UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue, SE
Washington, DC 20590

In re:	)
PE14-016 Air Bag Inflator Rupture	)

PRESERVATION ORDER AND TESTING CONTROL PLAN

This Preservation Order and Testing Control Plan ("Preservation 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, and hereby requires TK Holdings Inc. (hereinafter, "Takata") to preserve certain air bag inflators manufactured by Takata that are the subject of an ongoing defect investigation by NHTSA and that may be the subject of private litigation, and to implement a control plan for the inspection, testing, or analysis of those inflators. It is the mutual desire of NHTSA and Takata to formalize a control plan for the preservation and testing of inflators, in furtherance of the safety of vehicle owners, NHTSA's ongoing defect investigation, and the interests of vehicle manufacturers and parties in private litigation.

I. NATURE OF THE ACTION

1. On June 11, 2014, NHTSA opened a formal defect investigation (Preliminary Evaluation, PE14-016) into Takata air bag inflators.

2. Ten vehicle manufacturers—BMW of North America, LLC ("BMW"); Chrysler Group LLC ("Chrysler"); Ford Motor Company ("Ford"); General Motors Company ("General Motors"); American Honda Motor Co. ("Honda"); Mazda North American Operations

("Mazda"); Mitsubishi Motors North America, Inc. ("Mitsubishi"); Nissan North America, Inc. ("Nissan"); Subaru of America, Inc. ("Subaru"); and Toyota Motor Engineering & Manufacturing North America, Inc. ("Toyota")—are conducting recalls or other safety actions (collectively, "safety actions") in the United States to replace certain Takata air bag inflators. Those safety actions currently involve replacing Takata air bag inflators of the types designated PSDI, PSDI-4, PSDI-4K, SPI, PSPI, and PSPI-L. The procedures agreed to by the vehicle manufacturers in conducting these safety actions provide that the inflators that are removed through the safety actions are to be shipped to Takata.

3. Takata acknowledges that after it receives inflators removed through the safety actions in the United States described in Paragraph 2, it assumes control over those inflators and is the primary source of these inflators for further inspection, testing, or analysis. Takata also acknowledges that it has within its possession, custody, or control inflators subject to the safety actions described by Paragraph 2, which it obtained in a manner other than through removal pursuant to those safety actions. The inflators subject to the safety actions described by Paragraph 2, whether received by Takata through the safety actions or otherwise obtained by Takata, are referred to herein as "recalled or returned inflators."

4. Takata also acknowledges that it has within its possession, custody, or control certain inflators which ruptured prior to being removed in a safety action. These inflators are referred to herein as "ruptured inflators." Takata also acknowledges that it has within its possession, custody, or control certain ammonium nitrate-containing inflators removed from vehicles in the United States not subject to a safety action described in Paragraph 2. These inflators are referred to herein as "other ammonium nitrate-containing inflators."

5. As the federal agency charged with ensuring the safety of motor vehicles in the United States, NHTSA has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA's related defect investigation.

6. Inspection, testing, and analysis of inflators provide information critical to NHTSA's defect investigation, including information for, among other things, the purposes of evaluating the root cause of inflator ruptures, determining whether the current safety actions are sufficient to address the safety risk and to provide an effective remedy to vehicle owners, and deciding what, if any, further action is necessary to protect the safety of vehicle occupants.

7. Takata acknowledges that NHTSA, as the federal agency charged with ensuring the safety of motor vehicles in the United States, has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA's related defect investigation.

8. In connection with NHTSA's defect investigation, Takata has been inspecting, testing, and analyzing recalled or returned inflators, and providing NHTSA with information on the testing, including the results of the testing. The ten vehicle manufacturers conducting safety actions involving Takata air bag inflators in the United States have also formed a coalition intending to perform their own testing of recalled or returned inflators through an independent, third-party engineering firm.

9. Takata inflators are also the subject of ongoing private litigation. To date, over 70 private lawsuits have been filed alleging harm caused by Takata inflators. Additional lawsuits seek recovery for personal injuries allegedly caused by Takata inflators. Many of these lawsuits

are now, or are anticipated to be, subject to coordinated or consolidated pretrial proceedings in *In re: Takata Airbag Products Liability Litigation*, Case No. 1:15-md-02599-FAM (S.D. Fla.).

10. Plaintiffs in private litigation against Takata have expressed interest in conducting their own inflator testing, including the possibility of forming a consortium for testing. There is a federal interest in ensuring that NHTSA, in the course of its ongoing defect investigation, has full access to information on any testing performed on Takata inflators, including by plaintiffs, their experts, and any plaintiffs' consortium.

