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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 SUBPOENA

Calyx Technology, Inc., a non-party to this proceeding and recipient of a Subpoena issued by Complaint Counsel for the Commission, 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 allegedly is to be the recipient of certain aspects of business to be spun off as part of the merger

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agreement. Instead, Calyx is a competitor of Respondents and CWS, quietly seeking to continue its business independent of the proposed merger and related transactions.

Calyx has previously received a Civil Investigative Demand (“CID”) from the Commission relating to the subject matter of this proceeding, and has fully cooperated with the Commission in furnishing certain information in response. The present subpoena, however, received on March 27, 2023, a copy of which is attached as Exhibit “A,” (“subpoena”) is a dramatic departure from the prior CID, and threatens to impose monumental and virtually insurmountable expense and burden, as well as threatening exposure of valuable proprietary business information, upon an innocent bystander to the transactions being challenged herein by the Commission, having no interest in the outcome of this proceeding.

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.

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B.**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,” 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, 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. The economic and practical burden of undertaking such conversion rightfully belongs to the parties to this

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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.

C.

The subpoena contains impermissible interrogatories.

Included in the definitions and instructions accompanying the subpoena are impermissible 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 Definition D12, and in Instructions 2, 5(d), 6 (setting forth extensive “formatting” requirements, explanation of methods utilized to collect documents, and requirements of descriptions), 8, 10, and 13.

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:

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- ★ 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 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

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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 'l*, 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 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

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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 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:

- Capability and functionality of services provided by Calyx (items 4 and 5)
- The process by which Calyx developed its PPE engine, began offering to customers, and the requirements or barriers for developing, its PPE engine

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(item 7)

- How Calyx measures, and the prices it charges, for customers and users (items 8 and 9)
- Identification of each investor whose rates are available (item 10)
- Annual revenue and expenses broken down by functionality (item 11)
- “Variable costs” and “incremental variable costs”¹ broken down by category, transaction, and user (items 12 and 13); and
- Disclosure of “any issues”² that the Company has had in obtaining or maintaining access to a Loan Origination System” (item 14).

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, and would allow re-creation of its products and services, and identification of all of its customers who are most profitable. 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

¹ Calyx further objects to the subpoena because, in the context of software engines and functions provided, “variable cost” is a nonsensical term that cannot apply. Once a software engine is developed, and a server or cloud access is developed, there is no “marginal cost” for going from subscriber number 100 to subscriber number 101. Accordingly, the subpoena should be quashed for this additional reason because compliance therewith is nonsensical and impossible. The instruction purporting to avoid this difficulty is itself an impermissible interrogatory.

² The term “any issues” is impossibly overbroad and vague, and compliance with this request would require speculation and conjecture, and would risk penalties for noncompliance if Calyx and its counsel guessed wrong as to what the FTC is really seeking. For this additional reason, the subpoena should be quashed.

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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 be quashed in its entirety, or, alternatively, modified and limited to cure the above stated objections, that the Commission 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 it recover general relief.

Respectfully submitted,

MIDDLEBERG RIDDLE GROUP

/s/ Michael L. Riddle
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ATTORNEYS FOR CALYX TECHNOLOGY,
INC.

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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 FTC staff 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 FTC Complaint Counsel (Lauren Stillman) on March 31, 2023, at 2:00 p.m., Central time; on a phone conference, 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:

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The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
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I also certify that I caused the foregoing document to be served via email to:

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Counsel for Respondent Intercontinental Exchange, Inc.

_____/s/ Emil Lippe, Jr.
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EXHIBIT “A”

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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.

Docket No. 9413

**ATTACHMENT TO COMPLAINT COUNSEL'S SUBPOENA DUCES TECUM TO CALYX
TECHNOLOGY, INC.**

Pursuant to Federal Trade Commission Rule of Practice for Adjudicative Proceedings 3.34(b), 16 C.F.R. § 3.34(b), and the Definitions and Instructions set forth below, Complaint Counsel hereby requests that the Company produce all Documents, Electronically Stored Information, and other things in its possession, custody, or control responsive to the following Requests:

1. All Documents requested in any Subpoena Duces Tecum to produce Documents issued by Respondents Intercontinental Exchange, Inc. or Black Knight, Inc., in this Administrative Proceeding to the Company.
2. Documents sufficient to show the name of the Company's Product Pricing and Eligibility Engine and each lending channel (e.g., retail, wholesale, correspondent, etc.) for which the Company's Product Pricing and Eligibility Engine is used or may be used.
3. Documents sufficient to show each Loan Origination System that provides access to the Company's Product Pricing and Eligibility Engine, and identify when the Company's Product Pricing and Eligibility Engine first became accessible on the Loan Origination System.
4. Documents sufficient to show each capability and/or functionality (i.e., pricing, eligibility, rate locking, margin management, report generation, etc.) included in the sale or provision of the Company's Product Pricing and Eligibility Engine to its Lender customers.
5. Documents sufficient to show each capability and/or functionality the Company makes

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available for use with or in addition to the Company's Product Pricing and Eligibility Engine at an additional cost to its Lender customers.

6. Documents sufficient to show, for each capability and/or functionality identified in the Company's response to Requests 4 and 5, the month and year the Company made each capability and/or functionality available to its Lender customers.
7. Documents sufficient to show the process by which the Company built or acquired the Company's Product Pricing and Eligibility Engine, including, but not limited to:
 - a. the cost to build or acquire the Company's Product Pricing and Eligibility Engine and each included capability and/or functionality therein, including costs in total and separately by cost category;
 - b. the month and year in which the Company first began its efforts to build or acquire its Product Pricing and Eligibility Engine;
 - c. the year in which the Company's first Lender customer completed its implementation of the Company's Product Pricing and Eligibility Engine; and
 - d. the requirements for or barriers to entering (e.g., required specialized experience, employee-hours worked, and product testing) the development, provision, and sale of a Product Pricing and Eligibility Engine to Lender customers.
8. Documents sufficient to show how the Company measures transactions on the Company's Product Pricing and Eligibility Engine, and for each year:
 - a. the number of transactions by Loan Origination System;
 - b. the number of transactions by Lender customer;
 - c. the price per transaction by Loan Origination System;
 - d. the price per transaction by Lender customer; and
 - e. a list of the Company's Lender customers, along with their Legal Entity Identifier and respective HMDA count, by Loan Origination System.
9. For each year, documents sufficient to show:
 - a. the number of Users by Loan Origination System;
 - b. the number of Users by Lender customer;
 - c. the price per User by Loan Origination System; and
 - d. the price per User by Lender customer.

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10. Documents sufficient to show each Investor whose rates are available on the Company's Product Pricing and Eligibility Engine.
11. For each year, documents sufficient to show the Company's:
 - a. annual revenue derived from the provision and sale of the Company's Product Pricing and Eligibility Engine,
 - i. in total;
 - ii. separately by aggregate sales to all Lender customers on each Loan Origination System by each capability and/or functionality listed in Requests 4 and 5; and
 - iii. all other sales not included in response to Specification 11.a.ii.; and
 - b. aggregate expenses, by Loan Origination System, associated with accessing or providing the Company's Product Pricing and Eligibility Engine to Lender Customers on the Loan Origination System.
12. For each year, documents sufficient to show the Company's Variable Costs for the Company's Product Pricing and Eligibility Engine, separately by each capability and/or functionality listed in Requests 4 and 5, and the definition for each Variable Cost category.
13. For each year, documents sufficient to show the Company's incremental Variable Cost associated with each additional:
 - a. transaction;
 - b. User; and
 - c. Lender customer.
14. Documents sufficient to show any issues that the Company has had in obtaining and/or maintaining access to a Loan Origination System.

