

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue SE
Washington, D.C. 20590

In re:)
)
EA15-001)
Air Bag Inflator Rupture)
)
)
)

CONSENT ORDER

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve issues of liability raised in the above-captioned investigation, to mitigate and control risks of harm, and to promote public safety. This Consent Order sets forth the penalties, requirements, and performance obligations agreed to by TK Holdings Inc. (“Takata”), in connection with Takata’s alleged failure to fully comply with the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, and applicable regulations thereunder, as detailed herein.

The Consent Order of May 18, 2015, issued by NHTSA in this matter and agreed to by Takata, remains in effect and is hereby incorporated by reference, and its terms and conditions are made a part of this Consent Order as if set forth fully herein.

I. NATURE OF THE ACTION

1. The Safety Act provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1).

2. The Safety Act and applicable regulations impose certain obligations on manufacturers of motor vehicles and motor vehicle equipment to provide timely notice to NHTSA in particular circumstances where the manufacturer has determined in good faith that its motor vehicles or items of equipment contain a defect related to motor vehicle safety or do not comply with a Federal Motor Vehicle Safety Standard. *See* 49 U.S.C. § 30118(c); 49 C.F.R. § 573.3(e)(f); 49 C.F.R. § 573.6(a). Such notice, in the form of a Defect Information Report, is required not more than five working days after the manufacturer knew or should have known of a potential defect in its motor vehicle or motor vehicle equipment that poses an unreasonable risk to safety, or a non-compliance in its vehicles or equipment. *See* 49 C.F.R. § 573.6(a); *see also United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987); *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1049-50 (D.D.C. 1983).

3. The Safety Act and applicable regulations impose certain obligations on manufacturers to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety. 49 U.S.C. § 30166(e); 49 C.F.R. § 576.2. The records to be maintained by manufacturers include documentary materials that contain information concerning malfunctions that may be related to motor vehicle safety. 49 C.F.R. § 576.6. Such malfunctions include any failure in performance that could, in any reasonably foreseeable manner, be a causative factor in, or aggravate, an accident or an injury to a person. 49 C.F.R. § 576.8.

4. The Safety Act and applicable regulations impose certain obligations on manufacturers to provide timely, accurate, and complete information and cooperation in response to requests from NHTSA in connection with the investigation of potential risks to safety. *See* 49 U.S.C. §§ 30166(c), 30166(e).

5. A person who violates the defect notification requirements of the Safety Act, or a regulation thereunder, is currently liable to the United States Government for a civil penalty of not more than \$7,000 for each violation, subject to a limit of \$35,000,000 for a related series of violations. *See* 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a)(1). A person who fails to comply with the records retention and/or reporting obligations of section 30166 is currently liable for penalties of up to \$7,000 per day per violation, subject to a limit of \$35,000,000 for a related series of violations. 49 U.S.C. § 30165(a)(3); 49 C.F.R. § 578.6(a)(3). A separate violation occurs for each item of motor vehicle equipment and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a)(1).

6. Takata is a manufacturer of motor vehicle equipment within the meaning of the Safety Act, *see* 49 U.S.C. §§ 30102(a)(5), 30102(a)(7), and a person within the meaning of 49 U.S.C. § 30165.

II. BACKGROUND

7. On June 11, 2014, NHTSA opened a formal defect investigation (Preliminary Evaluation, PE14-016) into certain Takata air bag inflators that may become over-pressurized and rupture during air bag deployment, resulting in injury to the driver and/or passenger.

8. During the course of PE14-016, NHTSA issued two Special Orders to Takata, one on October 30, 2014 and one on November 18, 2014, and one General Order to Takata and the affected motor vehicles manufacturers on November 18, 2014, all of which requested documents and information related to the investigation.

9. On February 24, 2015, NHTSA upgraded and expanded its investigation to include various model year 2001-2011 motor vehicles, which contain air bag inflators manufactured by Takata (Engineering Analysis, EA15-001).

10. On May 18, 2015, Takata filed four Defect Information Reports with NHTSA in accordance with 49 C.F.R. § 573.6 (the “Takata DIRs”). In those Takata DIRs, Takata identified a defect related to motor vehicle safety that may arise in some of the frontal air bag inflator types that it has manufactured. The Takata DIRs have been designated by NHTSA as Recall Nos. 15E-040, 15E-041, 15E-042, and 15E-043.

11. On May 18, 2015, in connection with the filing of the Takata DIRs, Takata agreed to and NHTSA issued a Consent Order in EA15-001 (the “First Takata Consent Order”). Under the terms of the First Takata Consent Order, Takata was required to continue its cooperation in NHTSA investigation EA15-001; continue its cooperation in all regulatory actions and proceedings that may become part of NHTSA’s ongoing investigation and oversight of Takata air bag inflators; submit a plan to NHTSA outlining the steps Takata would take to maximize recall completion rates (the “‘Get the Word Out’ Digital Outreach Plan”); and submit a plan to provide NHTSA with test data and other information regarding the service life and safety of the remedy inflators (the “Proposed Plan to Test the Service Life and Safety of Certain Inflators”). *See* First Takata Consent Order at ¶¶ 7, 10. To date, Takata has substantially complied with the First Takata Consent Order.

12. On June 5, 2015, NHTSA issued a Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflators, and opened Docket No. NHTSA-2015-0055, to determine what action, if any, the agency should undertake to prioritize, organize, and phase the recall and remedy programs related to the Takata DIRs. *See* 80 Fed. Reg. 32197 (June 5, 2015).

