CERTIFICATION

I, RUTH A. SCOTT, am the duly qualified and appointed Executive Assistant of the City of DeKalb, DeKalb County, Illinois, as authorized by Local Ordinance 2019-059, and as such Executive Assistant, I maintain and am safe-keeper of the records and files of the Mayor and City Council of said City.

I do hereby certify that the attached hereto is a true and correct copy of:

ORDINANCE 2019-066

APPROVING AN AIRPORT GROUND LEASE WITH SYNDEO NETWORKS, INC. FOR A SECURE FIBER OPTIC CABLE NETWORK FACILITY.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 14th day of October 2019. The original document will be kept on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 4th day of December 2019.

RUTH A. SCOTT, Executive Assistant

Prepared by and Return to:

City of DeKalb
City Manager’s Office
Attention: Ruth A. Scott
200 S. Fourth Street
DeKalb, Illinois 60115
ORDINANCE 2019-066

APPROVING AN AIRPORT GROUND LEASE WITH SYNDEO NETWORKS, INC. FOR A SECURE FIBER OPTIC CABLE NETWORK FACILITY

WHEREAS, the City of DeKalb (the "City") is a home rule municipality with the power and authority conferred upon it by the Illinois Municipal Code and the Illinois Constitution; and

WHEREAS, Syndeo Networks, Inc. ("Syndeo") is an Illinois corporation which constructs, installs, maintains, owns, and operates an extensive fiber optic cable network in and around the DeKalb/Sycamore area; and

WHEREAS, Syndeo desires to lease a certain vacant parcel at the DeKalb Taylor Municipal Airport (the "Property"), which is legally described in Exhibit A attached hereto and incorporated herein, for the purpose of constructing and maintaining a secure facility for the City’s new data center and Syndeo’s fiber optic cable network and a fenced storage yard for construction equipment and materials pursuant to the terms and conditions contemplated in the same or substantially similar form as the ground lease (the "Lease") attached hereto and incorporated herein as Exhibit B; and

WHEREAS, Syndeo agrees to supply, install, and grant to the City the exclusive use of one (1) 19” relay rack and power up to 2000 watts for the City’s new data center and such other valuable consideration as contemplated in the Lease; and

WHEREAS, the City’s Corporate Authorities find that approval of this Ordinance is in the public interest and promotes the public health, safety and welfare;

NOW, THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

SECTION 1: The recitals to this Ordinance are true, correct, and hereby incorporated into this Ordinance as if fully set forth in this Section 1.

SECTION 2: The City’s Corporate Authorities, by a two-thirds vote of the Corporate Authorities then holding office, approve the Lease in the same or substantially similar form as Exhibit B, and further authorize the Mayor to execute the Lease, subject to such changes as shall be acceptable to him with the recommendation of City Staff.

SECTION 3: This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: October 15, 2019. Effective date: October 24, 2019.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 14th day of October 2019 and approved by me as Mayor on the same day. Passed on First Reading by a 7-0 roll call vote. Aye: Morris, Finucane, Smith McAdams, Verbic, Faire, Mayor Smith. Nay: None. Second Reading waived by a 7-0 roll call vote. Aye: Morris, Finucane, Smith, McAdams, Verbic, Faire, Mayor Smith. Nay: None.

ATTEST:

RUTH A. SCOTT, Executive Assistant

TERRY SMITH, Mayor
EXHIBIT A
(LEGAL DESCRIPTION OF THE PROPERTY)

The Property is legally described as follows:

125 x 200 foot portion of the property commonly known as DeKalb Corporation Airport Sub – Lot 2, PIN # 0824251007 as depicted in the survey dated September 26, 2019, which is attached hereto and incorporated herein by reference.
EXHIBIT B
(THE LEASE)
GROUND LEASE

This Lease is made and entered into as of the 5th day of October, 2019, by and between the City of DeKalb, an Illinois home rule municipal corporation ("City" or "Owner"), and Syndeo Networks, Inc., an Illinois corporation ("Syndeo" or "Tenant").