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DEFINITIONS

For the purposes of this Request, the following definitions apply:

- D 1. The term “the Company” or “Calyx” means, and information shall be provided separately for, 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; and all directors and officers of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any Person (including Calyx Technology, Inc.) in which there is partial (25 percent or more) or total ownership or control between any other Person and the Company.
- D 2. The term “Administrative Proceeding” means *In the Matter of Intercontinental Exchange, Inc., and Black Knight, Inc.*, FTC Docket No. 9413.
- D 3. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- D 4. The term “documents” means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term “documents” includes, without limitation: computer files; email messages; text messages; any communications created, shared or exchanged through messaging applications or other communication systems, including messaging applications such as, but not limited to, Slack, ConfiDe, Signal, WhatsApp, Teams, or Gchat; voicemails and other audio files; instant messages and chat logs; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person’s files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
- (a) Unless otherwise specified, the term “documents” excludes:
- i. bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
 - ii. architectural plans and engineering blueprints;
 - iii. documents solely relating to environmental, tax, OSHA, or ERISA issues; and
 - iv. relational and enterprise databases, except as required to comply with an individual Specification.
- (b) The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mobile devices, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company

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believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representatives identified on the last page of this Request. The Commission representative will consider modifying this Definition to:

- (i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
- (ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Commission representatives; or
- (iii) include other proposals consistent with Commission policy and the facts of the case.

- D 5. The term "Investor" means an organization that acquires, directly or indirectly, an originated residential mortgage loan after closing of the loan.
- D 6. The term "Lender" means an organization that originates residential mortgage loans.
- D 7. The term "Loan Origination System" means software that manages the residential mortgage loan origination process and serves as the Lender's system of record for each loan.
- D 8. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- D 9. The term "Product Pricing and Eligibility Engine" means software 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.
- D 10. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- D 11. The term "User" means a unique point of access (or seat) by which an individual can view, edit, upload, download, or otherwise modify information contained in or generated by a Product Pricing and Eligibility Engine.
- D 12. The term "Variable Cost" or "Variable Costs" has the same meaning that the Company uses in the ordinary course of business. If the Company does not define variable costs in the ordinary course of business, "Variable Cost" refers to all costs that change based on changes in the number of units of output. Under either definition, all depreciation costs designated as Variable Costs are to be itemized and reported separately from each other and from other Variable Costs.

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INSTRUCTIONS

For the purposes of this Subpoena, the following Instructions apply:

1. Unless otherwise specified, each Request calls for Documents received, created, modified, transmitted, or sent from January 1, 2017, to the present.
2. Unless modified by agreement with Complaint Counsel, this subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive Documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other Person retained by, consulted by, or working on behalf or under the direction of the Company. If any Person is unwilling to have his or her files searched, or is unwilling to produce responsive Documents, the Company must provide Complaint Counsel with the following information as to each such Person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy Documents, the search must include all of the Company's Electronically Stored Information.
3. The Company need not produce any Document that was previously produced to the Complaint Counsel voluntarily or in response to compulsory process, except for any Document that was provided to any Commissioner, including to any attorney advisor or any other staff of any individual Commissioner, but not provided to Complaint Counsel.
4. This subpoena is continuing in nature and shall be supplemented in the event that additional Documents responsive to this subpoena are created, modified, prepared, or received between the time of the Company's initial response and the date established by the Administrative Law Judge for the evidentiary hearing in the above-captioned proceeding.
5. All Documents responsive to this subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
 - a. Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files;
 - b. Shall be marked on each page with corporate identification and consecutive Document control numbers when produced in an image format;
 - c. Shall be produced in color if the original Document was in color;
 - d. Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive Documents are submitted; and (ii) the corresponding consecutive Document control number(s) used to identify that person's Documents, and if submitted in paper form, the box number containing such Documents. The FTC will provide a sample index upon request.
6. Form of Production: The Company shall submit Documents as instructed below absent

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written consent signed by Complaint Counsel.

