INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6)

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October 22, 2021

VIA E-MAIL, PURSUANT TO COVID-19 MODIFIED PROCEDURES

Ann Carlson
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE.
West Building W41-227
Washington, DC 20590

Re: Request for Confidentiality Concerning Daimler Vans Response to Information Request Associated with PE21-019 Part II

Dear Chief Counsel Carlson:

In accordance with 5 U.S.C. § 552(b)(4)&(6), 49 CFR Part 512, and other applicable authority, Mercedes-Benz USA, LLC and Mercedes-Benz AG (hereinafter referred to for convenience as "Daimler Vans") hereby request that the information described herein be protected from public disclosure as confidential business information ("CBI"). This letter requests confidential treatment for confidential or other propriety information submitted by Daimler Vans with its response to NHTSA's Information Request associated with PE21-019.

This Request for Confidentiality is submitted electronically in accordance with NHTSA's Office of Chief Counsel policy on submission of CBI during COVID-19 Social Distancing. If NHTSA has any questions regarding this confidentiality request, please contact me. If at any time NHSTA considers making publicly available any of the information Daimler Vans has designated as CBI, Daimler Vans respectfully request that it be afforded an opportunity to respond and to address any challenges or concerns identified by the Agency prior to any final confidentiality determination or public disclosure.

I. Description of Information for Which Confidentiality is Being Requested and Basis for Claims of Confidentiality

The confidential information contained in Daimler Vans' response to the Information Request constitutes commercial information that is not publicly disclosed by Daimler Vans. The response includes confidential information concerning Daimler Vans' vehicle sales and production records; internal procedures for responding to customer complaints, warranty claims, field reports, and other reports involving a crash, injury, property damage or other incident; technical

records, analyses, and other information regarding vehicle equipment specifications, design, operation and testing; intellectual property and trade secret information; part numbers and specifications; communications with affiliates, dealers, or fleet customers; supplier information and communications; and information regarding fleet customers and associated vehicle fleets. This type of information is used for internal operations, decision-making, and planning, and is not released to the public. The submitted material therefore is entitled to confidential treatment under 49 CFR § 512.15; 512.3(c). The response also includes blueprints and engineering drawings containing process and production data which are entitled to confidential treatment under 40 CFR Part 512, Appendix B.

The CBI materials described in this request are also entitled to protection from public disclosure under 5 U.S.C. § 552(b) in accordance with *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992) (en banc) because the materials have been voluntarily submitted to NHTSA and are not customarily released to the public by Daimler Vans. 49 CFR § 512.15(e); 68 *Fed. Reg.* 44209, 44227-28 (July 28, 2003) (incorporating *Critical Mass Energy Project* in Part 512).

In addition, information included in Daimler Vans' response to the Information Request includes documents containing personal identifying information that is also exempted from public disclosure under 49 CFR § 512.15(e); 5 U.S.C. § 552(b)(6). Release of this information "would constitute a clearly unwarranted invasion of personal privacy" and the public interest in disclosure does not weigh against the privacy interest of non-disclosure. *See Associated Press v. DOD*, 554 F.3d 274, 291 (2d Cir. 2009) ("Only where a privacy interest is implicated does the public interest for which the information will serve become relevant and require a balancing of the competing interests.") (quoting *FLRA v. VA*, 958 F.2d 503, 509 (2d Cir. 1992)).

The information designated as confidential in Daimler Vans' response to the Information Request has not been publicly disclosed. Daimler Vans has taken measures to ensure that the confidential information contained in the response to the Information Request is not made available to any persons outside of Daimler Vans, or its parents, suppliers, vendors, fleet customers, and affiliates. The information has been disclosed outside of the company as necessary for the purpose of obtaining advice and assistance from counsel and other confidential advisers. However, such disclosures do not compromise the confidential nature of the information because of the close business relationship between Daimler Vans and its parents and affiliates, nor does selective disclosure to advisers bound by obligations of confidentiality compromise the confidential nature of the information.

II. Requested Duration of Confidential Treatment

We request that confidentiality be granted indefinitely for the items marked confidential in Daimler Vans' response to the Information Request associated with PE21-019, or until such time as the information is no longer held confidential by Daimler Vans.

III. Confidentiality Designations

In accordance with Part 512, confidential information included with this submission is marked "CONFIDENTIAL BUSINESS INFORMATION" and such information contained within a portion of a single page is enclosed within brackets. 49 CFR 512.6(b).

Privilege Labels and Statements

Some of the documents and records Daimler Vans has produced as part of its Response to the Information Request bear the following label (or a similar legend or label suggesting a claim of attorney-client privilege document or attorney work product protection):

Most of the documents with such a label do include confidential business information, trade secret information, personal identifying information, or other information that is entitled to confidentiality protections under 5 U.S.C. § 552(b), 49 CFR Part 512, or other applicable authority. However, a "Privilege" label or logo (such as the above example) on documents that Daimler Vans is producing in response to NHTSA's PE21-019 Information Request is not, alone, intended to assert that documents bearing that label are subject to attorney-client privilege, attorney work product protections, or other privilege. Documents or information subject to attorney-client privilege, attorney work product, or other privilege from production have been withheld from this Response and will be identified in a privilege log. Accordingly, the above privilege tag may be disregarded for purposes of this Daimler Vans' Response to the Information Request.

Erroneous DRAFT labels

Other documents produced as part of this Response, including but not necessarily limited to copies of several PowerPoint presentations produced at Daimler Vans' Response Documents Part II (PE21-019), Response 8 Materials Folder 8.3, bear a "DRAFT" label in the top right hand corner of each slide.. Those documents were prepared in response to this Information Request, and they are not drafts, they are the final versions intended to be included in this

submission. The DRAFT label was applied erroneously and cannot readily be removed. The erroneous DRAFT label on the documents in Folder 8.3 may be disregarded.

IV. Response, Inquiries, or Requests for Information

Please direct NHTSA's response to this Request for Confidentiality, and any inquiries or requests for additional information to my attention at:

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In accordance with NHTSA's policy on submission of CBI during COVID-19 social distancing, enclosed with this request via email file transfer is a complete copy of Daimler Vans' Response to The Information Request Associated With PE21-019 and a certification signed by Daimler Vans. This submission does not contain non-confidential information, so Daimler Vans does not submit a separate redacted version as otherwise contemplated by regulations.

Respectfully submitted,

[redacted]

PAH:

cc: Ashley Simpson, NHTSA
Anthony Washington, Daimler Vans

enclosure: