

# THIRD AMENDED PSAN PI/WD TRUST DISTRIBUTION PROCEDURES

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# **THIRD AMENDED PSAN PI/WD TRUST DISTRIBUTION PROCEDURES**

## **SECTION 1**

### **PSAN PI/WD Trust**

#### **1.1 Overview**

The goal of the PSAN PI/WD Trust (the “Trust”)<sup>1</sup> is to provide an efficient process to fairly and reasonably compensate valid PSAN PI/WD Claims as swiftly as possible, as provided in and required by the Plan and the PSAN PI/WD Trust Agreement. The Trust also has the goal of fully compensating P-OEM Claims. The PSAN PI/WD Trust Distribution Procedures (“TDP”) set forth herein apply to all PSAN PI/WD Claims. The TDP should be read together with its Exhibits, all of which are incorporated herein. The Trustee of the PSAN PI/WD Trust (the “Trustee”) shall implement and administer the TDP in accordance with the Plan, the PSAN PI/WD Trust Agreement, the Participating OEM Contribution Agreement, and the Confirmation Order. Pursuant to the Plan and the PSAN PI/WD Trust Agreement, the Trustee shall administer the Trust and this TDP in consultation with the TAC, the OAC, and the FCR, as set forth herein and in other applicable Trust documents. Nothing in these documents is admissible in any legal proceeding to prove the existence or absence of a defect in a Takata PSAN inflator.

The TDP provides procedures for valuing and paying:

1. PSAN PI/WD Claims against the Debtors for personal injury or wrongful death caused by their PSAN inflators installed in any OEM’s vehicle (“TD Claims” as

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the PSAN PI/WD Trust Agreement, or if not defined herein or in the PSAN PI/WD Trust Agreement, in the Third Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors (the “Plan”).

defined in Section 2.30 below), and

2. PSAN PI/WD Claims against Participating OEMs for personal injury or wrongful death caused by the PSAN Inflator Defect (“P-OEM Claims” as defined in Section 2.19 below).<sup>2</sup>

Claimants injured in a Non-Participating OEM vehicle receive compensation under this TDP only for any TD Claim they may have against the Debtors, and not for any PSAN PI/WD Claim they may have against Non-Participating OEMs. Nothing in this TDP interferes with any rights these Claimants may have to assert such claims against Non-Participating OEMs in the tort system.

PSAN PI/WD Claims valued and paid under this TDP may also be eligible for compensation from the DOJ PI/WD Restitution Fund, administered by the DOJ Special Master. Claimants can apply for compensation from the DOJ PI/WD Restitution Fund using the same Claim Form that is described in this TDP to apply for compensation for TD Claims and/or P-OEM Claims. Any amount paid to a Claimant for a P-OEM Claim will be reduced by the amount, if any, paid to the same person arising out of the same incident from (1) the DOJ PI/WD Restitution Fund and (2) the PSAN PI/WD Trust on account of any TD Claim.

## **1.2 TD Claims Procedures Generally**

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<sup>2</sup> If as of the Initial Distribution Date, (a) no Consenting OEM has become a Participating OEM or (b) the PSAN PI/WD Trust’s liquid assets (not including estimated future receipts by the PSAN PI/WD Trust) total less than \$40 million in the aggregate, then the Trustee may, and if requested to do so by the TAC or the FCR, shall, promptly develop and propose modifications to this TDP in accordance with Section 2.4 of the Trust Agreement.

To liquidate TD Claims, the TDP establishes a relative valuation process adopted from the Special Master’s Individual Restitution Fund Methodology as initially approved by the U.S. District Court for the Eastern District of Michigan (the “Michigan District Court”).<sup>3</sup> That valuation process classifies compensable claims into injury categories and assigns points to them as provided in Exhibit A to the TDP. The points assigned to each TD Claim will be converted into a monetary award based on the value of each point pursuant to Section 5.2 and Exhibit A. The Trustee shall have no discretion to adopt any other methodology for valuation of TD Claims without the consent of the TAC, FCR, and Consenting OEMs (pursuant to the guidelines set forth in Section 9.6).<sup>4</sup> There can be no guarantee of any specific level of payment to Claimants for TD Claims. However, the Trustee shall use his best efforts to treat similar TD Claims in substantially the same manner, consistent with his duties as Trustee, the purposes of the PSAN PI/WD Trust, and the practical limitations imposed by the inability to predict the future with precision. The TDP also provides for an Extraordinary Review process for certain TD Claims that warrant additional consideration and/or compensation for Claimants whose injury or injuries do not fit within a particular category or deserve extraordinary compensation, as well as a FCR Supplemental Review Process. The parties have agreed that this is a reasonable methodology for valuing TD Claims, considering that the funds available to compensate such TD Claims are limited.

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<sup>3</sup> Any subsequent amendments to the Individual Restitution Fund Methodology shall not be automatically applicable to claims in the PSAN PI/WD Trust, nor shall the Michigan District Court have any authority over the PSAN PI/WD Trust, this TDP, or any claims handled by the PSAN PI/WD Trust.

<sup>4</sup> In all instances in which consent of the TAC, OAC, Consenting OEMs or FCR is required, such consent shall not be unreasonably withheld.

For TD Claims that have not been liquidated by the Debtors or released by the Claimant (other than pursuant to Section 10.6(c) of the Plan) on or before the Effective Date, the PSAN PI/WD Trust shall liquidate TD Claims that meet the requirements for compensability pursuant to Section 4.2 of the TDP.

### **1.3 P-OEM Claim Procedures Generally**

To liquidate P-OEM Claims, the TDP establishes the Scheduled Claim Process, which incorporates a schedule (the “Valuation Schedule”) of potential PSAN Inflator Defect-related injuries (“Injury Types”), each of which have medical requirements (“Injury Criteria”) and values falling between a specific Base (or minimum) value and High (or maximum) value. The Injury Types, Injury Criteria, Base values, High values, and the Scheduled Claim Process have been developed with the intention of satisfying all P-OEM Claims in light of available information, including the Debtors’ settlement history, the OEMs’ settlement history, the defenses available to the Protected Parties, the individual strengths and weaknesses of each P-OEM Claim, and the rights that Claimants would have in the court system absent the Chapter 11 Cases. The Scheduled Claim Process also provides for an Individual Review (“IR”) Process for certain P-OEM Claims that warrant additional consideration, as well as an appeals process.

The PSAN PI/WD Trust shall take all reasonable steps to resolve P-OEM Claims as efficiently and expeditiously as possible at each stage of processing and review by the Trustee and, when applicable, the Appeals Panel (the “P-OEM Claim Process”).

For P-OEM Claims that have not been liquidated by the Debtors or P-OEM against whom the claim is asserted, or released by the Claimant (other than pursuant to Section 10.6 of the Plan), on or before the Effective Date, the PSAN PI/WD Trust shall liquidate P-OEM Claims that meet the requirements for compensability as set forth in the TDP pursuant to the Scheduled

Claim Process and shall value those claims as described in Section 6. Certain P-OEM Claims may undergo the Individual Review Process as described in Section 6.2(c).

All unresolved disputes concerning the Trustee's denial of a P-OEM Claim, or the Trustee's determination of the proper Injury Type or valuation for a P-OEM Claim, shall be subject to review in the appeals process as defined and set forth in Section 6.3. P-OEM Claims that cannot be resolved by the appeals process and any subsequent conference with the FCR may enter the court system subject to the conditions set forth in Section 6.4.

## SECTION 2

### Definitions

**2.1 Aggressive Deployment Claim.** A PSAN PI/WD Claim that alleges that the Claimant was injured when the airbag deployed with excessive force caused by the PSAN Inflator Defect.<sup>5</sup> To receive compensation from the PSAN PI/WD Trust, an Aggressive Deployment Claim must meet the compensability requirements set forth in Section 4.2(b).

**2.2 Claimant.** An individual who asserts a TD Claim or a P-OEM Claim. This definition includes any personal representative or legal representative for the Claimant. Where an Indirect Claim has been asserted, for purposes of establishing and evaluating compensability and valuation of the claim, "Claimant" shall mean the individual who allegedly suffered the underlying personal injury or wrongful death.

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<sup>5</sup> Throughout this document, the terms "caused by" or similar words mean a contributing cause.

**23 Claim Parties.** For any individual TD Claim, the Trustee and the Claimant (or Indirect Claimant). For any individual P-OEM Claim, the Trustee, the Claimant, and the Participating OEM for that claim.

**24 Claims Administrator.** Any person, persons, or third-party retained by the Trustee to assist in the administration of the PSAN PI/WD Trust. The Trustee will identify on the Trust website the identities and roles of third-parties and others assisting in the administration of the Trust.

**25 Claim File.** All materials submitted to or created by the Trust related to a particular claim for compensation pursuant to this TDP.

**26 Claim Submission.** All materials submitted in support of a claim for compensation pursuant to this TDP, including the Claim Form, supporting documentation, and physical evidence.

**27 Compensable Claim.** A Compensable P-OEM Claim or Compensable TD Claim.

**28 Compensable P-OEM Claim.** A P-OEM Claim that meets the compensability requirements in Section 4.2 for either a Rupture Claim or an Aggressive Deployment Claim.

**29 Compensable TD Claim.** A TD Claim that meets the compensability requirements in Section 4.2 for either a Rupture Claim or an Aggressive Deployment Claim or that meets the compensability requirements to be determined with regard to any other claims that are determined to be compensable by the PSAN PI/WD Trust.

**2.10 Enhanced Injury.** Injuries suffered by a Claimant that are alleged to be greater or more severe than those that would have been caused by normal airbag deployment, allegedly as a result of an aggressive airbag deployment caused by the PSAN Inflator Defect.



**2.11 Extraordinary Review (“ER”) or Extraordinary Review Process.** A methodology utilized by the Trustee and/or FCR to evaluate certain TD Claims.

**2.12 Future Claimant’s Representative (“FCR”).** Future Claimant’s Representative and FCR have the meanings given those terms in the PSAN PI/WD Trust Agreement. The initial FCR will be Roger Frankel and his successor FCR shall be Richard H. Wyron with any further successor appointed in accordance with the PSAN PI/WD Trust Agreement.

**2.13 Global Adjustment Criteria.** Valuation adjustment criteria listed in Exhibit B.

**2.14 Indirect Claim.** Any TD Claim brought by an Indirect Claimant against the PSAN PI/WD Trust as assignee or subrogee to the rights of a direct Claimant, whether by written assignment, by paying in full any judgment against all the Debtors (or all those Debtors named, as applicable) that extinguishes all claims against the Debtors (or all those Debtors named, as applicable) as a matter of law, or by obtaining a full release of all the Debtors (or all those Debtors named, as applicable) in consideration for amounts paid by the OEM as part of any settlement. For purposes of the Trust and this TDP, a PSAN PI/WD Claim cannot be an Indirect Claim unless (1) it has been settled by an OEM after the Petition Date, and (2) the OEM has not obtained a recovery or contribution from the Debtors for it.

**2.15 Indirect Claimant.** An OEM that is the holder of an Indirect Claim.

**2.16 Individual Review (“IR”) or Individual Review Process.** A more extensive methodology utilized by the Trustee for valuation of certain P-OEM Claims outside of the Scheduled Claim Process as set forth in Section 6.2(c).

**2.17 Individual Review Claim.** A P-OEM Claim valued under the IR Process as set forth in Section 6.2(c).

**2.18 Non-Participating OEM (“NP-OEM”).** A vehicle manufacturer or U.S. distributor who has not elected to become a Participating OEM pursuant to section 5.10(s) of the Plan.

**2.19 P-OEM Claim.** Any PSAN PI/WD Claim involving a vehicle manufactured or sold<sup>6</sup> by a Participating OEM for alleged personal injury, wrongful death, or similar Claim or Cause of Action arising out of or relating to a personal injury or death, allegedly caused by the PSAN Inflator Defect in a product sold or supplied to a Participating OEM or any other Person prior to the Petition Date, regardless of whether the injury occurs before or after the Petition Date, and that is either (1) brought by a citizen of the United States or permanent resident, wherever the injury occurs, (2) arises from an incident occurring in the United States or its territories or possessions, whether or not such claim is brought by a citizen or permanent resident of the United States, or (3) involves a vehicle registered in the United States or its territories or possessions. All P-OEM Claims are channeled into the PSAN PI/WD Trust. P-OEM Claims do not include PSAN PI/WD Claims against a Participating OEM that such Participating OEM has previously settled, liquidated, or paid to the Claimant. P-OEM Claims exclude claims for economic loss.

**2.20 P-OEM Program.** The process through which P-OEM Claims are liquidated and compensated pursuant to these TDP and the Participating OEM Contribution Agreement.

**2.21 Points Schedule.** The schedule used for TD Claims which classifies the types of injury claims into a manageable number of categories and assigns relative points to them.

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<sup>6</sup> In a case where one OEM manufactured the vehicle and another OEM sold it, the OEMs will, upon notice of the TD Claim, advise the PSAN PI/WD Trust which OEM’s reserve should be used for the claim. If the OEMs do not so advise the PSAN PI/WD Trust within a reasonable time, then the Trustee shall resolve the issue in the way most favorable to the Claimant.

**2.22 PSAN PI/WD OEM Advisory Committee (“OAC”).** If there is at least one Participating OEM, a committee selected in accordance with the terms of the PSAN PI/WD Trust Agreement consisting of (1) members comprised of the Initial Participating OEM and any additional Participating OEMs, if they elect to serve; and (2) up to three non-member (non-voting), observer representatives that are Non-Participating OEMs, who may consult with the OAC members and other Non-Participating OEMs on any matter before the OAC other than matters pertaining to the treatment, liquidation or valuation of P-OEM Claims. Any such members, successor members and observers shall be appointed in accordance with the terms of the PSAN PI/WD Trust Agreement and shall be subject to reasonable confidentiality and privacy constraints.