13. Since commencing the Coordinated Remedy Program Proceeding, NHTSA has issued two additional Special Orders to Takata - one on June 19, 2015 and one on August 13,

2015. The Special Orders sought documents and information relevant to NHTSA's investigation and the Coordinated Remedy Program Proceeding. To date, Takata has substantially complied with these Special Orders.

III. FINDINGS

14. During the course of NHTSA's investigation, including its review of Takata's responses to the Special Orders issued by NHTSA, its review of documents produced by Takata, and its review of information proactively disclosed by Takata, the agency has discovered facts and circumstances indicating that Takata may have violated the Safety Act and the regulations thereunder in at least some respects; including possible violations of 49 U.S.C. § 30118(c)(1), 49 U.S.C. § 30119(c)(2), 49 U.S.C. § 30166, 49 C.F.R. § 573.3(e)-(f), and 49 C.F.R. § 573.6(b). It is the mutual desire of NHTSA and Takata to resolve these alleged violations, without the need for further action, to avoid the legal expenses and other costs of a protracted dispute and potential litigation, as well as to establish remedial measures with the purpose of mitigating risk and deterring future violations.

15. More specifically, during the course of NHTSA's investigation, the agency has discovered facts and circumstances indicating that:

a. Takata failed to provide notice to NHTSA of the safety-related defect that may arise in some of the inflators that are the subjects of Recall Nos. 13E-017, 14E-073, 15E-040, 15E-041, 15E-042, and 15E-043 within five working days of when Takata determined, or in good faith should have determined, the existence of that defect.

b. In several instances, Takata produced testing reports that contained selective, incomplete, or inaccurate data.

c. Takata failed to clarify inaccurate information provided to NHTSA, including, but not limited to, during a presentation made to the agency in January 2012.

d. Takata failed to comply fully with the instructions contained in the Special Orders issued by NHTSA on October 30, 2014 and November 18, 2014, as set forth more fully in the agency's February 20, 2015 letter to Takata.

IV. LEGAL AUTHORITY

16. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. § 30101, *et seq.*, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2(a)(1), including, among other things, its authority to inspect and investigate, 49 U.S.C. § 30166(b)(1); compromise the amount of civil penalties, 49 U.S.C. § 30165(b); ensure that defective vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30119; ensure the adequacy of recalls, 49 U.S.C. § 30120(c)(1); accelerate remedy programs, 49 U.S.C. § 30120(c)(3); and require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g). In consideration of Takata's entry into this Consent Order and its commitments outlined below, it is AGREED by Takata and ORDERED by NHTSA as follows:

V. TERMS AND CONDITIONS OF CONSENT ORDER

Safety Act Admissions

17. Takata admits that it did not satisfy the notice provisions of the Safety Act when it failed to provide notice to NHTSA of certain information potentially relevant to one or more of the safety-related defects that may arise in some of the inflators that are the subjects of Recall Nos. 13E-017, 14E-073, 15E-040, 15E-041, 15E-042, and 15E-043 within the five-day period provided by the Safety Act and regulations prescribed thereunder in 49 U.S.C. § 30118(c)(1),

49 U.S.C. § 30119(c)(2), 49 C.F.R. § 573.3(e)-(f), and 49 C.F.R. § 573.6(b), which at the time Takata did not believe was required.

18. Takata admits that it failed to provide, within the time limits requested by NHTSA, an explanation of certain documents produced to NHTSA pursuant to the Special Orders issued by NHTSA on October 30, 2014 and November 18, 2014.

Civil Penalty

19. Subject to the terms in the remainder of this Paragraph 19, Takata shall pay a civil penalty in the sum of two hundred million dollars (\$200,000,000) in connection with the matters addressed in this Consent Order, as follows:

a. The sum of seventy million dollars (\$70,000,000) shall be paid as the Civil Penalty Amount in accordance with the instructions set forth in Paragraph 20.

b. The sum of sixty million dollars (\$60,000,000), in the form of Stipulated Civil Penalties, shall be deferred and held in abeyance pending satisfactory completion of Paragraph 26.b.

c. The sum of seventy million dollars (\$70,000,000), in the form of Liquidated Penalties, shall be deferred and held in abeyance, and shall become due and payable in the increments described in Paragraphs 26.a. and 47 below, in the event NHTSA determines that Takata entered into any new contract for the manufacture and sale of any Takata PSAN inflator after the date of this Consent Order, or committed a violation of the Safety Act or the regulations prescribed thereunder, which was not disclosed to NHTSA as of the date of this Consent Order.

20. Takata shall pay the Civil Penalty Amount of seventy million dollars (\$70,000,000) in six lump-sum payments by electronic funds transfer to the U.S. Treasury, in

accordance with the instructions provided by NHTSA. The payments shall be made on the following schedule:

	Date	Amount
First Payment	February 1, 2016	\$10,000,000
Second Payment	October 31, 2016	\$10,000,000
Third Payment	October 31, 2017	\$10,000,000
Fourth Payment	October 31, 2018	\$10,000,000
Fifth Payment	October 31, 2019	\$15,000,000
Sixth Payment	October 31, 2020	\$15,000,000

21. Takata admits that it has an obligation to the United States in the amount of two hundred million dollars (\$200,000,000), as provided for in Paragraph 19 above, arising from activities under the jurisdiction of the U.S. Department of Transportation and subject to the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Claims Collection Act”).

22. If Takata fails to make the payment of the Civil Penalty Amount set forth in Paragraph 20 above, or any payment of Stipulated Civil Penalties or Liquidated Penalties, as may be imposed in accordance with Paragraphs 26.a., 26.b., and 47, on or before their respective due dates, Takata shall be in default of this Consent Order and any unpaid amounts shall become immediately due and owing. In that event, (i) Takata agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to the Claims Collection Act and U.S. Department of Transportation regulations, 49 C.F.R. § 89, either administratively or in any court, and (ii) Takata shall affirmatively waive any and all defenses or rights that would otherwise be available to it in any such collection proceeding. In addition, in such a proceeding, Takata shall pay the United States all reasonable costs of collection and enforcement, including attorneys’ fees and expenses.