WHEREAS, the City owns and operates the DeKalb Taylor Municipal Airport (the "Airport"); and

WHEREAS, Syndeo constructs, installs, maintains, owns, and operates an extensive fiber optic cable network in and around the DeKalb/Sycamore area; and

WHEREAS, Syndeo desires to lease a certain vacant parcel at the Airport as legally described below for the purpose of constructing and maintaining a secure facility for its fiber optic cable network and a fenced storage yard for construction equipment and materials; and

WHEREAS, Syndeo agrees to supply, install, and grant to the City the exclusive use of one (1) 19” Relay rack and Power up to 2000 watts and such other valuable consideration set forth in this Agreement in exchange for the ground lease set forth in this Agreement.

Now, therefore, in consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. PREMISES; INSPECTION; TITLE

Owner leases to Tenant the following described premises located in DeKalb, Illinois:

125 x 200 foot portion of the property commonly known as DeKalb Corporation Airport Sub – Lot 2, PIN # 0824251007, as depicted in the attached Exhibit A, which is incorporated herein by reference.

It is the responsibility of Tenant, at Tenant's sole expense, to satisfy itself, prior to the execution of this Agreement, as to the title and condition of the Premises including, but not limited to, title to the Premises, matters of record in the Official Records of DeKalb County, permitted land uses, zoning codes, building regulations, height limitations, setbacks, applicable building codes, permits, soil conditions, and environmental conditions. Tenant may, at Tenant's expense, cause a survey, site plan, and/or legal description of the Premises to be prepared, to further delineate and identify the land underlying the Premises, and to attach the same as exhibits to this Lease. Owner makes no warranties or representations to Tenant, and Tenant agrees Owner has made no warranty or representation respecting the condition of the Premises, or applicable zoning laws and regulations, or applicability of the uses contemplated by Tenant, or environmental conditions, or any matters which a current survey would disclose, or the applicability of any covenants or restrictions of public record, except as otherwise expressly provided in this Lease. Tenant acknowledges it has had adequate opportunity to inspect the Premises prior to entering into this Lease or has made adequate provision in this Lease, and the
taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises were in good and satisfactory condition when possession was taken by Tenant. Tenant further acknowledges and accepts taking the Premises in “AS IS” CONDITION, WITH ALL FAULTS, without the benefit of representation or warranty of, or recourse to, the City.

2. TERM

The term of this Lease shall be twenty (20) years, commencing on __10-15-2019__, with Syndeo’s option to extend this Lease for an additional twenty (20) year term at the same rent as the initial term.

3. RENT

The total rent for this Lease shall be $1.00. The rent shall be paid on the date of commencement of the initial term of this Lease. The rent shall be delivered by U.S. mail, addressed to DeKalb Taylor Municipal Airport, 3232 Pleasant St., DeKalb, IL 60015, or hand delivered to the Airport Manager during regular business hours, and shall be considered paid upon receipt by Owner. All payments required to be made by Tenant to Owner pursuant to this Lease shall be deemed additional rent.

Syndeo further agrees to supply, install, and grant to the City the exclusive use of one (1) 19” Relay rack and Power up to 2000 watts during the term of this Lease.

4. NOTICES

All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served by certified mail, return receipt requested, addressed as follows: if to Owner: City of DeKalb at 200 S. 4th St., DeKalb, IL 60015; if to Tenant: Syndeo Networks, Inc. at P.O. Box 833, Saint Charles, IL 60175; or to such other address as Owner or Tenant may by writing to the other so designate. Notice to Tenant may also be served by personal delivery.

5. WARRANTIES OF TITLE AND QUIET POSSESSION

Owner covenants that Owner is seized of the Premises and owner in fee simple of the Premises with the full right to make this Lease, subject to all matters of record, and covenants that Tenant, upon making payments of the rents and the keeping of the other covenants contained herein, shall have quiet and peaceful possession of the Premises during the term of this Lease.

6. USE

Tenant shall use the Premises only for the following purpose: constructing and maintaining a secure facility for its fiber optic cable network, including fiber optic shelters and associated accouterments for the purpose of switching and cross-connecting broadband and communications services, the storage of fiber optic network materials and equipment, or other
uses as agreed to in writing with the owner. Tenant shall not use or permit the Premises or any part of the Premises to be used for any unauthorized or unlawful purpose, or for any purpose other than as set forth above. Tenant’s construction and maintenance of a secure facility for its fiber optic cable network shall be consistent in nature, character, and extent with the improvements depicted on Exhibit B, a copy of which is attached hereto and incorporated herein by reference.