**2.23 PSAN Inflator Defect.** As defined in the Plan, a manufacturing and/or design defect that occurs in certain Takata inflators because of propellant degradation due to environmental exposure.

**2.24 PSAN PI/WD Claim.** As defined in the Plan, (i) any Claim asserted against the Debtors or the Protected Parties other than the Participating OEMs for alleged personal injury, wrongful death, or other similar Claim or Cause of Action arising out of or relating to an injury or death allegedly caused by a PSAN Inflator sold or supplied to an OEM or any other Person prior to the Petition Date, regardless of whether the injury occurs prepetition or postpetition, including on or after the Closing Date, or (ii) a Claim asserted against a Participating OEM for alleged personal injury, wrongful death, or similar Claim or Cause of Action arising out of or relating to a personal injury or death allegedly caused by the PSAN Inflator Defect in a Product sold or supplied to a Participating OEM or any other Person prior to the Petition Date, regardless of whether the injury occurs prepetition or postpetition and such Claim (a) is brought by a citizen of

the United States, wherever the injury occurs, (b) arises from an incident occurring in the United States or its territories, whether or not such Claim is brought by a citizen of the United States, or (c) involves a vehicle registered in the United States or its territories or possessions.

**2.25 PSAN PI/WD Trust Advisory Committee (“TAC”).** A three-person committee selected in accordance with the terms of the PSAN PI/WD Trust Agreement to serve as fiduciaries of holders of PSAN PI/WD Claims with any such members and successor members appointed in accordance with the terms of the PSAN PI/WD Trust Agreement. The initial TAC shall consist of Joe Rice, Curt Miner, and a third individual to be selected by them.

**2.26 Rupture Claim.** A PSAN PI/WD Claim that alleges that the Claimant was injured during the deployment of an airbag incorporating a Takata PSAN inflator when it produced excessive internal pressure which caused the metal inflator canister to fragment, break apart, or rupture as a result of the PSAN Inflator Defect. To receive compensation from the PSAN PI/WD Trust, a Rupture Claim must meet the compensability requirements set forth in Section 4.2(a) below.

**2.27 Scheduled Claim.** A P-OEM Claim valued under the Scheduled Claim Process as set forth in Section 6.2(b) and Exhibit B.

**2.28 Scheduled Claim Process.** A methodology utilized by the Trustee for valuation of compensable personal injury and wrongful death P-OEM Claims. In the Scheduled Claim Process, the Trustee shall determine the compensable injuries, if any, and determine a value for those injuries, applying the Valuation Schedule and the relevant Global Adjustment Criteria and Specific Injury Adjustment Criteria as set forth in Exhibit B.

**2.29 Specific Injury Adjustment Criteria.** Valuation adjustment criteria associated with particular injuries and listed in the Valuation Schedule.

**2.30 TD (“Takata Defendant”) Claim.** A PSAN PI/WD Claim against the Debtors for alleged personal injury, wrongful death, or other similar Claim or Cause of Action arising out of or relating to an injury or death, allegedly caused by a PSAN Inflator sold or supplied to an OEM or any other Person prior to the Petition Date, regardless of whether the injury occurs prepetition or postpetition, including on or after the Closing Date, excluding claims for economic loss. TD Claims include claims as to which the Claimant (1) is a United States citizen or permanent resident of the United States or any of its territories or possessions, wherever the injury occurred), (2) was injured in an incident occurring within the United States or its territories, or possessions, or (3) was injured in a vehicle registered in the United States or its territories or possessions. TD Claims also include International TD Claims as defined in Section 5.1 herein.

**2.31 Trustee.** The individual selected to receive and administer the funds paid into the PSAN PI/WD Trust, make determinations regarding compensability and valuation of TD Claims and P-OEM Claims submitted to the Trust, distribute funds to eligible Claimants and Indirect Claimants, and undertake such other responsibilities as set forth in this TDP and the PSAN PI/WD Trust Agreement. The initial Trustee will be Eric D. Green so long as he is the Special Master to administer the DOJ PI/WD Restitution Fund, and his successor Trustee shall be David J. Molton with any further successor appointed in accordance with the PSAN PI/WD Trust Agreement.<sup>7</sup>

**2.32 Valuation Schedule.** The schedule used for P-OEM Claims which identifies certain injuries potentially associated with the PSAN Inflator Defect, organizes those injuries into

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<sup>7</sup> If Mr. Molton is unable to serve, the successor Trustee shall be appointed in accordance with Section 8.13 of the PSAN PI/WD Trust Agreement.

appropriate Injury Types, assigns each Injury Type a Scheduled Value with both Base and High values, and provides specific Injury Criteria for each Injury Type.<sup>8</sup>

### SECTION 3

#### Submission of Claims

##### **3.1 General Requirements for Submitting a Claim**

Each Claimant alleging a TD Claim or P-OEM Claim, or Indirect Claimant alleging a TD Claim, may submit a Notice of Claim which shall include information identifying the Claimant and owner or lessee of the vehicle, if different from the Claimant, make and model year of vehicle, VIN, date and location of incident, preliminary and general description of known injuries, which may be supplemented as any time, and type of event such as rupture, aggressive deployment, or other allegation; or may submit a wrongful death or personal injury claim form (“Claim Form”), depending on the type of injury alleged. The Notice of Claim, Claim Forms, and Claim Form instructions will be made available on the Trustee website or from the Trustee. Information describing the compensability criteria, claims valuation protocol, eligibility criteria for ER and IR, and the procedure for requesting ER and IR will be available on the website.

Any statute of limitation, statutes of repose, or similar deadline for filing a PSAN PI/WD Claim against Debtors were tolled as of the Petition Date and through the Effective Date. A Claimant shall file a Notice of Claim or Claim Form for a claim arising out of an

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<sup>8</sup> The Valuation Schedule has not been agreed to or endorsed by any NP-OEM, and shall not be used in connection with TD Claims involving vehicles of NP-OEMs nor in any other legal proceeding or in connection with claims asserted in any context whatsoever against an NP-OEM.

incident that occurred prior to the Trust Effective Date within three years after the Effective Date of the Trust<sup>9</sup> or the claim is deemed waived, absent a finding by the Trustee of good cause shown. A Claimant shall file a Notice of Claim or Claim Form for a claim arising out of an incident occurring after the Effective Date of the Trust within the latter of three years from the date of the incident, or the time allowed under the applicable state law, or the claim is deemed waived, absent a finding by the Trustee of good cause shown. The filing of a Notice of Claim or Claim Form, whichever is filed sooner, shall be accepted as the notice date for claims filing deadlines. Indirect Claims arising before the Effective Date of the Trust shall be filed within one year of the Effective Date. Indirect Claims arising after the Effective Date of the Trust shall be filed within one year of the event giving rise to the Indirect Claim—i.e., the date of a written assignment from the direct Claimant, or the date of the judgment or the settlement release that gave rise to the Indirect Claim.

After filing a Notice of Claim or Claim Form, a Claimant may defer the consideration of the claim for one year from the Notice of Claim or Claim Form filing, or as long as a related claim is pending in the tort system plus 90 days (“Deferral Period”).<sup>10</sup>

Claim Forms will be evaluated once they are completed in their entirety and signed

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<sup>9</sup>For minor Claimants, the time period for noticing the claim will not begin to run until the Claimant reaches the age of majority. For incompetent Claimants, the time period for noticing the claim will not begin to run until competency is restored or a legal guardian has been appointed with appropriate authority to pursue the claim, and notice thereof. If during the applicable time period for noticing the claim, the Claimant becomes incompetent, the time period will be paused (tolled) until such time as competency is restored or a legal guardian has been appointed with appropriate authority to pursue the claim, and notice thereof.

<sup>10</sup> If the Claimant is relying on a pending lawsuit to defer consideration of her claim, she must provide the Trust with appropriate documentation of the lawsuit. The Claimant may also terminate the Deferral Period and activate the claim by providing written notice to the Trust.

either by the injured individual, counsel, or legal representative, or the Deferral Period has ended. In signing a Claim Form, the signer, including an Indirect Claimant, will certify, under penalty of perjury, that the information provided in the Claim Form and all supporting documentation is complete, true, and accurate to the best of their knowledge. Legal representatives of a direct Claimant must supply proof of their representative capacity, such as a power of attorney, an appointment as guardian or attorney *ad litem*, or the equivalent.

An individual who seeks Individual Review for a P-OEM Claim or Extraordinary Review for a TD Claim shall indicate that request on the Claim Form. The Claim Form will inform individuals asserting P-OEM Claims that they consent to the inspection of the subject vehicle and its components, if available, by the P-OEM pursuant to the protocols referenced in this TDP and Exhibits. The Claim Form will inform individuals seeking IR for a P-OEM Claim that they consent to an Independent Medical Examination (IME).

If a Claimant or Indirect Claimant submits an incomplete or facially deficient Claim Submission (by, for example, failing to sign the form or failing to include required documentation), a Deficiency Notice will be issued by the Trustee with instructions regarding how to cure the deficiencies in the Claim Submission. The Deficiency Notice will inform the Claimant or Indirect Claimant that they have 90 days from receipt of the notice to cure all noticed deficiencies in the Claim Submission. The Trustee will be available to answer questions relating to deficiencies and the curing process. If the Claimant or Indirect Claimant fails to respond to the Deficiency Notice in whole or in part, the Trustee, in his discretion, may extend the time to respond, may evaluate the claim on the information submitted, or may deny the claim without prejudice to refiling within one year of the date the claim was denied.

### **3.2 Withdrawal of Claims**



A Claimant may withdraw a claim at any time prior to execution of a Claimant Release upon written notice to the Trustee. A withdrawn claim may not be refiled absent the express permission of the Trustee. Deferred claims are governed by Section 3.1.

### **3.3 Distribution of the Claim File**

The Trust shall provide notice of claim to a designated representative of the relevant OEM within 20 days of receipt of the Notice of the Claim. In the case of a P-OEM Claim, the Trustee shall provide a copy of the Notice of Claim, or Claim Form, and any supporting documentation or materials to a designated representative of the relevant P-OEM within 20 days of receipt. If additional information is submitted by the Claimant, or the P-OEM submits information or reports, or the Trustee generates information for the Claim File, the Trustee shall promptly provide such information to the Claim Parties.

Nothing herein shall prevent an OEM from conducting an inspection of any vehicle or its component, upon consent of the owner of the vehicle, consistent with any regulatory reporting requirements or ongoing practice of providing inspection information to the federal government, or shall otherwise limit the ability of the Trustee, in his discretion, to obtain information from the Consenting OEMs as he deems necessary to evaluate Claims. Requests by a P-OEM to inspect a Claimant's vehicle must be made pursuant to the procedures set forth in a vehicle inspection protocol in a form to be agreed upon. If the Claimant owns the subject vehicle and is represented by counsel, any request to inspect the vehicle or inflator must be made through such counsel. Any such inspection of the subject vehicle or inflator by a P-OEM does not affect any P-OEM's right to inspect the subject vehicle or inflator at a later time as part of the Claim Process as provided herein or in any other legal proceeding if the vehicle or inflator is available.

### **3.4 Trustee Request for Vehicle and Inflator Information from OEM**

The Trustee may request information from the OEM concerning the manufacturer of the inflator, age and type of the inflator, whether the inflator in the subject vehicle is the original equipment inflator or a replacement, or any additional information from an OEM that the Trustee deems necessary, in his discretion, to evaluate a claim. Any submission by a P-OEM made pursuant to this Section does not affect the P-OEM's right to submit information in the Claims Process identified below. Copies of information submitted pursuant to this provision will be provided to the Claimant.

### **3.5 Confidentiality of Claim Submissions**

Except as provided herein, submissions to the PSAN PI/WD Trust by a Claimant involving a vehicle manufactured or sold by a Participating OEM shall be treated as made in the course of settlement discussions between the party who submitted a Claim Form and the PSAN PI/WD Trust, and intended by the Trustee, FCR, TAC, and Participating OEMs to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions. The PSAN PI/WD Trust shall preserve the confidentiality of Claim Submissions, and shall disclose the contents thereof only for the following purposes: (i) processing the claim for an award from the PSAN PI/WD Trust, (ii) legitimate business use associated with administering the Trust, including the prevention of fraud and/or the resolution of liens, (iii) providing a copy to the Participating OEM to whom the Claim Form relates as provided herein, or to any issuer of a PI/WD Insurance Policy solely for the purpose of pursuing insurance coverage and provided that such issuer of a PI/WD Insurance Policy agrees to maintain the confidentiality of the submissions, and (iv) other necessary, regulatory, and judicial requirements or processes, including the need to share information with

the FCR. Furthermore, the Trustee shall immediately provide the Claimant and the Participating OEM a copy of any subpoena served upon the PSAN PI/WD Trust. The Trustee, on his own initiative or at the request of the Claimant, shall take all reasonable and appropriate steps to preserve any and all available privileges.