23. In determining the appropriate amount of the civil penalty to be imposed, the agency has taken into consideration the purpose and objectives of the Safety Act (including the relevant factors set forth at 49 U.S.C. § 30165(c)), as well as the actions and commitments of Takata, including: Takata's willingness to enter into this Consent Order; Takata's decision to terminate certain employees; Takata's continued commitment to cooperate in the agency's ongoing investigation of air bag inflator ruptures, EA15-001, and its commitment to cooperate in the Coordinated Remedy Program announced by NHTSA on November 3, 2015, as set forth in Paragraph 32 below; Takata's commitment to improving its internal safety culture, as set forth in Paragraph 33 below; and the substantial costs Takata will incur in implementing and completing its "Get the Word Out" Digital Outreach Plan, its Proposed Plan to Test the Service Life and Safety of Certain Inflators, and the other obligations of this Consent Order.

Phase Out of Certain Takata PSAN Inflators

24. Takata states that air bags equipped with inflators containing phase-stabilized ammonium nitrate-based propellants (the "Takata PSAN inflators") have generally performed as intended and in the vast majority of cases deploy safely and are effective in saving lives and preventing serious injuries in motor vehicle accidents. Takata further states that it continues to have confidence in the safety of the Takata PSAN inflators it is manufacturing for use in air bags. NHTSA does not share this same confidence in the long-term performance of such inflators, particularly those that do not contain a desiccant;¹ including, but not limited to, the following inflator types: SDI, PSDI, PSDI-4, PSDI-4K, SPI, PSPI, and PSPI-L (the "non-desiccated Takata PSAN inflators"). In order to reach this resolution with NHTSA, and

¹ A desiccant is hygroscopic substance that has a high affinity for moisture and is used as a drying agent.

considering the commercial needs of its customers, Takata has agreed to phase out of the manufacture and sale of certain Takata PSAN inflators, as described below.

25. To mitigate and control the risk of serious injury or death due to an air bag inflator rupture, and in light of the significant population of vehicles containing Takata inflators, as well as Takata's current understanding of the defect that may arise in some inflators, as set forth in the Takata DIRs (*i.e.*, that "the inflator ruptures appear to have a multi-factor root cause that includes the slow-acting effects of a persistent and long term exposure to climates with high temperatures and high absolute humidity"), the agency believes there is a principled basis to allow Takata, on the schedule set forth below, to phase out of its manufacture and sale of certain Takata PSAN inflators and to continue testing the safety and service life of the Takata PSAN inflators, as set forth in Paragraphs 26-28 below. Based upon the agency's analysis and judgment, this approach best meets the objectives of the Safety Act, while taking into account the size of the affected vehicle population, the apparent nature of the defect mechanism, and other factors as they are best known and understood as of the date of this Consent Order. That being said, NHTSA states that Takata has studied this complex problem for at least the last eight years and, to date, does not have a definitive root cause. The agency does not believe that the American public will be well served if the root cause investigation continues indefinitely. The agency further believes there is a principled basis to require Takata to either demonstrate the safety of the Takata PSAN inflators, or file Defect Information Reports, as set forth in Paragraphs 29-30 below.

NHTSA reserves the right to alter the schedules set forth in Paragraphs 26 and 30 through a final order if NHTSA determines that such alteration is required by the Safety Act based on the occurrence of future field ruptures, testing (whether conducted by Takata, NHTSA, or any other

third party), or other circumstances to mitigate an unreasonable risk to safety within the meaning of the Safety Act. Any such order altering the schedules set forth in Paragraphs 26 and 30 will focus on particular types of inflators, on particular periods of manufacture, and on specific vehicles (including, where applicable, vehicle models, model years, and locations of vehicle registration). NHTSA will provide Takata reasonable advance notice of such a proposed order and an opportunity to consult with affected vehicle manufacturers. Upon a schedule to be determined by the Administrator, Takata will have an opportunity to present evidence and seek administrative reconsideration by NHTSA. Takata's objection to, or failure to comply with, any final order issued by NHTSA may be the subject of a civil action regarding Takata's obligations under any such order, including an action to compel specific performance.

26. **New and Existing Contracts.** Takata shall phase out of the manufacture and sale of certain Takata PSAN inflators for use in the United States, as set forth in this Paragraph.

a. With respect to new contracts, Takata shall not, and hereby represents that it has not since October 31, 2015, commit, contract for sale or resale, offer, provision for use, or otherwise agree to place into the stream of commerce of the United States any Takata PSAN inflator, regardless of whether it contains 2004 propellant or 2004L propellant, and regardless of whether or not it contains desiccant. If Takata violates this Paragraph 26.a., then Takata shall pay Liquidated Penalties as follows: for the first such violation, Takata shall make a lump-sum payment of five million dollars (\$5,000,000); for the second such violation, Takata shall make a lump-sum payment of ten million dollars (\$10,000,000); and for the third such violation, Takata shall make a lump-sum payment of twenty million dollars (\$20,000,000). Each payment of such Liquidated Penalties shall be made by electronic funds transfer to the U.S. Treasury within ten

business days of a final determination of the violation by NHTSA (following a reasonable opportunity for Takata to seek review of the determination), in accordance with the instructions provided by NHTSA. Nothing in this paragraph bars Takata from (1) selling or shipping service or replacement parts for the types of inflators covered by supply contracts existing prior to October 31, 2015, or (2) committing, selling, offering, provisioning for use, or otherwise agreeing to supply Takata PSAN inflator types that contain desiccant in lieu of non-desiccated Takata PSAN inflators; provided, however, that the manufacture and sale may be limited in case of: (i) any non-desiccated Takata PSAN inflators by Paragraph 26.b. and (ii) any desiccated Takata PSAN inflators (as defined in Paragraph 26.c. below) by Paragraph 26.c.

