UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 28, 2020

IMAGEWARE SYSTEMS, INC.

(Exact name of Registrant as specified in its Charter)

Delaware	001-15757	33-0224167
(State or other jurisdiction of incorporation)	(Commission File No.)	(IRS Employer Identification No.)

13500 Evening Creek Drive N., Suite 550
San Diego, California 92128
(Address of principal executive offices)

(858) 673-8600
(Registrant's Telephone Number)

Not Applicable
(Former name or address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of exchange on which registered
None	IWSY	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2) ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

Item 1.01 Entry into a material definitive agreement.

Securities Purchase Agreement

On September 28, 2020, the Company entered into a Securities Purchase Agreement (the "*Purchase Agreement*") whereby the Company agreed to sell a series of the Company's Preferred Stock, to be designated Series D Convertible Preferred Stock, par value $0.01 (the "*Series D Preferred*"), for a purchase price of $1,000 per share, to certain accredited investors (collectively, the "*Investors*"). The Purchase Agreement provides for the issuance of Series D Preferred Stock at closing (the "*Closing*") resulting in gross proceeds to the Company of approximately $10.9 million; however, the Purchase Agreement permits the Company to issue additional Series D Preferred at Closing resulting in aggregate gross proceeds of up to $15.0 million (the "*Series D Financing*"). The obligation of the Investors to purchase the Series D Preferred is conditioned on, among other terms and conditions set forth in the Purchase Agreement, (A) the filing with the Delaware Secretary of State of (i) an Amended and Restated Certificate of Incorporation ("*Amended Charter*"); (ii) Amended and Restated Certificates of Designation, Preferences and Rights of the Company's Series A Convertible Preferred Stock, par value $0.01 ("*Series A Preferred*"), Series A-1 Convertible Preferred Stock, par value $0.01 ("*Series A-1 Preferred*"), and Series C Convertible Preferred Stock, par value $0.01 ("*Series C Preferred*") (together, the "*New Organizational Documents*"); and (iii) the Certificate of Designation, Preferences and Rights of the Series D Preferred; and (B) the distribution to the Company's shareholders of an Information Statement relating to the written consent of shareholders approving the New Organizational Documents, which Information Statement the Company intends to file with the Securities and Exchange Commission ("*SEC*") promptly following the filing of this Current Report on Form 8-K with the SEC.

Concurrently with the execution of the Purchase Agreement, the Company and the Investors executed (i) a Registration Rights Agreement, pursuant to which the Company agreed to file a registration statement with the SEC within thirty days of Closing to register the shares of common stock, par value $0.01 ("*Common Stock*"), issuable upon conversion of the Series D Preferred to be issued at Closing; (ii) a Series C Exchange Agreement, pursuant to which the Company and certain holders of the Company's Series C Preferred agreed to exchange their Series C Preferred, with a liquidation preference of approximately $10.0 million, for Series D Preferred at Closing; and (iii) a Term Loan and Security Agreement ("*Loan Agreement*"), pursuant to which each Investor signatory thereto agreed to make a term loan to the Company, secured by all assets of the Company, in an amount equal to 20% of such Investor's purchase commitment as set forth in the Purchase Agreement ("*Bridge Loan*"), which Bridge Loan, plus accrued interest, will roll into, and be used to purchase, Series D Preferred at Closing. In anticipation of entering into the Purchase Agreement and the Series D Financing, on September 23, 2020, the Company entered into an Escrow Agreement with CitiBank, N.A., pursuant to which the Investor signatories to the Loan Agreement would deposit their pro-rata portion of the Bridge Loan into escrow, which amount was later released to the Company on September 29, 2020 (the "*Bridge Loan Closing*").

Under the terms of the Purchase Agreement, at the Closing of the Series D Financing, the holders of Series D Preferred will own approximately 50% of the voting securities of the Company on an as-converted basis, with the holders of the Common Stock and remaining classes of preferred stock, par value $0.01, including Series A Preferred, Series A-1 Preferred, Series B Convertible Preferred Stock ("*Series B Preferred*") and Series C Preferred, owning the remaining approximate 50% on an as-converted basis. Additionally, all current members of the Company's Board of Directors will resign at Closing, with the exception of Kristin Taylor, the Company's Chief Executive Officer, and the new members of the Board of Directors shall be appointed as follows: (i) the holders of Series D Preferred will appoint two directors (the "*Series D Directors*"); and (ii) Kristin Taylor and the two Series D Directors will appoint two additional, independent directors.

The Purchase Agreement contains covenants, requiring the Company to, among other things, file an application to list its Common Stock on the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market on or before December 31, 2020.

The Purchase Agreement, Registration Rights Agreement, Series C Exchange Agreement, Escrow Agreement, and Loan Agreement contain customary representations, warranties, agreements and conditions to Closing, as well as indemnification rights and other obligations of the parties.

The foregoing descriptions of the Purchase Agreement, Registration Rights Agreement, Series C Exchange Agreement, Escrow Agreement, and Loan Agreement do not purport to be complete, and is qualified in its entirety by reference to the same, copies of which are attached to this Current Report in Form 8-K as Exhibits 10.1, 10.2, 10.3, 10.4, and 10.5, respectively, and are incorporated by reference herein.

New Organizational Documents

Acting by written consent, the holders of the Company's Common Stock, Series A Preferred, Series A-1 Preferred and Series C Preferred approved the New Organizational Documents as more particularly set forth below and in the Information Statement to be filed with the SEC promptly following the filing of this Current Report on Form 8-K with the SEC.

Amended Charter. The Amended Charter provides for, among other things, (i) an increase in the authorized shares of the Company's Common Stock to 1.0 billion shares, (ii) the creation of the Series D Preferred, and (iii) designates Delaware as the exclusive forum for adjudicating corporate claims, including shareholder derivative claims. The Amended Charter also consolidates all amendments to the Company's Certificate of Incorporation into one document.

Series A Preferred and Series A-1 Preferred. The Amended and Restated Certificates of Designation, Preferences and Rights of the Company's Series A Preferred and Series A-1 Preferred were amended and restated to, among other things, provide for the automatic conversion of any Series A Preferred and Series A-1 Preferred shares not otherwise voluntarily converted into Common Stock by its terms, into shares of Common Stock of the Company monthly in 10% installments beginning November 1, 2020.

Series C Preferred. The Amended and Restated Certificate of Designation, Preferences and Rights of the Company's Series C Preferred was amended and restated so that the Series C Preferred ranks senior to the Company's Common Stock and Series A Preferred and junior to the Company's Series B Preferred and Series D Preferred. In addition, at such time as more than 50% of the outstanding shares of Series C Preferred (the "*Initiating Shareholders*") desire to effect an exchange of all of such Initiating Shareholders of Series C Preferred for shares of Series D Preferred, the Initiating Shareholders, in their sole discretion, may require that all remaining shares of Series C Preferred be automatically exchanged for Series D Preferred.

Each of the New Organizational Documents are anticipated to be filed with the Delaware Secretary of State on or promptly after twenty days following the first mailing of the Information Statement to shareholders.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

Upon consummation of the Bridge Loan Closing on September 29, 2020, approximately $2.2 million was released to the Company from escrow. The Bridge Loan bears interest at a fixed rate of 12% and is due and payable in arrears on the earlier of the Loan Conversion Date, as such term is defined in the Loan Agreement, or six months after the disbursement of the Bridge Loan. All amounts due and payable pursuant to the Bridge Loan are automatically convertible, without further action by the Investors, into shares of Series D Preferred at Closing at a purchase price of $1,000 for each share of Series D Preferred. The repayment of all amounts due under the terms of the Loan Agreement are secured by all assets of the Company.

The Company expects to use the proceeds from the Bridge Loan for working capital requirements and general corporate purposes.

Item 8.01 Other Events

On September 30, 2020, the Company issued a press release announcing the Bridge Loan Closing and the Series D Financing. A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

See Exhibit Index.

Exhibit Index

Exhibit No.	*Description*
10.1	Form of Securities Purchase Agreement, dated September 28, 2020, by and between ImageWare Systems, Inc. and each of the purchasers set forth on the signature page thereto.
10.2	Form of Registration Rights Agreement, dated September 28, 2020, by and between ImageWare Systems, Inc., and the purchasers named in the Securities Purchase Agreement dated September 28, 2020.
10.3	Form of Series C Exchange Agreement by and between ImageWare Systems, Inc., and those holders of Series C Preferred Convertible Stock set forth on the signature page thereto
10.4	Escrow Agreement, dated September 23, 2020, by and between ImageWare Systems, Inc. and CitiBank, N.A.
10.5	Form of Loan and Security Agreement, dated September 28, 2020, by and between ImageWare Systems, Inc., and each of the lenders set forth on the signature pages thereto.
99.1	Press Release dated September 30, 2020

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

IMAGEWARE SYSTEMS, INC.

Date: September 30, 2020

By: /s/ Kristin Taylor

Kristin Taylor

Chief Executive Officer

Exhibit 10.1

IMAGEWARE SYSTEMS, INC.

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "***Agreement***"), dated as of September 28, 2020 (the "***Effective Date***"), is made by and among ImageWare Systems, Inc., a corporation organized under the laws of the State of Delaware (the "***Company***"), and each of the purchasers (individually, a "***Purchaser***" and collectively the "***Purchasers***") set forth on the signature pages hereto (each, a "***Signature Page***" and collectively the "***Signature Pages***").

RECITALS

WHEREAS, the Company and the Purchasers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by the provisions of Regulation D ("***Regulation D***"), as promulgated by the United States Securities and Exchange Commission (the "***SEC***") under the Securities Act of 1933, as amended (including the rules and regulations promulgated thereunder, the "***Securities Act***");

WHEREAS, upon satisfaction of certain conditions, the Purchasers, severally and not jointly, desire to purchase, and the Company desires to issue and sell to the Purchasers, upon the terms and subject to the conditions set forth in this Agreement, an aggregate of Fifteen Thousand (15,000) shares of the Company's Series D Convertible Preferred Stock, par value $0.01 per share (the "***Preferred Stock***"), for $1,000 per share, which Preferred Stock shall have the rights, preferences and privileges set forth in the Company's Certificate of Designations, Preferences and Rights of Series D Convertible Preferred Stock (the "***Series D Certificate of Designation***") filed with the Secretary of State for the State of Delaware on or prior to the Closing Date, and substantially in the form of Exhibit A attached hereto;

WHEREAS, the shares of common stock of the Company, par value $0.01 per share (the "***Common Stock***"), issuable upon conversion of the Preferred Stock are referred to herein as the "***Conversion Shares***." The Preferred Stock and the Conversion Shares are collectively referred to herein as the "***Securities***" and each of them may individually be referred to herein as a "***Security***", and the shares of Common Stock issued or issuable to the holders of Preferred Stock as dividends in accordance with the terms and conditions set forth in the Certificate of Designation are referred to herein as "***Dividend Shares***"; and

WHEREAS, in connection with the execution of this Agreement, the Company has entered into an Escrow Agreement, dated as of the Effective Date, an executed copy of which is attached hereto as Exhibit B (the "***Escrow Agreement***"), with Citibank, N.A. (the "***Escrow Agent***"), pursuant to which the Escrow Agent will act as Escrow Agent with respect to the transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Purchasers hereby agree as follows:

1. PURCHASE AND SALE OF SECURITIES.

(a) Purchase and Sale of Securities. Subject to the terms and conditions hereof, at the Closing (as defined in Section 1(d) below), the Company shall issue and sell to each Purchaser, and each Purchaser, severally and not jointly, shall purchase from the Company, such number of shares of Preferred Stock as is set forth on such Purchaser's Signature Page, for a purchase price (as to each Purchaser, the "***Purchase Price***") equal to $1,000 per share of Preferred Stock.

