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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Intercontinental Exchange, Inc.,
a corporation, and**

**Black Knight, Inc.,
a corporation,**

Respondents.

Docket No. 9413

**MOTION OF CALYX TECHNOLOGY, INC. TO QUASH OR LIMIT
RESPONDENT'S SUBPOENA**

Calyx Technology, Inc., a non-party to this proceeding and recipient of a Subpoena issued by Counsel for Respondent Intercontinental Exchange, Inc., (“ICE”), a copy of which is attached hereto as Exhibit “A,” hereby files, pursuant to §3.34(c) of the Rules of Practice for Adjudicative Proceedings, 16 CFR 3.34 (c), this its Motion to Quash or Limit Subpoena, and states the following. This Motion is supported by the Declaration of Nicholas Dizer, attached hereto as Exhibit “B.”

BACKGROUND FACTS

Calyx Technology, Inc., (“Calyx”) is a long-standing provider of services to the mortgage lending community through its Loan Origination System (“LOS”). It is not a “dominant” provider of LOS services, or of product pricing and eligibility (“PPE”) services for the mortgage lending industry, as the Commission has alleged concerning the Respondents herein. Calyx is not a party or third party beneficiary to any of the merger-related agreements involving the Respondents or the interrelated interests of a third party, Constellation Web Solutions, Inc., (“CWS”), which

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allegedly is to be the recipient of certain aspects of business to be spun off as part of the merger agreement. Instead, Calyx is a competitor of Respondents and CWS, quietly seeking to continue its business independent of the proposed merger and related transactions.

**INCORPORATION OF MOTION TO QUASH OR LIMIT SUBPOENA
SERVED BY COMPLAINT COUNSEL**

Calyx is simultaneously filing its Motion to Quash or Limit the Subpoena served by Complaint Counsel. Because the Subpoena served by ICE requires production of all documents covered by the Subpoena issued by Complaint Counsel, in order to avoid duplication, Calyx hereby incorporates by this reference its entire Motion to Quash or Limit the Subpoena served by Complaint Counsel as if the same were set forth herein *in haec verba*.

ARGUMENT

I.

THE SUBPOENA IS OVERWHELMINGLY BURDENSOME AND OPPRESSIVE

A.

The time period for compliance is impossible to satisfy

1. The persons covered are too numerous for a meaningful response

The subpoena seeks information spanning a six (6) year time period, and purports to apply to each and every data source for not only Calyx, but also parents, subsidiaries, agents, representatives, and employees. It purports to require a “complete search” of all data sources for all persons and entities coming within the scope of its definition of “company.” It purports to require production of all such documents within ten (10) days from service. Further, it purports to require a narrative explanation for any documents lost or not recovered during the process of compliance.

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Calyx has approximately 120 employees in four separate locations across the country, and an uncertain number of additional “agents and representatives.” Obviously, the term “agents and representatives” could cover a real estate broker employed four years ago to seek leased office space, as well as other agents associated for limited purposes. Determination of just how many “agents and representatives” need to be included is, in and of itself, a virtually impossible task. The subpoena should be quashed or limited to narrow the scope of employees, agents, and representatives to a reasonable number of persons whose involvement would be meaningful to these proceedings. Obviously, the janitor, or a file clerk, or a purely ministerial employee, need not be included.

In today’s world, each such employee, agent, or representative is likely to have access to a desktop computer, one or more smart phones, one or more tablets, laptops, or similar devices, and one or more home computers, in addition to having access to the actual Company servers. Given the disposable nature of smart phones, tablets, and laptops in today’s reality, there will undoubtedly be smart phones that were dropped in water, lost, or simply replaced in the ordinary course of business over a six year time period. This means that the subpoena, literally interpreted, would likely require searching 2,000 or more devices, with each search requiring additional time and expense, and potential attempts to recover lost or replace devices, which will simply be impossible. Judicial notice should be taken that in this day and age, people will likely be erasing text or IMS, and emails, on a regular basis. Because there is absolutely no reason to suppose that a janitor or file clerk employed by Calyx, or a real estate broker engaged years ago, possess documents relevant to this proceeding, the scope of the subpoena must be limited to cover persons whose access would be meaningful.

PUBLIC**2. The definitions and instructions for collection and production increase the burden and expense.**

Further, the definitions and instructions included with the subpoena require that the searches be conducted in a forensically secure manner, preserving metadata, converting the documents found into a different format and adding, through another conversion, a printout of metadata information, plus narrative explanations relating to sources accessed, technology assisted review software, and more (as noted below, such narratives are really impermissible interrogatories). Calyx does not have any employee capable of performing a search for responsive documents in accordance with such instructions. This will require the involvement of Calyx's legal counsel, and the retention of an outside consulting firm knowledgeable in conducting and collecting documents in this fashion. The estimates of such cost are set forth below.

As a result, literally interpreted, the subpoena would likely require searches that would require extensive manpower and an undefinable number of hours of work. This could not possibly be responded to in less than sixty (60) days, even if the scope is limited. The existing ten (10) day time requirement has been further complicated by the fact that at the moment that the subpoena was received by counsel for Calyx, the direct contact at the company whom counsel would consult in connection with responding to the subpoena, was on his honeymoon and completely unavailable to assist in responding to the subpoena, with his return date to the company occurring within a day of the return date under the subpoena.

