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

cruise

February 20, 2024

John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
NHTSA West Building W41-227
1200 New Jersey Avenue, SE
Washington, D.C. 20590

CONFIDENTIAL

VIA SECURE FILE TRANSFER AND CBI PORTAL

Re: Request for Confidential Treatment of Certain Information Submitted by Cruise LLC to NHTSA on February 20, 2024, in Connection with Response to PE23-018

Dear Acting Chief Counsel Donaldson:

This letter requests confidential treatment under 49 C.F.R. part 512 and Exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4)) ("**FOIA**") for certain confidential materials submitted by Cruise LLC ("**Cruise**") to the National Highway Traffic Safety Administration ("**NHTSA**" or the "**Agency**") on February 20, 2024.

A. Description of the Confidential Information (49 C.F.R. § 512.8(a))

On February 20, 2024, Cruise submitted certain confidential materials (the "**Confidential Information**") in response ("**Response**") to NHTSA's November 27, 2023, Information Request (ID23018-02) ("**IR**") issued in connection with NHTSA Preliminary Evaluation 23-018. The Confidential Information is certain information contained in Cruise's Response indicated by the legend "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" at the top of each page or by the legend "CBI" in the title of each electronic file.

B. Production format (49 C.F.R. §§ 512.5 and 512.6)

Per NHTSA's instructions pursuant to PE23-018 regarding the submission of confidential business information, and in accordance with Cruise's email correspondence with the Agency on February 16, 2024, Cruise submitted a public and nonpublic copy of its Response containing the Confidential Information as outlined below.

First, as agreed upon with the Agency on February 16, 2024, Cruise submitted its document production and video file production via an encrypted pincode hard drive, hand delivered to the Agency on February 20, 2024 (Cruise's "Physical Submission"). The encrypted hard drive contains seven folders:

- REQUEST_03_CBI
- REQUEST_06_CBI
- REQUEST_08_CBI
- REQUEST_10_CBI
- REQUEST_11_CBI

- REQUEST_11
- UPI_CBI

Each top level folder marked "CBI" contains the Confidential Information. The entirety of each folder marked CBI (including each subfolder and file contained therein), is Confidential Information and Cruise requests confidential treatment for all information contained in these folders. In addition, the Confidential Information is indicated by the legend "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS" at the top of each page or, for video files, by the legend "CBI" in the title of each electronic file. If a page is partially confidential, Cruise has, as required by 49 C.F.R. § 512.6(c)(2), designated the Confidential Information with brackets. The "REQUEST_11" folder, labeled without "CBI," contains only those materials that do not include Confidential Information.

Second, in addition to Cruise's Physical Submission, Cruise submitted certain Confidential Information electronically to Sharon Yukevich for the NHTSA Office of Defects Investigation via secure file transfer and through the Agency's CBI Portal (Cruise's "Electronic Submission"). Cruise's Electronic Submission contains three .pdf files and one Excel (.xlsx), provided in two folders:

- **Nonpublic Copy**: Cruise's Electronic Submission contains a folder labeled "CONFIDENTIAL – Cruise – PE23-018 Response (02.20.2024)." This folder contains the Confidential Information from Cruise's Electronic Submission, including Cruise's .pdf response, .pdf confidentiality request, and .xlsx data spreadsheet. In accordance with NHTSA's instructions, Cruise has labeled the pages of the .pdf files that contain Confidential Information "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" and by the legend "CBI" in the title of the electronic file name. Cruise requests confidential treatment for all information contained in this folder.

- **Public Copy**: Cruise's electronic submission also contains a folder labeled "NON-CONFIDENTIAL – Cruise – PE23-018 Response (02.20.2024)." This folder contains only those materials that do not include Confidential Information.

C. Basis for confidential treatment (49 C.F.R. §§ 512.8(b) and 512.8(c))

Cruise's request for confidential treatment is governed by FOIA Exemption 4, which shields from mandatory disclosure confidential commercial or financial information. 5 U.S.C. § 552(b)(4); *see also* 49 C.F.R. § 512.15. The Confidential Information qualifies as "confidential" under FOIA Exemption 4 because Cruise does not customarily release or otherwise provide the Confidential Information or information like the Confidential Information to the public. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019). Disclosure of the Confidential Information would also likely cause competitive harm to Cruise because the autonomous vehicle industry is highly competitive, and the Confidential Information would

reveal highly confidential design elements of Cruise automated driving systems, operational and internal procedures, as well as confidential and sensitive business matters.

Cruise treats the Confidential Information as confidential and proprietary and makes it available only on an as-needed basis to authorized Cruise personnel. Cruise utilizes numerous systems and processes that limit access to and prevent unauthorized disclosure of the Confidential Information, including: (i) password-protected electronic record-keeping systems; (ii) security systems that limit physical access to Cruise electronic and hard-copy record-storage facilities; and (iii) information-security training that emphasizes the importance of preventing unauthorized disclosures of information like the Confidential Information. It is Cruise's expectation that the Agency will keep the Confidential Information confidential, in accordance with *Food Marketing Institute*.

D. Duration of confidential treatment (49 C.F.R. § 512.8(e))

Because Cruise does not anticipate ever customarily disclosing this kind of information to the public, Cruise requests that NHTSA treat the Confidential Information as confidential without a time limitation.

E. Contact information (49 C.F.R. § 512.8(f))

Please direct all inquiries and responses to this request to: Rachel Ross, Cruise LLC, Senior Counsel, Regulatory and Compliance, at rachel.ross@getcruise.com.

If NHTSA receives a request to disclose the Confidential Information, Cruise respectfully requests notification and an opportunity to provide, if necessary, additional support for its position that the Confidential Information is entitled to confidential treatment under FOIA.

Sincerely,

[redacted]

Steve Kenner
Chief Safety Officer
Cruise LLC

Attachments
Attachment A: Supporting Certificate of Steve Kenner

Attachment A

Supporting Certificate of Steve Kenner
Cruise LLC

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Steve Kenner, pursuant to the provisions of 49 C.F.R. § 512, state as follows:

(1) I am the Chief Safety Officer for Cruise LLC and am authorized to execute this certificate on its behalf.

(2) I certify that the Confidential Information (as defined in Cruise's letter to Mr. John Donaldson, dated February 20, 2024) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) and 49 C.F.R. § 512.

(3) I hereby request that the Confidential Information be protected without a time limitation.

(4) This certification is based on my personal knowledge or on information provided to me by Cruise personnel who have responsibility for information like the Confidential Information.

(5) Based on that information, to the best of my knowledge, information, and belief, the Confidential Information has never been released or made available outside Cruise except to authorized Cruise contractors, suppliers, confidential advisors, and other third parties who are legally obligated to maintain the confidentiality of the Confidential Information.

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations regarding unauthorized or inadvertent disclosure of the Confidential Information.

(7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of February, 2024.



Steve Kenner
Chief Safety Officer
Cruise LLC