Except as provided herein, submissions to the PSAN PI/WD Trust by a Claimant or Indirect Claimant involving a vehicle manufactured or sold by an NP-OEM shall be treated as made in the course of settlement discussions between the Claimant, or Indirect Claimant, and the PSAN PI/WD Trust, and intended by the Trustee, FCR, and TAC to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions, except that, in the case of a direct claim, the Trustee can share the following information with such NP-OEM: the name and address of the Claimant, the name and address of the owner of the vehicle (if different), the VIN, and whether a Rupture Claim is asserted. In addition, the Trustee can, only with the permission of the Claimant, and subject to a release reasonably satisfactory to the Trustee and the Claimant, as well as with appropriate confidentiality agreements with the NP-OEM, in a form approved by the TAC, share additional information with the NP-OEM that the Trustee deems necessary, in his discretion, to share in order to evaluate a claim. The Trustee shall share with the NP-OEMs on an annual basis a list of Claimants to whom distributions were made and the aggregate amount of such distributions.

Nothing in this TDP shall prevent the Trustee from complying with valid court orders or other legal process.

## SECTION 4

### **Resolution of Claims and Compensability**

#### **4.1 Review by the Trustee Generally**

The process for the Trustee to determine compensation, if any, for a TD Claim is a three-step process:

1. Is the TD Claim one involving personal injury or death allegedly caused by a Takata PSAN airbag inflator, and, therefore, appropriate for resolution through the PSAN PI/WD Trust?
2. Does the TD Claim meet the compensability requirements for payment as a Rupture Claim or an Aggressive Deployment or the compensability requirements for other claims determined to be eligible for compensation through the PSAN PI/WD Trust?
3. What is the value assigned to the TD Claim under the Points Schedule?

The process for the Trustee to determine compensation, if any, for a P-OEM Claim is a three-step process:

1. Is the claim a P-OEM Claim and, therefore, channeled through the Trust?
2. Does the P-OEM Claim meet the compensability requirements for payment as a Rupture Claim or an Aggressive Deployment Claim?
3. What is the full, fair, and reasonable compensation either within the Scheduled Claim Process or as part of the Individual Review Process?

The P-OEM Program shall compensate only for injuries caused by a rupture or aggressive deployment. A Claimant will have no recourse in the tort system against the Trust or a

Participating OEM to litigate any channeled P-OEM Claim except as specifically described herein.

In evaluating the evidence presented by any Claimant, Indirect Claimant, or P-OEM in the TD or P-OEM Claims Process, the Trustee or Reviewer shall rely only on evidence he determines to be reliable and helpful. The formal rules of evidence shall not apply, but the Trustee or Reviewer shall not rely on speculative or unsupported evidence when determining the compensability or valuation of a P-OEM or TD Claim. The Trustee or Reviewer should also consider whether expert medical, scientific, engineering, or other technical opinion or evidence is required to demonstrate or refute the compensability or value of a P-OEM or TD Claim under the terms of this TDP. If so, the Trustee or Reviewer shall consider that evidence only if it is from a qualified expert and is supported by reliable and sufficient facts.

#### **4.2 TD Claim and P-OEM Claim Compensability**

##### **4.2(a) Rupture Claims**

For a Rupture Claim to be a Compensable TD or P-OEM Claim, the Claimant must present evidence of the following:

1. Deployment of a Takata PSAN inflator in a vehicle manufactured or distributed by an NP-OEM or Participating OEM.
2. Physical evidence of rupture of the inflator canister to be demonstrated either by vehicle-based evidence, or by occupant-based evidence.
  - Vehicle-based evidence requires the following:
    - a. Ruptured inflator canister or metal/mesh fragments; or
    - b. Photographs of ruptured inflator canister or metal/mesh fragments; or
    - c. Cushion with evidence of cuts consistent with inflator rupture; or

- d. Photographs of cushion with evidence of cuts consistent with inflator rupture.

or

- Occupant-based<sup>11</sup> evidence requires one of the following:
  - a. Photographs of injuries consistent with inflator rupture; or
  - b. Medical records documenting removal of metal fragments embedded in occupant; or
  - c. Medical records identifying injuries consistent with inflator rupture;
- 3. Evidence that the rupture was a contributing cause to the claimed injury or injuries.

#### **4.2(b) Aggressive Deployment Claims**

For an Aggressive Deployment Claim to be a TD or P-OEM Compensable Claim, the Claimant must present evidence of the following:

1. A delayed deployment of a Takata PSAN dual-stage inflator;<sup>12</sup>
2. Over-pressurization of the inflator; and
3. The Claimant's injuries were caused by interaction with the airbag as it was deploying; and the injuries were enhanced such that they were greater than the typical

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<sup>11</sup> An occupant includes any person performing maintenance on the vehicle, whether inside the vehicle or not.

<sup>12</sup> If significant scientific or engineering data emerges, including tests and/or studies of field events, or becomes available in the future, a party (Claimant or the OEM against whom the claim is asserted) can seek revision of the compensability criteria for non-rupture claims—including the “delayed” and “dual-stage” requirements. The Trustee and FCR, after consultation with the TAC and OAC, may modify or expand the compensability criteria to appropriately compensate Claimants harmed by the PSAN Inflator Defect.

injuries an occupant in this crash would receive from an interaction with an airbag as it deploys normally.<sup>13</sup>

To establish the compensability of an Aggressive Deployment claim, the vehicle and inflator must be produced for inspection, if available. If the vehicle is not available for inspection, the Claimant must submit a statement explaining why it is not available.<sup>14</sup> If the vehicle and inflator are unavailable for inspection, the Claimant may submit representative evidence of the inflator or the vehicle, including evidence establishing expansion/yielding of the housing of the inflator canister, deformed inflator mounting hardware, or charred airbag cushion; photographs or documentation of the interior and exterior of the vehicle and inflator in their post-accident condition; evidence of belt use, seat occupant position, or steering wheel position; and information from the subject accident scene confirming an airbag deployment. In making his compensability decision, the Trustee shall consider the age of the inflator and the region in which the vehicle has been registered. He may also consider other evidence, including report(s) of qualified expert(s) concerning the inflator performance, injury causation, and accident reconstruction; a police report of the subject accident; photographs or videos of the accident scene; and photographs and medical records of Claimant.

The determination that an airbag had a delayed deployment shall be demonstrated by the SRS (“Supplemental Restraint System”) Electronic Control Unit, or equivalent electronic unit

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<sup>13</sup> This requirement does not alter the provisions in this section on the types of evidence allowable to establish compensability.

<sup>14</sup> If the Trustee determines that the Claimant failed to exercise due diligence to preserve the vehicle and inflator evidence after notice of the existence of a claim, there shall be a rebuttable presumption that the claim is not compensable.

per P-OEM specifications, readout and interpretation, if available. If not available, the Claimant may present other evidence to demonstrate the delayed deployment criteria. Upon Claimant's request, the Trustee will require the P-OEM whose vehicle is at issue, or through its supplier (as applicable), to conduct a download of the SRS unit. The Trustee shall promptly notify the P-OEM of the VIN and location of the vehicle and shall provide the consent of the owner for the download. The P-OEM will utilize best efforts to conduct a timely download of the SRS unit or equivalent electronic unit. Upon request by the Trustee for a download, the P-OEM will provide the Trustee and Claimant relevant supporting documentation including codes, keys, and other inflator specification information needed to translate and interpret the data that is recorded in the SRS, the airbag control module, or other electronic control unit or Vehicle Event Data Recorder (EDR) for the subject vehicle. As well as any applicable module fault or self-diagnostic codes. The P-OEM shall also provide the Claimant and the Trust with a copy of the electronic data download at the time of the SRS/EDR download. Thereafter, the P-OEM shall provide an interpretation of the results within 30 days to the Trustee who shall provide them to the Claimant. If the vehicle can be downloaded using third party tools such as the Bosch CDR (Crash Data Retrieval) tool, it shall be utilized either in addition to the above process or in place of it to provide the crash data available from all modules allowing download upon request of the Trustee or Claimant. Nothing referenced in this TDP is intended to affect a vehicle owner's rights under any relevant state SRS/EDR privacy law.

For a P-OEM Claim, the Trustee shall require the Claimant to make the vehicle, inflator, or other components available for inspection by the P-OEM, if requested and available. The P-OEM or Claimant may submit a report regarding the alleged aggressive deployment to the



Trustee for his consideration in evaluating the Aggressive Deployment Claim pursuant to a schedule determined by the Trustee.

#### **4.2(c) Other TD Claims**

The Trustee will develop compensability criteria for TD Claims that allege a means of injury other than rupture or aggressive deployment.

#### **4.2(d) Timeline**

The Trustee will, in consultation with the TAC, OAC, and FCR, create a timeline no later than the Plan confirmation date, for the determination of all claims submitted to the PSAN PI/WD Trust.

### **SECTION 5**

#### **Resolution of TD Claims and Indirect Claims**

##### **5.1 Is the Claim a TD Claim?**

As set out above, this TDP applies to all PSAN PI/WD Claims against the Debtors. A PSAN PI/WD Claim against the Debtors is a TD Claim if the Claimant (1) is a United States citizen or permanent resident of the United States or any of its territories or possessions, wherever the injury occurred), (2) was injured in an incident occurring within the United States or its territories or possessions, or (3) was injured in a vehicle registered in the United States or its territories or possessions.

If the Claimant does not satisfy any of the criteria set out in (1), (2), or (3) above, then, in order to proceed with a claim against the Trust, the Claimant must establish, to the satisfaction of the Trustee, that the Claimant's PSAN PI/WD Claim (a) could have been asserted in a complaint filed in any court in the United States or any of its territories or possessions against one or more of the Debtors (for purposes of this analysis, as if the Chapter 11 Cases had not been filed), and

(b) such complaint, if filed, would have withstood challenge on a motion to dismiss (or other dispositive motion) upon the grounds of lack of jurisdiction (e.g., lack of subject matter jurisdiction) and/or on forum selection grounds (e.g., under the *forum non conveniens* doctrine).

If a Claimant does not satisfy any of the criteria set out in (1), (2), or (3) above, but establishes, to the satisfaction of the Trustee, that such Claimant satisfies the criteria in the immediately preceding paragraph (such Claimant's PSAN PI/WD Claim, for purposes of this TDP, an "International TD Claim"), then the Trust shall proceed to consider such International TD Claim under the criteria for TD Claims in this TDP; provided, however, that, in determining the appropriate point award for such International TD Claim, the Trustee shall have discretion to reduce the Points awarded to reflect the relative differences with respect to applicable law and the tort system in the United States compared to applicable law and the tort system in the jurisdiction(s) in which the Claimant resides or was injured (including the compensation available and likely to be awarded to a Claimant in the circumstances and with the injuries of such TD Claimant), in order to fairly compensate such Claimant in light of the law and procedures that would apply to such International TD Claim.

## **5.2 Valuation of TD Claims**

Compensable TD Claims will be valued using the methodology outlined in Exhibit A to the TDP. Except for TD Claims filed with the PSAN PI/WD Trust on or before August 31, 2018, the Trustee will make reasonable efforts to complete his valuation determination within 30 days of making his compensability determination.

## **5.3 Extraordinary Review Process**

The Trustee may, in his discretion, award additional compensation to Claimants who present proof of injury or loss of a type or severity not otherwise captured by the TD Claim points schedule. Such additional compensation will in no event exceed a one-hundred-and-fifty

percent increase above the award to which the Claimant would otherwise be entitled. To be considered for additional compensation, a Claimant must specifically request ER and submit supporting information pursuant to the instructions on the Claim Form.

#### **5.4 TD Claim FCR Supplemental Review Process**

If a Claimant appeals a determination of a TD Claim, the Claim File shall be submitted to the FCR for supplemental review. To appeal a denial of compensability or a valuation determination by the Trustee, a Claimant must file a Notice of Appeal with the Trustee within 30 days of receipt of the relevant determination notice. A Notice of Appeal form can be downloaded from the Trustee website. If a Notice of Appeal is not filed within 30 days, the Trustee's proposed determination will become final, binding, and non-appealable, subject to the discretion of the Trustee for good cause shown. If the Claimant appeals a denial of compensability, the FCR will reconsider the claim under the criteria set forth in Section 4 above. If the FCR finds that the TD Claim is compensable, it will be returned to the Trustee for valuation. If the Claimant appeals a valuation determination, the FCR will review the TD Claim valuation using the following criteria:

- Life expectancy, age, and pre-accident health of Claimant
- Existence and age of dependents
- Past and future economic loss (excluding medical and/or funeral expenses) and household services calculated to present value
- Past and future medical expenses calculated to present value – using Core CPI from prior year
- Severity and/or permanency of injury
- Any unique effect of the injury on the Claimant's quality of life
- Pain and suffering

- Existence of multiple injuries not separately compensated

If the FCR, after reviewing the criteria above, determines that the points awarded under Section 5.2 should be supplemented, the FCR may in his discretion adjust the points awarded for the TD Claim upward in an amount not to exceed a one hundred-and-fifty percent increase in points from the point award to which the Claimant would otherwise be entitled. By example, a TD Claim awarded 1,000 Points may be awarded up to an additional 1,500 Points by the FCR for a total of 2,500 Points. The FCR will make his compensability and/or valuation determination, as applicable, within 30 days of receiving the Claim File; provided, however, for TD Claims filed with the PSAN PI/WD Trust on or before August 31, 2018, the FCR will make his compensability and/or valuation determination, as applicable, within 90 days of receiving the Claim File.

#### **5.5 Payment of TD Claims**

Once the point award for a TD Claim is determined, the Trustee will convert the point award to a dollar value pursuant to Section 8 of the TDP, and then will initiate the distribution process pursuant to Section 7 of the TDP.

