alcon Inc., may approve;

4. The Global Head of Litigation and Government Investigations of Alcon Inc., R. Christopher Cook, is hereby authorized, empowered, and directed to take any and all actions as may be necessary or appropriate, and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Global Head of Litigation and Government Investigations of Alcon Inc., R. Christopher Cook, which would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of Alcon Inc. and its subsidiaries and affiliates.

Date: 6/18/20

By: 

F. Michael Ball
Chairman of the Board of Directors
Alcon Inc.

ATTACHMENT C

CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and other applicable anti-corruption laws, Alcon Inc., on behalf of itself and its subsidiaries and affiliates, agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, Alcon Inc. agrees to adopt new, or to modify its existing compliance programs, including internal controls, compliance policies, and procedures in order to ensure that it maintains: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of Alcon Inc.’s existing internal controls, compliance code, policies, and procedures:

High-Level Commitment

1. Alcon Inc. will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of the anti-corruption laws and its compliance codes.

Policies and Procedures

2. Alcon Inc. will develop and promulgate a clearly articulated and visible corporate policy against violations of the FCPA and other applicable foreign law counterparts (collectively, the “anti-corruption laws”), which policy shall be memorialized in a written compliance code or codes.

3. Alcon Inc. will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the anti-corruption laws and Alcon Inc.’s compliance code, and Alcon Inc. will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of the anti-corruption laws by personnel at all levels of Alcon Inc. These anti-corruption policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of Alcon Inc. in a foreign jurisdiction, including, but not limited to, agents and intermediaries, consultants, representatives, distributors, teaming partners, contractors and suppliers, consortia, and joint venture partners (collectively, “agents and business partners”). Alcon Inc. shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of Alcon Inc. Such policies and procedures shall address:

- a. gifts;
- b. hospitality, entertainment, and expenses;
- c. customer travel;
- d. political contributions;
- e. charitable donations and sponsorships;

- f. facilitation payments; and
- g. solicitation and extortion.

4. Alcon Inc. will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts. This system shall be designed to provide reasonable assurances that:

- a. transactions are executed in accordance with management's general or specific authorization;
- b. transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- c. access to assets is permitted only in accordance with management's general or specific authorization; and
- d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Periodic Risk-Based Review

5. Alcon Inc. will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of Alcon Inc., in particular the foreign bribery risks facing Alcon Inc., including, but not limited to, its geographical organization, interactions with various types and levels of government officials, industrial sectors of operation, involvement in joint venture arrangements, importance of licenses and permits in Alcon Inc.'s

operations, degree of governmental oversight and inspection, and volume and importance of goods and personnel clearing through customs and immigration.

6. Alcon Inc. shall review its anti-corruption compliance policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving international and industry standards.

Proper Oversight and Independence

7. Alcon Inc. will assign responsibility to one or more senior corporate executives of Alcon Inc. for the implementation and oversight of Alcon Inc.'s anti-corruption compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent monitoring bodies, including internal audit, Alcon Inc.'s Board of Directors, or any appropriate committee of the Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

Training and Guidance

8. Alcon Inc. will implement mechanisms designed to ensure that its anti-corruption compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), or positions that otherwise pose a corruption risk to Alcon Inc., and, where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

9. Alcon Inc. will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with Alcon Inc.'s anti-corruption compliance code, policies, and procedures, including when they need advice on an urgent basis or in any foreign jurisdiction in which Alcon Inc. operates.

Internal Reporting and Investigation

10. Alcon Inc. will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of the anti-corruption laws or Alcon Inc.'s anti-corruption compliance code, policies, and procedures.

11. Alcon Inc. will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of the anti-corruption laws or Alcon Inc.'s anti-corruption compliance code, policies, and procedures.

Enforcement and Discipline

12. Alcon Inc. will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. Alcon Inc. will institute appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and Alcon Inc.'s anti-corruption compliance code, policies, and procedures by Alcon Inc.'s directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived

importance of, the director, officer, or employee. Alcon Inc. shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall anti-corruption compliance program is effective.

Third-Party Relationships

14. Alcon Inc. will institute appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

- a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;
- b. informing agents and business partners of Alcon Inc.'s commitment to abiding by the anti-corruption laws, and of Alcon Inc.'s anti-corruption compliance code, policies, and procedures; and
- c. seeking a reciprocal commitment from agents and business partners.