11. NHTSA issues this Preservation Order pursuant to its authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (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), to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that defective vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30119, to ensure the adequacy of recalls, 49 U.S.C. § 30120(c), and to require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g). It is AGREED by Takata and ORDERED by NHTSA as follows:

II. TERMS OF PRESERVATION ORDER

12. This Preservation Order is not intended to nor shall it interfere with any ongoing or future testing or analysis by NHTSA, Takata, vehicle manufacturers, or other third parties, or hamper any efforts by NHTSA to coordinate testing results and conduct its defect investigation pursuant to its primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA's related defect investigation.

13. In cooperation with NHTSA's defect investigation, Takata shall provide to NHTSA, on terms acceptable to NHTSA, information on its inspection, testing, or analysis of the

recalled or returned inflators, including but not limited to information on the procedures used for such inspection, testing, or analysis and the results of such inspection, testing, or analysis.

14. Except for testing, inspection, or analysis, as provided by Paragraph 17, and unless otherwise provided for by the terms of this Preservation Order, Takata shall take reasonable and appropriate steps designed to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of recalled or returned inflators, ruptured inflators, and other ammonium nitrate-containing inflators as described by Paragraphs 3-4. Takata shall also take reasonable and appropriate steps designed to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of documents, data, and tangible things reasonably anticipated to be relevant to the subject of NHTSA's defect investigation, including but not limited to all such records and materials associated with Takata's inspection, testing, or analysis of inflators. Takata shall make available and submit to NHTSA upon NHTSA's request all data and other records reflecting the results of Takata's inspection, testing, or analysis of inflators and shall respond to any request from NHTSA for the submission of other records and materials covered by this Paragraph.

15. As of the date of execution of this Preservation Order by Takata and approval by NHTSA, Takata shall:

a. Secure and preserve all recalled or returned inflators, ruptured inflators, and other ammonium nitrate-containing inflators in the United States (as described by Paragraphs 3-4) in a manner reasonably designed to ensure that inflators not the subject of its testing or analysis are preserved in unaltered form;

b. Maintain records that enable Takata to track all recalled or returned inflators, ruptured inflators, and other ammonium nitrate-containing inflators (as described by Paragraphs 3-4) by unique serial number;

c. Secure and preserve, in unaltered form, all testing data, video, photographs, test results, electronic files and communications related to inflator testing, which is in Takata's possession, custody, or control;

d. Set aside no fewer than 10 percent of all recalled or returned inflators (as described by Paragraph 3) currently within Takata's possession; and

e. Set aside no fewer than 10 percent of all recalled or returned inflators (as described by Paragraph 3) which come into Takata's possession after the date of this Preservation Order.

16. The inflators set aside pursuant to Paragraph 15.d. and e. shall be in proportion to the overall number of recalled or returned inflators received by Takata from each State (as defined by 49 U.S.C. § 30102(a)(10)) and the number of recalled or returned inflators from such State that fall within each of the types of inflators subject to the safety actions identified in Paragraph 2, including the six inflator types identified in Paragraph 2 or any inflator type covered by a future safety action. As is reasonably practicable, the inflators set aside pursuant to Paragraph 15.d. and e. shall also include a diversity of inflators, based on factors including but not limited to make, model, and model year of the vehicles from which they were removed and age of inflator. These inflators shall be set aside for the purpose of future inspection, testing, or analysis by private plaintiffs (including a consortium thereof, or their experts, consultants, or other designated person or entity).

17. Inflators other than those set aside pursuant to Paragraph 15.d. and e. may be inspected, tested, and analyzed by Takata, BMW, Chrysler, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Subaru, Toyota, a coalition of those ten vehicle manufacturers, or anyone acting on behalf of these entities. Such inspection, testing, or analysis, including the allocation of inflators for such purposes, shall be subject to NHTSA's regulatory oversight pursuant to the Safety Act and all regulations thereunder.

18. No later than 30 days after execution of this Preservation Order by Takata and approval by NHTSA, Takata shall submit to NHTSA proposed written protocols for carrying out the requirements of Paragraphs 14-17. With respect to Paragraph 15.d. and e., the written protocols shall:

a. Establish a process for a private plaintiff, or a consortium thereof, to seek access to inflators for inspection, testing, or analysis by submitting an application to Takata;

b. Require each applicant to certify that the applicant (or the applicant's expert, consultant, or other designated person or entity) is qualified safely to handle and test inflators in accordance with law and may require the applicant to release Takata from any liability associated with applicant's handling and testing of such inflators;