(b) Deliverables as of the Effective Date. As of the Effective Date, the parties hereto acknowledge and agree that the following has occurred:

(i) Escrow Agreement. (A) The Company and the Escrow Agent have executed such party's Signature Page to the Escrow Agreement and delivered the same to the other parties hereto, (B) each Purchaser has delivered to the Escrow Agent the full amount of such Purchaser's applicable Initial Purchase Price (defined below) and (C) the Company has delivered to the Escrow Agent the wire transfer instructions set forth on Exhibit C.

(ii) Registration Rights Agreement. The Company and each Purchaser have executed such party's Signature Page to the Registration Rights Agreement in the form attached hereto as Exhibit D (the "***Registration Rights Agreement***"), and delivered executed copies of the same to the other parties hereto. The Registration Rights Agreement shall be effective upon Closing.

(iii) Series C Exchange Agreement. The Company and the applicable holders of the Company's Series C Convertible Preferred Stock (the "***Series C Holders***") have executed the Series C Exchange Agreement, an executed copy of which is attached hereto as Exhibit E (the "***Exchange Agreement***"), and the Purchasers shall have received an executed copy thereof. The transactions contemplated by the Exchange Agreement shall have occurred, or concurrently with the Closing, will occur.

(iv) Term Loan and Security Agreement. The Company and each Purchaser have entered into that certain Term Loan Security Agreement, an executed copy of which is attached hereto and which is attached hereto as Exhibit F (the "***Term Loan and Security Agreement***"), which provides for the bridge loan to the Company (the "***Bridge Loan***"). The amount of the Bridge Loan shall be referred to as the "***Bridge Loan Amount***."

(v) Written Consent. The Requisite Shareholders have executed a written consent approving and adopting the applicable New Organizational Documents (defined below) which require shareholder approval, an executed copy of which is attached hereto as Exhibit G (including the documents and transactions authorized therein, the "***Written Consent***"). For the purposes of this Agreement, "Written Consent" shall refer to, individual and collectively, the Written Consent of each Stockholder Group (defined below) included as part of Exhibit G.

(c) Additional Purchasers. At any time after the Effective Date, one or more additional Purchasers ("***Additional Purchasers***") may become a party hereto by (i) executing and delivering to the Company and each other Purchaser (A) a Joinder Agreement in substantially the form attached hereto as Exhibit K, and (B) a signature page to the Registration Rights Agreement and Term Loan Agreement, and (ii) delivering such Additional Purchaser's Initial Purchase Price to the Escrow Agent. Immediately upon (i) execution and delivery of such Joinder Agreement and (ii) payment of such Additional Purchaser's Initial Purchase Price (and without any further action), each such Additional Purchaser will become a party to this Agreement and have all of the rights and obligations of a Purchaser hereunder, and this Agreement and the schedules hereto shall be deemed amended by such Joinder Agreement. Notwithstanding the foregoing, no Additional Purchasers will be permitted to be a party to this Agreement to the extent such Additional Purchaser's proposed Purchase Price would cause Total Purchase Price (including the Purchase Price of all Additional Purchasers) to exceed $15,000,000 without the express written consent of the Company.

(d) The Closing. Closing of the Transactions (the "***Closing***") shall occur on the date on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto in connection with the Closing, and all conditions precedent to (i) the Purchasers' obligation to deliver the Closing Purchase Price (defined below) of the Preferred Stock to the Company, as set forth in Section 7, and (ii) the Company's obligations to deliver the Preferred Stock set forth in Section 6, in each case, have been satisfied or waived. The day on which the Closing occurs shall be the "***Closing Date.***"

(e) Definitions. Unless the context otherwise requires, the terms defined in this Section 1(e) shall, for the purposes of this Agreement, have the meanings herein specified.

(i) *"**Accrued Interest Deduction**"* means, as to each Purchaser, an amount equal to the product of (A) the total amount of interest which has accrued on the Bridge Loan Amount pursuant to the terms of the Term Loan and Security Agreement as of the Closing Date, and (B) a fraction, the numerator of which is such Purchaser's Initial Purchaser Price and the denominator of which is the Bridge Loan Amount.

(ii) "***Closing Purchase Price***" means, as to each Purchaser, an amount equal to (A) such Purchaser's Purchase Price, *less* (B) the sum of (1) such Purchaser's Initial Purchase Price and (2) such Purchaser's Accrued Interest Deduction.

(iii) "***Initial Purchase Price*****"** means, as to each Purchaser, an amount equal to the product of (A) such Purchaser's Purchase Price, and (B) 0.20.

(iv) "***New Organizational Documents***" includes each of the following amended and restated Organizational Documents (defined below): (A) the amended and restated Certificate of Incorporation of the Company, in substantially the form attached as Exhibit E to the Written Consent (the "***Amended & Restated Certificate of Incorporation***"); (B) the amended and restated Certificates of Designations, Preferences and Rights of the Series A Convertible Preferred Stock of the Company, in substantially the form attached as Exhibit B to the Written Consent (the "***Amended and Restated Series A Certificate of Designation***"); (C) the amended and restated Certificates of Designations, Preferences and Rights of the Series A-1 Convertible Preferred Stock of the Company, in substantially the form attached Exhibit C to the Written Consent (the "***Amended and Restated Series A-1 Certificate of Designation***"); (D) the amended and restated Certificates of Designations, Preferences and Rights of the Series C Convertible Preferred Stock of the Company, in substantially the form attached as Exhibit D to the Written Consent] (the "***Amended and Restated Series C Certificate of Designation***"); and (E) the Series D Certificate of Designation.

(v) "***Organizational Documents***" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended.

(vi) "***Requisite Shareholders***" means the minimum number of shareholders of the Company required to approve the New Organizational Documents as required by the Company's current Organizational Documents and applicable law (as determined by the Holder Representative in its sole discretion). The term "Requisite Shareholders" means, individually and collectively, each of the following groups of stockholders (each, a "***Stockholder Group***"), each voting as a separate class: (a) stockholders owning at least fifty percent (50%) of the Company's outstanding capital stock on an as-converted basis; (b) holders owning not less than two-thirds (2/3rd) of the Series A Convertible Preferred Stock; (c) holders owning at least fifty percent (50%) of the Company's Series A-1 Convertible Preferred Stock; and (d) fifty percent (50%) of the Series C Holders.

(vii) "***Total Purchase Price***" means the aggregate Purchase Price of all Purchasers.

(viii) "***Transaction Documents***" mean this Agreement, the Registration Rights Agreement, the Escrow Agreement, the Term Loan and Security Agreement, the Exchange Agreement and the New Organizational Documents.

(ix) "***Transactions***" means the transaction contemplated by this Agreement and each of the Transaction Documents.

2. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

Each Purchaser, severally, but not jointly, represents and warrants to the Company as follows:

(a) Purchase for Own Account, Etc. Such Purchaser is purchasing the Securities for such Purchaser's own account for investment purposes only and not with a view towards the public sale or distribution thereof, except pursuant to sales that are exempt from the registration requirements of the Securities Act and/or sales registered under the Securities Act. Such Purchaser has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company, and is capable of evaluating the merits and risks of its investment in the Company. Such Purchaser understands that it must bear the economic risk of this investment indefinitely, unless the Securities are registered pursuant to the Securities Act and any applicable state securities or blue sky laws or an exemption from such registration is available, and that the Company has no present intention of registering the resale of any such Securities other than as contemplated by the Registration Rights Agreement. Notwithstanding anything in this Section 2(a) to the contrary, by making the representations herein, such Purchaser does not agree to hold the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from the registration requirements under the Securities Act.

(b) Accredited Investor Status. Such Purchaser is an "Accredited Investor", as that term is defined in Rule 501(a) of Regulation D.

(c) Reliance on Exemptions. Such Purchaser understands that the Securities are being offered and sold to such Purchaser in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws, and that the Company is relying upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(d) Information. All materials relating to the business, finances and operations of the Company (including the Company's most recent Annual Report on Form 10-K and most recent Quarterly Report on Form 10-Q) and materials relating to the offer and sale of the Securities which have been specifically requested by such Purchaser or its counsel have been made available to such Purchaser and its counsel, if any. Neither such inquiries nor any other investigation conducted by such Purchaser or its counsel or any of such Purchaser's representatives shall modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in Section 3 below. Such Purchaser understands that its investment in the Securities involves a high degree of risk, including the risk of loss of its entire investment in the Securities.

(e) Governmental Review. Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities.

(f) Transfer or Resale. Such Purchaser understands that (i) except as provided in the Registration Rights Agreement, the sale or resale of the Securities have not been and are not being registered under the Securities Act or any state securities laws, and the Securities may not be transferred unless (A) the transfer is made pursuant to and as set forth in an effective registration statement under the Securities Act covering the Securities; or (B) such Purchaser shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration; or (C) sold under and in compliance with Rule 144 promulgated under the Securities Act (including any successor rule, "***Rule 144***"); or (D) sold or transferred to an affiliate of such Purchaser that agrees to sell or otherwise transfer the Securities only in accordance with the provisions of this Section 2(f) and that is an Accredited Investor; and (ii) neither the Company nor any other person is under any obligation to register the Securities under the Securities Act or any state securities laws (other than pursuant to the terms of the Registration Rights Agreement). Notwithstanding the foregoing or anything else contained herein to the contrary, the Securities may be pledged as collateral in connection with a bona fide margin account or other lending arrangement, provided such pledge is consistent with applicable laws, rules and regulations.

(g) Authorization; Enforcement. This Agreement, the Registration Rights Agreement, the Escrow Agreement and the Exchange Agreement have been duly and validly authorized, executed and delivered on behalf of such Purchaser and are valid and binding agreements of such Purchaser enforceable against such Purchaser in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies.

(h) Residency. Such Purchaser is a resident of the jurisdiction set forth under such Purchaser's name on the Signature Page hereto executed by such Purchaser.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

Except as set forth on the Disclosure Schedule attached to this Agreement (the "***Disclosure Schedule***"), the Company represents and warrants to each Purchaser as follows:

(a) Organization and Qualification; Subsidiaries. The Company and each of its subsidiaries listed on Section 3(a) of the Disclosure Schedules]collectively, the "***Subsidiaries***") is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction in which it is incorporated or organized and has the requisite corporate power to own its properties and to carry on its business as now being conducted. The Company and each of its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary and where the failure so to qualify would have, or would reasonably be expected to result in, a Material Adverse Effect. For purposes of this Agreement, "***Material Adverse Effect***" means any event, occurrence, fact, condition or change that, individually or in the aggregate, results, or would reasonably be likely to result, in a material adverse effect on (i) the Securities or the Dividend Shares, (ii) the ability of the Company to perform its obligations under this Agreement or the other Transaction Documents or (iii) the condition (financial or otherwise) or the earnings, prospects, business, properties, surplus or results of operations of the Company and its Subsidiaries.

(b) Authorization; Enforcement. Other than the Written Consent, (i) the Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents, to issue and sell the Preferred Stock in accordance with the terms hereof, to issue the Conversion Shares upon conversion of the Preferred Stock in accordance with the terms thereof and to issue the Dividend Shares in accordance with the Series D Certificate of Designation and the Company's Certificate of Incorporation as in effect on the date hereof ("***Certificate of Incorporation***"); (ii) the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by it of the Transactions (including, without limitation, the issuance of the Preferred Stock and the issuance and reservation for issuance of the Conversion Shares and the Dividend Shares) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, any committee of the Board of Directors or any of the stockholders of the Company is required, and (iii) this Agreement constitutes, and, upon execution and delivery by the Company of the other Transaction Documents, such Transaction Documents will constitute, valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies. Other than the Written Consent, neither the execution, delivery or performance by the Company of its obligations under this Agreement or the other Transaction Documents, nor the consummation by it of the Transactions (including, without limitation, the issuance of the Preferred Stock, or the issuance or reservation for issuance of the Conversion Shares and the Dividend Shares) requires any consent or authorization of the Company's stockholders.