7. COMPLIANCE WITH LAWS

During the term of this Lease, Tenant shall comply with all ordinances, statutes, laws, rules and regulations of the City of DeKalb, State of Illinois and the U.S. Government, breach of which shall be cause for cancellation of this Lease. Tenant shall abide by all applicable regulations as set forth in the Municipal Code of the City of DeKalb, Illinois (the “Code”), including, but not limited to, Chapter 53 of the Code, together with any future amendments to the Code. Tenant shall at all times maintain all required licensing and permits. The violation of any provision of such ordinance, as evidenced by a final determination by the City’s Code enforcement board or a court of law, shall be conclusively deemed a default under this Lease and shall not be subject to the notice requirements or cure provisions set forth in Section 20 (“Default; Remedies”) of this Lease. Tenant further covenants that the Premises shall not be used for any purpose which might cause forfeiture of Owner’s title to the Premises.

8. SIGNS

Except with the prior written approval of Owner, which approval shall not be unreasonably withheld, Tenant shall not erect, maintain or display any signs or any advertising at or on the exterior of the Premises or within the Premises that are visible from outside the Premises.

9. OWNER’S RIGHT OF ENTRY

Tenant at all times shall permit Owner or its agents to enter into and upon the Premises and buildings for the purpose of inspecting the same.

10. IMPROVEMENTS AND ALTERATIONS

Tenant may, at its own expense and only upon written approval by Owner, make alterations and improvements to the Premises as necessary for the conduct of its business. Tenant specifically agrees that any and all improvements, except signs, equipment and trade fixtures installed, located upon the Premises shall become the property of Owner upon termination of this Lease. Tenant represents and warrants that Tenant will obtain, at its sole cost and expense, all required permits and licenses from governmental authorities for all Tenant Work, and shall provide the City a copy of each permit and license before beginning any Tenant Work. The City shall reasonably cooperate with Tenant to obtain such permits and licenses, and shall perform all Tenant Work in compliance with the City’s Code.
11. RIGHT OF WAY USE

Subject to reasonable regulations imposed regarding airport access, Owner grants to Tenant, its employees, agents, suppliers, customers and invitees, during the term of this Lease, a non-exclusive right of way for ingress and egress, over, across and upon the designated right of way to Pleasant Street.

12. OTHER RIGHTS RESERVED BY OWNER

In addition to all rights reserved by Owner in and to the Premises, Owner reserves the right to further develop or improve any area of the Airport and its industrial parks, as Owner deems proper, regardless of the desires and views of Tenant and without interference or hindrance; maintain and keep in repair, but without obligation to Tenant, the Airport and industrial parks of the Airport and all publicly owned facilities of the Airport; and take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Tenant from conducting any practice that may be detrimental to the Airport and industrial parks which in the opinion of Owner would limit the usefulness of the Airport and its industrial parks or constitute a hazard to such.

13. UTILITIES

Tenant agrees to pay all charges for any and all utilities in or about the Premises whether the same is telephone, electricity, water, sewer, gas or the like. Tenant further agrees that if, at any time during the term of this Lease, the City commences providing City utility services to the Airport property, Tenant will purchase such utility services from the City. Tenant further agrees to take delivery of all City utilities when each utility service is made available.

14. REPAIRS AND MAINTENANCE

Tenant agrees to make, at its own cost and expense, any or all repairs or work necessary to maintain the Premises and buildings located on the Premises. Tenant agrees to maintain the Premises in good order, condition, and repair throughout the term of this Lease.