b. With respect to contracts entered into before October 31, 2015, under which Takata is currently obligated to manufacture and sell non-desiccated Takata PSAN inflators in the future, Takata shall phase out of the manufacture and sale of such non-desiccated Takata PSAN inflators for use in the United States, including for use as remedy parts in connection with any existing recall campaign, on the following schedule:

[SCHEDULE FOLLOWS ON NEXT PAGE]

Deadline	Description of Phase Out Commitment
By Dec. 31, 2015	Less than 50% of driver inflators Takata supplies for use in the U.S. will be non-desiccated Takata PSAN inflators.
By Dec. 31, 2016	Less than 10% of driver inflators Takata supplies for use in the U.S. will be non-desiccated Takata PSAN inflators, and none of which shall contain the “Batwing” shaped propellant wafer.
By Dec. 31, 2017	Takata will stop supplying non-desiccated Takata PSAN driver inflators for use in the U.S., subject to de minimis exceptions for the necessary supply of service parts, but only as approved by NHTSA in writing.
By Dec. 31, 2016	Less than 50% of passenger and side inflators Takata supplies for use in the U.S. will be non-desiccated Takata PSAN inflators.
By Dec. 31, 2017	Less than 10% of passenger and side inflators Takata supplies for use in the U.S. will be non-desiccated Takata PSAN inflators.
By Dec. 31, 2018	Takata will stop supplying non-desiccated Takata PSAN passenger and side inflators for use in the U.S., subject to de minimis exceptions for the necessary supply of service parts, but only as approved by NHTSA in writing.

Takata shall submit to NHTSA a declaration executed by a senior officer, under oath and pursuant to 28 U.S.C. § 1746, within fourteen business days after each deadline set forth above, certifying that it has met the deadline. For purposes of meeting each deadline, Takata may rely on reasonable, good faith estimates or on reasonable representations from vehicle manufacturers in identifying or quantifying inflators produced for use in the United States. If Takata fails to comply with any deadline set forth in this Paragraph 26.b., then Takata shall pay Stipulated Civil Penalties in the amount of \$10 million per deadline missed. To the extent such stipulated penalties become due and owing, they shall be paid by wire transfer within ten business days of the missed deadline in accordance with the instructions provided by NHTSA. The payment of Stipulated Civil Penalties **does not** relieve Takata of its obligation to perform as required by this Paragraph 26.b., the continued failure of which may be the subject of a civil action compelling Takata’s specific performance.

c. With respect to contracts entered into before October 31, 2015, under which Takata is currently obligated to manufacture and sell Takata PSAN inflator types that contain desiccant (the “desiccated Takata PSAN inflators”), including, but not limited to, SDI-X, PSDI-5, PSDI-X, SPI-X, PSPI-X, SDI-X 1.7, PDP, and SDP, Takata may continue to manufacture and sell such inflators in accordance with those existing contracts and purchase orders. However, NHTSA reserves the right to order Takata to phase out of the manufacture and sale of the desiccated Takata PSAN inflators if NHTSA determines that such a phase out is required by the Safety Act based on the occurrence of future field ruptures, testing (whether conducted by Takata, NHTSA, or any other third party), or other circumstances to mitigate an unreasonable risk to safety within the meaning of the Safety Act. Any such order will focus on particular types of inflators, on particular periods of manufacture, and on specific vehicles (including, where applicable, vehicle models, model years, and locations of vehicle registration). NHTSA will provide Takata reasonable advance notice of such a proposed order and an opportunity to consult with affected vehicle manufacturers. Upon a schedule to be determined by the Administrator, Takata will have an opportunity to present evidence and seek administrative reconsideration by NHTSA. Takata’s objection to, or failure to comply with, any final order issued by NHTSA may be the subject of a civil action regarding Takata’s obligations under any such order, including an action to compel specific performance.

Further Testing of Takata PSAN Inflators and Potential Future Recalls

27. **Testing of Non-Desiccated Takata PSAN Inflators.** Takata shall continue its current service life and safety testing of non-desiccated Takata PSAN inflators. Takata shall

provide frequent updates to NHTSA on the status of this effort and test results, and shall respond fully and accurately to any request for information by the agency.

28. **Testing of Desiccated Takata PSAN Inflators.** Takata shall extend its current service life and safety testing to include testing of desiccated Takata PSAN inflators, with the cooperation of the vehicle manufacturers, to determine the service life and safety of such inflators, and to determine whether, and to what extent, these inflator types suffer from a defect condition, regardless of whether it is the same or similar to the conditions at issue in the Takata DIRs. Takata shall provide frequent updates to NHTSA on the status of this effort and test results, and shall respond fully and accurately to any request for information by the agency.