c. Require each applicant to certify that the applicant has agreed to provide information on the inspection, testing, or analysis of Takata inflators to NHTSA by signing the attached Exhibit A, a copy of which shall be submitted to Takata in support of the application;

d. Require each applicant to provide a name, address, phone number, and email address for each person responsible for providing information on the inspection, testing, or analysis of Takata inflators to NHTSA;

e. Establish criteria that provide for expeditious approval of an application, except for good cause;

f. Provide for access to inflators as soon as reasonably practicable from the date that such access is requested by an applicant, and, subject to availability, accommodate the type(s) of inflators requested by the applicant when and as reasonably practicable (including by age of inflator and geographic location, make, model, and model year of the vehicle from which the inflator was removed);

g. Establish a mechanism for an applicant to obtain available information on the type of inflators provided to the applicant (including age of inflator and geographic location, make, model, and model year of the vehicle from which the inflator was removed);

h. Ensure that the allocation of inflators to applicants takes into account the need to maintain a sufficient quantity of inflators for future applicants; and

i. Provide for reporting to NHTSA on the application process, including the submission and approval of applications and the provision of access to inflators pursuant to such approvals.

If NHTSA determines that any changes to the proposed written protocols are warranted, NHTSA shall inform Takata in writing of such proposed changes, and Takata shall make prompt and reasonable efforts to accommodate NHTSA's feedback. Takata shall provide a revised copy, if applicable, of the proposed written protocols to NHTSA no later than 5 business days after

receiving any such feedback from NHTSA. Upon acceptance by NHTSA of the proposed written protocols, NHTSA will make the final written protocols publicly available. The final written protocols shall not be subject to attorney-client privilege or attorney work-product protection and shall not include confidential business information or information otherwise not subject to public disclosure by NHTSA.

19. Takata shall not release any recalled or returned inflator or ruptured inflator (as described by Paragraphs 3-4) to any vehicle manufacturer, private plaintiff, or consortium thereof (including their experts, consultants, or other designated person or entity), for inspection, testing, or analysis unless that vehicle manufacturer, private plaintiff, or consortium thereof accedes to this Preservation Order by signing a copy of the attached Exhibit A, requiring preservation of materials associated with the inspection, testing, or analysis and provision of information on the inspection, testing, or analysis to NHTSA, on terms acceptable to NHTSA.

20. Takata shall, upon written request by NHTSA, address Takata's compliance with this Preservation Order by, at NHTSA's election and in its sole discretion, submitting a written report to NHTSA or meeting with NHTSA representatives.

21. Takata shall provide written notice of each required submission under this Preservation Order by electronic mail to NHTSA's Director, Office of Defects Investigation (currently Frank Borris, Frank.Borris@dot.gov), and with a copy to NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman, Tim.Goodman@dot.gov). NHTSA will provide notice to Takata if the individuals holding these positions or their email addresses change.

22. On demand by NHTSA, Takata shall release into NHTSA's custody any recalled or returned inflator or category of inflators subject to this Preservation Order for inspection,

testing, or analysis including any recalled or returned inflator or category of inflators otherwise required to be set aside pursuant to Paragraph 15.d. and e. Nothing herein shall limit NHTSA's ability to carry out its defect investigation.

III. TIME PERIOD OF PRESERVATION ORDER

23. Upon NHTSA's closure of PE14-016 and any Engineering Analysis that may follow, the NHTSA Administrator shall issue a written order providing notice of termination of this Preservation Order and may issue such a written order earlier, at his sole discretion. This Preservation Order shall remain in effect for 90 days following the issuance of that subsequent written order of the NHTSA Administrator. NHTSA and Takata anticipate that this 90-day term will allow parties to any private litigation that remains pending sufficient time to obtain an appropriate preservation order.

IV. AMENDMENT

24. This Preservation Order cannot be modified, amended, or waived other than by a writing agreed to by NHTSA and Takata setting forth such modification, amendment, or waiver. NHTSA reserves all authority to take any further action permitted by law.

V. INTERPRETATION CONSISTENT WITH FEDERAL LAW

25. Nothing in this Preservation Order shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation, in effect at the time of the execution of this Preservation Order by Takata and approval by NHTSA or any subsequent amendment.

VI. MISCELLANEOUS

26. This Preservation 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.

27. This Preservation Order shall be effective following its execution by Takata and approval by NHTSA and shall remain in effect until such time as the NHTSA Administrator issues a notice of termination pursuant to Paragraph 23 and for a period of 90 days thereafter as provided in that paragraph. NHTSA may bring an action against Takata in any United States District Court to enforce this Preservation Order, including in response to any material breach by Takata of its obligations hereunder. Takata hereby waives any and all objections as to venue in such enforcement action and any and all defenses to the enforceability of this Preservation Order. Nothing herein shall constitute an admission of any wrongdoing or to the jurisdiction of NHTSA as to any other order, proceeding, or demand.