15. Where necessary and appropriate, Alcon Inc. will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate

an agent or business partner as a result of any breach of the anti-corruption laws, Alcon Inc.'s compliance code, policies, or procedures, or the representations and undertakings related to such matters.

Mergers and Acquisitions

16. Alcon Inc. will develop and implement policies and procedures for mergers and acquisitions requiring that Alcon Inc. conduct appropriate risk-based due diligence on potential new business entities, including appropriate FCPA and anti-corruption due diligence by legal, accounting, and compliance personnel.

17. Alcon Inc. will ensure that Alcon Inc.'s compliance code, policies, and procedures regarding the anti-corruption laws apply as quickly as is practicable to newly acquired businesses or entities merged with Alcon Inc. and will promptly:

a. train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above on the anti-corruption laws and Alcon Inc.'s compliance code, policies, and procedures regarding anti-corruption laws; and

b. where warranted, conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable.

Monitoring and Testing

18. Alcon Inc. will conduct periodic reviews and testing of its anti-corruption compliance codes, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of the anti-corruption laws and Alcon Inc.'s anti-corruption codes, policies, and procedures, taking into account relevant developments in the field and evolving international and industry standards.

ATTACHMENT D
REPORTING REQUIREMENTS

Alcon Inc. agrees that it will report to the Fraud Section and the Office periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment C. During this three-year period, Alcon Inc. shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is executed, Alcon Inc. shall submit to the Fraud Section and the Office a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve Alcon Inc.'s internal controls, policies, and procedures for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the proposed scope of the subsequent reviews. The report shall be transmitted to Chief, FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, Bond Building, 11th Floor, Washington, D.C. 20530 and Chief, Health Care Fraud Unit, United States Attorney's Office for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, New Jersey 07102. Alcon Inc. may extend the time period for issuance of the report with prior written approval of the Fraud Section.

b. Alcon Inc. shall undertake at least two follow-up reviews and reports, incorporating the Fraud Section's and the Office's views on Alcon Inc.'s prior reviews and reports, to further monitor and assess whether Alcon Inc.'s policies and procedures are

reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the Fraud Section and the Office. The second follow-up review and report shall be completed and delivered to the Fraud Section and the Office no later than thirty days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Fraud Section and the Office determine in their sole discretion that disclosure would be in furtherance of the Fraud Section's and the Office's discharge of their duties and responsibilities or is otherwise required by law.

e. Alcon Inc. may extend the time period for submission of any of the follow-up reports with prior written approval of the Fraud Section and the Office.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Criminal No. 20-539
 :
 v. : 18 U.S.C. § 371
 :
 ALCON PTE LTD :

INFORMATION

The United States charges that, at all times relevant to this Information, unless otherwise specified:

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* (the “FCPA”), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. Pertinent to this charge, the FCPA’s accounting provisions, among other things, require every issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or required to file periodic reports with the United States Securities and Exchange Commission (“SEC”) under Section 15(d) of the Securities Exchange Act, 15 U.S.C §

78o(d), to make and keep books, records, and accounts that accurately and fairly reflect transactions and the distribution of the company's assets, and prohibit the knowing and willful falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

ALCON PTE LTD and Other Relevant Entities

2. Alcon, Inc. was a multinational eye care company with headquarters in Fort Worth, Texas, and incorporated in Hünenberg, Switzerland. In or about April 2011, Alcon, Inc. merged with Novartis AG, a global pharmaceutical company based in Basel, Switzerland, after which Alcon, Inc. (the "Alcon Division") became a wholly owned subsidiary of Novartis AG. Novartis AG's American Depository Shares were listed and traded on the New York Stock Exchange under the symbol "NVS." Novartis AG was an issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act and was required to file periodic reports with the SEC under Section 13 of the Securities Exchange Act. Thus, Novartis AG was an "issuer" within the meaning of the FCPA, 15 U.S.C. §§ 78dd-1(a) and 78m(b). The Alcon Division's books, records, and accounts were included in the consolidated financial statements of Novartis AG filed with the SEC.