As a result, due to the scope and extreme amount of work necessitated by the subpoena as presently written, Calyx will require at least sixty (60) additional days to respond to the subpoena, even if some limitations as to scope of persons covered and the data searches required is granted, and even more than sixty (60) days if no such limits are granted.

PUBLIC**B.****Blanket coverage of all communications between Calyx and its Counsel herein is blatantly impermissible.**

Item 2 of the Subpoena purports to require production of various categories of documents and communications relating to the investigation conducted by the FTC prior to the filing of this proceeding, the proposed merger agreement at issue herein, or this proceeding. The definitions of “company” and “communications” make it clear that this item will include each and every communication between Calyx and its counsel relating to all these matters, with an ongoing duty of supplementation. Coverage of communications between Calyx and its counsel in this proceeding is improper because it would purportedly require preparation of an ongoing privilege log with supplementation every time Calyx communicates with its counsel herein. Such a burdensome requirement is completely improper. Calyx should not be required to produce a privilege log for its communications with its counsel in this proceeding, and such documents should be excluded from the scope of the Subpoena.

C.**The definitions and instructions of the subpoena create additional unreasonable practicality burdens**

In addition to the incredibly overbroad coverage of the subpoena, extending to every “agent and representative,” including present counsel in this proceeding and requiring a “complete” search of all available devices, the subpoena purports to require that Calyx produce documents, in addition to the native formats in which they currently exist, in TIFF format, with additional reporting of metadata and other information, printed out through a different software (OCR) reading. Calyx does not maintain any of its files in TIFF format, and does not utilize OCR software to record metadata for every file it has ever created or received over the last six (6) years,

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both because such formats are completely unusable and non-functionary in the ordinary course of business, and due to the enormous size of computer or cloud capacity for preservation of such types of document formats.

As a result, compliance with the subpoena as presently worded will impose the burden upon Calyx, a nonparty to this proceeding, of utilizing the professional services of its counsel, and of counsel's retention of an outside consulting firm capable of performing these tasks. It will require converting files from their currently usable and sensible formats to formats designed solely for the benefit of the litigants in this proceeding, utilizing certain document management platforms. Production of documents in native format allows the recipient, at its own expense and burden, to convert those files to TIFF formats, or any other format which they choose, and to conduct metadata searches and organize the results of such data, with any software and in any fashion which they choose. This will require, based upon the outline of expenses set forth below, many tens of thousands of dollars for the cost of counsel and the outside consulting firm.

Calyx recognizes that in today's litigation practice, such formatting and provision of metadata is often useful to the parties in a large and complex proceeding. The economic and practical burden of undertaking such conversion rightfully belongs to the parties to this proceeding, and not to Calyx. For this reason, the document production should be limited to documents in their native formats. Further, additional information as to metadata that is not available from the native documents should be limited to specified documents produced for which there is shown a genuine need for such additional information.

D.**The subpoena contains impermissible interrogatories.**

Included in the definitions and instructions accompanying the subpoena are impermissible

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interrogatories purporting to require assembly of additional information. This includes the manner of producing the metadata as specified, and also includes the explanations required in Instructions 6 (setting forth extensive “formatting” requirements, explanation of methods utilized to collect documents, and requirements of descriptions), 8, 10, 11, and 12.

The Commission has previously ruled that a subpoena duces tecum which includes “specifications” in the instructions that amount to interrogatories, requiring preparation of additional documents not already in existence, is improper. *In the Matter of Exxon Corporation*. 1976 FTC LEXIS 70, Docket No.8934. Further, a subpoena which by its time scope, and breadth of documents to be produced, is improper. *Id.*

D.**The economic burden of compliance with the subpoena would be crushing**

Since Calyx does not maintain files in the format called for in the subpoena, counsel for Calyx has obtained a bid for performing such compliance from an outside consulting firm which specializes in such services. The cost incurred for these services, as required by the subpoena, will entail:

- ★ Payment of \$475.00/hour for consultation to identify and map locations of potentially covered sites. If literally every one of the over 120 employees, and every agent’s and representative’s possible sites will have to be searched, this would amount to hundreds of hours. Calyx maintains files in at least seven different platforms requiring separate searching.
- ★ Payment of \$1,495.00 per account for web-based collection, which will require remote searching of each web or cloud account identified as potentially having responsive documents. This will require searching every email or other web account utilized by the hundreds of employees, agents, and representatives, which would likely require the search of hundreds of such accounts at \$1,495.00 each.
- ★ **\$1,695.00 per device** for searching servers, hard drives, smart phones, etc., for every user covered by the subpoena. As stated above, in today’s world

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this could likely require searching over 2,000 devices, and perhaps more, depending upon the scope of persons to be covered under the document production. This cost alone would be devastating.

- ★ \$295 per professional hour, plus additional fees per gigabyte, for ingesting documents into a system for production, processing, and de-duplicating the documents for production. The number of hours for such work will depend upon the breadth of the subpoena, and the number of persons and devices covered, but would almost certainly involve hundreds of hours for such services.
- ★ Additional fees for storage, platform access, and maintenance after creation, of \$1,750 per month, plus additional fees based on ancillary services for such storage and access, and dependent upon size of storage required

Additionally, production of documents under the subpoena will require involvement of Calyx's outside counsel, the undersigned firm, at an additional expense of \$400.00 per hour for professional time, which will undoubtedly require tens of thousands of dollars of professional time.