15. INSURANCE

Tenant will, at its sole cost, obtain and keep in force at all times during the term of this Agreement, Workers Compensation and Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Insurance in at least the type and amounts as follows:

A. Workers' Compensation:

(a) State: Statutory
(b) Employer's Liability
   $1,000,000.00 Per Accident
   $1,000,000.00 Disease, Policy Limit
$1,000,000.00 Disease, Each Employee

B. Commercial General Liability: $2,000,000.00 General Aggregate

C. Business Automobile Liability (including owned, non-owned and hired vehicles):
   i. Bodily Injury:
      $1,000,000.00 Per Person
      $1,000,000.00 Per Accident
   ii. Property Damage:
      $1,000,000.00 Per Occurrence
   iii. Umbrella Excess Liability: $2,000,000.00 over Primary Insurance

Tenant must name the City of DeKalb as an additional insured under all insurance policies required by this Agreement and provide the City with Certificates of Insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Failure of the City to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant’s obligation to maintain such insurance. Tenant agrees that the obligation to provide the insurance required by this Agreement is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction, or omission by the City. Upon request, Tenant shall provide copies of any or all policies of insurance maintained in fulfillment hereof. Failure to maintain the required insurance may result in immediate termination of this Agreement at City’s option.

16. INDEMNIFICATION OF OWNER

Tenant agrees to protect, defend, reimburse, indemnify, and hold harmless the City and the City’s agents, employees, and officers at all times from and against any and all claims, liability, expenses, losses, costs, fines, damages, reasonable attorney’s fees, and causes of action of every kind and character by reason of any damage to property, or the environment (including, but not limited to, any contamination of Airport property, such as the soil or stormwater, or by fuel, gas, chemicals or any hazardous substances), or bodily injury (including death) incurred or sustained by any party to this Lease, any agent or employee of any party to this Lease, or any other person, or any governmental agency, arising out of or incident to or in connection with Tenant’s performance under this Agreement, Tenant’s use or occupancy of the Premises, Tenant’s acts, omissions or operations under this Lease or the performance, nonperformance or purported performance of this Agreement or any breach of the terms of this Agreement. Tenant recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and acknowledges the receipt of such good and valuable consideration provided by Owner in support of this indemnification in accordance with the laws of Illinois. This Section shall survive the termination of this Agreement. Compliance with the insurance
requirements in this Lease shall not relieve Tenant of its liability or obligation to indemnify Owner as set forth in this Section. Notwithstanding anything to the contrary in the foregoing or within this Agreement, Owner shall not relinquish or waive any of its rights and defenses under the Illinois Local Government and Governmental Employees Act (745 ILCS 10/1, et seq.).

17. SUBORDINATION

This Lease and all rights of Tenant under it are and shall be subject to and subordinate to the rights of any mortgage holder now or later having a security interest in the Premises or any other encumbrances Owner desires to place on the Premises.

18. TAXES

All taxes, assessments and charges on lands or improvements and obligations upon the Premises shall be promptly paid by Tenant when due. Tenant shall have the right from time-to-time to contest or protest or review by legal proceedings any such other manner as may be provided by law such taxes or assessments imposed by governmental authorities and to institute such proceedings in the name of itself as well as Owner as it may deem necessary; provided, however, that any expense incurred by reason of such proceedings shall be borne by Tenant and such proceedings shall be conducted free of any expense to Owner.

19. ASSIGNMENT AND SUBLETTING

Tenant shall not assign nor sublet its right, title or interest in or to all or any portion of the Premises or the leasehold improvements without first obtaining the prior written consent of Owner; provided, however, that such consent shall not be unreasonably withheld; provided further that Tenant shall remain directly and primarily liable for the performance of the terms and conditions of this Lease; and provided further that no such assignment or subletting shall be made to any person for any purpose other than that set forth in this Lease.

20. DEFAULT; REMEDIES

The occurrence of anyone or more of the following events shall constitute a default on the part of Tenant: (1) Tenant fails to pay when due any rental or any other sum of money payable under this Lease on the date due; (2) the conduct of any business or performance of any acts at the Airport not specifically authorized in the Agreement; (3) Tenant abandons, deserts or vacates the Premises; (4) Tenant breaches or fails to comply with any other term, provision, covenant or condition of this Agreement; or (5) Tenant breaches or fails to comply with any other term, provision, covenant or condition of any other agreement, contract or obligation with or to Owner. Any or all of the foregoing are referred to as “Events of Default.”