3. In or about April 2019, Novartis AG spun off the Alcon Division, including defendant ALCON PTE LTD, and the newly established independent parent company was named "Alcon Inc." Alcon Inc. is the lawful successor-in-interest to Alcon, Inc. (i.e., the Alcon Division).

4. From in or about 2011 to in or about 2014 (the “relevant time period”), ALCON PTE LTD was an affiliate of the Alcon Division with headquarters in Singapore. Among other functions, ALCON PTE LTD provided financial services and managerial oversight for the Alcon Division’s operations in Asia, including for two representative offices in Vietnam. ALCON PTE LTD’s books, records, and accounts were included in the consolidated financial statements that Novartis AG filed with the SEC.

5. The “Distributor Company,” an entity whose identity is known to the United States and ALCON PTE LTD, was a limited liability company incorporated in Vietnam. Among other business, Distributor Company marketed and sold Alcon Division products to health care providers (“HCPs”) and hospitals in Vietnam.

Relevant Individuals

6. “Alcon Pte Ltd Executive 1,” an individual whose identity is known to the United States, was a high level executive of ALCON PTE LTD and, at various times, was located in the United States or Singapore. For fiscal year 2014, Alcon Pte Ltd Executive 1 signed two Sarbanes-Oxley sub-certifications that were false. These false sub-certifications were maintained as part of Novartis AG’s books, records, and accounts.

7. “Alcon Pte Ltd Executive 2,” an individual whose identity is known to the United States, was an employee of ALCON PTE LTD and, at various times, was located in the United States or Singapore.

8. “Distributor Company Executive 1,” an individual whose identity is known to the United States, was a high level executive of Distributor Company during the relevant time period.

9. “Distributor Company Executive 2,” an individual whose identity is known to the United States, was a high level accounting executive of Distributor Company during the relevant time period.

Operations in Vietnam

10. Vietnam owned and operated state-owned and state-controlled hospitals and clinics, and these hospitals and clinics performed a government function. Employees of state-owned and state-controlled hospitals and clinics in Vietnam (“Vietnam State HCPs”) were “foreign officials” within the meaning of the FCPA, 15 U.S.C. § 78dd-3(f)(2)(A).

11. The Alcon Division conducted business operations in Vietnam through two representative offices located in Hanoi, Vietnam, and Ho Chi Minh City, Vietnam (“Alcon Vietnam Representative Offices”). ALCON PTE LTD provided management and financial reporting oversight for the Alcon Vietnam Representative Offices.

12. The Alcon Vietnam Representative Offices did not directly conduct sales to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in Vietnam. Rather, sales to end-customers in Vietnam were conducted through the Distributor Company.

13. Among other lines of the Alcon Division's eye care business, the Alcon Vietnam Representative Offices, through the Distributor Company, sold surgical equipment and devices such as lasers and intraocular lenses ("IOLs") to end-customers in Vietnam, including to state-owned and state-controlled hospitals and clinics in Vietnam. IOLs are artificial replacement lenses that are implanted in the eye as part of a treatment for a variety of ailments, such as cataracts.

Overview of the Conspiracy

14. Beginning in or about 2007, the Alcon Vietnam Representative Offices and the Distributor Company engaged in a scheme to bribe Vietnam State HCPs in order to increase sales of IOLs. Participants in the scheme referred to it as the "consultancy program."

15. Under the guise of the consultancy program, the Distributor Company made corrupt payments to HCPs, including Vietnam State HCPs, in connection with sales of Alcon Division IOLs by the Distributor Company. The Distributor Company made the payments directly to HCPs, including to Vietnam State HCPs. The Alcon Vietnam Representative Offices, with the approval of

employees of ALCON PTE LTD, reimbursed the Distributor Company for up to 50 percent of the costs associated with the improper payments to HCPs.

16. The scheme continued after the Alcon Division merged with Novartis AG in or about April 2011. Thereafter, between in or about April 2011 and in or about June 2014, ALCON PTE LTD, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to cause Novartis AG to maintain false accounting records, by, among other things, falsely recording partial reimbursements to the Distributor Company for improper payments made to Vietnam State HCPs in ALCON PTE LTD's internal financial records, which were consolidated into Novartis AG's financial records, and by transmitting false Sarbanes-Oxley sub-certification letters to Novartis AG. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

17. In total, from in or about 2011 through in or about 2014, as a result of the improper payments to Vietnam State HCPs, ALCON PTE LTD realized approximately \$8,500,000 in profits.