(c) Capitalization. The capitalization of the Company as of the date hereof, including the authorized capital stock, the number of shares issued and outstanding, the number of shares issuable and reserved for issuance pursuant to the Company's stock option plans, all securities exercisable or exchangeable for, or convertible into, any shares of capital stock of the Company ("***Convertible Securities***"), the number of shares issuable and reserved for issuance pursuant to Convertible Securities, any shares of capital stock and the number of shares reserved for issuance upon conversion of the Preferred Stock, is set forth in Section 3(c) of the Disclosure Schedule. All such outstanding shares of capital stock have been, or upon issuance in accordance with the terms of any such Convertible Securities will be, validly issued, fully paid and non-assessable. No shares of capital stock of the Company (including the Conversion Shares and the Dividend Shares) are subject to preemptive rights or any other similar rights of the stockholders of the Company or any liens or encumbrances. Except as set forth on Section 3(c) of the Disclosure Schedule, (i) there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of capital stock of the Company or any of its Subsidiaries, or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries, nor are any such issuances or arrangements contemplated, (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of its or their securities under the Securities Act (except the Registration Rights Agreement); (iii) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem any security of the Company; and (iv) the Company does not have any shareholder rights plan, "poison pill" or other anti-takeover plans or similar arrangements. Section 3(c) of the Disclosure Schedule sets forth all of the securities or instruments issued by the Company or any of its Subsidiaries that contain anti-dilution or similar provisions that will be triggered by, and all of the resulting adjustments that will be made to such securities and instruments as a result of, the issuance of the Securities and the Dividend Shares in accordance with the terms of this Agreement or the Series D Certificate of Designation. Other than the Written Consent, the Company has no knowledge of any voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among any of the security holders of the Company relating to the securities of the Company held by them. The Company can furnish, upon request, true and correct copies of the Company's Certificate of Incorporation, the Company's Bylaws as in effect on the date hereof (the "***Bylaws***"), and all other instruments and agreements governing any Convertible Securities. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or any such Subsidiary.

(d) Issuance of Securities. Subject to the Written Consent, the Preferred Stock is duly authorized and, upon issuance in accordance with the terms of this Agreement and the Series D Certificate of Designation, (i) will be validly issued and free from all taxes, liens, claims, transfer restrictions, and encumbrances (other than restrictions on transfer contained in this Agreement or the Series D Certificate of Designation), (ii) will not be subject to preemptive rights, rights of first refusal or other similar rights of stockholders of the Company or any other Person (as defined below) and (iii) will not impose personal liability on any holder thereof. The Conversion Shares and the Dividend Shares are duly authorized and reserved for issuance, and, upon issuance of the Dividend Shares or conversion of the Preferred Stock, in each case in accordance with the terms of the Series D Certificate of Designation, (x) will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims, transfer restrictions, and encumbrances (other than restrictions on transfer contained in this Agreement), (y) will not be subject to preemptive rights, rights of first refusal or other similar rights of stockholders of the Company or any other Person and (z) will not impose personal liability upon any holder thereof. Except for the filing of any notice prior or subsequent to the Closing Date that may be required under applicable state and/or federal securities laws (or comparable laws of any other jurisdiction), and subject to Section 4(k), no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency, instrumentality or other third party, is or will be necessary for, or in connection with, the execution and delivery by the Company of this Agreement, the offer, issue, sale, execution or delivery of the Securities and the Dividend Shares, or the performance by the Company of its obligations under this Agreement. No "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a "***Disqualification Event***") is applicable to the Company or, to the Company's knowledge, any Person listed in the first paragraph of Rule 506(d)(1), except for a Disqualification Event as to which Rule 506(d)(2)(ii–iv) or (d)(3), is applicable. "***Person***" means an individual, partnership, corporation, unincorporated organization, joint stock company, limited liability company, association, trust, joint venture or any other entity, or a governmental agency or political subdivision thereof.

(e) No Conflicts. Except as set forth on Section 3(e) of the Disclosure Schedule, and subject to the Written Consent, the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the Transactions (including, without limitation, the issuance of the Preferred Stock, and the issuance and reservation for issuance of the Conversion Shares and the Dividend Shares) will not (i) result in a violation of the Certificate of Incorporation or Bylaws, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including United States federal and state securities laws, rules and regulations and rules and regulations of any self-regulatory organizations to which either the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iv) result in the imposition of a mortgage, pledge, security interest, encumbrance, charge or other lien on any asset of the Company or any Subsidiary.

(f) Compliance. Neither the Company nor any of its Subsidiaries is in violation of its Certificate of Incorporation, Bylaws or other organizational documents, and neither the Company nor any of its Subsidiaries is in default (and no event has occurred that with notice or lapse of time or both would put the Company or any of its Subsidiaries in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party. The businesses of the Company and its Subsidiaries are not being conducted, and shall not be conducted so long as any Purchaser (or any of its respective affiliates) owns any of the Securities or Dividend Shares, in violation of any law, ordinance or regulation of any governmental entity, except for possible violations the sanctions for which either singly or in the aggregate have not had and would not materially affect the Company or any of its Subsidiaries. Neither the Company, nor any of its Subsidiaries, nor any director, officer, agent, employee or other Person acting on behalf of the Company or any Subsidiary has, in the course of his actions for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, provincial or foreign governmental or regulatory authorities that are material to the conduct to their business, and neither the Company nor any of its Subsidiaries has received any notice of proceeding relating to the revocation or modification of any such certificate, authorization or permit. The Company has complied in all material respects with and is not in default or violation in any material respect of, and is not, to the Company's knowledge, under investigation with respect to or has not been, to the knowledge of the Company, threatened to be charged with or given notice of any violation of, any applicable federal, state, local or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any federal, state, local or foreign governmental or regulatory authority. Except for statutory or regulatory restrictions of general application, no federal, state, local or foreign governmental or regulatory authority has placed any material restriction on the business or properties of the Company or any of its Subsidiaries.

(g) SEC Documents, Financial Statements. Except as set forth on Section 3(g) of the Disclosure Schedules, the Company has timely filed (within applicable extension periods) all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the Securities Act and/or the Securities Exchange Act of 1934, as amended (including the rules and regulations promulgated thereunder, the "***Exchange Act***") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, the "***SEC Documents***"). As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings made prior to the date hereof). As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC applicable with respect thereto. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("***GAAP***"), consistently applied, during the periods involved (except as may be otherwise indicated in such financial statements or the notes thereto or, in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to immaterial year-end audit adjustments). Except as set forth in the financial statements of the Company included in the Select SEC Documents (as defined below), the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of such financial statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in such financial statements, which liabilities and obligations referred to in clauses (i) and (ii), individually or in the aggregate, are not material to the financial condition or operating results of the Company. For purposes of this Agreement, "***Select SEC Documents***" means the Company's (A) Annual Report on Form 10-K for the fiscal year ended December 31, 2019, (B) Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2020, (C) Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2020, and (D) all Current Reports on Form 8-K filed since August 19, 2020.

(h) No Material Adverse Effect in Business. Except as set forth on Section 3(h) of the Disclosure Schedule, and other than effects on the business related primarily to COVID-19, since March 31, 2020 through the date hereof, (i) there has been no Material Adverse Effect, nor any development or event which would result, or be reasonably likely to result, in a Material Adverse Effect, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets, net current liabilities or net assets of the Company and its Subsidiaries.

(i) Absence of Certain Changes. Except as set forth on Section 3(i) of the Disclosure Schedule, since March 31, 2020, (i) there has not been any change in the capital stock (other than pursuant to the Company's stock plans pursuant to the Company's Approved Share Plan (as defined below), pursuant to the conversion or exercise of outstanding securities that are convertible into or exercisable for Common Stock, or pursuant to publicly disclosed equity or debt financings) or long-term debt of the Company, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock; (ii) neither the Company nor any of its Subsidiaries has entered into any transaction or agreement that is material to the Company or any of its Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company or any of its Subsidiaries and, except as contemplated by this Agreement, has made any material change or amendment to a material contract or arrangement by which the Company or any of its Subsidiaries or any of their respective assets or properties is bound or subject; (iii) neither the Company nor any of its Subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority; and (iv) there has been no material adverse change and no material adverse development in the business, properties, operations, prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries has taken any steps, and does not currently expect to take any steps, to seek protection pursuant to any bankruptcy or receivership law, nor does the Company or any of its Subsidiaries have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings with respect to the Company or any of its Subsidiaries. For purposes of this Section 3(i), "***Approved Share Plan***" shall mean the Company's Amended and Restated 1999 Stock Award Plan and 2020 Omnibus Stock Incentive Plan.

(j) Transactions with Affiliates. Except as disclosed on the Select SEC Documents, none of the officers, directors, or employees of the Company or any of its Subsidiaries, or any of their family members, is presently a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services solely in their capacity as officers, directors, employees or consultants), including, without limitation, any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director, employee or family member or any corporation, partnership, trust or other entity in which any such officer, director, employee or family member has an ownership interest of five percent or more or is an officer, director, trustee or partner.

(k) Absence of Litigation. Except as disclosed on Section 3(k) of the Disclosure Schedules, there is no action, suit, proceeding, inquiry or, to the best of the Company's knowledge, investigation before or by any court, public board, government agency, self-regulatory organization or body (including, without limitation, the SEC) pending or affecting the Company, any of its Subsidiaries, or any of their respective directors or officers in their capacities as such. To the knowledge of the Company or any of its Subsidiaries, there are no actions, suits, proceedings, inquiries or investigations before or by any court, public board, government agency, self-regulatory organization or body (including, without limitation, the SEC) threatened against the Company, any of its Subsidiaries, or any of their respective directors or officers in their capacities as such, which, if determined adversely, could, either individually or in the aggregate, be material to the Company or any of its Subsidiaries. There are no facts which, if known by a potential claimant or governmental authority, could give rise to a claim or proceeding which, if asserted or conducted with results unfavorable to the Company or any of its Subsidiaries, could reasonably be expected to be material to the Company or any of its Subsidiaries.

(l) Intellectual Property. Each of the Company and its Subsidiaries owns or is duly licensed (and, in such event, has the unfettered right to grant sublicenses) to use all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, copyright applications, licenses, permits, inventions, discoveries, processes, scientific, technical, engineering and marketing data, object and source codes, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) and other similar rights and proprietary knowledge (collectively, "***Intellectual Property***") used in or necessary for the conduct of its business as now being conducted and as presently contemplated to be conducted in the future (collectively, the "***Company Intellectual Property***"). Section 3(l) of the Disclosure Schedule sets forth a list of all material Company Intellectual Property owned and/or used by the Company or any of its Subsidiaries in its business. Except as set forth on the Disclosure Schedule, there are no rights of third parties to any of the Company Intellectual Property except through licensing agreements. Except as set forth on the Disclosure Schedule, there are no outstanding options, licenses or agreements of any kind relating to the Company Intellectual Property, nor is the Company or any of its Subsidiaries bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other Person (collectively, the "***Third Party License Agreements***") other than such licenses or agreements arising from the purchase of generally available products, as to which the aggregate consideration paid by or due from the Company or any of its Subsidiaries does not exceed $25,000 in value, or "off the shelf" products. All of the Third Party License Agreements are valid, binding and in full force and effect in all material respects and to the Company's knowledge enforceable by the Company or its applicable Subsidiary in accordance with their respective terms in all material respects, subject to general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies. Neither the Company nor any of its Subsidiaries is in material breach of any such Third Party License Agreements. To the Company's knowledge, no other party to any of the Third Party License Agreements is in material default thereunder. Neither the Company nor any Subsidiary of the Company infringes or is in conflict with any right of any other Person with respect to any third party Intellectual Property. Neither the Company nor any of its Subsidiaries has received written notice of any pending conflict with or infringement upon any third party Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or any of its Subsidiaries' ownership of or licensing rights in or to any Company Intellectual Property. Neither the Company nor any of its Subsidiaries has entered into any consent agreement, indemnification agreement, forbearance to sue or settlement agreement with respect to the validity of the Company's or its Subsidiaries' ownership of or right to use its Company Intellectual Property and there is no reasonable basis for any such claim to be successful. The rights of the Company and its Subsidiaries in the Company Intellectual Property are valid and enforceable and no registration relating thereto has lapsed, expired or been abandoned or canceled or is the subject of cancellation or other adversarial proceedings, and all applications therefor are pending and in good standing. The Company and its Subsidiaries have taken all reasonable steps required to perfect their ownership of and interest in the Company Intellectual Property and has taken reasonable security measures to protect the secrecy, confidentiality and value of all of the Company Intellectual Property. The Company and its Subsidiaries have complied, in all material respects, with their respective contractual obligations relating to the protection of the Company Intellectual Property used pursuant to licenses. No Person is infringing on or violating the Company Intellectual Property owned or used by the Company or its Subsidiaries. The Company and its Subsidiaries have used Company IP Counsel (as defined below) for all Intellectual Property matters since December 31, 2011 and, since such date, neither the Company nor any of its Subsidiaries has consulted any other counsel with respect to any Intellectual Property matters.