Upon the occurrence of any of the above Events of Default, Owner shall give written notice of such default to Tenant at the address set forth under Section 4 of this Agreement. The effective date of notice shall be the date that the notice is placed in the U.S. mail or posted on the Premises by Owner. If the default is for failure to pay rent or any other sum of money when due,
then Tenant shall have fifteen (15) days after the effective date of notice to cure. If the default is for any other Event of Default, then Tenant shall have thirty (30) days after the effective date of notice to cure, except that Tenant shall not be allowed an opportunity to cure a reoccurring Event of Default of the same type which has been previously notice by Owner and cured by Tenant.

If Tenant fails to cure the default within the time allowed, Owner then shall have the option to exercise any remedy or right permitted by law or in equity. Tenant shall fully reimburse and compensate Owner upon demand for any costs and expenses incurred in connection with any cure, correction or repair undertaken by Owner, which sums shall be deemed to be additional rent under this Lease. If Owner relets the Premises, Tenant shall pay Owner any deficiency between the amount received, if any, from such reletting, and the amount of rent and other fees payable by Tenant under this Lease, including Owner's expenses in connection with re-entry, taking possession, repairing and reletting.

Notwithstanding the occurrence of any Event of Default, Tenant shall remain liable to Owner for all payments payable under this Lease and for all preceding breaches of any covenant of this Agreement. Furthermore, unless Owner elects to cancel this Agreement, Tenant shall remain liable for and promptly pay any and all payments accruing under this Lease until such time as this Agreement has been duly canceled. No retaking of possession of the Premises by Owner shall be construed as an election on its part to terminate this Agreement, unless a written notice of such intention be given to Tenant. No pursuit of any remedy by Owner shall constitute a forfeiture or waiver of any payments or other moneys due to Owner under this Lease, or of any damages accruing to Owner by reason of the violations of any of the terms, provisions, and covenants contained in this Lease. Owner's acceptance of payments or other moneys following any Event of Default shall not be construed as Owner's waiver of such Event of Default unless the Event of Default is the delinquency in the payment of the amount accepted. Forbearance by Owner of action upon any violation or breach of any of the terms, provision and covenants contained in this Lease shall not be deemed or construed to constitute a waiver of any of such terms, provisions or covenants. Forbearance by Owner to enforce one or more of the remedies provided in this Lease upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy.

21. CONDEMNATION

If the entire Premises are taken in condemnation proceedings, Tenant may cancel this Lease; should a substantial part of the Premises be so taken, Tenant may cancel this Lease or at its option retain the remainder of the Premises, which shall be restored to tenantable condition, and the rental then shall be apportioned; the rental subsequently shall be reduced in proportion to the amount of loss as a result of condemnation proceedings.

22. CLEANLINESS

Tenant shall at all times keep the Premises in a reasonably neat and orderly condition and clean and free from rubbish and dirt. Tenant will not store any unsightly materials, junk, garbage or debris of any kind upon the Premises and shall commit or suffer no waste of the Premises or
maintain any nuisance on the Premises.

23. DESTRUCTION OF PREMISES

In the event of damage to or destruction of any improvements which are to be erected on the Premises pursuant to the terms of this Lease, during the term of this Lease, from any cause covered by the insurance required under this Lease, Tenant shall promptly repair or rehabilitate the same. Such damage or destruction shall in no wise annul or void this Lease.

24. LATE PAYMENT PENALTY

All lease payments that are not paid by the due date are considered delinquent and shall be assessed a 5% penalty, which shall be considered a part of the rent and shall be due and payable with the rent payment.

25. BANKRUPTCY

Tenant agrees that if Tenant is adjudged bankrupt or insolvent under the laws of the United States or any state, or makes a general assignment for the benefit of creditors, or if a receiver of the property of Tenant is appointed and shall not be discharged within thirty (30) days after such appointment, then Owner may, at its option, immediately terminate this Lease and shall be entitled to immediate possession of the Premises.