Details of the Scheme

18. In or about April 2007, prior to Novartis AG's merger with the Alcon Division, the Alcon Vietnam Representative Offices, with the knowledge and involvement of Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others, began providing money to the Distributor Company, disguised

as consultancy payments and in the form of credit notes, that the Distributor Company used to make corrupt payments to HCPs, including Vietnam State HCPs.

19. In furtherance of the scheme, on or about April 3, 2007, Distributor Company Executive 2 sent an email to Alcon Pte Ltd Executive 1, an Alcon Vietnam Representative Offices executive, and others. In the email, Distributor Company Executive 2 referenced a meeting from March 2007 in which details of the corrupt consultancy program were discussed. The email attached a list of approximately 35 HCPs, including Vietnam State HCPs, who were designated to receive payments in exchange for purchasing Alcon Division IOLs. The email—and other contemporaneous communications—also outlined a proposal for the consultancy program as follows:

a. The consultancy program would cover two types of Alcon Division IOLs: IQ and Restore;

b. HCPs would be paid 200,000 VND (then equivalent to approximately \$12.50) per IQ IOL purchased and 400,000 VND (then equivalent to approximately \$25.00) per Restore IOL purchased;

c. The Distributor Company would make the payments to HCPs through bank transfers; and

d. Alcon Vietnam Representative Offices would reimburse Distributor Company for up to 50 percent of the costs associated with the consultancy program.

20. The consultancy program targeted doctors and nurses, many of whom were Vietnam State HCPs. As explained in an attachment to an email from an Alcon Vietnam Representative Offices executive dated July 21, 2008, the “[t]arget customer[s]” for the scheme consisted of the following: “[d]octor[s] in the consulta[tion] room,” “[d]octor[s] in the exam room,” “[n]urse[s] in the consulta[tion] room,” and the “[c]hief[s] of [Operating Rooms] in” two specific eye hospitals in Vietnam.

21. Furthermore, the purpose of the consultancy program, as explained in an email dated July 26, 2008, from a Distributor Company employee to an Alcon Vietnam Representative Offices executive, among others, was to “encourage[] doctors to introduce and use Alcon’s IOLs and . . . speed up IOLs sales.”

22. At the consultancy program’s peak, in or about 2011, the Distributor Company made corrupt payments to approximately 200 HCPs, a number of whom were Vietnam State HCPs, and the Alcon Vietnam Representative Offices disguised reimbursement for those payments as legitimate payments made pursuant to the consultancy program. These payments aggregated over time. For example, during 2010, a proposed payment schedule showed one Vietnam State HCP was scheduled to receive more than 360,000,000 VND (then equivalent to approximately \$18,450) pursuant to the consultancy program, while another Vietnam State HCP was scheduled to receive more than 450,000,000 VND (then equivalent to approximately \$23,352).

23. Between in or about 2007 and in or about June 2014, the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD and others, partially reimbursed the Distributor Company periodically for improper payments that the Distributor Company made to HCPs, including to Vietnam State HCPs (for instance, reimbursing approximately \$180,000 in or about 2010 and up to approximately \$100,000 in or about 2013 and 2014).

The False Records

24. Prior to in or about 2012, the Alcon Vietnam Representative Offices partially reimbursed the Distributor Company for improper payments made through the consultancy program by causing another Alcon entity to issue credits to the Distributor Company that offset its outstanding debt balances. These credits were referred to as “credit notes.”

25. The typical system for issuing the credit notes included the following steps: (a) Distributor Company employees would regularly send emails to an Alcon Vietnam Representative Offices employee requesting a credit note for a certain amount related to the consultancy program; (b) the Alcon Vietnam Representative Offices employee reviewed and forwarded the requests to regional management, including Alcon Pte Ltd Executive 2; and (c) once approved by regional management, credit notes were issued to the Distributor Company with the stated reason for the credit note as “consultancy fees.”

26. After 2011, the Distributor Company, with the knowledge of certain employees of ALCON PTE LTD, continued to make improper payments to HCPs, including to Vietnam State HCPs, in order to increase sales of Alcon Division IOLs, and ALCON PTE LTD continued to reimburse the Distributor Company indirectly for a portion of those payments.