(m) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and merchantable title to all personal property owned by them that is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries. Any real property and facilities held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(n) Tax Status. Except as set forth in Section 3(n) of the Disclosure Schedule, the Company and each of its Subsidiaries has made or filed all foreign, U.S. federal, state, provincial and local income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges due and owing, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to any statute of limitations relating to the assessment or collection of any foreign, federal, state, provincial or local tax. None of the Company's tax returns is presently being audited by any taxing authority.

(o) Key Employees. Except as set forth on Section 3(o) of the Disclosure Schedules, each of the Company's and its Subsidiaries' directors and officers and any Key Employee (as defined below) is currently serving the Company or its Subsidiaries in the capacity disclosed in the Select SEC Documents. No Key Employee is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each Key Employee does not subject the Company or any of its Subsidiaries to any material liability with respect to any of the foregoing matters. Except as set forth on Section 3(o) of the Disclosure Schedules, no Key Employee has, to the knowledge of the Company and its Subsidiaries, any intention to terminate or limit his employment with, or services to, the Company or any of its Subsidiaries, nor is any such Key Employee subject to any constraints which would cause such employee to be unable to devote his full time and attention to such employment or services. For purposes of this Agreement, "***Key Employee***" means the persons listed in Section 3(o) of the Disclosure Schedule and any individual who assumes or performs any of the duties of a Key Employee.

(p) Employee Relations. No application or petition for certification of a collective bargaining agent is pending and none of the employees of Company or any of its Subsidiaries are or have been represented by any union or other bargaining representative and no union has attempted to organize any group of the Company's or any of its Subsidiaries' employees, and no group of the Company's or any of its Subsidiaries' employees has sought to organize themselves into a union or similar organization for the purpose of collective bargaining. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) of the Securities Act) has notified the Company or any of its Subsidiaries that such officer intends to leave the Company or any of its Subsidiaries or otherwise terminate such officer's employment with the Company or any of its Subsidiaries. The Company and its Subsidiaries are in compliance with all federal, state and local laws and regulations and, to the Company's knowledge, all foreign laws and regulations, in each case respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, be material to the Company or any of its Subsidiaries.

(q) Insurance. The Company and each of its Subsidiaries has in force fire, casualty, product liability and other insurance policies, with extended coverage, sufficient in amount to allow it to replace any of its material properties or assets which might be damaged or destroyed or sufficient to cover liabilities to which the Company or any of its Subsidiaries may reasonably become subject, and such types and amounts of other insurance with respect to its business and properties, on both a per occurrence and an aggregate basis, as are customarily carried by Persons engaged in the same or similar business as the Company and its Subsidiaries. No default or event has occurred that could give rise to a default under any such policy.

(r) Environmental Matters. The Company and each of its Subsidiaries is in compliance with all foreign, federal, state and local rules, laws and regulations relating to the use, treatment, storage and disposal of Hazardous Substances (as defined below) and protection of health and safety or the environment which are applicable to its business. There is no environmental litigation or other environmental proceeding pending or threatened by any governmental or regulatory authority or others with respect to the current or any former business of the Company or any of its Subsidiaries or any partnership or joint venture currently or at any time affiliated with the Company or any of its Subsidiaries. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by the Company or any of its Subsidiaries. No Hazardous Substances have been treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by the Company or any of its Subsidiaries or by any partnership or joint venture currently or at any time affiliated with the Company or any of its Subsidiaries in violation of any applicable environmental laws. The environmental compliance programs of the Company and each of its Subsidiaries comply in all respects with all environmental laws, whether foreign, federal, state, provincial or local, currently in effect. For purposes of this Agreement, "***Hazardous Substances***" means any substance, waste, contaminant, pollutant or material that has been determined by any governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

(s) Listing. The Company is not in violation of the listing requirements of the OTCQB Marketplace (the "***OTCQB***") on which it trades, does not reasonably anticipate that the Common Stock will be delisted by the OTCQB for the foreseeable future, and has not received any notice regarding the possible delisting of the Common Stock from the OTCQB. The issuance and sale of the Preferred Stock and the Transactions do not contravene the rules and regulations of the OTCQB.

(t) No General Solicitation or Integrated Offering. Neither the Company nor any Person acting for the Company has conducted any "general solicitation" (as such term is defined in Regulation D) with respect to any of the Securities and/or Dividend Shares being offered hereby. Neither the Company nor any of its affiliates, nor any Person acting on its or their behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration of the Securities and/or Dividend Shares being offered hereby under the Securities Act or cause this offering of Securities and/or Dividend Shares to be integrated with any prior offering of securities of the Company for purposes of the Securities Act, which result of such integration would require registration under the Securities Act, or any applicable stockholder approval provisions.

(u) No Brokers. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other third party with respect to the Transactions. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other third parties for fees of a type contemplated in this Section 3(u) that may be due in connection with the Transactions.

(v) Acknowledgment Regarding Securities. The number of Conversion Shares issuable upon conversion of the Preferred Stock may increase in certain circumstances. The Company's directors and executive officers have studied and fully understand the nature of the Securities being sold hereunder. The Company acknowledges that its obligation to issue (i) Conversion Shares upon conversion of the Preferred Stock and (ii) the Dividend Shares, in each case, in accordance with the Series D Certificate of Designation, is absolute and unconditional, regardless of the dilution that such issuance may have on the ownership interests of other stockholders and the availability of remedies provided for in this Agreement relating to a failure or refusal to issue Conversion Shares and Dividend Shares to the extent required by the Series D Certificate of Designation. Taking the foregoing into account, the Company's Board of Directors has determined in its good faith business judgment that the issuance of the Preferred Stock hereunder and the consummation of the Transactions are in the best interests of the Company and its stockholders.

(w) Internal Control over Financial Reporting. The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company does not have any material weaknesses in its internal control over financial reporting. Since the date of the latest audited financial statements included in the Select SEC Documents, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(x) Disclosure Controls and Procedures. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) of the Exchange Act) that comply with the requirements of the Exchange Act. Such disclosure controls and procedures have been designed to ensure that material information relating to the Company is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, by others within those entities.

(y) Sarbanes-Oxley Compliance. The Company and the Company's directors and officers, in their capacities as such, are in compliance with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith ("***SOX***"), including Section 402 related to loans and Sections 302 and 906 related to certifications, and neither the Company nor any of its officers has received notice from any governmental entity questioning or challenging the accuracy, completeness, content, form or manner of filing or submission of such certifications. The Company has no reasonable basis to believe that it will not continue to be in compliance with SOX as in effect on the Closing Date (including, without limitation, the requirements of Section 404 thereof).

(z) Disclosure. All information relating to or concerning the Company and/or any of its Subsidiaries set forth in this Agreement or provided to the Purchasers pursuant to Section 2(d) hereof or otherwise by the Company in connection with the Transactions is true and correct in all material respects and the Company has not omitted to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or exists with respect to the Company or its Subsidiaries or their respective businesses, properties, prospects, operations or financial conditions, which has not been publicly disclosed but, under applicable law, rule or regulation, would be required to be disclosed by the Company in a registration statement filed on the date hereof by the Company under the Securities Act with respect to a primary issuance of the Company's securities.

(aa) Absence of Indebtedness. On the Closing Date, as a result of the Transactions, neither the Company nor any Subsidiary shall have any indebtedness for borrowed money that would be required to be disclosed by the Company on a balance sheet prepared in accordance with GAAP. Section 3(aa) of the Disclosure Schedule sets for the indebtedness for borrowed money of the Company and its Subsidiaries as of immediately prior to the Closing Date.

(bb) No Registration. Assuming the accuracy of the representations and warranties of the Purchasers contained in Section 2 hereof, it is not necessary, in connection with the issuance and sale of the Preferred Stock to the Purchasers, the issuance of the Conversion Shares upon conversion of the Preferred Stock or the issuance of the Dividend Shares pursuant to the terms of the Series D Certificate of Designation and the Certificate of Incorporation, in each case in the manner contemplated by this Agreement and the other Transaction Documents, to register the Preferred Stock, the Conversion Shares or the Dividend Shares under the Securities Act, except for any registration that is required under the terms of the Registration Rights Agreement.

(cc) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the Transactions. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the Transactions and any advice given by any Purchaser or any of its representatives or agents in connection with the Transaction Documents and the Transactions is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the Transactions by the Company and its representatives.

(dd) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, short sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, and (iii) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(ee) Information Statement. Neither the information supplied, or to be supplied, by or on behalf of the Company, for inclusion or incorporation by reference into the Information Statement or any other documents to be filed by the Company with the SEC in connection with the Transactions, contains or will, on the date of its filing or at the date it is mailed to the stockholders, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

4. COVENANTS.

(a) Form D: Blue Sky Laws. The Company shall timely file with the SEC a Form D with respect to the Securities as required under Regulation D and provide a copy thereof to any Purchaser promptly upon request of such Purchaser. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary to qualify the Securities for sale to each Purchaser pursuant to this Agreement under applicable securities or "blue sky" laws of the states of the United States or obtain exemption therefrom, and shall provide evidence of any such action so taken to Holder Representative (as defined below) on or prior to the Closing Date. Within four business days after the Closing Date, the Company shall file a Form 8-K with the SEC concerning this Agreement and the Transactions, which Form 8-K shall attach this Agreement and its Exhibits as exhibits to such Form 8-K (the "***8-K Filing***"). The Company shall provide Holder Representative with a copy of the 8-K Filing at least two (2) business days prior to the filing of the 8-K Filing for Holder Representative's review and comment, it being understood that nothing contained herein shall prevent the Company from filing such 8-K Filing within four (4) business days after the Closing Date. The Company shall consider in good faith the comments received by Holder Representative or its counsel to the 8-K Filing and shall incorporate the same into the 8-K Filing unless the Company, acting in good faith, has a reasonable basis for not incorporating any such comments, in which case the Company shall consult with Holder Representative or its counsel with respect to such comments. For purposes of this Agreement, "***Holder Representative***" means any Purchaser beneficially owning in excess of fifty percent (50%) of the Preferred Stock immediately following Closing. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the SEC or any regulatory agency or trading market (including, without limitation, on any signature page to any Transaction Document), without the prior written consent of such Purchaser, except (i) as required by federal securities law in connection with any registration statement contemplated by the Registration Rights Agreement and (ii) to the extent such disclosure is required by law, in which case the Company shall provide the applicable Purchaser(s) with prior notice of such disclosure permitted under this clause (ii). From and after the 8-K Filing, the Company hereby represents and acknowledges to the Purchasers that no Purchaser shall be in possession of any material nonpublic information received from the Company, any of its Subsidiaries or any of its respective officers, directors, employees or agents, that is not disclosed in the 8-K Filing. In addition, effective upon the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or affiliates on the one hand, and any of the Purchasers or any of their affiliates on the other hand, shall terminate. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, employees and agents not to, provide any Purchaser with any material nonpublic information regarding the Company or any of its Subsidiaries from and after the 8-K Filing without the express written consent of such Purchaser. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material non-public information to a Purchaser without such Purchaser's express written consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to the Company, any of its Subsidiaries or affiliates, or any of their respective officers, directors, agents or employees or affiliates, or a duty to the Company, any of its Subsidiaries or affiliates or any of their respective officers, directors, agents or employees not to trade on the basis of, such material non-public information, *provided* that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material non-public information regarding the Company or any of its Subsidiaries or affiliates, the Company shall simultaneously file such notice with the SEC pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company or its affiliates.