29. **Agency Defect Determinations.** At any time, the Associate Administrator for Enforcement may make a determination that a defect within the meaning of the Safety Act – *i.e.*, a defect that presents an unreasonable risk to safety – exists in any Takata PSAN inflator type, whether non-desiccated or desiccated, based upon: (a) the occurrence of a field rupture(s) of that Takata PSAN inflator type, (b) testing data and analysis relating to the propensity for rupture of that Takata PSAN inflator type, (c) Takata’s ultimate determinations concerning the safety and/or service life of any Takata PSAN inflator type, (d) the determination of root cause of inflator ruptures by any credible source, or (e) other appropriate evidence. Within five business days of receiving such a determination by NHTSA, which shall set forth the basis for the defect determination, Takata shall either submit an appropriate Defect Information Report to the agency or provide written notice that it disputes NHTSA’s defect determination. Takata may consult with affected vehicle manufacturers and, upon a schedule to be determined by the Administrator, may present evidence supporting its position, after which the Administrator shall make a final decision. If, after consideration of Takata’s submission, the Administrator ultimately concludes

that a defect related to motor vehicle safety exists, then he or she may issue a final order directing Takata to submit the appropriate Defect Information Report(s) to the agency within five business days of the issuance of the order. Any such order will focus on particular types of inflators, on particular periods of manufacture, and on specific vehicles (including, where applicable, vehicle models, model years, and locations of vehicle registration). Takata's objection to, or failure to comply with, any final order issued by NHTSA may be the subject of a civil action regarding Takata's obligations under any such order, including an action to compel specific performance.

30. ***De Facto Defect Determinations.*** If no root cause of field ruptures of the relevant type of inflator has been determined by Takata or any other credible source, or if Takata has not otherwise been able to make a showing to NHTSA concerning the safety and/or service life of any of the Takata PSAN inflators to NHTSA's satisfaction by December 31, 2018 for non-desiccated Takata PSAN inflators and by December 31, 2019 for desiccated Takata PSAN inflators, then the Administrator may issue one or more final orders setting forth a schedule on which Takata shall submit Defect Information Reports to the agency for the relevant Takata PSAN inflators. Any such order will focus on particular types of inflators, on particular periods of manufacture, and on specific vehicles (including, where applicable, vehicle models, model years, and locations of vehicle registration). NHTSA will provide Takata reasonable advance notice of such a proposed order and an opportunity to consult with affected vehicle manufacturers. Upon a schedule to be determined by the Administrator, Takata will have an opportunity to present evidence and seek administrative reconsideration by NHTSA. Takata's objection to, or failure to comply with, any final order issued by NHTSA may be the subject of a

civil action regarding Takata's obligations under any such order, including an action to compel specific performance.

31. Nothing in this Consent Order, specifically including Paragraphs 25-30, shall relieve Takata of its obligation to make any defect determination and/or to file any Defect Information Report that is required by 49 C.F.R. §§ 573.3(e)-(f), and 573.6(a).

Other Performance Obligations

32. Cooperation.

a. Takata shall comply with its obligations under the Safety Act, and regulations prescribed thereunder, to take all actions reasonably necessary to comply with this Consent Order and to cooperate with NHTSA in carrying out the requirements of this Consent Order. Takata's reasonable best efforts shall include, but shall not be limited to, (i) providing prompt notice to NHTSA in the event any requirement of this Consent Order cannot be met or timely met; and (ii) ensuring that Takata employees involved in carrying out the requirements of this Consent Order are kept well-informed and are allocated sufficient time during their working hours to enable them thoroughly and effectively to perform the actions necessary to carry out those requirements.

b. Takata shall continue to cooperate with NHTSA in its ongoing investigation and oversight of Takata air bag inflators, including, but not limited to, NHTSA Investigation EA15-001.

c. Takata shall continue to cooperate in all regulatory actions and proceedings that are part of NHTSA's ongoing investigation and oversight of defective Takata air bag inflators and accompanying remedial actions, including, but not limited to,

the Coordinated Remedy Program, as announced by NHTSA in the Coordinated Remedy Order issued on November 3, 2015.

33. **Internal Safety Culture Improvements.** Takata shall work diligently to correct any lapses and improve its safety culture, as follows:

a. *Report of Internal Investigation.* Through counsel, Takata shall provide a detailed written report to NHTSA regarding the history of the rupturing inflator issues giving rise to Recall Nos. 15E-040, 15E-041, 15E-042, and 15E-043 no later than June 30, 2016. The written report shall include a summary of the facts, internal discussions and decision-making, safety lapses that Takata has uncovered, and steps taken by Takata to mitigate the risk. Takata shall not assert any claim of confidentiality or privilege with respect to this report, which shall be made publicly available by NHTSA.

b. *Confirmation of Employee Termination.* Within sixty days of the execution of this Consent Order, Takata shall submit written notice to NHTSA, confirming the identities of the individuals whose employment has been terminated as a result of, or in relation to, Takata's review of the subject matter of this Consent Order.

c. *Chief Safety Assurance and Accountability Officer.* Within sixty days following execution of this Consent Order, Takata shall designate a Chief Safety Assurance and Accountability Officer, who shall have independent authority within Takata to oversee compliance by Takata and its employees with the process improvements, written procedures, and training programs established by the Monitor. The Chief Safety Assurance and Accountability Officer is a permanent position and shall report directly to the board of directors of Takata. Takata shall provide him or her with sufficient staff and resources to carry out the duties contemplated by this Paragraph 33.c.

fully, efficiently, and without the need for burdensome approvals or administrative delays.

d. *Improvements to Internal Whistleblower Reporting.* Takata shall ensure that its existing whistleblower process permits and encourages its employees to expeditiously report concerns regarding irregularities in customer test data, malfunctions, actual or potential safety-related defects, or actual or potential noncompliance with Federal Motor Vehicle Safety Standards. Takata shall establish and rigorously enforce a non-retaliation policy for employees who report such concerns. No later than ninety days following execution of this Consent Order, Takata shall provide NHTSA with written documentation describing the process and policy for whistleblower reporting, as described in this Paragraph 33.d.