27. Between in or about August 2011 and in or about 2012, the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD and others, changed the methodology for reimbursing the Distributor Company for a portion of the improper payments made through the consultancy program. Specifically, rather than reimburse the Distributor Company by issuing credit notes for “consultancy fees,” the Alcon Vietnam Representative Offices partially reimbursed the Distributor Company for the payments through other, inflated reimbursable costs, such as marketing, human resources, or margin reconciliation costs.

28. In furtherance of the scheme, in an email dated August 15, 2011, an Alcon Vietnam Representative Offices executive wrote to Alcon Pte Ltd Executive 2 and others about continued financial support for the consultancy program and suggested using the Distributor Company’s margin in order to cover the consultancy program costs. The email noted that “[Distributor Company Executive 1] agreed to remain their activities to secure business as much as possible but [Distributor Company Executive 1] need[s] our support more in term[s] of finance.” In the email,

an Alcon Vietnam Representative Offices executive noted further, “I also discuss[ed] with [Distributor Company Executive 1] our scenario of increasing the margin to cover USD 120K . . . With this support, [the Distributor Company] will propose the marketing plan for next year for Alcon[’s] review and agree[ment] before implementation.”

29. Employees of ALCON PTE LTD and the Alcon Vietnam Representative Offices also discussed using a marketing budget to cover the costs of reimbursing Distributor Company in connection with the improper payments made under the consultancy program. For example, on or about November 23, 2011, a Distributor Company employee sent an email to two Alcon Vietnam Representative Offices executives, among others, summarizing a November 9, 2011 meeting, during which personnel from the Distributor Company and from the Alcon Vietnam Representative Offices discussed various ways that the consultancy program would operate in 2012. Specifically, the Distributor Company employee wrote: “Consultant Program in 2012: Alcon will consider and share the finance difficulties of [Distributor Company] by:

- Increasing the ratio[] share of Loss of exchange rate . . .
- [P]aying sample for [Distributor Company]
- [U]sing some money from marketing budget to support [Distributor Company].”

30. Furthermore, during a phone call in or about late summer 2014, Distributor Company Executive 1 told an Alcon Pte Ltd employee that the Distributor

Company had used up all of its funds to pay for Alcon Division's surgical equipment and could no longer pay the "usual considerations" to Vietnamese HCPs to ensure they purchased Alcon Division products.

31. In or about May or June 2014, Alcon Pte Ltd Executive 1 told an Alcon Pte Ltd employee, who was responsible for reviewing the financials for the Alcon Division's business in Vietnam, that no one needed to know about the Distributor Company's 2014 profit and loss analysis ("Distributor Company's P&L Analysis").

32. Shortly thereafter, on or about June 11, 2014, an Alcon Vietnam Representative Offices executive sent an Alcon Pte Ltd employee a copy of the Distributor Company's P&L Analysis, which included a number of line items that concealed improper payments to HCPs, including to Vietnam State HCPs, in fiscal year ("FY") 2013 and FY 2014, including: purported "[c]onsultant cost" of approximately \$111,157 for FY 2013, purported "[c]onsultant cost" of approximately \$97,000 for FY 2014, purported "HR" cost of approximately \$800,000 for FY 2013, purported "HR" cost of approximately \$740,000 for FY 2014, purported "[a]dministration cost" of approximately \$514,000 for FY 2013, and purported "[a]dministration cost" of approximately \$572,000 for FY 2014.

33. Together, these entries in the Distributor Company's P&L Analysis correlated to ongoing efforts by ALCON PTE LTD to conceal the

reimbursement of the Distributor Company for improper payments made to Vietnam State HCPs and others.

34. ALCON PTE LTD, through its executives, employees, and agents, knowingly and willfully conspired and agreed with others to falsely record in ALCON PTE LTD's internal financial records partial reimbursement of the improper payments that the Distributor Company made to HCPs, including to Vietnam State HCPs, pursuant to the consultancy program. By recording reimbursements for these payments as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs, ALCON PTE LTD, through its executives, employees, and agents, concealed the true nature of these payments and caused Novartis AG to maintain false financial records.