(b) Reporting Status. So long as any Purchaser (or any of its affiliates) beneficially owns any of the Securities or Dividend Shares, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and shall timely file all reports required to be filed with the SEC pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act, and the Company shall not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination. In addition, the Company shall take all actions necessary to meet the "registrant eligibility" requirements set forth in the general instructions to Form S-1 or any successor form thereto, to continue to be eligible to register the resale of its Common Stock on a registration statement on Form S-1 under the Securities Act.

(c) Use of Proceeds. Except as set forth on Section 3(aa) of the Disclosure Schedules, the Company shall use the proceeds from the sale and issuance of the Preferred Stock for general corporate purposes and working capital (including payment of legal fees and expenses pursuant to Section 4(l) herein); *provided* that such proceeds shall not be used to (i) pay dividends, except for dividends paid or payable to holders of the Company's Series B Convertible Redeemable Preferred Stock; (ii) purchase debt or equity securities of any entity (including redeeming the Company's own securities), except for (A) evidences of indebtedness issued or fully guaranteed by the United States of America and having a maturity of not more than one year from the date of acquisition, (B) certificates of deposit, notes, acceptances and repurchase agreements having a maturity of not more than one year from the date of acquisition issued by a bank organized in the United States, (C) the highest-rated commercial paper having a maturity of not more than one year from the date of acquisition, and (D) "Money Market" fund shares, or money market accounts fully insured by the Federal Deposit Insurance Corporation and sponsored by banks and other financial institutions, provided that the investments consist principally of the types of investments described in clauses (A), (B), or (C) above; or (iii) make any investment not directly related to the current business of the Company.

(d) Uplisting. The Company shall maintain, so long as any Purchaser (or any of its affiliates) beneficially owns any Securities or Dividend Shares, the listing of all Dividend Shares, if any, and Conversion Shares from time to time issuable upon conversion of the Preferred Stock on each national securities exchange, automated quotation system or electronic bulletin board on which shares of Common Stock are currently listed. The Company shall file an application to be listed on any of the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or any successor market thereto (collectively, "***NASDAQ***"), or such other national securities exchange as is reasonably acceptable to Holder Representative (the "***Uplisting***"), and will use its commercially reasonable efforts to effect the Uplisting (including by effectuating a reverse stock split on or prior to December 31, 2020 at the request of Holder Representative). The Company shall bear all costs associated with the Uplisting. Unless and until such Uplisting is effectuated, the Company will use its best efforts to continue the listing and trading of its Common Stock on the OTCQB.

(e) Corporate Existence. So long as any Purchaser (or any of its affiliates) beneficially owns any Securities or Dividend Shares, the Company shall maintain its corporate existence, and in the event of a merger, consolidation or sale of all or substantially all of the Company's assets, the Company shall ensure that the surviving or successor entity in such transaction and, if an entity different from the successor or acquiring entity, the entity whose securities into which the Common Stock shall become convertible or exchangeable in such transaction (i) expressly assumes in writing, for the benefit of the Purchasers, the Company's obligations under this Agreement and the other Transaction Documents and the agreements and instruments entered into in connection herewith and therewith regardless of whether or not the Company would have had a sufficient number of shares of Common Stock authorized and available for issuance in order to effect the conversion of all the Preferred Stock outstanding as of the date of such transaction and (ii) except in the event of a merger, consolidation of the Company into any other corporation, or the sale or conveyance of all or substantially all of the assets of the Company where the consideration consists solely of cash, the surviving or successor entity and, if an entity different from the successor or acquiring entity, the entity whose securities into which the Common Stock shall become convertible or exchangeable in such transaction, is a publicly traded corporation whose common stock is listed for quotation or trading on the OTCQB, NASDAQ or NYSE MKT Exchange.

(f) No Integrated Offerings. The Company shall not make any offers or sales of any security (other than the Securities) under circumstances that would require registration of the Securities being offered or sold hereunder under the Securities Act or cause this offering of the Securities to be integrated with any other offering of securities by the Company for purposes of any stockholder approval provision applicable to the Company or its securities.

(g) Legal Compliance. The Company shall conduct its business and the business of its Subsidiaries in compliance with all laws, ordinances or regulations of governmental entities applicable to such businesses, except where the failure to do so would not be material to the Securities, the Dividend Shares or the business, operations, properties, prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries.

(h) Press Release. Neither the Purchasers nor the Company may issue any press release (whether or not included in the 8-K Filing) relating to the Transactions or any other Transaction Document without the prior written approval of Holder Representative, in the case of a press release issued by the Company, or the Company, in the case of a press release issued by any Purchaser, in each case, such approval not to be withheld, conditioned or delayed by any such Person.

(i) Legends. Each Purchaser agrees to the imprinting, so long as is required by this Section 4(i), of a legend on any of the Securities or Dividend Shares in the following form:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR IN ANY OTHER JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS. THIS SECURITIES REPRESENTED HEREBY MAY BE PLEDGED IN ACCORDANCE WITH THE TERMS OF THE SECURITIES PURCHASE AGREEMENT, DATED AS OF SEPTEMBER 28, 2020, IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LENDING ARRANGEMENT WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities and/or Dividend Shares to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities and/or Dividend Shares to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. The Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities and/or Dividend Shares may reasonably request in connection with a pledge or transfer of the Securities and/or Dividend Shares, including, if the Securities and/or Dividend Shares are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of selling stockholders thereunder.

Instruments (including statements related to book-entry accounts), whether certificated or uncertificated, evidencing the Securities and/or Dividend Shares shall not contain any legend (including the legend set forth above in this Section 4(i)), and the Company shall take all actions that are necessary to remove any such legend, (i) while a registration statement (including, without limitation, the registration statement contemplated by the Registration Rights Agreement) covering the resale of such Securities and/or Dividend Shares is effective under the Securities Act, (ii) following any sale of such Securities and/or Dividend Shares pursuant to Rule 144, (iii) if such Securities and/or Dividend Shares are eligible for sale under Rule 144 (whether or not such Securities and/or Dividend Shares are being sold under Rule 144 at the applicable time), without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities and/or Dividend Shares and without volume or manner-of-sale restrictions, (iv) the holder of any such Securities and/or Dividend Shares provides the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Security and/or Dividend Share may be made without registration under the Securities Act; or (v) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC). Promptly after such time as such legend is no longer required, the Company shall cause its counsel to issue a legal opinion to its transfer agent if required by the transfer agent to effect the removal of the legend hereunder, or to a Purchaser upon request. The Company agrees that following such time as such legend is no longer required, it will, no later two (2) business days following the delivery by a Purchaser to the Company or its transfer agent of an instrument (including statements related to book-entry accounts), whether certificated or uncertificated, representing Securities and/or Dividend Shares, as the case may be, issued with (or subject to) a restrictive legend, deliver or cause to be delivered to such Purchaser an instrument (including statements related to book-entry accounts), whether certificated or uncertificated, representing such Securities and/or Dividend Shares that is free from all restrictive and other legends.

(j) Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an "acquiring person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities and/or Dividend Shares under the Transaction Documents or under any other agreement between the Company and the Purchasers.

(k) Information Statement. As promptly as practicable after the date hereof, the Company, acting through its Board of Directors, shall, in accordance with applicable law and the Organizational Documents, in consultation with Holder Representative, prepare and file with the SEC a preliminary information statement relating to the Transactions and obtain and furnish the information required by the SEC to be included therein and, after consultation with Holder Representative, respond promptly to any comments made by the SEC with respect to the preliminary information statement and cause a definitive information statement (together with all amendments, supplements and exhibits thereto, the "***Information Statement***") to be mailed to the Company's shareholders at the earliest practicable date; provided that no amendments or supplements to the Information Statement shall be made by the Company without consultation with Holder Representative. Each Purchaser shall promptly provide the Company with such information with respect to such Purchasers and its affiliates as shall be required to be included in the Information Statement.

(l) Legal Fees and Expenses. Whether or not the Transactions are consummated, each of the Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the Transactions, including, without limitation, (i) all expenses incident to the issuance and delivery of the Securities (including all printing and engraving costs), (ii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Preferred Stock to the Purchasers, (iii) the reasonable fees and expenses of the Escrow Agent, and (iv) all reasonable and documented out-of-pocket fees and expenses -- including, without limitation, the fees and expenses of Stroock & Stroock & Lavan LLP ("***Stroock***") as counsel to certain Purchasers ("***Stroock Legal Fees***") incurred in connection with the Transactions and any related documentation therewith; *provided*, however that aggregate Stroock Legal Fees shall not exceed $350,000 (the "***Stroock Legal Fee Cap***") except as otherwise set forth herein. Notwithstanding the foregoing, aggregate Stroock Legal Fees may exceed the Stroock Legal Fee Cap to account for fees and expenses incurred in connection with the preparation, negotiation and execution of the Term Loan and Security Agreement, Escrow Agreement and other documents related to the Bridge Loan (ii) if and to the extent Stroock and its client make a good faith determination that the incurrence of such additional fees is consistent with the legal requirements of Stroock's clients, either in its capacity as Purchaser or as Holder Representative.

5. TRANSFER AGENT INSTRUCTIONS.

(a) Upon conversion of the Preferred Stock by any Person or the issuance of any Dividend Shares, (i) if the DTC Transfer Conditions (as defined below) are satisfied, the Company shall cause its transfer agent to electronically transmit all Conversion Shares and/or Dividend Shares, as applicable, by crediting the account of such Person or its nominee with the Depository Trust Company ("***DTC***") through its Deposit Withdrawal Agent Commission system; or (ii) if the DTC Transfer Conditions are not satisfied, the Company shall issue and deliver, or instruct its transfer agent to issue and deliver, certificates or statements related to book-entry accounts (subject to the legend and other applicable provisions hereof and the Series D Certificate of Designation), registered in the name of such Person or its nominee, representing the Conversion Shares and/or the Dividend Shares, as applicable. Even if the DTC Transfer Conditions are satisfied, any Person effecting a conversion of Preferred Stock or receiving Dividend Shares may instruct the Company to deliver to such Person or its nominee physical certificates representing the Conversion Shares and/or Dividend Shares, as applicable, in lieu of delivering such shares by way of DTC transfer. For purposes of this Agreement, "***DTC Transfer Conditions***" means that (A) the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer program and (B) the certificates for the Conversion Shares and/or Dividend Shares, as applicable, required to be delivered are not required to bear a legend pursuant to Section 4(i) and the Person effecting such conversion or exercise is not then required to return such certificate for the placement of a legend thereon.

(b) The Company warrants that no instruction other than such instructions referred to in this Section 5, and stop transfer instructions to give effect to Section 2(f) hereof in the case of the transfer of the Conversion Shares and/or Dividend Shares prior to registration of the Conversion Shares and/or Dividend Shares under the Securities Act or without an exemption therefrom, shall be given by the Company to its transfer agent and that the Conversion Shares and/or Dividend Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement. Nothing in this Section shall affect in any way the Purchasers' obligations and agreement set forth in Section 4(i) hereof to resell the Securities and/or Dividend Shares pursuant to an effective registration statement or under an exemption from the registration requirements of applicable securities law.

(c) If any Purchaser provides the Company and the transfer agent with an opinion of counsel, which opinion of counsel shall be in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that the Securities and/or Dividend Shares to be sold or transferred may be sold or transferred pursuant to an exemption from registration, or any Purchaser provides the Company with reasonable assurances that such Securities and/or Dividend Shares may be sold under Rule 144 (whether or not such Securities and/or Dividend Shares are actually being sold at the applicable time), the Company shall permit the transfer and, in the case of the Conversion Shares and/or Dividend Shares, promptly instruct its transfer agent to issue one or more certificates in such name and in such denominations as specified by the Purchasers. Nothing in this Section 5(c) shall alter, modify, reduce, supersede or otherwise change the obligations of the Company under Section 4(i).