- a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original Documents:
 - i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata and information as described in subparts (a)(ii), (a)(iii), and (a)(iv).
 - ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Metadata/Document Information	Description
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.

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Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

- iii. Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
Metadata/Document Information	Description
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYYY]

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Date Modified	Date the file was last changed and saved.[MM/DD/YYYY]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- iv. Submit all other electronic Documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.

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End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved.[MM/DD/YYYY HH:MM:SS AM/PM]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Native Link	Relative path to submitted native or near native files.Example: \\NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \\TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- v. Submit Documents stored in hard copy in TIFF (Group IV) format accomplished by OCR with the following information:

Metadata/Document Information	Description
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.

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Custodian	Name of person from whom the file was obtained.
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- vi. Submit redacted Documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 10.
 - b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
 - c. If the Company intends to utilize any de-duplication, email threading, or TAR software or services when collecting or reviewing information that is stored in its computer systems or electronic storage media, or if the Company's computer system contain or utilize such software, the Company must contact the FTC's staff to determine, with the assistance of the appropriate FTC representative, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena.
 - d. Produce electronic file and image submissions as follows:
 - i. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this subpoena;
 - ii. Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged; and
 - iii. Each production shall be submitted with a transmittal letter that includes: the FTC Docket No. 9413; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load-file fields in the order in which they are organized in the load file.
7. To protect privacy, the Company shall mask any Sensitive Personally Identifiable

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Information (“PII”). For purposes of this subpoena, PII means an individual’s Social Security Number alone; or an individual’s name, street address (but not city, county, state, or zip code of residence), or phone number in combination with one or more of the following: date of birth; driver’s license number or other state identification number, or a foreign country equivalent; passport number; financial account number; or credit or debit card number.

8. Provide the names of any electronic production tools or software packages utilized by the Company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, and global de-duplication or near deduplication:
 - a. If the Company utilized keyword search terms to identify Documents and information responsive to this subpoena, a list of all of the search terms used for each custodian;
 - b. If the Company utilized Technology Assisted Review software, all statistical analyses utilized or generated by the Company or its agents related to the precision, recall, accuracy, validation, or quality of its Document production in response to this subpoena; and descriptions of all collection methodologies, including (a) how the software was utilized to identify responsive Documents, (b) the process(es) the Company utilized to identify and validate the seed set Documents subject to manual review, (c) the total number of Documents reviewed manually, (d) the total number of Documents determined non-responsive without manual review, (e) the process the Company used to determine and validate the accuracy of the automatic determinations of responsiveness and non-responsiveness, (f) how the Company handled exceptions (“uncategorized Documents”), and (g) if the Company’s Documents include foreign language Documents, whether reviewed manually or by some technology-assisted method; and
 - c. The identity of each individual able to testify on behalf of the Company about information known or reasonably available to the Company relating to its response.
9. If any documents are withheld from production based on a claim of privilege, the Company shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
10. If Documents responsive to a particular Request no longer exist for reasons other than the ordinary course of business or the implementation of the Company’s Document retention policy, but the Company has reason to believe such Documents have been in existence, state the circumstances under which they were lost or destroyed, describe the Documents to the fullest extent possible, state the

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Request(s) to which they are responsive, and identify persons having knowledge of the content of such Documents.