34. **Meetings with NHTSA.** Takata shall meet with NHTSA within ninety days of the execution of this Consent Order to discuss the steps it has taken pursuant to this Consent Order, and the process improvements, written procedures, and training programs being developed and implemented by the Monitor and Chief Safety Assurance and Accountability Officer. Takata shall work with NHTSA to evaluate which recommendations, process improvements, and training programs are appropriate for implementation and will develop a detailed written plan to implement any recommendations deemed appropriate. Takata shall thereafter meet with NHTSA on a quarterly basis for one year to discuss Takata's implementation of any recommendations NHTSA determines are appropriate. Takata agrees that, absent compelling circumstances, Kevin M. Kennedy, Executive Vice President of Takata (or his successor, if applicable), will attend the meetings, along with any other Takata officials, employees, or representatives whom Takata considers appropriate attendees. NHTSA may

extend the period of time for periodic meetings (no more frequently than once per quarter) pursuant to this Paragraph 34 for up to the term of this Consent Order.

Independent Monitor

Takata agrees to retain, at its sole cost and expense, an independent monitor (the “Monitor”) whose powers, rights and responsibilities shall be as set forth below.

35. **Jurisdiction, Powers, and Oversight Authority.** The scope of the Monitor’s authority is: (i) to review and assess Takata’s compliance with this Consent Order, including, but not limited to, Takata’s phasing out of the manufacture and sale of PSAN inflators, as described in Paragraph 26, its testing efforts, as set forth in Paragraphs 27-28, and the internal safety improvements described in Paragraph 33.a.-d. above; (ii) to monitor Takata’s compliance with the First Takata Consent Order, including its compliance with, and any alterations to, its “Get the Word Out” Digital Outreach Plan and its Proposed Plan to Test the Service Life and Safety of Certain Inflators; and (iii) to oversee, monitor, and assess compliance with the Coordinated Remedy Program, as set forth in the Coordinated Remedy Order issued by NHTSA on November 3, 2015.

It is expected and agreed that the Monitor will develop and implement process improvements, written procedures, and training programs and may make additional recommendations aimed at enhancing Takata’s ability to detect, investigate, and resolve potential safety related concerns. The Monitor will oversee the activities of the Chief Safety Assurance and Accountability Officer and, in the event of a dispute, the advice and recommendations of the Monitor will be controlling. The Monitor is not intended to supplant NHTSA’s authority over decisions related to motor vehicle safety. Except as expressly set forth below, the authority granted to the Monitor shall not include the authority to exercise oversight, or to participate in,

decisions by Takata about product offerings, decisions relating to product development, engineering of equipment, capital allocation, and investment decisions.

The Monitor's jurisdiction, powers, and oversight authority and duties are to be broadly construed, subject to the following limitation: the Monitor's responsibilities shall be limited to Takata's activities in the United States, and to the extent the Monitor seeks information outside the United States, compliance with such requests shall be consistent with the applicable legal principles in that jurisdiction. Takata shall adopt all recommendations submitted by the Monitor unless Takata objects to any recommendation and NHTSA agrees that adoption of such recommendation should not be required.

36. **Access to Information.** The Monitor shall have the authority to take such reasonable steps, in the Monitor's view, as necessary to be fully informed about those operations of Takata within or related to his or her jurisdiction. To that end, the Monitor shall have:

a. Access to, and the right to make copies of, any and all non-privileged books, records, accounts, correspondence, files, and any and all other documents or electronic records, including e-mails, of Takata and its subsidiaries, and of officers, agents, and employees of Takata and its subsidiaries, within or related to his or her jurisdiction that are located in the United States; and

b. The right to interview any officer, employee, agent, or consultant of Takata conducting business in or present in the United States and to participate in any meeting in the United States concerning any matter within or relating to the Monitor's jurisdiction; provided, however, that during any such interview, such officer, employee, agent, or consultant shall have the right to counsel and shall not be required to disclose privileged information.

c. To the extent that the Monitor seeks access to information contained within privileged documents or materials, Takata shall use its best efforts to provide the Monitor with the information without compromising the asserted privilege.

37. Confidentiality.

a. The Monitor shall maintain the confidentiality of any non-public information entrusted or made available to the Monitor. The Monitor shall share such information only with NHTSA, except that the Monitor may also determine in consultation with NHTSA that such information should be shared with the U.S. Department of Justice and/or other federal agencies.

b. The Monitor shall sign a non-disclosure agreement with Takata prohibiting disclosure of information received from Takata to anyone other than NHTSA or anyone designated by NHTSA or hired by the Monitor. Within thirty days after the end of the Monitor's term, the Monitor shall either return anything obtained from Takata, or certify that such information has been destroyed. Anyone hired or retained by the Monitor shall also sign a non-disclosure agreement with similar return or destruction requirements as set forth in this subparagraph.

38. Hiring Authority. The Monitor shall have the authority to employ, subject to ordinary and customary engagement terms, legal counsel, consultants, investigators, experts, and any other personnel reasonably necessary to assist in the proper discharge of the Monitor's duties.

39. Implementing Authority. The Monitor shall have the authority to take any other actions in the United States that are reasonably necessary to effectuate the Monitor's oversight and monitoring responsibilities.