Based upon such quotation for such services, Calyx estimates that its cost of compliance with the literal terms of the subpoena will be an amount that would be devastating, and economically disastrous for Calyx. There is absolutely no justification for imposing such a horrendous economic burden upon Calyx, a non-party to this litigation.

Although proceedings before the Federal Trade Commission are governed by the FTC's Rules of Practice, the Federal Rules of Civil Procedure governing discovery disputes do provide an analytical framework to assist in an FTC proceeding. *In re Louisiana Real Estate Appraisers Board*, 2018 FTC LEXIS 36, Docket No.9374, *citing, In re LabMD, Inc* , 2014 FTC LEXIS 20, *12 (F.T.C. January 10, 2014) (*citing In re Crush Int '1*, 1972 FTC LEXIS 255, *5-6 (March 23, 1972)).

Rule 45(d) of the Federal Rules of Civil Procedure provides for cost-shifting of compliance with a subpoena from a non-party to the party issuing the subpoena. The Court in *High Rock*

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Westminster St., LLC v. Bank of America, N.A., 2014 U.S. Dist. LEXIS 200880, *6, 2014 WL 12782611 (D.R.I.2014), held that:

Pursuant to Rule 45(d)(2)(B)(ii), if the Court orders production by an objecting non-party, "the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance."

As the Court held in *Gamache v. Hogue*, 2022 U.S. Dist. LEXIS 99880, *5-7, 2022 WL 1624109 (M.D.Ga.2022):

"When discovery is sought from a non[-]party, . . . [t]he Court has an obligation to protect the non[-]party 'from significant expense resulting from compliance.'" *S.E.C. v. Avent*, No. 1:16-CV-2459-SCJ, 2018 U.S. Dist. LEXIS 233477, 2018 WL 8996272, at *1 (N.D. Ga. Apr. 26, 2018) (quoting Fed. R. Civ. P. 45(d)(2)(B)(ii)). Courts must shift costs to the party seeking production if a "non-party's subpoena compliance costs . . . are significant." *Hernandez v. Hendrix Produce, Inc.*, No. CV613-053, 2014 U.S. Dist. LEXIS 30861, 2014 WL 953503, at *2 n.5 (S.D. Ga. Mar. 10, 2014) (first citing Fed. R. Civ. P. 45(d)(2)(B)(ii); and then citing *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013)). "Despite the required protection from significant expense, '[a] non-party can be required to bear some or all of its expenses where the equities of a particular case demand it.'" *Sun Capital Partners, Inc. v. Twin City Fire Ins. Co.*, No. 12-CIV-81397-Marra/Matthewman, 2016 U.S. Dist. LEXIS 58208, 2016 WL 1658765, at *7 (S.D. Fla. Apr. 26, 2016) (alteration in original) (first quoting *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 303 (S.D.N.Y. 2003); and then citing *In re Seroquel Prods. Liab. Litig.*, No. 6:06-md-1769-Orl-22DAB, 2007 U.S. Dist. LEXIS 89903, 2007 WL 4287676, at *2 (M.D. Fla. Dec. 6, 2007)). "[T]o determine how much cost to shift from the non-party to the discovering party," courts consider three factors: (1) "whether the non-party actually has an interest in the outcome of the case," (2) "whether the non-party can more readily bear its cost than the requesting party," and (3) "whether the litigation is of public importance." *Id.* (citation omitted).

Furthermore,

[w]hen discovery is ordered against a non-party, the only question before the court in considering whether to shift costs is whether the subpoena imposes significant expense on the non-party. If so, the district court must order the party seeking discovery to bear at least enough of the cost of compliance to render the remainder non-significant.

Monitronics Int'l, Inc. v. Hall, Booth, Smith, P.C., No. 1:15-cv-3927-WSD, 2016 U.S. Dist. LEXIS 166402, 2016 WL 7030324, at *13 (N.D. Ga. Dec. 2, 2016) (emphasis added) (citation omitted). Under Rule 45, "[r]easonable compensation

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includes payment for out-of-pocket production expenses." *In re Hornbeam Corp.*, No. 14-CV-24887-LOUIS, 2019 U.S. Dist. LEXIS 179576, 2019 WL 5106768, at *5 (S.D. Fla. Sept. 27, 2019) (emphasis added) (first citing Fed. R. Civ. P. 45(d)(3)(C)(ii); and then citing *Cohen v. City of New York*, 255 F.R.D. 110, 126 (S.D.N.Y. 2008)).

Here, Calyx is not a party to this proceeding, and there is no justification whatsoever for seeking to impose upon Calyx the enormous and crushing cost that compliance with the literal terms of the subpoena would require. After limiting the scope of the subpoena to a reasonable category of persons, and devices, and providing additional time for searching and providing production in native format only, a reasonable cost deposit must be required in advance of the document production.

II.