35. Furthermore, as part of the conspiracy, Alcon Pte Ltd Executive 1, who participated in the scheme and knew of the corrupt payments to Vietnam State HCPs, signed and transmitted two false Sarbanes-Oxley sub-certification letters dated July 4, 2014, and October 7, 2014, to the Alcon Division's Chief Executive Officer and Chief Financial Officer. These false sub-certification letters were subsequently maintained in the books, records, and accounts of Novartis AG.

COUNT ONE
(Conspiracy to Violate the Books and Records Provision of the FCPA)

36. Paragraphs 1 through 35 of this Information are realleged here.

37. Between in or about 2011 and in or about 2014, in the United States and elsewhere, defendant

ALCON PTE LTD

together with others known and unknown, knowingly and willfully did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, that is: to knowingly and willfully falsify and cause to be falsified books, records, and accounts required, in reasonable detail, to accurately and fairly reflect the transactions and dispositions of the assets of Novartis AG, an issuer within the meaning of the FCPA, contrary to 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

Object of the Conspiracy

38. The object of the conspiracy was for ALCON PTE LTD and its co-conspirators to conceal improper payments made to Vietnam State HCPs by falsely recording partial reimbursements to the Distributor Company in ALCON PTE LTD's internal financial records, which were consolidated into Novartis AG's financial records, and by transmitting false Sarbanes-Oxley sub-certification letters to Novartis AG, which caused Novartis AG to maintain false accounting records.

Manner and Means of the Conspiracy

39. The manner and means by which ALCON PTE LTD and its co-conspirators sought to accomplish the object of the conspiracy included, among other things, the following:

a. Under the guise of the consultancy program, the Distributor Company made corrupt payments to HCPs, including Vietnam State HCPs, in connection with sales of Alcon Division IOLs by the Distributor Company. The Distributor Company made the payments directly to HCPs, including to Vietnam State HCPs, and the Alcon Vietnam Representative Offices, with the approval of employees of ALCON PTE LTD, reimbursed the Distributor Company for up to 50 percent of the costs associated with the improper payments to HCPs.

b. ALCON PTE LTD, through its executives, employees, and agents, falsely recorded partial reimbursements to the Distributor Company for improper payments made to Vietnam State HCPs in ALCON PTE LTD's internal financial records as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs, which were consolidated into Novartis AG's financial records.

Overt Acts

40. In furtherance of the conspiracy and to effect its object, ALCON PTE LTD and its co-conspirators committed or caused the commission of the following acts in the United States and elsewhere:

a. In or about late summer 2014, Distributor Company Executive 1 told an Alcon Pte Ltd employee that the Distributor Company had used all of its funds to pay for Alcon Division's surgical equipment and could no longer pay the "usual considerations" to Vietnamese HCPs to ensure that they purchased Alcon Division products.


b. In or about May or June 2014, Alcon Pte Ltd Executive 1 told an Alcon Pte Ltd employee, who was responsible for reviewing the financials for the Alcon Division's business in Vietnam, that no one needed to know about the Distributor Company's P&L Analysis.

c. On or about June 11, 2014, an Alcon Vietnam Representative Offices executive sent an Alcon Pte Ltd employee a copy of the Distributor Company's P&L Analysis, which included a number of line items that concealed improper payments to HCPs, including to Vietnam State HCPs, in FY 2013 and FY 2014.

d. At other times during the relevant time period, ALCON PTE LTD, through its executives, employees, and agents, falsely recorded reimbursements for payments to the Distributor Company as legitimate expenses, such as consulting expenses, marketing expenses, human resource expenses, administration costs, and/or margin reconciliation costs.

e. On or about July 4, 2014, Alcon Pte Ltd Executive 1, who participated in the scheme and knew of the corrupt payments to Vietnam State HCPs, signed and transmitted a false Sarbanes-Oxley sub-certification letter to the Alcon Division's Chief Executive Officer and Chief Financial Officer.

In violation of Title 18, United States Code, Section 371.

 6/22/2020

ROBERT ZINK
Chief, Fraud Section
Criminal Division
U.S. Department of Justice



CRAIG CARPENITO
United States Attorney
District of New Jersey

CASE NUMBER: 20-cr-539

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

ALCON PTE LTD

INFORMATION

18 U.S.C. § 371

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