#### **5.6 Indirect Claims**

Any OEM that resolves or has resolved in the past a claim of personal injury or wrongful death resulting from the PSAN Inflator Defect or any other claim determined to be compensable by the PSAN PI/WD Trust that includes a full release of the Debtors (or any of them named, as applicable), with respect to such Claim for payment made by the OEM, may obtain an assignment of the Claimant's rights to bring a TD Claim against the PSAN PI/WD Trust or be subrogated to those rights even without a written assignment, upon proof that such release of the Debtors (or any of them named, as applicable) was granted for and in consideration for the amounts paid by the OEM or that a judgment arising from such claim was paid in full by the

OEM. The Trustee shall process Indirect Claims in the same manner as a direct TD Claim or P-OEM Claim, as applicable, and shall determine and pay to the OEM the amount to which the direct Claimant would have been entitled to be paid if the direct Claimant had submitted the claim resolved by the OEM directly to the PSAN PI/WD Trust, provided however that the OEM shall not receive more than 65%<sup>15</sup> of the amount the OEM paid to resolve the claim.

In the case of an OEM asserting an Indirect Claim, the OEM must present evidence of compensability that satisfies the requirements in Section 4.2 just as a direct Claimant would be required to do; the OEM cannot merely stipulate to facts to satisfy those requirements.

## SECTION 6

### **Resolution of P-OEM Claims**

#### **6.1 Is the Claim a P-OEM Claim?**

The Trustee will verify that the claim involves a Participating OEM vehicle and that any individual submitting a Claim Form has submitted sufficient evidence to show (i) that they are a United States citizen or permanent resident at the time of the accident, (ii) that the accident occurred in the United States or its territories or possessions, or (iii) involves a vehicle registered in the U.S. or its territories or possessions. The Claim Form will indicate the types of evidence that can be relied on to meet this burden.<sup>16</sup>

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<sup>15</sup> This percentage shall not be deemed applicable in any context outside the resolution of TD Claims in the PSAN PI/WD Trust.

<sup>16</sup> If a Non-Participating OEM becomes a Participating OEM and PSAN PI/WD Claims are currently asserted against such OEM in the tort system, the Non-Participating OEM shall notify the Trust and the Trustee will provide notice of the OEM's election to counsel of record for the plaintiffs. Any such PSAN PI/WD Claim will not be channeled to the PSAN PI/WD Trust and will continue in the tort system unless the plaintiff gives his affirmative consent to the Trustee for the claim to be channeled. If the plaintiff gives his consent, the claim will not be channeled unless and until the court grants a voluntary dismissal and the plaintiff files a Claim Form with the Trust. In that event, the Trustee may coordinate the processing of any unliquidated TD Claim with the processing of the new filed P-OEM Claim.

## **6.2 Valuation of P-OEM Claims**

### **6.2(a) In General**

Compensable P-OEM Claims will be valued using the Scheduled Claim Process, including the Valuation Schedule, unless the Claimant requests, and the claim qualifies for, IR, or the Trustee concludes, upon reviewing the Claim Submission, that consideration under IR is necessary to fairly and fully compensate the Claimant.

If the Trustee determines an Aggressive Deployment Claim to be compensable, then the Claimant may receive compensation for only the Enhanced Injury. Compensation for the Enhanced Injury is to be determined by the Trustee, who shall use the Valuation Schedule for the injuries as guidance in determining the appropriate award, if any.

### **6.2(b) Scheduled Claim Process**

Under the Scheduled Claim Process, the Trustee will determine which Injury Type(s) was sustained by the Claimant as a result of the PSAN Inflator Defect and assign a value to each P-OEM Claim consistent with this section. Compensation for multiple Injury Types shall be combined or “stacked” as described in Exhibit B. The Trustee may not award compensation for any injury unless the Claimant has presented evidence demonstrating that the Injury Criteria for the claimed Injury Type(s) are met and that the injury was caused by the PSAN Inflator Defect.

### **6.2(c) Individual Review Process**

IR has been established as a potential means to address wrongful death P-OEM Claims and those personal injury P-OEM Claims in which the Claimant demonstrates that (a) the combination of injuries sustained is not contemplated by the Scheduled Claim Process, (b) the Claimant’s injury and/or damages require a more comprehensive review, or (c) the injuries and damages would not be compensated adequately, or at all, through the application of the

Scheduled Claim Process. Considerations for setting the compensation amount include the Global Adjustment Criteria and the Specific Injury Adjustment Criteria for the injuries suffered. Even if a Claimant meets the criteria for IR, the Trustee may determine that compensation within the Valuation Schedule is appropriate and award compensation within the valuation range for the Claimant's injuries.

#### **6.2(c)(1) IR Eligibility for P-OEM Claims**

If the Claimant wishes her P-OEM Claim to be evaluated under IR, she shall request such review on her Claim Form. The Trustee may also choose to consider a P-OEM Claim under IR on his own initiative. By proceeding under IR, the Claimant consents to an Independent Medical Examination ("IME") and agrees to produce the subject vehicle and/or inflator, if available, for inspection. Once IR is initiated, the Trustee will make an initial determination as to whether the claim is a Compensable Claim and, if so, whether it meets the threshold criteria for IR. If the Trustee determines that a claim is appropriate for IR, he will notify the Claimant and the Participating OEM and identify the basis for his determination. The Trustee will forward the Claim Materials to the Participating OEM. A Participating OEM will have 30 days from the date the Trustee notifies the Participating OEM that a claim is appropriate for IR to request an IME of the Claimant. If the Trustee determines the P-OEM Claim is a Compensable Claim but not appropriate for IR, the Trustee will continue his evaluation of the claim under the Scheduled Claim Process.

When the Claimant requests IR, the Claimant must demonstrate one of the following to qualify:

- A fatality;
- Loss of vision resulting in legal blindness in both eyes;

- Special Damages (meaning economic damages related to the Claimant’s injuries, including but not limited to, funeral costs, lost earning capacity, and past and future medical care supported by a qualified expert) that exceed \$1.5M in net present value;
- An AIS 5 rated injury;
- A moderate or severe TBI;
- Over 50% loss of use of limb or hand;
- Permanent profound hearing loss considering the Specific Adjustment Criteria identified for Permanent Hearing Loss above;
- Permanent injury to a fetus that survives to childhood;
- Spinal injury resulting in partial or full paralysis; or
- An injury or combination of injuries not contemplated by the Valuation Schedule and the Scheduled Claim Process.

**6.2(c)(2) Participating OEM Submission**

The Participating OEM may submit a report in response to the Claimant’s IR Claim. The report may address any aspect of the P-OEM Claim, including compensability, injury causation and the value of the P-OEM Claim.

**6.2(d) Trustee Report**

After evaluating each Claim Submission, the Trustee shall make determinations regarding the compensability and valuation, if any, for the Scheduled Claim or IR Claim. The Trustee will prepare a written report indicating his findings and citing the Claim Submission evidence in support. The determinations of the Trustee are deemed final, binding, and non-appealable unless the Claimant timely appeals in compliance with the procedures set forth in Section 6.3. The Trustee, FCR, TAC, and OAC have intentionally and willingly limited appeals



to the process in Section 6.3 and do not allow appeals to any court. The Trustee will complete his valuation of Scheduled Claims within 30 days of determining compensability.

### **6.3 Appeals Process for P-OEM Claims**

#### **6.3(a) Appeals Panel**

Appeals shall be conducted by a single Reviewer. The Appeals Panel shall be composed of up to twelve Reviewers (“the Appeals Panel”) unanimously agreed upon by the Trustee, OAC, TAC, and FCR. Each individual appeal shall be conducted by a single Reviewer. Each Reviewer must be a court certified mediator/arbitrator or former state or federal judge. On the Effective Date, the following persons will be members of the Appeals Panel: Joseph Farina, Michael Siboni, Cathy Yanni, Jean H. Toal, Costa M. Pleicones, and Peter Wechsler.

Vacancies on the Appeal Panel shall be filled by nominations from Trustee, TAC, and OAC, in turn, subject to unanimous approval of the Trustee, FCR, TAC, and OAC. Each Reviewer will serve a three-year term subject to renewal with the unanimous consent of the Trustee, FCR, TAC, and OAC. The Trustee, FCR, TAC, and OAC will make reasonable efforts to have Reviewer representation from all National Highway Safety Administration (“NHTSA”) Zones;<sup>17</sup> at least three of the members must be from Zone A. Each Reviewer shall attend a training session(s) to be conducted by the Trust and representatives of the TAC and OAC upon appointment and before participating in any appeal.

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<sup>17</sup> NHTSA Zones are defined in the May 4, 2016 Amendment to the November 2015 Consent Order.

### **6.3(b) Selection of Reviewer for an Appealed P-OEM**

#### **Claim**

The Reviewer shall be chosen at random by the Trust from the Appeals Panel. Neither the Participating OEM nor the Claimant may challenge the choice of the Reviewer.

### **6.3(c) Process for Initiation and Resolution of Appeal**

#### **of P-OEM Claims**

*Initiation of Reviewer Appeal.* The determination of the Trustee is deemed final and binding on the parties unless the Claimant or the P-OEM provides a written Notice of Appeal of the Trustee's determination, within 30 days of receipt of the Trustee's Report pursuant to the process identified in this TDP.<sup>18</sup>

For Scheduled Claims, Claimants have the right to appeal the Trustee's determination on the compensability of the claim, the amount of the award and the denial of IR, if applicable. The Claimant must identify the issues they are appealing in their Notice of Appeal. P-OEMs do not have a right to appeal the Trustee's determination of a Scheduled Claim. For IR Claims, the Claimant or P-OEM may appeal the Trustee's determination on the compensability of the claim, appropriateness of IR, and the amount of the award. To initiate the appeal of any P-OEM Claim, the Claim Parties must first complete the Scheduled Claim or IR Claim Process.

The Trustee shall forward a copy of all written Notices of Appeal to the non-appealing party within 10 days of receipt of the Notice. Within 30 days of receipt of the Notice of Appeal,

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<sup>18</sup> The Trustee may, upon request in his discretion, allow additional time for appeal of Claims held by representatives of deceased or incompetent Claimants for which court or probate approval of the Trustee's offer is required.

the Trustee shall randomly assign a Reviewer, notify the Claim Parties, and provide the assigned Reviewer and non-appealing party with a copy of the complete Claim Submission. Within 30 days after the Notice of Appeal, the appealing party or parties may submit an appeal submission of no more than 10 double-spaced pages setting forth the reasons for the appeal. The non-appealing party shall receive a copy of any appeal submission by the appealing party and may submit a written response within 30 days of receipt. The Reviewer may only consider the evidence submitted to the Trustee in evaluating the appeal, except when the appeal concerns the Trustee's denial of compensation for a submitted claim, in which case the P-OEM may submit evidence supporting the Trustee's decision that a claim is not compensable or for the appeal of IR claims, if the Claimant appeals, the P-OEM may submit evidence on all the Trustee's determinations. The Reviewer shall review only those determinations appealed in the Notice of Appeal.

***Standard of Review.*** At all stages of the Appeals Process, the de novo standard of review will be used for review of determinations involving (i) choice and application of governing law<sup>19</sup> and (ii) compensability of P-OEM Rupture Claims as set forth in Section 4.2. At all stages of the appeals process, the clearly erroneous standard of review will be used for review of: (i) determinations involving the compensability of P-OEM Aggressive Deployment Claims (section 4.2(b) of TDP), (ii) determinations of the appropriateness of IR as set forth in Section 6.2(c), and

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<sup>19</sup> The appropriate choice and application of governing law to determine questions including but not limited to bystander claims, loss of consortium claims, and injury to fetus claims are questions of law subject to de novo review. Whether the Trustee's valuation determination or award is full, fair, and reasonable compensation is not a legal question subject to de novo review, but will be reviewed pursuant to this Section.

(iii) the Trustee's findings of fact in support of a valuation determination or Trustee's award. The Trustee's valuation determination or award amount will be reviewed as described herein.

***Reviewer Review of Trustee Award.*** When evaluating the Trustee's award amount, the Reviewer shall affirm the Trustee's award unless she determines that the award fails to provide full, fair, and reasonable compensation to the Claimant. If the Reviewer determines that the Trustee award did not provide full, fair, and reasonable compensation, the Reviewer may modify the Trustee's award by an amount not to exceed the lesser of (a) 30% of the original award amount, OR (b) \$400,000 (the "Non-Appealable Modification Range"). The Reviewer may modify the Trustee's award upward by an amount in excess of the Non-Appealable Modification Range only if the Reviewer determines that the Trustee's award was clearly erroneous or that the Trustee's choice or application of governing law was incorrect under the de novo standard of review. The Reviewer may modify the Trustee's award downward only if the Reviewer determines that the Trustee's award was clearly erroneous or that the Trustee's choice or application of governing law was incorrect under the de novo standard of review. The Reviewer may not value an appealed Scheduled Claim outside the Valuation Schedule.

The Reviewer shall notify the Trust of her decision within 30 days of receipt of all Claim Parties' submissions. The Reviewer shall provide a written report setting forth the reasons for any reversal of compensability or modification of the Trustee's award. If the Reviewer reverses a denial of compensation and finds the claim to be a compensable or reverses a denial of IR, the claim will be returned to the Trustee for valuation.