THE SUBPOENA SEEKS PRODUCTION OF HIGHLY CONFIDENTIAL AND PROPRIETARY DOCUMENTS

The subpoena further requires production of documents establishing the following categories of information:

- All current customers including beginning date of usage and extent of usage of services provided by Calyx (items 3 and 5)
- The process by which Calyx developed and markets its services (item 7)
- Pricing information for Calyx customers and users (items 4 and 6)
- Calyx's business and strategic plans (items 8 and 9)

These categories of documents to be produced would go to the very heart of Calyx's development of its products and services, definition of its customers, determination of its pricing and profits, determination of its ongoing business and strategic plans, and would allow re-creation of its products and services, and identification of all of its customers who are most profitable.

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Such information is highly confidential and proprietary, and deserves the highest protection from competitors.

The two Respondents herein are direct competitors of Calyx. Provision of such information to them could seriously impact Calyx's ability to compete with them. In addition, a third party has appeared herein, Constellation Web Solutions, Inc., ("CWS"), which, according to the answers filed herein by the Respondents, is destined to receive, as a spinoff of the proposed merger, Black Knight's Empower LOS and other products, such that CSW could effectively compete in the LOS market. Therefore, the interested third party would likely also be benefitted by the disclosure of such highly confidential information from Calyx.

Calyx fully realizes and acknowledges the existence of a protective order entered herein by the Chief Administrative Law Judge. In order to provide full and complete security and confidentiality of the documents covered by the subpoena, however, Calyx requests that such protective order be entered by a United States District Judge to assure the ability to enforce the same through contempt proceedings if necessary.

CONCLUSION

For the reasons set forth above, Calyx Technology, Inc., prays that, pursuant to §3.34(c) of the Rules of Practice for Adjudicative Proceedings, 16 CFR 3.34 (c), the subpoena directed to it from Respondent Intercontinental Exchange, Inc., be quashed in its entirety, or, alternatively, modified and limited to cure the above stated objections, that ICE be ordered to deposit an amount deemed sufficient to cover the costs of compliance with the subpoena, as modified pursuant to this Motion, and that Calyx recover general relief.

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Respectfully submitted,

MIDDLEBERG RIDDLE GROUP

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ATTORNEYS FOR CALYX TECHNOLOGY,
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STATEMENT OF CONFERENCE

The undersigned counsel for Calyx Technology, Inc., hereby certifies, pursuant to Rule 3.22(g) of the FTC Rules of Practice, that he has conferred with counsel for Respondent Intercontinental Exchange, Inc., in good faith to resolve by agreement the issues raised by this motion and have been unable to reach such agreement on the issues noted in this motion. The undersigned conferred with counsel for ICE (Damos R. Anderson and Zachary Johns) on March 31, 2023, at 10:00 a.m., Central time; and on April 5, 2023, at 8:00 a.m., Central time, on Teams video conferences, for such purpose.

/s/ Emil Lippe, Jr.
Emil Lippe, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2023, I filed the foregoing document electronically using the Federal Trade Commission E-Filing system, which will send notice of such filing to:

April Tobar
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-113
Washington, DC 20580
electronicfilings@ftc.gov

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
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I also certify that I caused the foregoing document to be served via email to:

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Steven Couper
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Counsel for Respondent Intercontinental Exchange, Inc.

_____/s/ Emil Lippe, Jr.
Emil Lippe, Jr.
Counsel for Calyx Technology, Inc.

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EXHIBIT “A”



Subpoena for Production of Documentary Material

Provided by the Secretary of the Federal Trade Commission, and
 Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Calyx Technology, Inc.</p> <p>Jongsuk Sohn 3001 Geary Blvd. #201 San Francisco, CA 94118</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Morgan, Lewis, and Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Morgan, Lewis, and Bockius LLP Attn: Zachary Johns and Heather Nelson</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>April 10, 2023 at 5 pm ET</p>
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6. SUBJECT OF PROCEEDING

FTC Part 3 Action related to proposed transaction between Intercontinental Exchange, Inc. and Black Knight, Inc.

7. MATERIAL TO BE PRODUCED

See Attachment A

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>D. Michael Chappell Chief Administrative Law Judge</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Morgan, Lewis, and Bockius LLP Zachary Johns (zachary.johns@morganlewis.com; 215.963.5340) Heather Nelson (heather.nelson@morganlewis.com; 212.309.6061) Counsel for Respondent, Intercontinental Exchange, Inc.</p>
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<p>DATE SIGNED</p> <p>3/27/23</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p><i>/s/ Zachary M. Johns</i></p>
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INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 9.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or travel@ftc.gov. PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

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ATTACHMENT A

DEFINITIONS

1. The definitions set forth in 16 C.F.R. parts 3 and 4 are incorporated herein by reference and are applicable to all Requests contained herein.
2. “Administrative Proceeding” means the proceeding initiated on March 9, 2023, by the Federal Trade Commission under its administrative process, bearing Docket Number 9413, in connection with the Proposed Transaction.
3. “And/or,” “or,” and “and” are used inclusively, not exclusively. As such, “and/or,” “or,” and “and” should be construed so as to require the broadest possible response. If, for example, a request calls for information about “A or B” or “A and B,” You should produce all information about A and all information about B, as well as all information about A and B collectively.
4. “Ancillary Services” has the same definition as that in Paragraph 6 of the Complaint filed in the Administrative Proceeding, and means the services necessary to process, underwrite, fund, and close a loan for a residential real estate mortgage.¹
5. “Any,” “each” and “all” are to be construed as to be synonymous so as to bring within the scope of the discovery requests the broadest range of Documents.
6. “Bid” or “Bids” should be read to include final, draft, or preliminary bids, proposals, offers, estimates, inquiries, and quotes, whether written or oral.
7. “BK” means Black Knight, Inc.