40. **Selection and Termination.**

a. *Term.* The Monitor's authority set forth herein shall extend for a period of five years from the commencement of the Monitor's duties, except that (a) in the event NHTSA determines during the period of the Monitorship (or any extensions thereof) that Takata has violated any provision of this Consent Order, an extension of the period of the Monitorship may be imposed in the sole discretion of NHTSA, up to an additional one-year extension, but in no event shall the total term of the Monitorship exceed the term of this Consent Order; and (b) in the event NHTSA, in its sole discretion, determines during the period of the Monitorship that the employment of a Monitor is no longer necessary to carry out the purposes of this Agreement, NHTSA may shorten the period of the Monitorship, in accordance with subparagraph c.

b. *Selection.* NHTSA shall consult with Takata, including soliciting nominations from Takata, using its best efforts to select and appoint a mutually acceptable Monitor (and any replacement Monitors, if required) as promptly as possible. In the event NHTSA is unable to identify a Monitor who is acceptable to Takata, NHTSA shall have the sole right to select a Monitor (and any replacement Monitors, if required).

c. *Termination.* NHTSA shall have the right to terminate the retention of the Monitor at any time for cause, which termination shall be effective immediately. Termination for cause shall include termination for: (i) intentional nonperformance, misperformance, or gross negligence in the performance of the duties set forth in Paragraph 35; (ii) failure to report to NHTSA in the timeframe and manner specified in Paragraph 42; (iii) willful dishonesty, fraud or misconduct; (iv) conviction of, or a plea of nolo contendere to, a felony or other crime involving moral turpitude; or (v) the

commission of any act materially inconsistent with the object and purpose of this Consent Order and/or the Safety Act.

Upon the mutual agreement of NHTSA and Takata, the Monitor's retention may be terminated without cause upon thirty days prior written notice to the Monitor.

41. **Notice regarding the Monitor; Monitor's Authority to Act on Information received from Employees; No Penalty for Reporting.** Takata shall establish an independent, toll-free answering service to facilitate communication anonymously or otherwise with the Monitor. Within ten days of the commencement of the Monitor's duties, Takata shall advise its employees of the appointment of the Monitor, the Monitor's powers and duties as set forth in this Agreement, a toll-free telephone number established for contacting the Monitor, and email and mail addresses designated by the Monitor. Such notice shall inform employees that they may communicate with the Monitor anonymously or otherwise, and that no agent, consultant, or employee of Takata shall be penalized in any way for providing information to the Monitor (unless the Monitor determines that the agent, consultant, or employee has intentionally provided false information to the Monitor). In addition, such notice shall direct that, if an employee is aware of any violation of any law or any unethical conduct that has not been reported to an appropriate federal, state or municipal agency, the employee is obligated to report such violation or conduct to the Monitor. The Monitor shall have access to all communications made using this toll-free number. The Monitor has the sole discretion to determine whether the toll-free number is sufficient to permit confidential and/or anonymous communications or whether the establishment of an additional or different toll-free number is required.

42. **Reports to NHTSA.** The Monitor shall keep records of his or her activities, including copies of all correspondence and telephone logs, as well as records relating to actions

taken in response to correspondence or telephone calls. If potentially illegal or unethical conduct is reported to the Monitor, the Monitor may, at his or her option, conduct an investigation, and/or refer the matter to NHTSA and/or the U.S. Department of Justice. The Monitor may report to NHTSA whenever the Monitor deems fit but, in any event, shall file written reports not less often than every four months regarding: the Monitor's activities; whether Takata is complying with the terms of this Consent Order; any changes that are necessary to foster Takata's compliance with the Safety Act and/or any regulation promulgated thereunder; and any developments associated with the Coordinated Remedy Program. Sixty days prior to the scheduled expiration of his or her term, the Monitor shall submit a closing report to NHTSA assessing Takata's record of compliance with the requirements of the Consent Order.

43. Cooperation with the Monitor.

a. Takata and all of its officers, directors, employees, agents, and consultants shall have an affirmative duty to cooperate with and assist the Monitor in the execution of his or her duties and shall inform the Monitor of any non-privileged information that may relate to the Monitor's duties or lead to information that relates to his or her duties.

Failure of any Takata officer, director, employee, or agent to cooperate with the Monitor may, in the sole discretion of the Monitor, serve as a basis for the Monitor to recommend dismissal or other disciplinary action.

b. On a monthly basis for a period of one year, the Chief Safety Assurance and Accountability Officer shall provide the Monitor with a written list of every safety-related issue concerning any item of equipment manufactured by Takata that is being investigated, reviewed, or monitored by Takata. The Monitor shall include these issues in the reports to NHTSA under Paragraph 42.

44. **Compensation and Expenses.** Although the Monitor shall operate under the supervision of NHTSA, the compensation and expenses of the Monitor, and of the persons hired under his or her authority, shall be paid by Takata. The Monitor, and any persons hired by the Monitor, shall be compensated in accordance with their respective typical hourly rates. Takata shall pay bills for compensation and expenses promptly, and in any event within thirty days. In addition, within one week after the selection of the Monitor, Takata shall make available reasonable office space, telephone service and clerical assistance sufficient for the Monitor to carry out his or her duties.

45. **Indemnification.** Takata shall provide an appropriate indemnification agreement to the Monitor with respect to any claims arising out of the proper performance of the Monitor's duties.

46. **No Affiliation.** The Monitor is not, and shall not be treated for any purpose, as an officer, employee, agent, or affiliate of Takata.