***Further Panel Review Process.*** If a Reviewer has modified the Trustee's award in excess of the Non-Appealable Modification Range for a Scheduled or IR Claim, then the P-OEM or the Claimant may appeal that Reviewer's award by submitting a written notice to the Trustee within 30 days of receipt of the Reviewer's determination. The Trustee will provide all Claim Parties

with any such submission and identify a Review Panel which shall include the original Reviewer and two additional randomly selected Reviewers to review further the single Reviewer's award.<sup>20</sup> The non-appealing party may submit a written response within 30 days of receipt of notice of the appeal of the Reviewer's award. The Review Panel will review the Trustee's choice and application of law using a de novo standard and the Trustee's findings of fact in support of his valuation determination or award, and the amount of the award using a clearly erroneous standard, and shall affirm the Trustee's award unless it finds by majority vote that the Trustee's valuation determination or award was clearly erroneous. If the Review Panel by a majority vote overturns the Trustee's award, the Review Panel may award an amount the majority determines will provide full, fair, and reasonable compensation to the Claimant. Under no circumstances may the Review Panel award more than the single Reviewer award (if the single Reviewer proposed to increase the Trustee award) or less than the single Reviewer award (if she proposed to decrease the Trustee award). The Review Panel may not value an appealed Scheduled Claim outside the Valuation Schedule.

#### **6.3(d) FCR Conference**

The decision of the single Reviewer or the Review Panel (whichever is the final appeal) will be final and binding unless, within 20 days of notification of the Reviewer or Review Panel determination, the Claimant submits a written notification of intent to reject the determination and to proceed in the tort system. For the avoidance of doubt, the Claimant must exhaust all available appeals identified in this section before seeking a conference with the FCR and before

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<sup>20</sup> For example, if the Trustee awarded a Claimant \$100,000 and the Reviewer increases the award above \$130,000, or decreases it to less than \$70,000 the P-OEM or Claimant may further appeal that decision to a three-person Review panel.

opting into the tort system. Upon receipt of a Claimant's notification to reject a determination, the Trustee shall forward the Claim File to the FCR for review and the FCR shall hold a conference with the Claimant and the P-OEM. Before holding such a conference, the FCR will ensure that the Claimant has exhausted all applicable appeals as identified in the TDP. Within 10 days after the conference with the FCR, the Claimant may submit written confirmation to the Trustee of her rejection of the award and intent to proceed in the tort system. If the Claimant does not confirm her intent to reject the award within that 10-day period, the Reviewer's or Review Panel's final determination, as applicable, will be deemed final and binding on all parties.

#### **6.4 Litigation in Tort System of P-OEM Claims**

After the Claimant has exhausted the Claim Process, including a review and determination by the Trustee, an appeal, and a conference with the FCR, if the Claimant is dissatisfied with the offer made, he may pursue relief in an appropriate jurisdiction of law after submitting written rejection of the PSAN PI/WD Trust's proposed final claim award to the PSAN PI/WD Trust pursuant to the terms of this TDP.

##### **6.4(a) Proceeding in the Tort System**

Any claim must be filed in a state or federal court in the United States by the Claimant within 120 days of the date that the Claimant submits written rejection of the PSAN PI/WD Trust's proposed final claim award or all legal rights will be deemed waived as to the claim against the P-OEM and the Trust. The claim must be filed in her own right and name and not as a member or representative of a class, and no such lawsuit may be consolidated with any other lawsuit, except that claims arising out of a single incident may be brought together in a single

action. Except as provided herein, the laws of the applicable jurisdiction will govern all claims filed pursuant to this Section.

Any trial will be limited to the issues of injury causation and valuation/damages only. Liability for all claims, including third party claims of bystander liability and loss of consortium, shall be based on strict liability only. Neither Plaintiff (including consortium and bystander claimants) nor the Trust shall assert any claims or defenses based in negligence including defenses of contributory or comparative fault. To the extent the laws of the applicable jurisdiction do not provide for strict liability, the Claim Parties agree that strict liability will apply to all claims asserting injuries resulting from the PSAN Inflator Defect.

The Trust in such litigation shall not assert as a defense Plaintiff's conduct, including contributory or comparative negligence in causing the underlying accident, or notice of recall, or the statute of limitations or statute of repose defenses. The Trust shall not assert as a defense in any litigation the conduct or negligence of any third-party potential tortfeasor, including but not limited to the Debtors and its affiliated entities, any dealership against whom concurrent liability is asserted, or any dealership or other party against whom independent liability is asserted related to the PSAN Inflator Defect. The P-OEM shall indemnify any third-party defendants against whom the Plaintiff asserts concurrent liability.

If any third-party defendant not indemnified by the P-OEM asserts any comparative or contributory fault as a defense against a Plaintiff, the Trust shall not take any position on those claims or defenses, including but not limited to participating in any written discovery, depositions, or assistance to counsel in pursuing any comparative or contributory negligence against the plaintiff. If any third-party defendant not indemnified by the P-OEM claims that the

conduct of the Plaintiff is a complete or partial defense, such defenses will not apply to the claims against the P-OEM or the Trust.

With respect to the Trust and any Participating OEM: (a) No Plaintiff shall assert any cause of action, seek discovery related to, or present any evidence related except as to causation and damages; (b) the Plaintiff shall not seek conduct-based discovery nor present conduct-based evidence at trial; and (c) punitive or exemplary damages cannot be sought and will not be payable.

In the event that there is a verdict for compensable damages and the jury attributes any portion of the damages to the Trust, the Trust shall be responsible for satisfying the full compensatory verdict amount. If a jury apportions fault between the Trust and any other tortfeasor, the Trust shall be responsible for satisfying the full compensatory verdict amount regardless of any apportionment of fault (by cross-claim, third party liability, comparative fault of the plaintiff, or otherwise). Under no circumstances shall the Trust be responsible for any exemplary or punitive damages awarded against any third-party defendant or tortfeasor. Nothing herein shall prevent the P-OEM from pursuing indemnification against any third-party defendant or tortfeasor and the Plaintiff shall assign its rights to pursue any portion of the verdict attributed to a third-party defendant or tortfeasor to the P-OEM. There is no litigation scenario in which the Trust is not responsible for paying the entire compensatory verdict.

If the Plaintiff was alive at the time the Claim Form was filed with the PSAN PI/WD Trust and died during the pendency of the claim, the Plaintiff shall be entitled to all personal injury damages incurred prior to death, regardless of the law of the jurisdiction, in addition to any wrongful death damages arising from his death.



The Alabama wrongful death statute shall not apply to any Claims filed in any jurisdiction pursuant to the terms of this TDP. See Ala. Code § 6-5-410 (1975) and Ala. Code § 6-5-391 (1975). Rather, in any wrongful death case in which Alabama law would govern, the Parties agree that the law of the State of Georgia effective as of the date of this TDP will govern the determination of compensation for those wrongful death cases.

In any jury trial, the parties agree to jointly seek the court's approval to include in the court's instructions to the jury the instructions set forth in Exhibit C with appropriate refinements to make them consistent with state law relating to the parties' agreement as set forth in this section.

#### **6.4(b) Payment of Claims in the Tort System**

If a P-OEM Claim proceeds in the tort system under the provisions of this TDP and is subsequently liquidated by either a settlement and/or a judgment, the liquidated amount shall be paid by the Trust in the following manner.

Payments of any settlement or judgment in the tort system shall be paid by the Trust as follows:

- **Pretrial Settlement.** If the P-OEM Claim is liquidated by a pretrial settlement and the Claimant received an amount from the Trust ("Trust Award"), 50% of the Trust Award will be paid to the Claimant within 10 days of the pretrial settlement, the lesser of the remaining 50% of the Trust Award or the remaining liquidated balance will be paid on the first anniversary of the settlement, and the remainder of the liquidated value, if any, paid on the second anniversary of the settlement. If the Claimant did not receive a Trust Award, any pretrial settlement will be paid in three equal payments with the first payment made 10 days following the pretrial

settlement, the second payment made on the first anniversary of the pretrial settlement, and the final payment made on the second anniversary of the pretrial settlement.

- **No Appeal of a Judgment.** If the P-OEM Claim is liquidated by a judgment and the Claimant received a Trust Award, 50% of the Trust Award will be paid to the Claimant within 10 days of the judgment, the lesser of the remaining 50% of the Trust Award or the remaining liquidated balance will be paid on the first anniversary of the judgment, and the remainder of the liquidated value, if any, will be paid on the second anniversary of the judgment. If the Claimant did not receive a Trust Award, any judgment will be paid in three equal payments with the first payment made 10 days following the judgment, the second payment made on the first anniversary of the judgment, and the final payment made on the second anniversary of the judgment.
- **Appeal of a Judgment by the Trust.** If the Trust appeals a judgment in favor of the Claimant and the Claimant received a Trust Award, 50% of the Trust Award will be paid to the Claimant within 10 days of the judgment, the lesser of the remaining 50% of the Trust Award or the remaining liquidated balance will be paid on the later of the first anniversary of the judgment, any post-trial settlement, or any appellate decision, and the remainder of the liquidated value, if any, one year later. If the Claimant did not receive a Trust Award, the Trust will pay the Claimant one-third of the judgment amount 10 days following the verdict, 50% of the remaining liquidated balance on the later of the first anniversary of the

judgment, any post-trial settlement, or any appellate decision, and the remainder of the liquidated value, if any, one year after the second payment.

- **Appeal of a Judgment by the Claimant.** If the Claimant appeals a judgment in favor of the Trust and the Claimant did not receive a Trust Award, and the parties reach a post-trial settlement, the Trust will pay the Claimant in three equal payments with the first payment made 10 days following the settlement.

Any unsatisfied amount of any judgment will be entitled to post-judgment interest under applicable law.

## SECTION 7

### **General Guidelines for Liquidating and Paying Claims**

#### **7.1 Payment of P-OEM and TD Claims, Including Indirect Claims**

Once an award on a P-OEM Claim or TD Claim, including Indirect Claims, is deemed final, the Trustee will initiate the distribution process. The Trustee shall pay the Claimant or Indirect Claimant, subject to the terms of this TDP and the PSAN PI/WD Trust Agreement, the amount of the award. Distributions for Compensable Claims to Claimants not represented by an attorney will be issued by checks mailed to the Claimant's address set forth on the Claimant's Claim Form, which will be negotiable for 90 days. If the Claimant is represented by an attorney, the distribution may be issued by check or by electronic payment to the attorney.

In determining all award amounts, the Trustee will take into account all known outstanding medical liens, if any, currently owed by the Claimant. Claimants shall be responsible for the payment of all medical or other applicable liens. The Claimant will undertake to resolve such liens, and if not done, the Trustee will take over the process. The Trustee will retain the services of a Lien Resolution Administrator to identify, resolve, and satisfy, in accordance with

applicable law, certain Claimant repayment obligations, including, but not limited to, Medicare (Parts A and B), Medicaid, and other governmental liens.

Where the Claimant is deceased or has been determined to be incompetent, and the settlement and payment of her claim must be approved by a court of competent jurisdiction or through a probate process prior to acceptance of the claim by the Claimant's representative, an offer made by the Trustee on the claim shall remain open so long as proceedings before that court or in that probate process remain pending; provided that the Trustee has been furnished with evidence that the settlement offer has been submitted to such court or to the probate process for approval prior to the expiration of the time to accept the offer. If the offer is ultimately approved by the court or through the probate process and accepted by the Claimant's representative and the Trustee receives written notice of the approval and acceptance, the Trustee shall pay, subject to the terms of this TDP and the PSAN PI/WD Trust Agreement, the claim in the amount so offered.

In accordance with the terms of the Participating OEM Contribution Agreement, to the extent the Claimant has established a PSAN PI/WD Claim that is a P-OEM Claim for which a Participating OEM would otherwise be liable but for the Channeling Injunction, the Participating OEM shall pay the Net Liquidated Value, if any, (as defined in the Participating OEM Contribution Agreement) of such PSAN PI/WD Claim into a segregated account established solely for the purpose of paying PSAN PI/WD Claims asserted against the Participating OEM. The Trust shall pay the Claimant (a) the amount of the Net Liquidated Value of such PSAN PI/WD Claim received from the Participating OEM, and (b) the amount such PSAN PI/WD Claim is entitled to receive from the PSAN PI/WD Trust including on account of (i) the TD

Claim and (ii) any recovered PSAN PI/WD Insurance Proceeds allocable to the PSAN PI/WD Claim.

## **7.2 Order of Payment**

The Trustee shall attempt to pay all Compensable Claims on an efficient and fair basis. In making decisions on compensability and compensation amounts, the Trustee may evaluate and pay claims on an ongoing basis, even if this means later submitted claims are evaluated or paid before earlier submitted claims.

## **7.3 Costs Considered**

Notwithstanding any provisions of this TDP to the contrary, the Trustee shall always give appropriate consideration to the cost of investigating and uncovering invalid claims, including issues relating to the validity of the medical or inflator defect evidence supporting or disputing such a claim, so that the payment of valid claims is not impaired by such processes. The Trustee shall also have the latitude to make judgments regarding the amount of transaction costs to be expended by the PSAN PI/WD Trust so that valid claims are not unduly impaired by the costs of additional investigation or frivolous defense.

## **7.4 Claimant Releases**

As a condition for payment from the PSAN PI/WD Trust, all persons who apply for compensation from the PSAN PI/WD Trust must execute and submit to the Trustee a release (the “Claimant Release”) in the form or forms provided by the Trustee for Claimants and Indirect Claimants.

For TD Claims, by signing the Claimant Release, the Claimant or Indirect Claimant will agree to release the Trust, the Trustee, the FCR, the TAC, and the OAC (the “Released Parties”) from any and all past, present and future claims, counterclaims, actions, rights or causes of

action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that an applicant had, have, or may have in the future (a "Released Claim") arising out of, in any way relating to or in connection with the PSAN PI/WD Trust and the discharge of the Trustee's duties and responsibilities under the PSAN PI/WD Trust Agreement.