28. This Preservation Order constitutes the entire agreement regarding the resolution of the subject matter therein, and supersedes any and all prior or contemporaneous written or oral agreements or representations.

29. This Preservation Order shall be binding upon, and inure to the benefit of, Takata and its directors, officers, employees, agents, subsidiaries, successors, and assigns. Takata hereby waives any and all defenses to the enforceability of this Preservation Order that may exist or arise in connection with any person or entity succeeding to the 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.

30. This Preservation Order shall not be construed to create rights in, or grant any cause of action to, any individual or entity not party to this Preservation Order, other than as expressly provided herein.

31. If any provision of this Preservation Order is held illegal or unenforceable in a

judicial proceeding, the remainder of this Preservation Order shall remain operative and binding, but only if the elimination of the invalidated provision does not alter the fundamental terms of this Preservation Order (including, without limitation, Paragraphs 14-19).

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

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

Dated: February 25, 2015

By: **\\ORIGINAL SIGNED BY**

Mark R. Rosekind
Administrator

Dated: February 25, 2015

By: O. Kevin Vincent

O. Kevin Vincent
Chief Counsel

Dated: February 25, 2015

By: T. H. Goodman

Timothy H. Goodman
Assistant Chief Counsel
for Litigation & Enforcement

Dated: February 25, 2015

By: Kerry Kolodziej

Kerry E. Kolodziej
Senior Trial Attorney

AGREED:

TK HOLDINGS INC.

Dated: February 24, 2015

By: _____

Frank Roe
Executive Vice President

AGREED:

DECHERT LLP

Dated: February 24, 2015

By: _____

Steven G. Bradbury
Dechert LLP
Outside Counsel

EXHIBIT A

ACCESSION TO PRESERVATION ORDER AND TESTING CONTROL PLAN

I, [Name], am an authorized representative of [Manufacturer, Plaintiff, or Consortium Name]. On behalf of [Manufacturer, Plaintiff, or Consortium Name]:

1. I am aware of and have reviewed the terms of the Preservation Order and Testing Control Plan, entered on February 25, 2015, by the National Highway Traffic Safety Administration ("NHTSA") in *In re:* PE14-016, Air Bag Inflator Rupture ("Preservation Order").

2. I acknowledge that NHTSA, as the federal agency charged with ensuring the safety of motor vehicles in the United States, has primary regulatory interest in the safety actions involving Takata inflators and in the preservation and testing of inflators in connection with NHTSA's related defect investigation.

3. As a condition of receiving Takata inflator(s) for inspection, testing, or analysis, pursuant to the Preservation Order, I agree to take reasonable and appropriate steps to prevent the partial or full destruction, alteration, deletion, shredding, incineration, or loss of documents, data, records, and tangible things reasonably anticipated to be relevant to the subject of NHTSA's defect investigation, including but not limited to all such materials associated with the inspection, testing, or analysis of Takata inflators. I further agree to make available and submit to NHTSA upon NHTSA's request all data and other records reflecting the results of inspection, testing, or analysis of inflators and shall respond to any request from NHTSA for the submission of other records and materials covered by this Paragraph.

4. In cooperation with NHTSA's defect investigation, I agree to provide to NHTSA, on terms acceptable to NHTSA, information on the inspection, testing, or analysis of Takata

inflators, including but not limited to information on the procedures used for such inspection, testing, or analysis and the results of such testing, inspection, or analysis.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A (FOR A MANUFACTURER)

AGREED:

[MANUFACTURER NAME]

Dated: _____, 2015

By: _____

[Name]
[Title]

EXHIBIT A (FOR A PLAINTIFF)

AGREED:

[PLAINTIFF NAME]

Dated: _____, 2015 By: _____

Plaintiff in [Lawsuit]

Dated: _____, 2015 By: _____

Counsel for [Plaintiff]

EXHIBIT A (FOR A CONSORTIUM)

AGREED:

[CONSORTIUM NAME]

Dated: _____, 2015

By: _____

[Name]
[Title]

ON BEHALF OF THE FOLLOWING CONSORTIUM MEMBERS:

[If for a consortium of vehicle manufacturers, list each vehicle manufacturer which is a consortium member. If for a consortium of plaintiffs, list each plaintiff who is a consortium member, and identify the name of each plaintiff's counsel and each plaintiff's lawsuit.]