47. **Liquidated Penalties.** Should NHTSA reasonably determine, whether based on notice from the Monitor as provided in Paragraph 42 above, on documents that become public, but were not produced to NHTSA in accordance with any of the agency's Special Orders to Takata, or on NHTSA's own investigation, that Takata had committed a violation of the Safety Act or the regulations prescribed thereunder, which was not disclosed to NHTSA as of the date of this Consent Order, Takata shall pay Liquidated Penalties in accordance with this Paragraph 47; provided, however, that Takata reserves the right to argue that its actions did not constitute a violation of the Safety Act or the regulations prescribed thereunder, or that such violation was disclosed to NHTSA as of the date of this Consent Order. For the first such violation, Takata shall make a lump-sum payment of five million dollars (\$5,000,000); for the second such

violation, Takata shall make a lump-sum payment of ten million dollars (\$10,000,000); and for the third such violation, Takata shall make a lump-sum payment of twenty million dollars (\$20,000,000). Each payment of such Liquidated Penalties shall be made by electronic funds transfer to the U.S. Treasury within ten business days of a final determination of the violation by NHTSA (following a reasonable opportunity for Takata to seek review of the determination), in accordance with the instructions provided by NHTSA.

VI. TERM OF CONSENT ORDER

48. Unless otherwise specified, the term of this Consent Order and Takata's performance obligations thereunder is five years from the date of execution; provided, however, that NHTSA may, at its sole option, extend the term of this Consent Order for one year if NHTSA reasonably decides that Takata should not be released from this Consent Order for failure to comply materially with one or more terms of this Consent Order, or for other good cause.

VII. AMENDMENT

49. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties.

VIII. MISCELLANEOUS

50. **Investigation Remains Open.** Takata recognizes that NHTSA will keep the agency's investigation open in order to address the outstanding scientific and engineering questions with respect to the determination of root cause. Therefore, NHTSA's Investigation EA15-001 shall remain open until such time as NHTSA reasonably concludes, in its sole discretion and determination, that all issues thereunder have been satisfactorily resolved. Any

and all subsequent actions taken by NHTSA involving or related to the investigation into Takata air bag inflators may be included as part of EA15-001.

51. **Conflict.** In the event of a conflict between the terms and conditions of the First Takata Consent Order and this Consent Order, the terms and conditions of this Consent Order control.

52. **Notice.** Takata shall provide written notice of each required submission under this Consent Order by electronic mail to the Director of NHTSA's Office of Defects Investigation (currently Otto Matheke at Otto.Matheke@dot.gov), with copies to NHTSA's Associate Administrator for Enforcement (currently Frank Borris at Frank.Borris@dot.gov) and NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman at Tim.Goodman@dot.gov). For any matter requiring notice by NHTSA to Takata under this Consent Order, such notice shall be by electronic mail to D. Michael Rains, Director of Product Safety for Takata, at mike.rains@takata.com, and to Andrew J. Levander of Dechert LLP, outside counsel to Takata, at andrew.levander@dechert.com. The parties shall provide notice if the individuals holding these positions or their e-mail addresses change.

53. **Application of Federal Law.** Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

54. **Release.**

a. Upon the expiration of the term of this Consent Order, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released Takata, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for any additional

civil penalties pursuant to 49 U.S.C. § 30165, in connection with any and all violations of Takata's Safety Act obligations, including those expressly identified in this Consent Order, from the inception of the Safety Act through the execution date of this Consent Order.

b. This Consent Order does not release Takata from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than as described in this Consent Order.

55. **Breach.** In the event of Takata's breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, actions compelling specific performance of the terms of this Consent Order, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Consent Order in any United States District Court. Takata agrees that, in any such enforcement action, it will not raise any objection as to venue. Takata expressly waives any and all defenses, at law or in equity, and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Civil Penalty Amount, or of any other penalty amounts required by this Consent Order, if applicable, was made to NHTSA as set forth herein, (ii) that Takata has substantially complied with the terms of this Consent Order, and (iii) that NHTSA's subsequent orders under Paragraphs 25, 26, 29, 30, and 50, if issued, were arbitrary, capricious, or contrary to law, including the Safety Act.

56. **Attorneys' Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 22 above.

57. **Authority.** The parties who are the signatories to this Consent Order have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

58. **Tax Deduction/Credit.** Takata agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Consent Order.

59. **Corporate Change.** This Consent Order shall be binding upon, and inure to the benefit of, Takata and its current and former directors, officers, employees, agents, subsidiaries, affiliates, successors, and assigns. Takata agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to its interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Takata and any of its parents, subsidiaries, or affiliates.

60. **Severability.** Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair or invalidate any other provision of this Consent Order.

61. **Third Parties.** This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

62. **Counterparts.** This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

63. **Effective Date.** This Consent Order shall be effective upon its full execution.

64. **Integration.** This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This

Consent Order sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order and the attachments thereto.

[SIGNATURES ON NEXT PAGE]

APPROVED AND SO ORDERED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: November 3, 2015

By: // ORIGINAL SIGNED BY //

Mark R. Rosekind, Ph.D.
Administrator

Dated: November 3, 2015

By: Paul Hemmersbaugh

Paul A. Hemmersbaugh
Chief Counsel

Dated: November 3, 2015

By: Timothy H. Goodman

Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: November 3, 2015

By: Elizabeth H. Mykytiuk

Elizabeth H. Mykytiuk
Trial Attorney

Dated: November 3, 2015

By: Kara L. Fischer

Kara L. Fischer
Trial Attorney

Dated: November 3, 2015

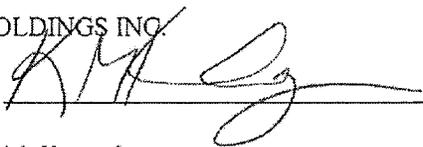
By: Arija M. Flowers

Arija M. Flowers
Trial Attorney

AGREED:

Dated: November 3 2015

TK HOLDINGS INC.

By: 

Kevin M. Kennedy
Executive Vice President

Dated: November 3 2015

By: 

Andrew J. Levander
Dechert LLP
Counsel for TK Holdings, Inc.
Approved as to Form