The Release will also require the Claimant to (i) acknowledge and agree that the Claimant remains solely responsible for resolving all open Government Payors' and Non-Government Payors' liens, rights of reimbursement, and other claims (collectively, "Liens"); (ii) use best efforts to resolve all known Liens; (iii) agree to indemnify and hold harmless the Trust in connection with all known Liens and any future Liens; (iv) agree that the Trust will not be liable for any act, or failure to act, of the lien resolution administrator retained in connection with the PSAN PI/WD Trust; and (v) assign the Trust the right to pursue the PI/WD Insurance Rights, if any, for the full value of the TD Claim.

In the case of an Indirect Claim, the Release will require the Indirect Claimant to: (i) use reasonable efforts to verify that the direct Claimant has resolved all known liens; (ii) agree to indemnify and hold harmless the Trust in connection with all known Liens and any future Liens; (iii) agree that the Trust will not be liable for any act, or failure to act, of the lien resolution administrator retained in connection with the PSAN PI/WD Trust solely to the extent the lien resolution administrator is involved, if at all, in the resolution of liens relating to the

Indirect Claim at issue; and (iv) assign the Trust the right to pursue the PI/WD Insurance Rights, if any, for the full value of the TD Claim.

For P-OEM Claims, upon final determination of a P-OEM Claim, the Release shall identify the injury category for which compensation is awarded, and where applicable allocation among related claims, estopping the Claimant from seeking any further relief for that injury, or portion thereof, regardless of defect theory. If the Claimant is awarded compensation for an Aggressive Deployment Claim, the Release will identify the specific enhanced injury and percentage of the injury deemed enhanced. Nothing in this TDP or any subsequent order approving this TDP precludes the Claimant from seeking recovery in the tort system for any portion of an injury not compensated. The Claimant is responsible for promptly securing any court approval required in the applicable jurisdiction for any awards made as necessary to complete the Release. If the Claimant is awarded compensation for any loss of consortium or bystander claims, all beneficiaries of such claims shall also execute the Release, barring the assertion of those indirect or third-party claims in the tort system.

The Trustee may, with consent of the TAC, OAC and FCR, (i) adopt a form of release and (ii) modify any form of release that has previously been approved by the TAC, OAC, and FCR.

#### **7.5 Third Party Services**

Nothing in this TDP shall preclude the PSAN PI/WD Trust from contracting with a claims resolution organization to provide services to the PSAN PI/WD Trust so long as decisions about the categorization and value of claims are based on the relevant provisions of this TDP, including, in the case of P-OEM Claims, the Injury Levels, Scheduled Values, Base and High Values, and Injury Criteria set forth above. Subject to the terms and conditions of the Trust

Agreement, the Trustee may retain one or more Claims Administrators to assist him in aspects of the administration of the PSAN PI/WD Trust, but final determination of Claims by the Trust shall be made by the Trustee.

## SECTION 8

### **Point Value and Periodic Estimates**

#### **8.1 PSAN PI/WD Trust's Determination of the Point Value**

To seek to ensure substantially equivalent treatment of all present and future PSAN PI/WD Claims, the Trustee must determine from time to time the per-point dollar value of the points used to value TD Claims under Section 5.2 of the TDP (the "Point Value").

Promptly after the PSAN PI/WD Trust is established, the Trustee, with the consent of the TAC, OAC, and FCR, shall set an initial Point Value for TD Claims (the "Initial Point Value"). The Initial Point Value shall be calculated in accordance with Section 8.2.

The Initial Point Value, and any later determined Point Value, as in effect at the beginning of each calendar year, will be adjusted for inflation annually, beginning as of January 1, 2020 (the "Inflation Adjustment"). The amount of each such Inflation Adjustment shall equal the increase for the preceding year in the Consumer Price Index for All Urban Consumers ("CPI-U"), but such Inflation Adjustment for any year shall not be less than an increase of 2% or more than an increase of 5%. The Trust shall rely upon CPI-U as published by the United States Department of Labor, Bureau of Labor Statistics ("BLS"); provided, however, that if BLS ceases to publish CPI-U, the Trustee shall select the most comparable index of inflation published by BLS or another reputable and established source.



At least thirty (30) days prior to proposing in writing to the TAC, OAC, and FCR a change in the Point Value, the Trustee shall issue a written notice to Claimants or Claimants' counsel indicating that the Trustee is reconsidering such Point Value.

There is uncertainty surrounding the value of the PSAN PI/WD Trust's assets in the future. There is also uncertainty surrounding the totality of the TD Claims to be paid over time. If the value of the PSAN PI/WD Trust's future assets increases materially and/or if the value or volume of TD Claims actually filed with the PSAN PI/WD Trust is materially lower than originally estimated, the PSAN PI/WD Trust shall use the increase in Trust assets available first to maintain the Point Value then in effect.

If the Trustee, after consultation with the TAC and OAC, and with the consent of the FCR, makes a determination to increase the Point Value due to a material change in the estimates of the PSAN PI/WD Trust's future assets and/or liabilities, the Trustee shall also make supplemental payments to Claimants and Indirect Claimants who previously liquidated their claims against the PSAN PI/WD Trust and received payments based on a lower Point Value; provided, however, that no supplemental payments will be made to a Claimant who has already received a PSAN PI/WD Top-Up Amount as defined by the Plan. The amount of any supplemental payment shall be the liquidated value of the TD Claim in question multiplied by the newly adjusted Point Value, less all amounts previously paid by the Trust to the Claimant or Indirect Claimant for that TD Claim.

The PSAN PI/WD Trust's obligation to make a supplemental payment to a Claimant or Indirect Claimant shall be suspended in the event the payment in question would be less than \$100.00, and the amount of the suspended payment shall be added to the amount of any prior supplemental payment/payments that was/were also suspended because it/they would have been

less than \$100.00. However, the PSAN PI/WD Trust's obligation shall resume, and the PSAN PI/WD Trust shall pay any such aggregate supplemental payments due the Claimant or Indirect Claimant at such time that the total exceeds \$100.00.

## **8.2 Computation of Point Value**

As provided in Section 8.1 above, the Trustee, with the consent of the TAC, OAC, and the FCR, shall establish the Initial Point Value after the Plan's Effective Date.

The Trustee shall base his determination of the Point Value on current estimates of the number, types, and Points assigned present and future TD Claims, the value of the assets then available to the PSAN PI/WD Trust for payment of TD Claims, all anticipated administrative and legal expenses, and any other matters that are reasonably likely to affect the sufficiency of funds to pay on an equal application of the TDP methodology to all present and future holders of PSAN PI/WD Claims based on the points awarded to each Claimant. Factors relating to point values for International TD Claims are set forth in Section 5.1. When making these determinations, the Trustee shall evaluate all relevant factors to determine a conservative Point Value with the goal of assuring that the PSAN PI/WD Trust will treat all present and future holders in a similar manner. The Point Value shall be subject to change pursuant to the terms of the TDP and the PSAN PI/WD Trust Agreement. The Trustee shall review the then-applicable Point Value as he deems necessary to assure that it is based on accurate, current information, and shall compare the liability forecast on which the then-applicable Point Value was based with the actual claims filing and payment experience of the PSAN PI/WD Trust to date, and the projected assets of the PSAN PI/WD Trust on which the then-applicable Point Value was based with the current assets, and any updated projections of asset values, of the PSAN PI/WD Trust and future claims. If the results of the comparisons call into question the ability of the PSAN PI/WD Trust

to rely upon the current liability and asset forecasts, the Trustee may, if necessary, propose a change in the Point Value. Any change in the Point Value must be approved by the Trustee and the FCR, after consultation with the TAC and the OAC.

### **8.3 Applicability of the Point Value**

Except as otherwise provided in (a) Section 7.1 for TD Claims involving deceased or incompetent Claimants for which approval of the PSAN PI/WD Trust's offer by a court or through a probate process is required; and (b) the paragraph below with respect to Released Claims; no holder of any TD Claim shall receive a payment that exceeds the product of the total points attributed to the claim under the TD Claim Process multiplied by the Point Value in effect at the time of payment.

If a redetermination of the Point Value has been proposed in writing by the Trustee to the TAC, OAC, and FCR but has not yet been adopted, the Claimant or Indirect Claimant, as applicable, shall receive the lower of the current Point Value or the proposed Point Value. However, if the proposed Point Value is the lower amount but is not subsequently adopted, the Claimant or Indirect Claimant shall thereafter receive the difference between the lower proposed amount and the higher current amount. Conversely, if the proposed Point Value is the higher amount and is subsequently adopted, the Claimant or Indirect Claimant shall thereafter receive the difference between the lower current amount and the higher adopted amount. In either event, however, no supplemental payments will be made to a Claimant who has already received a PSAN PI/WD Top-Up Amount, although a participating OEM may receive a credit in such circumstances.

Notwithstanding anything contained herein, if the proposed Point Value is lower than the current Point Value, a Claimant whose TD Claim was liquidated prior to the date on which the

redetermination of the Point Value was proposed (the “Proposal Date”) and who either (a) transmitted<sup>21</sup> an executed release to the PSAN PI/WD Trust prior to the Proposal Date or (b) with respect to those Claimants who had received releases fewer than thirty (30) days prior to the Proposal Date, transmitted an executed release to the PSAN PI/WD Trust within thirty (30) days of the Claimant’s receipt of the release (the claims described in (a) and (b) are collectively referred to herein as the “Released Claims”) shall be paid based on the current Point Value (the “Released Claims Point Value”). For purposes hereof, (a) a Claimant represented by counsel shall be deemed to have received a release on the date that the Claimant’s counsel receives the release, (b) if the PSAN PI/WD Trust transmits a release electronically, the release shall be deemed to have been received on the date the PSAN PI/WD Trust transmits the offer notification, and (c) if the PSAN PI/WD Trust places the release in the U.S. mail, postage prepaid, the release shall be deemed to have been received three (3) business days after such mailing date. A delay in the payment of the Released Claims for any reason shall not affect the rights of the holders of the Released Claims to be paid based on the Released Claims Point Value.

## **SECTION 9**

### **Miscellaneous**

#### **9.1 Amendments**

Except as otherwise provided herein, the Trustee may amend any provisions of this TDP except the methodology for valuing TD Claims and Indirect Claims (including, without

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<sup>21</sup> For purposes of this sentence, “transmitted” is defined as the date/time postmarked if submitted by mail or the date/time uploaded if submitted electronically.

limitation, amendments to conform this TDP to advances in scientific or medical knowledge or other changes in circumstances), provided that (i) he or she first obtains the unanimous consent of the TAC, the OAC, and the FCR pursuant to the consent process set forth in Sections 5.7, 6.7, and 7.6 of the PSAN PI/WD Trust Agreement; (ii) the right to adjust the Point Value for TD Claims is governed by Section 8 above; and (iii) such amendments, modifications, deletions, or additions do not impact the Channeling Injunction and are not otherwise inconsistent with the Confirmation Order or the Plan. Nothing herein is intended to preclude the TAC, the OAC, the NP-OEMs or the FCR from proposing to the Trustee, in writing, amendments to this TDP. The Trustee, after consultation with the TAC, OAC, and FCR, may make changes as necessary for the administration of the PSAN PI/WD Trust, so long as those changes do not amend the terms of this TDP, the PSAN PI/WD Trust Agreement, the Channeling Injunction, Confirmation Order, the Plan, or other Plan Document.

## **9.2 Extensions of Time**

Upon written request, the Trustee may in his discretion grant extensions of time for any deadline or time limit identified herein to any Claimant or OEM.

## **9.3 Severability**

Should any provision contained in this TDP be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this TDP.

## **9.4 Governing Law**

Administration of this TDP shall be governed by, and construed in accordance with, the laws of the State of Delaware. The law governing the determination of PSAN PI/WD Claims in

the case litigation in the tort system shall be the law of the Claimant's Jurisdiction as described in Section 6.4(a) above.

## **9.5 Claims Audit Program**

The TDP includes an audit program ("Claims Audit Program") to assist in the prevention of consideration of suspicious evidence included in any Claimant Submission.

### **9.5(a) Trustee Audit**

The Trustee may select TD Claims and P-OEM Claims for audit if the Trustee determines, based upon experience with the claims process, that the Claim Submission may contain fraudulent documentation or misrepresentations of material fact relating to the claim.

#### **9.5(a)(1) TD Claim Audit**

If a TD Claim is selected for audit, the Trustee shall promptly notify the Claimant or Indirect Claimant as applicable, of the selection of the claim for audit, the specific reasons the Trustee suspects a Claimant or Indirect Claimant has submitted fraudulent documentation or made misrepresentations of material fact, and which specific documents or statements are alleged to be suspect. The audited party shall, within 30 days, submit to the Trustee, documentation establishing the accuracy and reliability of the documentation or misrepresentation the Trustee has put at issue. If, after completing an audit, the Trustee determines that the Claimant or Indirect Claimant has not intentionally supplied false evidence or made intentional misrepresentations of material fact, the Trustee shall proceed to evaluate and pay the TD Claim. If the Trustee determines that the TD Claim is fraudulent, he will not pay the claim. The Trustee may, as he deems appropriate, report the alleged fraudulent conduct to the Bankruptcy Court or to law enforcement.

#### **9.5(a)(2) P-OEM Claim Audit**

If the Trustee selects a P-OEM Claim for audit, the Trustee shall promptly notify the Claimant and Participating OEM of the selection of the claim for audit, the specific reasons the Trustee suspects a Claimant or Participating OEM has submitted fraudulent documentation or made intentional misrepresentations of material fact, and which specific documents or statements are alleged to be suspect. The Participating OEM and Claimant shall, within 90 days, submit to the Trustee, documentation establishing the accuracy and reliability of the documentation or misrepresentation the Trustee has put at issue. If, after completing an audit, the Trustee determines that the Claimant or Participating OEM has not intentionally supplied false evidence or made intentional misrepresentation of material fact, the Trustee shall proceed to evaluate and pay the P-OEM Claim.