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

The obligation of the Company hereunder to issue and sell the Preferred Stock to each Purchaser is subject to the satisfaction, on or before the Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion:

(a) Representation and Warranties. The representations and warranties of each Purchaser shall be true and correct as of the date when made and on the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which representations and warranties shall be true and correct as of such date), and such Purchaser shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Purchaser on or prior to the Closing Date.

(b) Closing Purchase Price. Each Purchaser shall have delivered such Purchaser's Closing Purchase Price to the Company by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Exhibit C.

(c) No Proceedings. No statute, rule, regulation, executive order, decree, ruling, injunction, action or proceeding shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the Transactions.

7. CONDITIONS TO THE PURCHASER'S OBLIGATION TO PURCHASE.

The obligation of each Purchaser hereunder to deliver the Closing Purchase Price in connection with the purchase of the Preferred Stock on the Closing Date is subject to the satisfaction of each of the following conditions, provided that such conditions are for each Purchaser's individual and sole benefit and may be waived by such Purchaser at any time in such Purchaser's sole discretion:

(a) Representation and Warranties. The representations and warranties of the Company shall be true and correct as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which representations and warranties shall be true and correct as of such date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company on or prior to the Closing Date. In connection with the issuance of the Preferred Stock on the Closing Date, such Purchaser shall have received a certificate, executed by the Chief Executive Officer of the Company after reasonable investigation, dated as of the Closing Date to the foregoing effect.

(b) Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation of the Company shall have been duly executed by the Company and duly filed with the Secretary of State of Delaware, and the Purchasers shall have received evidence of such execution and filing.

(c) Amended and Restated Series C Certificate of Designation. The Amended and Restated the Certificate of Designations, Preferences and Rights of the Series C Convertible Preferred Stock, shall have been duly executed by the Company and duly filed with the Secretary of State of Delaware, and the Purchasers shall have received evidence of such execution and filing.

(d) Amended and Restated Series A Certificate of Designation. The Amended and Restated the Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock, shall have been duly executed by the Company and duly filed with the Secretary of State of Delaware, and the Purchasers shall have received evidence of such execution and filing.

(e) Amended and Restated Series A-1 Certificate of Designation. The Amended and Restated the Certificate of Designations, Preferences and Rights of the Series A-1 Convertible Preferred Stock, shall have been duly executed by the Company and duly filed with the Secretary of State of Delaware, and the Purchasers shall have received evidence of such execution and filing.

(f) Series D Certificate of Designation. The Series D Certificate of Designations shall have been duly executed by the Company and duly filed with the Secretary of State of Delaware, and the Purchasers shall have received evidence of such execution and filing.

(g) Information Statement. (i) The Company shall have mailed to its shareholders the Information Statement conforming to the requirements of the Exchange Act relating to the Written Consent; (ii) twenty (20) days shall have passed since the mailing date of the Information Statement; and (iii) and the Company shall have otherwise satisfied its obligations under Section 4(k).

(h) Board Resignations. The Company shall have received a letter of resignation addressed to the Company, effective as of a date no later than the Closing Date and in substantially the form attached hereto as Exhibit H (the "***Board Resignation***"), from each of the resigning directors set forth on Section 3(o)(ii) of the Disclosure Schedules, and provided Holder Representative satisfactory evidence thereof (in the sole discretion of Holder Representative).

(i) Board/Management Release Agreements. The Company shall have received a Board/Management Release Agreement, effective as of a date no later than the Closing Date and in substantially the form attached hereto as Exhibit I (the "***Board/Management Release Agreement***"), from each of the Persons set forth on Section 3(o)(iv) of the Disclosure Schedules, and provided Holder Representative satisfactory evidence thereof (in the sole discretion of Holder Representative).

(j) Change-in-Control Waivers. The Company shall have received a Change-in-Control Waiver, effective as of a date no later than the Closing Date and in substantially the form attached hereto as Exhibit J (the "***Change-in-Control Waiver***"), from each holder of a restricted stock unit (i) issued pursuant to an Approved Share Plan, and (ii) not otherwise executing a Board/Management Release Agreement (such holders, the "***Continuing RSU Holders***"), and provided Holder Representative satisfactory evidence thereof (in the sole discretion of Holder Representative). Each Continuing RSU Holder is listed on Section 3(e)(ii) of the Disclosure Schedules.

(k) Satisfaction and Release of Related-Party Loans. The Company shall have satisfied the loans and other indebtedness listed on Sections 3(aa)(i) and 3(aa)(ii) of the Disclosure Schedules, and provided Holder Representative satisfactory evidence thereof (in the sole discretion of Holder Representative).

(l) Delivery of Preferred Stock Certificates. The Company shall have delivered to such Purchaser duly executed certificates (or, if the shares of Preferred Stock are not represented by certificates, duly executed statements related to book-entry accounts) representing the Preferred Stock for the number of shares of Preferred Stock being purchased by such Purchaser on the Closing Date, registered in such Purchaser's name.

(m) OTCQB. The Common Stock shall be authorized for quotation and listed on the OTCQB and trading in the Common Stock (or on the OTCQB generally) shall not have been suspended by the SEC or the OTCQB.

(n) Legal Opinion. Such Purchaser shall have received an opinion of the Company's counsel, Disclosure Law Group, a professional corporation, dated as of the Closing Date, addressed to such Purchaser in form and substance reasonably satisfactory to Stroock, as counsel to certain Purchasers.

(o) IP Opinion. Such Purchaser shall have received an opinion of the Company's intellectual property counsel, Sheppard, Mullin, Richter & Hampton LLP ("***Company IP Counsel***"), dated as of the Closing Date, addressed to such Purchaser in form and substance reasonably satisfactory to Stroock, as counsel to certain Purchasers.

(p) Board Resolutions. Each Purchaser shall have received a copy of resolutions, duly adopted by the Board of Directors of the Company, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by the Company of the Transactions, certified as such by the Secretary or Assistant Secretary of the Company on or before the Closing Date, and such other documents they reasonably request in connection with the issuance of the Preferred Stock on the Closing Date.

(q) Closing Purchase Price. The Closing Purchase Price for all the Preferred Stock purchased by other Purchasers who are not affiliates of such Purchaser shall have been, or concurrently with the Closing will be, delivered to the Company by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Exhibit C.

(r) Legal Fees. The Company shall have paid (or shall pay concurrently with the Closing) the legal fees and disbursements of Stroock, as provided for in Section 4(l).

(s) No Proceeding. No statute, rule, regulation, executive order, decree, ruling, injunction, action or proceeding shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which questions the validity of, challenges or prohibits the consummation of, any of the Transactions.

(t) No Material Adverse Change. There shall have been no material adverse changes and no material adverse developments in the business, properties, operations, prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole, since the date hereof, and no information that is materially adverse to the Company and of which such Purchaser is not currently aware shall come to the attention of such Purchaser.

(u) Other Consents, Approvals and Waivers. All other consents, approvals and waivers reasonably required for the consummation of the Transactions (in the sole discretion of Holder Representative) shall have been obtained.

8. GOVERNING LAW; MISCELLANEOUS.

(a) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The Company and each Purchaser irrevocably consent to the exclusive jurisdiction of the United States federal courts and the state courts located in the County of New York, State of New York, in any suit or proceeding based on or arising under this Agreement and irrevocably agree that all claims in respect of such suit or proceeding may be determined in such courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process upon the Company mailed by first class mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the right of any Purchaser to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

(b) Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission or electronic mail of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(c) Construction. Whenever the context requires, the gender of any word used in this Agreement includes the masculine, feminine or neuter, and the number of any word includes the singular or plural. Unless the context otherwise requires, all references to articles and sections refer to articles and sections of this Agreement, and all references to schedules are to schedules attached hereto, each of which is made a part hereof for all purposes. The descriptive headings of the several articles and sections of this Agreement are inserted for purposes of reference only, and shall not affect the meaning or construction of any of the provisions hereof.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents (including any schedules and exhibits hereto and thereto) contain the entire understanding of the Purchasers, the Company, their affiliates and persons acting on their behalf with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor the Purchasers make any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived other than by an instrument in writing signed by the party to be charged with enforcement, and no provision of this Agreement may be amended other than by an instrument in writing signed by the Company and each Purchaser.

(f) Notices. Any notices required or permitted to be given under the terms of this Agreement shall be sent by certified or registered mail (return receipt requested) or delivered personally, by responsible overnight carrier or by confirmed facsimile or by electronic mail ("e-mail"), and shall be effective five days after being placed in the mail, if mailed, or upon receipt or refusal of receipt, if delivered personally or by responsible overnight carrier or confirmed facsimile, or when sent if sent by e-mail, in each case addressed to a party. The initial addresses for such communications shall be as follows, and each party shall provide notice to the other parties of any change in such party's address:

(i) If to the Company:

ImageWare Systems, Inc.
13500 Evening Creek Drive N.
Suite 550
San Diego, California 92127
E-mail: jmorris@iwsinc.com
Attention: Chief Financial Officer

with a copy simultaneously transmitted by like means (which transmittal shall not constitute notice hereunder) to:

Disclosure Law Group, a Professional Corporation
655 West Broadway, Suite 870
San Diego, CA 92101
Telephone: (619) 272-7062
Facsimile: (619) 330-2101
E-Mail: drumsey@disclosurelawgroup.com
Attention: Daniel W. Rumsey, Managing Director

(ii) If to any Purchasers, to the address set forth under such Purchaser's name on the Signature Page hereto executed by such Purchaser.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Except as provided herein, the Company shall not assign this Agreement or any rights or obligations hereunder. Any Purchaser may assign or transfer the Securities pursuant to the terms of this Agreement and of such Securities. Any Purchaser may assign such Purchaser's rights and obligations hereunder or thereunder to any Person to whom such Purchaser assigns or transfers any Securities and/or Dividend Shares (any such assignee thereafter becoming a "Purchaser" hereunder). In addition, and notwithstanding anything to the contrary contained in this Agreement or the other Transaction Documents, the Securities may be pledged and all rights of any Purchaser under this Agreement or any other Transaction Document may be assigned, without further consent of the Company, to a bona fide pledgee in connection with such Purchaser's margin or brokerage account or any other lending arrangement with a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act.

(h) Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except that each Indemnitee that is not a party to this Agreement shall be a third party beneficiary of Section 8(k).

(i) Survival. The representations and warranties of the Company and the agreements and covenants set forth in Sections 2, 3, 4, 5 and 8 hereof shall survive the Closing Date notwithstanding any due diligence investigation conducted by or on behalf of, or any knowledge of, any Purchaser, and such representations, warranties, agreements and covenants are part of the basis of the bargain contemplated by this Agreement. Moreover, none of the representations and warranties made by the Company herein shall act as a waiver of any rights or remedies any Purchaser may have under applicable U.S. federal or state securities laws.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification. In consideration of each Purchaser's execution and delivery of this Agreement and the other Transaction Documents and purchase of the Securities hereunder, and in addition to all of the Company's other obligations under this Agreement and the other Transaction Documents, from and after the Closing Date, the Company shall defend, protect, indemnify and hold harmless each Purchaser and each other holder of the Securities and/or Dividend Shares and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives, including, without limitation, those retained in connection with the Transactions (collectively, the "***Indemnitees***"), from and against any and all actions, causes of action, suits, judgments, claims, losses, costs, penalties, fees, liabilities, amounts paid in settlements, and damages (including diminution in value of the Securities and Dividend Shares), and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to any action for which indemnification hereunder is sought), whether or not involving a third party claim, and including reasonable attorneys' fees and disbursements (the "***Indemnified Liabilities***"), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any misrepresentation or breach of any representation or warranty made by the Company in this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby, (ii) any breach of any covenant, agreement or obligation of the Company contained in this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby or (iii) any cause of action, suit or claim brought or made against such Indemnitee by any Person (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (A) the execution, delivery, performance or enforcement of this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby, (B) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance and sale of the Securities, or (C) the status of such Purchaser or holder of the Securities and/or Dividend Shares as an investor in the Company, and shall reimburse each such Indemnitee for the reasonable costs and expenses as they are incurred in connection with investigating, monitoring, responding to or defending any of the foregoing. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(l) Joint Participation in Drafting. Each party to this Agreement has participated in the negotiation and drafting of this Agreement and the other Transaction Documents. As such, the language used herein and therein shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party to this Agreement.