11. If you object to any part of a Request, set forth the basis for your objection and respond to all parts of the Request to which you do not object. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.
12. All objections must state with particularity whether and in what manner the objection is being relied upon as a basis for limiting the scope of any search for Documents or withholding any responsive Documents. If you are withholding responsive information pursuant to any general objection, you should so expressly indicate. If, in responding to any Request, you claim any ambiguity in interpreting either the Request or a definition or instruction applicably thereto, set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the Request, and produce all Documents that are responsive to the Request as you interpret it.
13. Whenever necessary to bring within the scope of a Request a response that might otherwise be construed to be outside its scope, the following construction should be applied:
 - a. Construing the terms “and” and “or” in the disjunctive or conjunctive, as necessary, to make the Request more inclusive;
 - b. Construing the singular form of any word to include the plural and plural form to include the singular;
 - c. Construing the past tense of the verb to include the present tense and present tense to include the past tense;
 - d. Construing the masculine form to include the feminine form and vice versa; and
 - e. Construing the term “date” to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters.
14. Unless otherwise stated, construe each Request independently and without reference to any other purpose or limitation.
15. Any questions you have relating to the scope or meaning of anything in this subpoena or suggestions for possible modifications thereto should be directed to Lauren Sillman at 202-326-2118, lsillman@ftc.gov.
16. For productions smaller than 10 GB, the Company shall submit a response to this subpoena to the Commission through email using secure file transfer

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protocols (“FTP”). For instructions on submitting through FTP, please contact Rebecca Hyman (rhyman@ftc.gov), Samantha Artison (sartison@ftc.gov), Terri Martin (tmartin@ftc.gov), Devon Allen (dallen1@ftc.gov), and Corene Wint (cwint@ftc.gov). For productions larger than 10 GB, the Company shall contact Rebecca Hyman (rhyman@ftc.gov), Samantha Artison (sartison@ftc.gov), Terri Martin (tmartin@ftc.gov), Devon Allen (dallen1@ftc.gov), and Corene Wint (cwint@ftc.gov), who will provide further instructions on how to submit a response to this subpoena on physical media. A transmittal cover letter shall still be sent via electronic mail to: Lauren Sillman (lsillman@ftc.gov), Rebecca Hyman (rhyman@ftc.gov), Samantha Artison (sartison@ftc.gov), Terri Martin, (tmartin@ftc.gov), Devon Allen (dallen1@ftc.gov), and Corene Wint (cwint@ftc.gov).

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CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Subpoena *Duces Tecum* is complete and correct to the best of my knowledge and belief.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

PUBLIC**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.

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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*

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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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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, I caused the foregoing document to be served via email to:

Harry T. Robins
Susan Zhu
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
(212) 309-6728
harry.robins@morganlewis.com
szhu@morganlewis.com

Ryan Kantor
J. Clayton Everett, Jr.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-5343
ryan.kantor@morganlewis.com
clay.everett@morganlewis.com

Kenneth Kliebard
Morgan, Lewis & Bockius LLP
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
(312) 324-1774
kenneth.kliebard@morganlewis.com

John C. Dodds
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1701 Market Street
Philadelphia, PA 19103
(215) 963-5000
john.dodds@morganlewis.com
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*Counsel for Intercontinental Exchange,
Inc.*

Nelson O. Fitts
Jonathan M. Moses
Sarah K. Eddy
Adam L. Goodman
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
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(212) 403-1361
NOFitts@WLRK.com
JMMoses@WLRK.com
SKEddy@WLRK.com
ALGoodman@WLRK.com

Counsel for Black Knight, Inc.

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By: s/ Abby L. Dennis
Abby L. Dennis

Counsel Supporting the Complaint



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)

1. TO Calyx Technology, Inc. c/o Michael Riddle 2911 Turtle Creek Blvd., Suite 1250 Dallas, TX 75219	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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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.

3. PLACE OF PRODUCTION Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580	4. MATERIAL WILL BE PRODUCED TO Abby L. Dennis, Esq., or designee
	5. DATE AND TIME OF PRODUCTION April 10, 2023 @ 10:00 a.m.

6. SUBJECT OF PROCEEDING

 In the Matter of Intercontinental Exchange, Inc. and Black Knight, Inc., corporations; Docket No. 9413

7. MATERIAL TO BE PRODUCED

 See Attached Requests and Specifications

8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Abby L. Dennis or designee Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2381
--	---

DATE SIGNED Mar 27, 2023	SIGNATURE OF COUNSEL ISSUING SUBPOENA s/ Abby L. Dennis
---------------------------------	--

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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EXHIBIT “B”

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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