¹ The definitions contained herein of defined terms in the Complaint, such as “Ancillary Services,” “LOS,” “PPE, or any other terms, are used for purposes of these Requests to be consistent with the Commission’s definitions and uses of those same terms in the Complaint. Respondents’ use of these terms should not be construed as an admission by Respondents of the correctness of any definition, appropriateness of any alleged relevant market, or truth of any other allegations in the Complaint.

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8. “Communication(s)” means any and all written, oral, telephonic, or other utterances of any nature whatsoever, shared, shown, and/or transferred between and/or among any person(s), including but not limited to any statements, inquiries, discussions, conversations, dialogues, correspondence, consultations, negotiations, agreements, understandings, meetings, letters, emails, faxes, notations, telegrams, advertisements, interviews, and all other Documents as herein defined. The phrase “communication between” is defined to include instances where one party addresses a communication to the other party but the other party does not respond, as well as instances in which the other party responds.

9. “Company” means Calyx Technology, Inc.; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any Person in which there is partial (25 percent or more) or total ownership or control between any other Person and the Company.

10. “Complaint” means the complaint filed by the FTC on March 9, 2023 in the Administrative Proceeding, bearing Docket Number 9413, in connection with the Proposed Transaction.

11. “Complaint Counsel” means the attorneys who are representing the FTC in connection with the Administrative Proceeding.

12. “Concerning” means, without limitation, the following concepts: referring to, regarding, relating, discussing, describing, reflecting, concerning, dealing with, pertaining to, analyzing, evaluating, evidencing, estimating, containing, constituting, studying, surveying, projecting, assessing, recording, summarizing, criticizing, reporting, commenting, or otherwise involving, in whole or in part.

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13. “Discuss” means that the Document, in whole or in part, addresses the designated subject matter, regardless of the length of the treatment or detail of analysis, but does not simply refer to the subject matter without elaboration. Further, “discuss” includes any operating or financial data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.

14. “Document” includes, by way of clarification to the definition in 16 C.F.R. §§ 3.34 and 3.37, without limitation any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” instant messaging (including the use of applications such as, but not limited to, SMS messages, iMessage, Slack, Confide, Signal, WhatsApp, Teams, or Gchat), questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form), including, without limitation, electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any other tangible things, and any preliminary versions, as well as drafts or revisions of any of the foregoing, whether produced or authored by the Company or anyone else.

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15. “Document Family” means a group of related Documents that are considered collectively as a group, including but not limited to an email with attachments (the email being the “parent” and the attachments being “children”). Paper Documents that are physically connected by binding, folders, or other cohesive physical or logical groupings should be deemed a Document Family.

16. “FTC” means the United States Federal Trade Commission, inclusive of any of its Commissioners, attorneys, staff, bureaus, agents, consultants, economists, advisors, or employees.

17. “ICE” means Intercontinental Exchange, Inc.

18. “Including” should be read to mean “including but not limited to” and is used to emphasize certain types of Documents requested and should not be construed as limiting the request in any way.

19. “Investigation” means any review, assessment, or investigation of the Proposed Transaction occurring prior to the filing of the Complaint in the Administrative Proceeding on March 9, 2023.

20. “Investment” means the contribution of any money, equity, or any other form of capital, including but not limited to the undertaking of debt to facilitate such a contribution.

21. “Litigation” means the judicial process in connection with the Proposed Transaction from the filing of the Complaint until the issuance of any final non-appealable judgment (including exhaustion of appeals) by any court.

22. “LOS” means a mortgage loan origination system.

23. “Person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

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24. “Plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

25. “PPE” has the same definition as that in Paragraph 7 of the Complaint in the Administrative Proceeding, and means a product pricing and eligibility engine or any other solution that allows a lender to identify potential loan rates for a borrower, determine the borrower’s eligibility for a given loan, and lock in the loan’s terms for the borrower.

26. “Proposed Transaction” means the proposed acquisition of BK by ICE, as well as the sale of BK’s Empower LOS business, including its Exchange, LendingSpace and AIVA solutions, to Constellations Web Solutions, Inc.

27. “Proprietary LOS” has the same definition as that in Paragraphs 24 and 25 of the Complaint in the Administrative Proceeding, and means the foundational technology that mortgage lenders use to originate home mortgages and which are developed and maintained in-house by lenders.

28. “Relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

29. “You” or “Your” refers to the Company.

30. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.