If, after completing an audit, the Trustee determines that the Claimant or Participating OEM has intentionally supplied false evidence or made intentional misrepresentation of material fact, the Trustee shall notify them both. The Claimant or Participating OEM still suspected may then respond, within 15 days, with any evidence indicating that it has not intentionally submitted fraudulent documentation or has not made an intentional misrepresentation of material fact. Alternatively, for the Claimant, he shall be given an opportunity to withdraw his claim. If the Trustee accepts such additional evidence or explanation, the Trustee shall proceed to evaluate and pay the P-OEM Claim. If the Claimant or Participating OEM does not respond to the Trustee's notice, or if the Trustee, after considering the response, does not alter its determination, the Trustee shall exclude any such suspect evidence. The ultimate determination of compensability and valuation for that P-OEM Claim will be subject to the Appeals Process in the same manner as any other Scheduled Claim or IR Claim, as applicable. If the Appeal Panel upholds the Trustee's determination that the audited Claimant or Participating OEM intentionally

supplied false or fraudulent information material to the claim, the Trustee may require the Claimant or Participating OEM to pay the costs associated with the audit. In addition, the Trustee may report the alleged fraudulent conduct to the Bankruptcy Court or to law enforcement.

**9.5(b) OAC-TAC-FCR Financial Audit**

The Participating OEM(s) on the OAC, the TAC, and the FCR shall have the right, beginning on the first January after the Effective Date, and each January thereafter, to cause an annual audit to of the Trust's operations including payment of claims to be performed by a Certified Public Accountant upon the financial records of the Trust. Complete copies of such audits shall be provided to the Bankruptcy Court, Trustee, OAC, TAC, and FCR.

**9.5(c) OAC, TAC, and FCR General Audit**

The Participating OEM(s) on the OAC, the TAC, or the FCR shall be entitled to individually audit and review all aspects of the PSAN PI/WD Trust, including but not limited to its operations, claims processing procedures, and results. The Trustee shall provide to the auditing party, at their sole discretion and, if the auditing party is a Participating OEM, the Participating OEM's sole expense, such information and documentation as they reasonably request. The Trustee shall reasonably cooperate with the auditing party in connection with any such audit, including but not limited to providing the OAC reasonable access to the Trustee and Claims Administrator's personnel for interviews and reasonable direct access to any computer hardware, software, or data used or maintained by the PSAN PI/WD Trust. Such an audit shall be at the sole discretion of the auditing party, and if the auditing party is a P-OEM, at that P-OEM's sole expense. The auditing party may make recommendations to the Trustee, OAC, TAC, and FCR, as applicable, concerning the PSAN PI/WD Trust, including but not limited to the PSAN PI/WD Trust's claims processing operations.



## **9.6 Consenting OEM and OAC Consent Rights**

The following terms and provisions of this TDP may not be amended or modified without the consent of the Consenting OEMs, which consent may not be unreasonably withheld: (1) the methodology for valuation of TD Claims as set forth in section 1.2 herein, (2) section 5.6, (3) footnote 8 and any term or provision of similar meaning, and (4) the first paragraph of section 9.6. In addition, this TDP may not be amended or modified to impose additional obligations on the Consenting OEMs that otherwise affect the rights of the Consenting OEMs in any material respect without the consent of the Consenting OEMs, which consent may not be unreasonably withheld. The procedures for obtaining such consent are specified in the PSAN PI/WD Trust Agreement. The Consenting OEMs reserve any and all rights, and are granted standing as third-party beneficiaries of this TDP, to enforce the terms or provisions of this TDP pertaining to the Consenting OEMs or the OEMs generally.

In addition, as provided in the PSAN PI/WD Trust Agreement, if there is not at least one Participating OEM, the OAC shall not be formed and the rights granted to the OAC hereunder shall be deemed to be of no force and effect. For any matter in which this TDP requires the consent of the OAC, the consent of the OAC shall not be unreasonably withheld. The procedures for obtaining such consent are specified in the PSAN PI/WD Trust Agreement. This paragraph of section 9.6 may not be amended without the consent of the OAC.

## **Exhibit A**

### **TD Claim Process**

#### **A. Valuation Process**

The first step in the TD Claim valuation process is to classify the types of injury claims into a manageable number of categories in a manner that is objectively based on the settlement history, consistent, efficient for claims handling purposes, explainable and understandable, and grounded in the way in which experts in the valuation and settlement of such cases (plaintiff and defense attorneys) have actually valued them in the past in real cases. For purposes of valuing TD Claims, the following types of injuries will be used: (i) fatality; (ii) permanent loss of vision in two eyes; (iii) permanent loss of vision in one eye; (iv) other eye injuries; (v) traumatic brain injury; (vi) larynx/vocal cord injuries; (vii) skull/dental/mandibular fractures; (viii) head/face/neck lacerations, scars, or burn disfigurements; (ix) facial nerve damage; (x) neck/back injuries; (xi) torso/limb lacerations, scars, burns, or disfigurement; (xii) permanent hearing loss/impairment; (xiii) non-permanent hearing injuries; (xiv) other broken bones/fractures; (xv) vascular complications (xvi) internal injuries; (xvii) injury to pregnancy; (xviii) concussion; (xix) minor bruising; (xx) fetal fatality;<sup>22</sup> and (xxi) dental injury. Individual injuries within these twenty-one categories may then be classified as mild, moderate, or severe.

The second step in the TD Claim valuation process is to assign relative values, i.e. points, to each injury category and subcategory, taking care to relatively value each type of injury clearly, fairly, objectively, and consistently. The TD Claim points schedule assigns a specific

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<sup>22</sup> This claim is compensable only if permitted by applicable law.

number of points to each of the identified injury categories and, where appropriate, for mild, moderate, and severe subcategories within each category. In addition, the schedule identifies situations where additional points may be added to a claim based on factors such as age and number of dependents to adjust the relative case value consistent with the historical settlement experience and fairness.

The dollar value of each point shall be determined and adjusted periodically in accordance with Section 8 of the TDP.

## B. Points Schedule

Injury	Level 3 (Mild)	Level 2 (Moderate)	Level 1 (Severe)	Additional Factors for Level 1 Injuries	Additional Points
1. Fatality			4,000	Prolonged suffering	1,500
				Age under 25	3,000
				Age between 25 and 39	2,000
				Age 40 to 59	1,000
				Spouse/each dependent	75
2. Permanent loss of vision - two eyes			4,000	Age under 25	500
				Age between 25 and 49	250
				Spouse/each dependent	75
3. Permanent loss of vision - one eye			2,000	Age under 25	500
				Age between 25 and 49	250
				Spouse	75
4. Other eye injuries	100	400	1,000		
5. Traumatic Brain Injury	250	750	2,000	Age under 25	500
				Age between 25 and 49	250
				Spouse/each dependent	75
6. Larynx/vocal cord injury	100	400	2,000	Age under 25	500
				Age between 25 and 49	250
				Spouse/each dependent	75
7. Skull/dental/mandible fractures	100	350	1,600		
8. Head/face/neck laceration, scars, burns disfigurement	100	350	1,000		
9. Facial nerve damage/paralysis	100	400	1,000	Age under 25	500
				Age between 25 and 49	250
10. Neck/back injuries	10	350	2,000		
11. Torso/limb laceration, scars, burns, disfigurement	20	100	275		
12. Permanent hearing loss/impairment	100	500	1,500	Age under 25	500
				Age between 25 and 49	250
				Spouse/each dependent	75
13. Hearing - non-permanent injuries	10	100	150		
14. Other broken bones/fractures	40	150	600		
15. Vascular complications		50	150		
16. Internal injuries		50	250		
17. Injury to pregnancy		50	500		
18. Concussion		20	80		
19. Minor bruising/None		10	25		
20. Fetal fatality			4,000		
21. Dental injury	25	50	150		

## **EXHIBIT B**

### **Scheduled Claim Process**

#### **A. Valuation Process**

To determine the Scheduled Value for a Compensable Claim, first, the Trustee shall review the Claim Submission, identify the Injury Types claimed by the Claimant and then determine which of the Injury Type(s) claimed, if any, were caused by the PSAN Inflator Defect subject to the above criteria for Rupture and Aggressive Deployment Claims. Each Injury Type is assigned a value range (Base to High) in the Valuation Schedule. The default value for a Claimant's injury is the Base value for the corresponding Injury Type, but may be increased based on the Global Adjustment Criteria listed below in this section and the Specific Injury Adjustment Criteria listed in the Valuation Schedule.

Second, if the Claimant's compensable injuries fall into more than one Injury Type within a single Group, the Claimant will receive compensation for those injuries within the range of the most valuable of those Injury Types. As noted below, the existence of multiple injuries within the same Group is a Global Adjustment Criterion that justifies increasing a Claimant's compensation amount within the range.

Third, if the Claimant's compensable injuries fall into more than one Group and/or Ungrouped Injury Type, compensation for each Group and/or Ungrouped Injury Type will be added together ("stacked") to determine the total compensation amount for the Claimant. For stacked injuries, the minimum scheduled value will be the sum of the Base value for each Group and/or Ungrouped Injury Type for which the Claimant has a Compensable Claim and meets the applicable Injury Criteria. However, the Trustee may stack no more than three different Groups and/or Ungrouped Injury Types (using the highest three) when calculating the total compensation

amount. The total compensation amount represents the total and complete value that will be paid to the Claimant for his injuries. Nothing in this Agreement, Plan or the TDP interferes with a Claimant's obligation, if any, to pay attorney's fees.

Beginning in 2019, and every other year thereafter, the scheduled values, both Base and High, shall be adjusted upward by the percentage increase in the Core Consumer Price Index (CPI) from the value for the prior year, but such adjustment will never fall below 2% and never exceed 5%.

The Trustee may adjust the compensation amount within the Valuation Schedule based on Global Adjustment Criteria and Specific Injury Adjustment Criteria where appropriate.

Global Adjustment Criteria include:

- Life expectancy, age, and pre-accident health of Claimant
- Existence and age of dependents
- Past and future economic loss (excluding medical and/or funeral expenses) and household services calculated to present value
- Past and future medical expenses calculated to present value – using Core CPI from prior year
- Severity and/or permanency of injury
- Any unique effect of the injury on the Claimant's quality of life
- Pain and suffering
- Existence of multiple injuries not separately compensated
- Existence of bystander Claims under applicable law
- Existence of loss of consortium Claims under applicable law

Potential Specific Injury Adjustment Criteria are identified in the Valuation Schedule. The Valuation Schedule is organized into Groups of Injury Types as follows.

- Group 1: Lacerative Injuries
  - Minor Bruising
  - Neck or Back Injuries
  - Torso/Limb Lacerative Injuries
  - Head/Facial/Neck Lacerative Injuries
  - Skull/Facial/Neck Fractures
  - Permanent eye injury not resulting in any degree of legal blindness
  - Loss of Vision in One Eye
  - Loss of Vision in Two Eyes
- Group 2: Traumatic Brain Injury
  - Mild TBI
  - Moderate TBI
  - Severe TBI
- Group 3: Other Laceration-Related Injury
  - Larynx or Vocal Cord Injury
  - Vascular Complications
  - Nerve Damage or Facial or Limb Paralysis
- Group 4: Hearing Injury
  - Non-permanent Hearing Injury
  - Permanent Hearing Injury
  - Permanent Hearing Loss or Impairment
- Ungrouped Injury Types
  - Non-permanent eye injury
  - Other Broken/Fractured Bones
  - Internal Injuries
  - Injury to Pregnancy
  - Dental Injury

## **B. Valuation Schedule**

### **Fatality**

Compensation for a fatality is not stackable (i.e., a Claimant who receives compensation for a Fatality will not receive separate compensation for any other Injury Type).

Injury Type	Values	Injury Criteria
Fatality	Base: \$2,000,000 High: \$5,000,000	Specific Injury Adjustment Criteria for a Fatality include miscarriage. <sup>23</sup> For a Fatality, all Global Adjustment Criteria apply.

### Group 1: Lacerative Injuries

Claimant receives compensation in the range of most valuable Injury Type in this Group for which he qualifies, if any. That compensation is stackable with compensation for injuries in other Groups.

Injury Type	Values	Injury Criteria
Minor Bruising	Base: \$10,000 High: \$50,000	Minor bruising, contusions, or swelling. A minor bruise or contusion is a temporary bruise under the skin (subcutaneous) that might also involve deep bruising of the muscles (intramuscular). It does <u>not</u> include bruising of the bones (periosteal).
Neck or Back Injuries	Base: \$25,000 High: \$1,000,000	A neck or back injury or aggravation to existing neck or back injury confirmed by a medical opinion of a board-certified physician.  To receive compensation for nerve-related vertebrae damage requires medical documentation by a board-certified neurologist or neurosurgeon of the severity of the injury.

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<sup>23</sup> If the fatality of a pregnant mother also results in miscarriage of an unborn fetus, the Trustee may consider this fact in determining the level of compensation for the death of the mother if such claim is compensable under applicable law.