(m) Knowledge. As used in this Agreement, the term "knowledge" of any Person shall mean and include (i) with respect to the Company, the actual knowledge of any of the Company's officers or directors and (ii) that knowledge which a reasonably prudent business person could have obtained in the management of his or her business affairs after making due inquiry and exercising due diligence which a prudent business person should have made or exercised, as applicable, with respect thereto.

(n) Exculpation Among Purchasers. The Company acknowledges that the obligations of each Purchaser under this Agreement and each of the other Transaction Documents are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under the Transaction Documents. Each Purchaser acknowledges that it has independently evaluated the merits of the Transactions and the other Transaction Documents, that it has independently determined to enter into the Transactions, that it is not relying on any advice from or evaluation by any other Purchaser, and that it is not acting in concert with any other Purchaser in making its purchase of securities hereunder or in monitoring its investment in the Company. The Purchasers and the Company agree that no action taken by any Purchaser pursuant hereto or the other Transaction Documents shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or would deem such Purchasers to be members of a "group" for purposes of Section 13(d) of the Exchange Act, and the Purchasers have not agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of the Company. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by the Purchasers. The Company acknowledges that such procedure with respect to the Transaction Documents in no way creates a presumption that the Purchasers are in any way acting in concert or as a "group" for purposes of Section 13(d) of the Exchange Act with respect to the Transaction Documents or the Transactions. Each Purchaser acknowledges that it has been represented by its own separate legal counsel in their review and negotiation of the Transaction Documents. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers, and no Purchaser shall make any claim against any other Purchaser under this Agreement, whether on the basis of breach, non-performance, or otherwise.

(o) Business Days and Trading Days. For purposes of this Agreement, the term "business day" means any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law, regulation or executive order to close, and the term "trading day" means any day on which the OTCQB or, if the Common Stock is not then traded on the OTCQB, the principal national securities exchange, automated quotation system or other trading market where the Common Stock is then listed, quoted or traded, is open for trading.

(p) Termination. This Agreement may be terminated at any time prior to the Closing by the written notice of the Required Purchasers to the Company if the Closing shall not have occurred on or before October 31, 2020. Any such termination shall be effective immediately upon delivery of such notice to the Company, unless such notice provides for a different time for termination. If this Agreement is terminated prior to (i) the Closing and (ii) termination of the Escrow Agreement pursuant to Section 12 therein, then the Company shall promptly (but in no event later than one (1) business day after the date of such termination) deliver written notice to the Escrow Agent (pursuant to Section 4 of the Escrow Agreement) instructing the Escrow Agent to, and otherwise cause the Escrow Agent to, refund to the applicable Purchasers all unreleased amounts deposited into the Escrow Account (as defined in the Escrow Agreement) by the Purchasers. The Company shall not amend or permit any other Person to amend the Escrow Agreement without the prior written consent of the Required Purchasers. "***Required Purchasers***" shall mean the Purchasers who have agreed to purchase at least a majority of the Securities to be sold hereunder.

(q) Specific Performance. The Company and each of the Purchasers acknowledge and agree that (a) irreparable damage would occur in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, and (b) remedies at law would not be adequate to compensate the non-breaching party. Accordingly, the Company and each of the Purchasers agree that each of them shall have the right, in addition to any other rights and remedies existing in its favor, to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Agreement. The Company and each of the Purchasers hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance or other equitable remedies.

(r) Tax Treatment. The Company and the Purchasers agree to treat the Series D Preferred Shares as common stock solely for U.S. income tax purposes.

(s) Holder Representative.

(i) By virtue of executing and delivering their respective Signature Page to this Agreement, each Purchaser shall have irrevocably authorized and appointed Holder Representative as such Purchaser's representative and attorney-in-fact to act on behalf of such Person with respect the Holder Representative Matters (defined below) as expressly set forth in, which shall survive the Closing Date to the extent applicable. "***Holder Representative Matters***" include approvals by Holder Representative expressly set forth in: Section 1(b), Section 4(a), Section 4(d), Section 4(h), Section 4(k) and Section 7(v).

(ii) Holder Representative shall have no duties or obligations to the Purchasers hereunder, including any fiduciary duties, except those Holder Representative Matters set forth herein, and such duties and obligations shall be determined solely by the express provisions of this Agreement.

(iii) Each of the Purchasers disclaims any beneficial ownership or participation in any group (as such term is defined in Sections 13(d) or 13(g) of the Securities Act) as a result of such party communicating with other parties in connection with this Agreement (or the Transactions Documents), including without limitation Holder Representative acting in such capacity. Any such communications that the parties hereto may engage in with other Purchasers, to the extent such communications occur after the consummation of the Transactions and in connection with this Agreement (or the Transaction Documents), are solely for the purpose of protecting such party's rights or fulfilling such party's obligations under this Agreement (or the Transaction Documents) and are not intended to, and do not, constitute any agreement, arrangement or understanding among one or more such parties for the purpose of, directly or indirectly, buying, selling, voting or holding securities of the Company.

(iv) The Holder Representative shall not be liable to the Purchasers (or any other Persons) for actions taken pursuant to this Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted gross negligence or involved fraud, intentional misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by Holder Representative shall be conclusive evidence of good faith). The Purchasers shall severally and not jointly (pro rata in accordance with the Purchase Price of each Purchaser), indemnify and hold harmless Holder Representative from and against, compensate it for, reimburse it for and pay any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with its activities as Holder Representative under this Agreement (the "***Representative Losses***"), in each case as such Representative Loss is suffered or incurred; *provided*, that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence, fraud, intentional misconduct or bad faith of Holder Representative, Holder Representative shall reimburse the Stockholders the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, intentional misconduct or bad faith.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Purchasers and the Company have caused this Agreement to be duly executed as of the date first above written.

IMAGEWARE SYSTEMS, INC.

By: /s/ Kristin Taylor
Name: Kristin Taylor
Title: Chief Executive Officer

PURCHASER:

(Print or Type Name of Purchaser)

By:
Name:
Title:

ADDRESS:

Telephone:
Facsimile:
E-
Mail:
Attention:

AGGREGATE SUBSCRIPTION AMOUNT:

Number of shares of Preferred
Stock:
Purchase Price ($1,000 per share of Preferred
Stock):

Exhibit List

Exhibit A – Form of Series D Certificate of Designation
Exhibit B – Escrow Agreement
Exhibit C – Wire Transfer Instructions
Exhibit D – Form of Registration Rights Agreement
Exhibit E – Exchange Agreement
Exhibit F – Term Loan and Security Agreement
Exhibit G – Written Consent

- Amended and Restated Certificate of Incorporation
- Amended and Restated Series A Certificate of Designation
- Amended and Restated Series A-1 Certificate of Designation
- Amended and Restated Series C Certificate of Designation

Exhibit H – Form Board Resignation
Exhibit I – Form of Board/Management Release Agreement
Exhibit J – Form of Change-in-Control Waiver
Exhibit K – Joinder Agreement

[EXHIBITS INTENTIONALLY OMITTED]

Exhibit 10.2

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "*Agreement*") is made and entered into as of this 28th day of September, 2020 by and among ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), and the "*Purchasers*" named in that certain Securities Purchase Agreement, dated as of September 28, 2020, by and among the Company and the Purchasers (the "*Purchase Agreement*"). Capitalized terms used herein have the respective meanings ascribed thereto in the Purchase Agreement unless otherwise defined herein.

The parties hereby agree as follows:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"*Affiliate*" means, with respect to any Person, any other Person that (either directly or indirectly) controls, is controlled by, or is under common control with the specified Person, and shall also include any Related Fund of such Person. The term "control" includes the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through the ownership of securities, by contract or otherwise.

"*Common Stock*" means the Company's common stock, par value $0.01 per share, and any securities into which such Common Stock may hereinafter be reclassified.

"*Conversion Shares*" means the shares of Common Stock issuable upon conversion of the Preferred Stock issued pursuant to the Purchase Agreement.

"*Person*" means an individual, partnership, corporation, unincorporated organization, joint stock company, limited liability company, association, trust, joint venture or any other entity, or a governmental authority.

"*Prospectus*" means (i) the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any "*free writing prospectus*" as defined in Rule 405 under the 1933 Act.

"*Purchasers*" means the Purchasers identified in the Purchase Agreement and any Affiliate or permitted transferee of any Purchaser who is a subsequent holder of any Registrable Securities.

"*Register*," "*registered*" and "*registration*" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act (as defined below), and the declaration or ordering of effectiveness of such Registration Statement or document.

"*Registrable Securities*" means the (i) Conversion Shares and any other securities issued or issuable with respect to or in exchange for Registrable Securities, whether by merger, charter amendment or otherwise, and (ii) shares of Common Stock issuable as dividends payable with respect to the Preferred Stock; *provided*, that, a security shall cease to be a Registrable Security upon sale pursuant to a Registration Statement or Rule 144 under the 1933 Act.

"*Registration Statement*" means any registration statement of the Company filed under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"*Related Fund*" means, with respect to any Person, any fund, account or investment vehicle that is controlled or managed by (i) such Person, (ii) an Affiliate of such Person or (iii) the same investment manager, advisor or subadvisor as such Person or an Affiliate of such investment manager, advisor or subadvisor.

"*Required Purchasers*" means, as of any date of determination, the Purchasers holding a majority of the Registrable Securities as of such date.

"*SEC*" means the U.S. Securities and Exchange Commission.

"*1933 Act*" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"*1934 Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

2. Registration.

(a) Registration Statements.

(i) No later than thirty (30) days from the date of this Agreement (the "*Filing Deadline*"), the Company shall prepare and file with the SEC one Registration Statement (the "*Initial Registration Statement*") covering the resale of all of the Registrable Securities on a continuous basis pursuant to Rule 415 of the Securities Act. The Initial Registration Statement filed hereunder shall be on Form S-3; *provided*, that if Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (x) register the resale of the Registrable Securities on another appropriate form and (y) undertake to register the resale of Registrable Securities on Form S-3 as soon as such form is available, *provided*, that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the staff of the SEC. No Purchaser shall be named as an "underwriter" in the Initial Registration Statement without such Purchaser's prior written consent. Such Initial Registration Statement also shall cover, to the extent allowable under the 1933 Act and the rules promulgated thereunder (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. Such Initial Registration Statement shall not include any shares of Common Stock or other securities for the account of any other Person (including the Company) without the prior written consent of the Required Purchasers. The Initial Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 3(c) to the Purchasers and their counsel prior to its filing or other submission. If (i) the Initial Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, or (ii) prior to the effective date of the Initial Registration Statement, the Company shall fail to file any pre-effective amendment to the Initial Registration Statement required to be filed by the SEC or otherwise respond to comments from the SEC within 15 days from the date of receipt of such comments (a "*Response Failure*"), the Company will make payments to each Purchaser, as liquidated damages and not as a penalty, in an amount equal to 1.0% of the aggregate Purchase Price paid by such Purchaser for its Preferred Stock on the Closing Date pursuant to the Purchase Agreement (such amount, with respect to each Purchaser, the "*Investment Amount*") for the first 30-day period or pro rata for any portion thereof following the Filing Deadline for which no Initial Registration Statement is filed with respect to the Registrable Securities, or following a Response Failure, as the case may be, and 1.5% of such Purchaser's Investment Amount for each 30-day period thereafter or pro rata for any portion thereof for which no Initial Registration Statement is filed with respect to the Registrable Securities, or following a Response Failure, as the case may be; *provided*, that the maximum payments to any Purchaser pursuant to this Section 2(a)(i) shall not exceed 12.0% of such Purchaser's Investment Amount. Such payments shall constitute the Purchasers' exclusive monetary remedy for such events, but shall not affect the right of the Purchasers to seek injunctive relief.