PUBLIC**INSTRUCTIONS**

1. The terms defined above and the individual discovery requests are to be construed broadly to the fullest extent of their meaning in a good faith effort to comply with the Part 3 Rules.
2. Produce all Documents responsive to the Requests, below, that are within Your possession, custody, or control.
3. If any part of a Document is responsive to any request, the whole Document is to be produced. If any requested Document cannot be produced in full, please produce the Document to the extent possible, specifying each reason for Your inability to produce the remainder of the Document.
4. Any alteration of a responsive Document, including notes, underlining, stamps, drafts, revisions, modifications and other versions of a final Document, is a separate Document and is to be produced as a separate Document.
5. All Documents are to be produced with the file folder, envelope, or other container in which the Documents are maintained. If, for any reason, the container cannot reasonably be produced, copies of all labels or other identifying marks are to be produced instead. If any Document within a Document Family is responsive to one of the requests within this subpoena, produce the entire Document Family.
6. All Documents, whether hardcopy or electronic, shall be produced pursuant to the production formats set forth in Appendix A and Appendix B hereto (unless those appendices are superseded by a subsequent order in the Administrative Proceeding) to the greatest extent practicable, and shall be produced with the metadata fields specified therein to the extent reasonably available.

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7. If You file a timely objection to any portion of a request, definition, or instruction, Documents responsive to the remaining portion are to be produced.

8. If any Document is withheld, in whole or in part, for any reason, including but not limited to any claim of privilege or work-product protection of any kind, to the extent that this information is not evident from the produced portion(s) of the document, set forth separately with respect to each Document: (a) the nature of the privilege or protection claimed; (b) the author(s) of the Document (designating which, if any, are attorneys); (c) the recipient(s) of the Document, including all persons who received copies of the Document (designating which, if any, are attorneys); (d) a description of the Document (or redacted portion of the Document) as set forth in 16 C.F.R. § 3.38A; (e) the Bates range of the Document; (e) the privilege log reference number; and such other information as is sufficient to identify the Document. Any privilege log is to be produced in an Excel spreadsheet or other format capable of electronic sorting.

9. If You object in whole or in part to any of the following requests, please state in detail the basis for Your objection to the particular request and all facts upon which You rely to support Your objection. In addition, You are requested to identify all Documents or things for which You are interposing any objection.

10. If You cannot comply with any of the following requests in full after exercising due diligence to secure the Documents or things, so state and produce to the extent possible. Specify Your inability to produce the remainder and state whatever information or knowledge You may have regarding the unproduced Documents and things.

11. If in responding to this subpoena You claim an ambiguity in interpreting either a particular request or a definition or instruction, that claim shall not be used as a basis for refusing

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to respond. Instead, You shall set forth as part of Your written response to this subpoena the language deemed to be ambiguous, and the interpretation used in responding.

12. If any responsive Document was, but is no longer, in Your possession or subject to Your control, please state whether it is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of. For each instance, please state the date or approximate date of such disposition and explain the circumstances surrounding such disposition.

13. The following discovery requests are continuing and require prompt supplemental responses if You obtain further information or Documents or things with respect to the same between the time Your initial responses are served and the time of trial, and such information is to be made known (and Documents or things to be produced) by means of amended answers to these discovery requests promptly upon first being discovered.

14. To the extent that you deem materials produced in response to this subpoena to be confidential, you may so designate them pursuant to the Protective Order Governing Confidential Material issued on March 9, 2023, in connection with this Administrative Proceeding, attached as Appendix C.

15. Unless otherwise specified, each of the Requests calls for Documents from January 1, 2017 to the present.

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DOCUMENT REQUESTS

1. All Documents requested in any Subpoena Duces Tecum to produce Documents issued by Complaint Counsel in this Administrative Proceeding.
2. All Documents and Communications concerning the Proposed Transaction, the Investigation, the Administrative Proceedings, or this Litigation, including, but not limited to:
 - a. Documents relating to the Company's internal discussions or evaluations of the Proposed Transaction, including any potential or actual risks and benefits of the Proposed Transaction;
 - b. Documents discussing the potential effects of the Proposed Transaction on the Company, on competition in any market, or on its customers;
 - c. Documents provided to or received from and Communications with media (including, but not limited to, other industry participants or financial companies, newspapers, news publications, magazines, radio, podcasts, trade publications, or blogs) about the Proposed Transaction;
 - d. Documents constituting or regarding the Company's Communications with the FTC about the Proposed Transaction, the Investigation, the Administrative Proceedings, or this Litigation, including, but not limited to all questions asked or requests made by the FTC to the Company;
 - e. Documents provided to the FTC in connection with the Proposed Transaction, the Investigation, the Administrative Proceedings or this Litigation; and
 - f. Documents relating to communications with any third party other than the FTC in connection with the Proposed Transaction, the Investigation, the Administrative Proceedings or this Litigation.
3. Documents sufficient to show all current customers of LOS, PPE or Ancillary Services products, the date that the Company started working with each customer, and any measures of their use of the LOS, PPE, and/or Ancillary Services products (including, but not limited to, number of loans, number of users, number of transactions, and total value of loans).
4. Documents sufficient to show the pricing of LOS products by lender size for each LOS customer and any bundled pricing for LOS, PPE, and Ancillary Services products.