<b>Injury Type</b>	<b>Values</b>	<b>Injury Criteria</b>
Torso/Limb Lacerative Injuries <sup>24</sup>	Base: \$25,000 High: \$750,000	Abrasions, cuts, lacerations, contact burns, scarring, or other damage to the soft tissue of the torso or limbs, beyond minor bruising. <sup>25</sup> Includes bruising of the bones (periosteal).
Head/Facial/Neck Lacerative Injuries	Base: \$50,000 High: \$1,250,000	Lacerations, disfigurement, abrasions, cuts, contact burns, scarring, or other damage to the soft tissue of the head (including scalp, face, and ears) and/or neck, beyond minor bruising. Includes bruising of the bones (periosteal).
Head/Facial/Neck Fractures	Base: \$100,000 High: \$1,500,000	Fracture of skull, mandible, facial bones, and/or neck.  Specific Injury Adjustment Criteria include need for surgical treatment, hospitalization, and severity of lacerations and scarring.

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<sup>24</sup> Specific Injury Adjustment Criteria for all lacerative injury categories include but are not limited to the following: number or severity of these and other injuries; visibility when clothed; surgical or non-surgical removal of metal fragments from skin; surgical drain; surgical scar repair; number of surgeries; infection; hypertrophic scars; keloid scars; atrophic scars; disfigurement; sensory, and/or autonomic impairment or weakness; and neuropathy. If the Claimant is seeking compensation for sensory and/or autonomic impairment or weakness or neuropathy, then that injury must be supported by diagnosis of a board-certified neurologist or neurosurgeon. Relevant properties of scars include size, thickness, reduced pliability, pigmentation, pain, innervation, pruritus, texture, vascularity, irregularities, hatchmarks, location, surface area, depth, and thickness. Claimant may submit a scar severity rating prepared by a qualified medical professional, and if applicable submit ratings on a rating scale, including but not limited to the Stony Brook, Vancouver, the Manchester Scar Scale, and POSAS scales. Scarring may be from lacerations, burns, and/or any subsequent treatments.

<sup>25</sup> For all lacerative injury categories, “soft tissue” includes oral and nasal tissue, muscles, ligaments, and tendons.

<b>Injury Type</b>	<b>Values</b>	<b>Injury Criteria</b>
Permanent eye injury not resulting in any degree of legal blindness	Base: \$100,000 High: \$1,250,000	Permanent eye injury diagnosed by a board-certified ophthalmologist, including but not limited to permanent diminished vision.  Claimant may submit evidence of eye injury severity based on 2015 AIS or Ocular Trauma Score (OTS). Specific Injury Adjustment Criteria include injury severity based on recognized trauma scale, need for additional medical care supported by board-certified ophthalmologist, inability for the impairment to be corrected, overall vision of Claimant.
Loss of Vision in One Eye	Base: \$1,750,000 High: \$5,000,000	Diagnosis of uncorrectable legal blindness in one eye at the time of evaluation by a board-certified ophthalmologist. The Claimant's overall vision in both eyes pre- and post-trauma should be considered when determining appropriate compensation.
Loss of Vision in Two Eyes	Base: \$3,000,000 High: \$5,000,000	Diagnosis of uncorrectable legal blindness in both eyes at the time of evaluation by a board-certified ophthalmologist. The Claimant's overall vision in both eyes pre- and post-trauma should be considered when determining appropriate compensation. For the avoidance of doubt, if a Claimant already was legally blind in one eye, and the event resulted in legal blindness in the other eye, this category governs.

## **Group 2: Traumatic Brain Injury**

Claimant receives compensation in the range of the most valuable Injury Type in this Group for which s/he qualifies, if any. That compensation is stackable with compensation for injuries in other Groups.

<b>Traumatic Brain Injury Type</b>	<b>Values</b>	<b>Injury Criteria</b>
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Traumatic Brain Injury Type	Values	Injury Criteria
Mild Traumatic Brain Injury (Concussion)	Base: \$25,000 High: \$300,000	Requires: (1) Diagnosis of a traumatic brain injury (“TBI”) <sup>26</sup> by a board-certified or treating physician; and (2) supporting medical documentation establishing the degree and severity of the TBI.
Moderate Traumatic Brain Injury	Base: \$250,000 High: \$750,000	Requires: (1) Diagnosis of a moderate TBI <sup>27</sup> and supporting medical documentation establishing the degree and severity of the TBI by a board-certified neurologist, neuropsychiatrist, or neuropsychologist; and (2) a Life Care Plan written by a qualified medical professional where applicable for claims being made for current or future attendant care calculated to present value.
Severe Traumatic Brain Injury	Base: \$1,000,000 High: \$3,000,000	Requires: (1) Diagnosis of a severe TBI <sup>28</sup> and supporting medical documentation establishing the degree and severity of the TBI by a board-certified neurologist, neuropsychiatrist, or neuropsychologist; and (2) a Life Care Plan written by a qualified medical professional where applicable for claims being made for current or future attendant care calculated to present value.

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<sup>26</sup> Mild TBI is defined as a loss or alteration of consciousness for less than thirty minutes, post-traumatic amnesia of less than one hour where observable in light of the claimant's multiple injuries, demonstrated and documented focal neurologic deficits that may or may not be transient, and/or Glasgow Coma Score (GCS) of 13-15, an AIS-Head of 1, or other TBI rating tool typically relied on by a neurologist. Mild TBI is also known as concussion. *See* Daniel Friedland, Peter Hutchison, *Classification of Traumatic Brain Injury*, *Advances in Clinical Neuroscience and Rehabilitation* (July 27, 2013), <http://www.acnr.co.uk/2013/07/classification-of-traumatic-brain-injury>.

<sup>27</sup> Moderate TBI entail loss of consciousness for greater than thirty minutes, post-traumatic amnesia for greater than one hour where observable in light of the claimant's multiple injuries, and additional ratings the neurologist concludes supports the diagnosis, which could include a GCS of 9-12, an AIS-Head of 2, or other TBI rating tool typically relied on by a neurologist. *Id.*

<sup>28</sup> Severe TBI entail all of the moderate criteria listed above, and requires additional ratings the neurologist concludes supports the diagnosis, which could include a GCS of 8 or lower, an AIS-Head of 3 or higher, or other TBI rating tool typically relied on by a neurologist.

### Group 3: Other Laceration-Related Injury

Claimant receives compensation in the range of most valuable Injury Type in this Group for which s/he qualifies, if any. That compensation is stackable with compensation for injuries in other Groups.

<b>Other Laceration-Related Injury Type</b>	<b>Values</b>	<b>Injury Criteria</b>
Larynx or Vocal Cord Injury	Base: \$150,000 High: \$2,500,000	<p>Larynx, trachea, or vocal cord injury (including injuries that result in partial loss of voice) confirmed by a medical opinion of a board-certified physician.</p> <p>Specific adjustment criteria can include level of severity of laryngeal trauma on Schaefer Classification system.</p> <p>Compensation for permanent loss of voice must be supported by diagnosis by a board-certified ear, nose, and throat physician.</p> <p>If such physician diagnoses total loss of voice, the Claimant has an automatic right to IR.</p>
Vascular Complications	Base: \$50,000 High: \$400,000	Diagnosis of injury caused by loss of blood or damage to circulatory system confirmed by a medical opinion of a board-certified physician.
Nerve Damage, Facial or Limb Paralysis	Base: \$50,000 High: \$2,500,000	<p>Nerve damage or paralysis of facial or limb muscles including motor impairment. This category does not include nerve-related vertebrae injuries to the neck or back.</p> <p>To receive compensation for this injury, the claimant must submit medical documentation of the severity and permanency of the injury by a board-certified neurologist or neurosurgeon.</p> <p>Specific Injury Adjustment Criteria would include the degree and location of nerve damage (e.g., facial, loss of use of limb/hand).</p>

**Group 4: Hearing Injury**

Claimant receives compensation in the range of most valuable Injury Type in this Group for which s/he qualifies, if any. That compensation is stackable with compensation for injuries in other Groups.

<b>Hearing Injury Type</b>	<b>Values</b>	<b>Injury Criteria</b>
Non-permanent Hearing Injury	Base: \$10,000 High: \$125,000	Tinnitus, inner ear pain, temporary hearing loss, balance issues, or other ear related injuries such as eardrum damage, supported by a qualified physician.
Permanent Hearing Injury	Base: \$100,000 High: \$1,500,000	Permanent moderate to severe tinnitus, inner ear pain, slight, mild, or moderate hearing loss, mildly or moderately diminished speech recognition, balance issues, or other ear related injuries such as eardrum damage, confirmed by a board-certified ear, nose, and throat (“ENT”) physician.
Permanent Hearing Loss or Impairment	Base: \$150,000 High: \$3,000,000	Permanent diminishment of hearing and/or reduced speech recognition confirmed by a board-certified ear, nose, and throat (“ENT”) physician.  Specific Injury Adjustment Criteria include pre-accident hearing status, classification by an ENT of severity of hearing loss using recognized dB scale, severe diminished speech recognition, and the effect of auditory aids mitigation and ongoing speech/hearing therapy.

### Stackable Injury Types Not in a Group

Claimant receives compensation in the applicable range for each of the Injury Types below for which s/he qualifies, if any. Compensation for these Injury Types is stackable with compensation for all Groups.

Injury Type	Values	Injury Criteria
Non-permanent eye injury	Base: \$10,000 High: \$175,000	Non-permanent eye injury diagnosed by a physician, including but not limited to non-permanent diminished vision.  Claimant may submit evidence of eye injury severity based on 2015 AIS or Ocular Trauma Score (OTS). Specific Injury Adjustment Criteria include injury severity based on recognized trauma scale, need for additional medical care supported by physician, and overall vision of Claimant.
Other Broken/Fractured Bones	Base: \$25,000 High: \$175,000	Broken or fractured bones other than skull and facial bones.  Specific Injury Adjustment Criteria include need for surgical treatment, and consideration that the likelihood of limb fractures from rupture event is extremely rare and likelihood of lower extremity fractures caused by airbag deployment is extremely rare unless occupant is out of position.
Internal Injuries	Base: \$50,000 High: \$500,000	Damage to the internal organs, such as collapsed lung, spleen, kidney, damage to diaphragm, etc. confirmed by a medical opinion of a board-certified physician.

Injury Type	Values	Injury Criteria
Injury to Pregnancy	Base: \$100,000 High: \$2,000,000	Miscarriage, complications to pregnancy, or injury to fetus confirmed by a medical opinion of a board-certified obstetrician. <sup>29</sup> This category is only applicable where the mother is not deceased. If the mother's case is a fatality, then the fatality category governs. Additionally, see footnote 23 above.
Dental Injury	Base: \$25,000 High: \$125,000	Loss of one or more teeth or other dental injury. Specific Injury Adjustment Criteria include number and location of teeth damaged or lost, number and duration of treatments to replace the teeth or get implants, position of teeth, projected future cost of replacing the implants, and impact on everyday life.

**C. Loss of Consortium and Bystander Claims**

The Trustee may increase a Claimant’s compensation within the applicable range(s) based on the availability of a Loss of Consortium and/or Bystander Claim under the applicable law of any jurisdiction in which the claim could be properly filed. The Trustee shall take into account whether the claim would be permitted by the relevant state law most favorable to the Claimant that could be applied to the claim in the tort system.

A Claimant may request consideration for either or both of these Global Adjustment Criteria with submission of a Claim, and submit supporting documentation at that time. If the Trustee finds that either or both of these Global Adjustment Criteria are applicable, he will determine a single value for the Claim and apportion the amount between the person directly

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<sup>29</sup> This claim is compensable only if permitted by applicable law.

injured and the third party or parties. Any third party (such as a Bystander or Loss of Consortium claimant) for whom compensation was provided must provide a Claimant Release.



## **EXHIBIT C**

### **Jury Instruction**

1. The Defendant in this case is a PSAN PI/WD Trust (the “PSAN Defendant”) created by the United States Bankruptcy Court when Takata filed for bankruptcy. The PSAN Defendant was created to provide compensation for injuries caused by defective Takata inflators. The PSAN Defendant has assumed the liability of Takata for injuries caused by defective inflators designed, manufactured, and sold by Takata, and liability of [Relevant P-OEM] for injuries caused by defective Takata inflators installed in [Relevant P-OEM] vehicles. Therefore, the PSAN Defendant is responsible just as if it were both [Relevant P-OEM] and Takata, and they were the defendants here.
2. In order to recover in this case, the Plaintiff must prove three essential elements of her claim by the preponderance or greater weight of the evidence. She must prove: (1) that the Defendant designed, manufactured or sold a product that was at the time it was sold in a defective condition unreasonably dangerous to the Plaintiff; (2) the Plaintiff suffered personal injuries; and (3) the defective product was a contributing cause of the Plaintiff’s injuries.
3. The Defendant agrees and stipulates that Takata designed manufactured and sold the airbag inflator that is the subject of this action and that [Relevant P-OEM] sold that inflator by incorporating it into the (model and model year) vehicle in which the Plaintiff was a passenger (or the driver.) The Defendant further agrees that the inflator was in a defective condition unreasonably dangerous when it was sold. Therefore, the first element of Plaintiff’s claim is established and requires no further proof by the plaintiff. You must accept the stipulation as conclusive evidence that the product was defective.

4. Therefore, in order for Plaintiff to recover in this case you must answer the following questions:

- Did Plaintiff present evidence to convince you that by a preponderance of the evidence more likely than not the PSAN Inflator Defect was a contributing cause of the Plaintiff's injuries [or death]? If the answer to that question is no, you must find the Defendant is not liable and render a verdict in favor of the Defendant. [If causation is admitted this will be omitted and Causation stipulated above] [If aggressive deployment alleged, add enhancement language]
- If the answer to that question is yes, you will be asked to determine the amount of money that will fully and fairly compensate Plaintiff for those injuries and award those damages in favor of the Plaintiff.