26. CONDITION OF PREMISES AT TERMINATION

Tenant will quit, peacefully surrender, and deliver up the Premises and all additions to the Premises in as good and tenantable condition as the same are at the beginning of Tenant’s occupancy, reasonable wear and tear, damage by fire and other casualties and condemnation appropriate by eminent domain excepted, to the possession and use of the City without delay and in good condition and repair. Tenant shall remove all personal property (including without limitation, if requested by the City, any underground storage tanks installed by Tenant or its Associated Parties on the Premises) and trade fixtures (including all equipment), if any, of Tenant from the Premises prior to the date of termination or earlier expiration of this Lease, and shall repair any damage to the Premises caused by Tenant’s removal thereof. If Tenant fails to remove any items required to be removed by it hereunder, or fails to repair any resulting damage, prior to or within thirty (30) days after termination or earlier expiration of this Lease, then the City may remove said items and repair any resulting damage, and Tenant shall pay the cost of any such removal and repair, together with 5% interest thereon from and after the date such costs were incurred until the City’s receipt of full payment therefor. Upon or at any time after the expiration or earlier termination of this Lease, the City may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all income from the same.
27. PART OF MUNICIPAL AIRPORT

It is understood and agreed between the parties to this Lease that the Premises are a portion of DeKalb Taylor Municipal Airport and, therefore, notwithstanding anything contained in this Lease that may be or appear to the contrary, it is agreed that the rights granted under this Lease are nonexclusive and Owner reserves the right to grant similar privileges to another Tenant or other Tenants on other parts of the Airport. This Lease and all provisions of this Lease are subject and subordinate to the terms and conditions of the instruments and documents under which Owner acquired the subject property and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the deed of such lands to Owner, and any existing or subsequent amendments to the same, and are subject to any ordinances, rules or regulations which have been or may later be adopted by the United States of America, the State of Illinois, or Owner pertaining to the DeKalb Taylor Municipal Airport.

28. NONDISCRIMINATION

Tenant, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Lease, agrees that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the leased facilities; (2) in the construction of any improvements on, over or under such land and the furnishing of services on the land, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, as amended. In the event of breach of any of the above nondiscrimination covenants, Owner shall have the right to terminate this Lease and to re-enter and as if this Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations Part 21 are followed and completed including exercise or expiration of appeal rights.

29. AIRPORT PROTECTION

Owner reserves to itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in such airspace such noise as may be inherent in the operation of aircraft, now known or later used, for navigation of or flight in such airspace, and for use of such airspace for landing on, taking off from or operating on the Airport. Tenant agrees to restrict the height of structures, objects of natural growth and other obstructions on the Premises to such a height so as to comply with Federal Aviation Regulations, Part 77. Tenant agrees to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard to the Airport.
30. SUBROGATION

Tenant waives and shall cause its insurers to waive, and the Tenant shall cause each of Tenant’s Contractor, or other consultants, contractors, affiliates and sublessees, and each of Tenant’s Contractor, or other consultants, contractors, affiliates and sublessees insurers, to waive, their respective rights of subrogation against the City for recovery of damages to the extent these damages are covered by the following insurance obtained by Tenant pursuant to this Agreement: (1) Workers’ Compensation and Employer’s Liability Insurance; (2) Commercial General Liability (primary and umbrella); and (3) Automobile Liability Insurance. With respect to the waiver of subrogation for Workers’ Compensation and Employer’s Liability, Tenant shall obtain an endorsement equivalent to WC 00 03 13 to effect such waiver. In the event the insurers of Tenant or insurers of any of Tenant’s Contractor, or other consultants, contractors, affiliates and sublessees, should seek to pursue contribution or a subrogation claim against the City, the Tenant shall be responsible to pay all cost of defending such claims, including actual attorney’s fees of counsel of the City’s choosing subject to Section 16 (Indemnification of Owner).

31. HAZARDOUS MATERIALS

Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released into the environment or disposed of on, in, under or about the Airport, without the prior written consent of Owner. To the fullest extent permitted by law, Tenant agrees to indemnify, defend, protect and hold harmless Owner and Owner’s Agents, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, but not limited to, loss or restriction on use of rentable space or of any amenity of the Premises and sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees) which arise during or after the lease term directly or indirectly from the presence of Hazardous Materials on, in or about the Premises which is caused or permitted by Tenant or Tenant’s Agents. This indemnification includes, but is not limited to, any and all costs incurred in connection with any investigation of site conditions or any cleanup remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of such Hazardous Material in, on or about the Premises or the soil or groundwater on or under any building or any portion of a building. Tenant shall promptly notify Owner of any release of Hazardous Materials at the Airport, whether caused by Tenant or any other persons or entities.