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5. Documents sufficient to show the PPE used by each LOS customer and any measure of the usage of the PPE based on, but not limited to, loan count.
6. Documents sufficient to show the prices paid for the PPE used by each LOS customer.
7. Documents regarding the Company's development, marketing, and sale of LOS, PPE, and Ancillary Services products, including:
 - a. the terms of, and negotiations for, any agreements between the Company and actual or prospective customers for the sale of LOS, PPE, and Ancillary Services products in effect on or since January 1, 2019;
 - b. any list, rack, or bundled pricing;
 - c. any discussions with actual or prospective customers that reference ICE, BK, or any other LOS, PPE, and/or Ancillary Services provider;
 - d. any Bids, proposals, and requests for Bids (including discounts, minimum volume, minimum user, and/or per closed loan requirements) for the provision of any LOS, PPE, and/or Ancillary Services and any internal discussions relating to the Bids, proposals, and requests for Bids;
 - e. any "win-loss" data for any Bids, proposals, and requests for Bids for the provision of any LOS, PPE, and/or Ancillary Services; and
 - f. Actual, potential or considered Investments in any LOS, PPE, and/or Ancillary Services, including (i) the amount of the Investments, (ii) the timing of the Investments, and (iii) the impact and projections that the Investments might or have had on sales, revenue, profits, or market share.
8. Documents regarding the Company's business Plans or strategic Plans related to any LOS, PPE, and/or Ancillary Services, including:
 - a. market studies, surveys, or other Documents related to competition in the sale or provision of any LOS, PPE, and/or Ancillary Services;
 - b. projections of future sales, revenue, profits, or market share; and
 - c. Documents describing entities that the Company has identified as competing or potentially competing for the sales or provision of any LOS and PPE product, and any associated Ancillary Services (including Proprietary LOSs).

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9. Documents sufficient to show all current, contemplated, or planned integrations between the Company's LOS and any PPE or Ancillary Services or between the Company's PPE and any other LOS.

APPENDIX A

ESI Production Specifications

I. Production Format – Hardcopy

At the Producing Party’s discretion, hardcopy documents should be scanned as in PDF format or single-page, Group IV, 300 DPI TIFF images with an .opt image cross-reference file and a delimited database load file (*i.e.*, .dat). The database load file should contain the following fields: “BEGNO,” “ENDNO,” “BEGATTACH,” “ENDATTACH,” “PAGES” and “CUSTODIAN.” The documents should be logically unitized (*i.e.*, distinct documents should not be merged into a single record, and a single document should not be split into multiple records) and should be produced in the order in which they are kept in the usual course of business. If an original document contains relevant information in color necessary to understand the meaning or content of the document, the document should be produced as single-page, 300 DPI with a minimum quality level of 75, 24-bit, color JPG images. To the extent that the Producing Party OCR’s the document, OCR must also be provided. The OCR software should maximize text quality over process speed. Settings such as “auto-skewing” and “auto-rotation” should be turned on during the OCR process.

II. Production Format – Electronically Stored Information

Source code, audio, video, and spreadsheet-type files (including but not limited to Microsoft Excel or CSV files) should always be produced in native format. All other types of electronically stored information (“ESI”) should be produced as single-page, Group IV, 300 DPI TIFF images. All ESI should be produced with a delimited, database load file that contains the required metadata fields listed in Appendix B, below, to the extent captured at the time of the collection.

TIFF images should show any and all text and images, including but not limited to BCC information for email documents, speaker notes or hidden slides for Microsoft PowerPoint documents, or comments or tracked changes for Microsoft Word documents, which would be visible to the reader using the native software that created the document. Color originals may be produced in black and white TIFF format, but the Requesting Party may subsequently request, by Bates number(s), a replacement set of images in color and/or the native versions of those originals, to the extent that the loss of color in the black and white TIFF image detracts from the usability of or reduces the ability to understand the information imparted in the original.

If a document is produced in native format, a single-page Bates-stamped TIFF image slip-sheet containing the confidential designation and text stating the document has been produced in native format should also be provided. Each native file should be named according to the Bates number it has been assigned and should be linked directly to its corresponding record in the load file using the NATIVELINK field.

III. Production Format – Structured Data

To the extent a response to a non-objectionable discovery request requires production of discoverable electronic information contained in a database, the Parties will meet and confer to

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discuss the most appropriate and cost-effective production format, which may include an export of data.

IV. Production Format – Social Media

ESI from social media websites (e.g., LinkedIn, Facebook, Twitter) may be produced by capturing information through “screen shots” or “screen captures” and converting same into images along with corresponding extracted text or OCR unless the Parties agree to perform bulk exports of accounts, such as by exporting out a profile from LinkedIn or downloading a copy of an individual’s Facebook data or archive.

V. Production Format – Text and/or Chat Messaging

Text or chat messages may be produced in their native format (Teams chat messages, for example), or by capturing information through “screen shots” or “screen captures” and converting same into images along with corresponding extracted text or OCR.