Tenant shall promptly notify Owner of, and shall promptly provide true, correct, complete and legible copies of, all of the following environmental items relating to any property at the Airport which may be filed or prepared by or on behalf of, or delivered to or served upon, Tenant: reports filed pursuant to any self-reporting requirements, reports filed pursuant to any applicable laws, all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans, manifests or documents (even those which may be characterized as confidential) relating to water discharges, air pollution, water generation or disposal, underground storage tanks or Hazardous Materials.

Owner shall have the right, but not the obligation, to inspect, investigate, sample and
monitor any property at the Airport, including any soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses, at any time, to determine whether Tenant is complying with the requirements of this Section, or of any other law, and in connection with such right, Tenant shall provide Owner with full access to all relevant facilities, records and personnel.

As used in this Section, the term “Hazardous Materials” shall mean and include any hazardous or toxic materials, substances or wastes, including (A) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, any agency of the State of Illinois or any agency of the United States Government, (B) asbestos, (C) petroleum and petroleum-based products, (D) urea formaldehyde foam insulation, (E) polychlorinated byphenyls (“PCBs”), and (F) freon and other chlorofluorocarbons.

If Tenant or any environmental inspection discloses the existence of Hazardous Materials in, on, under or about the Premises, Tenant shall, at Owner’s request, immediately prepare and submit to Owner within fourteen (14) days after such request a comprehensive plan, subject to Owner’s approval, specifying the actions to be taken by Tenant to return the Premises to the condition existing prior to the introduction of such Hazardous Materials. Upon Owner’s approval of such cleanup plan, Tenant shall, at Tenant’s sole cost and expense, without limitation on any rights and remedies of Owner under this Lease, or applicable law, immediately implement such plan and proceed to clean up the Hazardous Materials in accordance with all applicable laws and as required by such plan and this Lease.

The provisions of this Section, including but not limited to its indemnification provisions, shall survive any termination of this Lease.

32. STORMWATER POLLUTION

Tenant agrees to prepare and adhere to a Stormwater Pollution Prevention Plan that meets the requirements of federal and state law and that is approved by Owner. Tenant agrees to provide a copy of such plan to Owner.

33. VENUE

Owner and Tenant waive the privilege of venue and agree that all litigation between them in the state courts shall take place in DeKalb County, Illinois, and that all litigation between them in the federal courts shall take place in the United States District Court for the Northern District of Illinois, Western Division.

34. ATTORNEY’S FEES

In any action on this Agreement at law or in equity, the prevailing party shall be entitled to recover the reasonable costs of its successful case, including reasonable attorney's fees and costs of appeal.
35. NON-LIABILITY FOR PUBLIC OFFICIALS

Neither party shall charge any official, employee or agent of the other party personally with any liability or expenses of defense or hold any official, employee or agent of such other party personally liable to them under any term or provision of this Lease or because of such party's execution, attempted execution or any breach of this Lease.

36. BINDING EFFECT

This Lease and all of its covenants and provisions shall inure to the benefit of and be binding upon the legal representative successors and assigns of the parties to this Lease.

37. ENTIRE AGREEMENT; MODIFICATION

This Lease represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are superseded. No agreement to modify this Lease will be effective unless in writing and executed by the party against whom the modification is sought to be enforced. Any such modification on the part of Owner shall not be effective unless considered at a public meeting and approved by majority vote of the City's Corporate Authorities. All information provided by Tenant in the lease application process is incorporated in this Lease by this reference.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized representatives on the dates set forth.

ATTEST:  
By:  
Title: Executive Assistant

ATTEST:  
By:  
Title: City Manager

CITY OF DEKALB  
By:  
Its: Mayor

SYNDEO NETWORKS, INC.  
By:  
Its: CEO
STATE OF ILLINOIS  
COUNTY OF DEKALB  

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Jerry Smith, known to me to be the same person whose name is subscribed to the foregoing Ground Lease, appeared before me this day in person and acknowledged that, pursuant to his authority, s/he signed the said Lease as his free and voluntary act, on behalf of the named municipal corporation, for the uses and purposes therein stated.

Given under my hand and seal this 15th day of October, 2019.

[Signature]
Notary Public

My commission expires 1-24-22
EXHIBIT A
(Fehr Graham survey dated Sept. 26, 2019)