APPENDIX B
Required Metadata Fields

Field Name	Example / Format	Description
BEGBATES	ABC00000001 (Unique ID)	The Document ID Number associated with the first page of the document.
ENDBATES	ABC00000003 (Unique ID)	The Document ID Number associated with the last page of the document.
BEGATTACH	ABC00000001 (Unique ID Parent- Child Relationships)	The Document ID Number associated with the first page of the parent document.
ENDATTACH	ABC00000008 (Unique ID Parent- Child Relationships)	The Document ID Number associated with the last page of the last attachment.
PAGES	3 (Numeric)	The number of pages for a document.
VOLUME	VOL001	The name of CD, DVD or Hard Drive (vendor assigns).
RECORDTYPE	Options: e-mail, attachment, hard copy, loose e-file	The record type of a document.
DESIGNATION	Confidential, Highly Confidential, etc.	Populate this field for all documents that carry confidentiality designations, separate and apart from the stamping of produced TIFFs. If the document is only provided in native, this field would be populated with the designation the native file should have if printed.
REDACTED	Yes	Populate this field for all documents that have a redaction.
SENTDATE	MM/DD/YYYY	The date the email was sent.
SENTTIME	HH:MM	The time the email was sent.
CREATEDDATE	MM/DD/YYYY	The date the document was created. *Parties acknowledge that the CREATEDATE field may not actually reflect the date the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the date when the file was created in that particular location on the computer or on the other storage device location)
CREATETIME	HH:MM	The time the document was created. *Parties acknowledge that the CREATETIME field may not actually reflect the time the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the time when the file was created in that particular location on the computer or on the other storage device location).
LASTMODDATE	MM/DD/YYYY	The date the document was last modified.
LASTMODTIME	HH:MM	The time the document was last modified.
RECEIVEDDATE	MM/DD/YYYY	The date the document was received.
RECEIVEDTIME	HH:MM	The time the document was received.
TIMEZONE PROCESSED	PST, CST, EST, etc.	The time zone the document was processed in. NOTE: This should be the time zone where the documents were located at the time of collection.

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Field Name	Example / Format	Description
FILEPATH	i.e. John Smith/E-mail/Inbox	Location of the original document. The source should be the start of the relative path.
AUTHOR	jsmith	The author of a document from extracted metadata. *Parties acknowledge that the Author field may not actually reflect the author of the document.
LASTEDITEDBY	jsmith	The name of the last person to edit the document from extracted metadata.
FROM	Joe Smith <jsmith@email.com>	The display name or e-mail of the sender of an e-mail.
TO	Joe Smith <jsmith@email.com>; tjones@email.com	The display name or e-mail of the recipient(s) of an e-mail.
CC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name or e-mail of the copyee(s) of an e-mail.
BCC	Joe Smith <jsmith@email.com>; tjones@email.com	The display name or e-mail of the blind copyee(s) of an e-mail.
SUBJECT		The subject line of the e-mail.
DOCTITLE		The extracted document title of a document.
IMPORTANCE	0 or 1 or 2	E-mail Importance Flag (0 = Normal, 1 = Low Importance, 2 = High Importance)
CUSTODIAN	John Smith; Tim Jones; Finance Department	The custodian/source of a document. NOTE: If the documents are de-duped on a global level, this field should contain the name of each custodian from which the document originated (by subsequent overlay if necessary.).
ATTACH COUNT	Numeric	The number of attachments to a document.
FILEEXT	XLS	The file extension of a document.
FILENAME	Document Name.xls	The file name of a document.
FILESIZE	Numeric	The file size of a document (including embedded attachments).
MD5HASH (or equivalent)		The MD5 Hash value or “de-duplication key” assigned to a document.
EMAIL CONVERSATION INDEX		ID used to tie together e-mail threads.
NATIVELINK	D:\NATIVES\ABC000001.xls	The relative path to a native copy of a document.
FULLTEXT	D:\TEXT\ABC000001.txt	The path to the full extracted text or OCR of the document. There should be a folder on the deliverable, containing a separate text file per document. These text files should be named with their corresponding bates numbers. If the attachment or e-file does not extract any text, then OCR for the document should be provided (only to the extent the Producing Party OCR’s the document for their own benefit).

APPENDIX C

Protective Order Governing Confidential Materials

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**


_____)
In the Matter of)
)
Intercontinental Exchange, Inc.)
a corporation, and)
)
Black Knight, Inc.,)
a corporation,)
)
Respondents.)
_____)

Docket No. 9413

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: March 9, 2023

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9413” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9413” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in*

camera treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

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EXHIBIT “B”

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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Intercontinental Exchange, Inc.,
a corporation, and**

**Black Knight, Inc.,
a corporation,**

Respondents.

Docket No. 9413

**DECLARATION OF NICHOLAS DIZER
ON BEHALF OF CALYX TECHNOLOGY, INC.**

Nicholas Dizer, pursuant to 28 U.S.C. §1746, declares the following under penalty of perjury:

1. “My name is Nicholas Dizer. I am the Associate General Counsel of Calyx Technology, Inc., and am duly authorized to make this Declaration on behalf of Calyx

2. I have read the attached Motion to Quash or Limit Respondent's Subpoena relating to the Subpoena served upon Calyx Technology, Inc., by Counsel for Respondent Intercontinental Exchange, Inc., incorporated by this reference. The factual statements contained therein are, within my personal knowledge, true and correct.

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3. Further Declarant sayeth not.@

Pursuant to 28 U.S.C. '1746, I hereby declare, under penalty of perjury that the foregoing is true and correct.

Executed on 5th day of April, 2023.



NICHOLAS DIZER