(b) Expenses. The Company will pay all expenses associated with each Registration Statement (whether or not such Registration Statement becomes effective), including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws, listing fees, and the reasonable fees and expenses of counsel to, (i) with respect to the Initial Registration Statement or a Demand Registration, the Required Purchasers, and (ii) with respect to any Piggyback Registration, Purchasers that at the relevant time hold at least a majority of the Registrable Securities held by all Purchasers to be included in such Piggyback Registration.

(c) Effectiveness of Registration Statements.

(i) The Company shall use its best efforts to have the Initial Registration Statement declared effective as soon as practicable, but in no event later than ninety (90) days after the date of this Agreement. The Company shall notify the Purchasers by facsimile or e-mail as promptly as practicable, and in any event, within twenty-four (24) hours, after any Registration Statement is declared effective and shall simultaneously provide the Purchasers with copies of any related Prospectus to be used in connection with the sale or other disposition of the securities covered thereby. If (A) the Initial Registration Statement covering the Registrable Securities is not declared effective by the SEC prior to the earlier of (i) five (5) Business Days after the SEC shall have informed the Company that no review of the Initial Registration Statement will be made or that the SEC has no further comments on the Registration Statement and (ii) the 90th day after the date hereof; (B) after the Initial Registration Statement has been declared effective by the SEC, sales cannot be made pursuant to such Initial Registration Statement for any reason (including without limitation by reason of a stop order, the Company's failure to update the Initial Registration Statement or on account of any event described in Section 3(h)) or the inability of any Purchaser to sell the Registrable Securities covered thereby due to market conditions; or (C) the Initial Registration Statement ceases to remain continuously effective as to all Registrable Securities included thereunder, then the Company will make payments to each Purchaser, as liquidated damages and not as a penalty, in an amount equal to 1.0% of such Purchaser's Investment Amount for the first 30-day period or pro rata for any portion thereof following the date by which such Initial Registration Statement should have been effective and 1.5% of such Purchaser's Investment Amount for each 30-day period thereafter or pro rata for any portion thereof for which such Initial Registration Statement should have been effective (the "*Blackout Period*"); *provided*, that the maximum payments to any Purchaser pursuant to this Section 2(c) shall not exceed 16.0% of such Purchaser's Investment Amount. Such payments shall constitute the Purchasers' exclusive monetary remedy for such events, but shall not affect the right of the Purchasers to seek injunctive relief.

(d) Rule 415; Cutback If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in any Registration Statement filed pursuant to the terms and conditions of this Agreement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the 1933 Act or requires any Purchaser to be named as an "underwriter", the Company shall use its best efforts to persuade the SEC that the offering contemplated by such Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Purchasers is an "underwriter". The Purchasers shall have the right to participate or have their counsel participate in any meetings or discussions with the SEC regarding the SEC's position and to comment or have their counsel comment on any written submission made to the SEC with respect thereto. No such written submission shall be made to the SEC to which the Required Purchasers', or, with respect to a Demand Registration, the Requesting Purchasers' (as such term is defined in Section 2(f)(i) below), counsel reasonably objects. In the event that, despite the Company's best efforts and compliance with the terms of this Section 2(d), the SEC refuses to alter its position, the Company shall (i) remove from such Registration Statement such portion of the Registrable Securities that the SEC requires to be removed from such Registration Statement, while still including the maximum number of Registrable Securities permitted to be registered by the SEC under such Registration Statement at such time (such removed Registrable Securities, the "*Cut Back Shares*"), and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure the Company's compliance with the requirements of Rule 415 (collectively, the "*SEC Restrictions*"); *provided, however*, that the Company shall not agree to name any Purchaser as an "underwriter" in any Registration Statement without the prior written consent of such Purchaser. Any cut-back imposed on the Purchasers pursuant to this Section 2(d) shall be allocated, first, among all securities that are not Registrable Securities (to the extent previously permitted by the Required Purchasers, or, in the case of a Demand Registration, by the Requesting Purchasers), and second, among the Purchasers on a pro rata basis, unless the SEC Restrictions otherwise require or provide or the Purchasers otherwise agree. In the event of any cut-back imposed on the Purchasers pursuant to this Section 2(d), the Company will use its best efforts to file with the SEC, as promptly as allowed by the SEC, one or more Registration Statements on Form S-1 covering the resale of the Cut Back Shares or such other form available to register for resale the Cut Back Shares. No liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is permitted to effect the registration of such Cut Back Shares using Form S-3 in accordance with any SEC Restrictions (such date, the "*Restriction Termination Date*" of such Cut Back Shares). From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this Section 2 (including the liquidated damages provisions) shall again be applicable to any Cut Back Shares that are not included in a Registration Statement prior to the Restriction Termination Date; *provided, however*, that (i) the Filing Deadline for any Registration Statement including any Cut Back Shares that have not otherwise been included in a Registration Statement that has been declared effective shall be ten (10) Business Days after such Restriction Termination Date, and (ii) the date by which the Company is required to obtain effectiveness with respect to such Cut Back Shares under Section 2(c) shall be the 120th day immediately after the Restriction Termination Date.

(e) Right to Piggyback Registration.

(i) If at any time following the date of this Agreement that any Registrable Securities remain outstanding the Company proposes for any reason to register any shares of Common Stock under the 1933 Act (other than pursuant to a registration statement on Form S-4 or Form S-8 (or a similar or successor form)) with respect to an offering of Common Stock by the Company for its own account or for the account of any of its stockholders, it shall, unless a holder of Registrable Securities has provided written notice to the Company that it does not want to receive such information, at each such time promptly give written notice to the holders of the Registrable Securities of its intention to do so (but in no event less than thirty (30) days before the anticipated filing date) and, to the extent permitted under the provisions of Rule 415 under the 1933 Act, include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within fifteen (15) days after receipt of the Company's notice (a "*Piggyback Registration*"). Such notice shall offer the holders of the Registrable Securities the opportunity to register such number of shares of Registrable Securities as each such holder may request and shall indicate the intended method of distribution of such Registrable Securities.

(ii) Notwithstanding the foregoing, (A) if such registration involves an underwritten public offering, the Purchasers must sell their Registrable Securities to, if applicable, the underwriter(s) at the same price and subject to the same underwriting discounts and commissions that apply to the other securities sold in such offering (it being acknowledged that the Company shall be responsible for other expenses as set forth in Section 2(b)) and subject to the Purchasers entering into customary underwriting documentation for selling stockholders in an underwritten public offering, and (B) if, at any time after giving written notice of its intention to register any Registrable Securities pursuant to Section 2(e)(i) and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to cause such registration statement to become effective under the 1933 Act, the Company shall deliver written notice to the Purchasers and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration; *provided, however*, that nothing contained in this Section 2(e) shall limit the Company's liabilities and/or obligations under this Agreement, including, without limitation, the obligation to pay liquidated damages under this Section 2. Any Purchaser may elect to withdraw such Purchaser's request for inclusion of Registrable Securities in any Piggyback Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement or the pricing of an underwritten offering, as applicable.

(f) Demand Registration.

(i) At any time and from time to time after the Initial Registration Statement has been declared effective, any Purchaser or group of Purchasers (acting together) that own or control Registrable Securities representing at least fifty percent (50%) of the then-issued and outstanding Registrable Securities (collectively, the "*Requesting Purchasers*"), may deliver to the Company a written notice (a "*Demand Registration Notice*") informing the Company that such Requesting Purchasers require the Company to register for resale some or all of such Requesting Purchasers' Registrable Securities not otherwise then registered for resale by the Initial Registration Statement (a "*Demand Registration*"); *provided, however,* that the Company will not be required to effect more than three (3) Demand Registrations in accordance with this Agreement, including (a) one (1) Demand Registration starting three (3) months after the Closing Date, and (b) two (2) Demand Registrations starting one (1) year after the Closing Date. Upon receipt of the Demand Registration Notice, the Company will use best efforts to file with the SEC as promptly as practicable after receiving the Demand Registration Notice, but in no event more than sixty (60) days following receipt of the Demand Registration Notice, a Registration Statement covering all requested Registrable Securities (the "*Demand Registration Statement*"), and agrees to use best efforts to cause the Demand Registration Statement to be declared effective by the SEC as soon as practicable following the filing thereof, but in no event later than ninety (90) days after the filing of such Demand Registration Statement. The Company agrees to use best efforts to keep any Demand Registration Statement continuously effective (including the preparation and filing of any amendments and supplements necessary for that purpose) until such time as all of the Registrable Securities covered thereby have been sold ("*Minimum Effective Period*").

(ii) Notice to Purchasers. The Company shall give written notice of the proposed filing of any Demand Registration Statement to all Purchasers (other than the Requesting Purchasers) as soon as practicable, and each such Purchaser who wishes to participate in such Demand Registration Statement shall notify the Company in writing within five (5) Business Days after the receipt by such Purchaser of the notice from the Company, and shall specify in such notice the number of Registrable Securities held by such Purchaser to be included in the Demand Registration Statement. Upon the written request of any Purchaser, delivered to the Company no later than five (5) Business Days after the Company's notice is delivered to such Purchaser (each such Purchaser, a "*Joining Purchaser*"), to register, on the same terms and conditions as the Registrable Securities otherwise being sold pursuant to such Demand Registration, any of its Registrable Securities, the Company will use its best efforts to cause such Registrable Securities to be included in the Demand Registration Statement proposed to be filed by the Company on the same terms and conditions as any Registrable Securities included therein.

3. Company Obligations. The Company will use best efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use best efforts to cause the Initial Registration Statement to become effective and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Initial Registration Statement as amended from time to time, have been sold, and (ii) the date on which all Registrable Securities covered by such Initial Registration Statement may be sold without restriction and without the need for current public information pursuant to Rule 144 (the "*Effectiveness Period*") and advise the Purchasers in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to any Registration Statement and Prospectus as may be necessary to keep such Registration Statement effective for, with respect to the Initial Registration Statement, the Effectiveness Period and with respect to any Demand Registration Statement, the Minimum Effective Period, and in any case to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered in any Registration Statement;

(c) provide copies to and permit counsel designated by the Purchasers to review each Registration Statement and all amendments and supplements thereto no fewer than seven (7) days prior to their filing with the SEC and not file any Registration Statement or other document to which such counsel reasonably objects;

(d) furnish to the Purchasers and their legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company (but not later than two (2) Business Days after the filing date, receipt date or sending date, as the case may be) one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment), and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as each Purchaser may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Purchaser that are covered by the related Registration Statement;

(e) use best efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(f) prior to any public offering of Registrable Securities, use best efforts to register or qualify or cooperate with the Purchasers and their counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions requested by the Purchasers and do any and all other acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by any Registration Statement; *provided, however*, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(f), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(f), or (iii) file a general consent to service of process in any such jurisdiction;

(g) use best efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed or quoted;

(h) immediately notify the Purchasers, at any time prior to the end of the Effectiveness Period or the Minimum Effective Period, as applicable, upon discovery that, or upon the happening of any event as a result of which, any Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(i) otherwise use best efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Purchasers in writing if, at any time during the Effectiveness Period or Minimum Effective Period, as applicable, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Purchasers are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 3(i), "*Availability Date*" means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company's fiscal year, "*Availability Date*" means the 90th day after the end of such fourth fiscal quarter);

(j) if during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in the Initial Registration Statement, the Company shall file as soon as reasonably practicable an additional Registration Statement covering the resale by the Purchasers of not less than the number of such Registrable Securities; and

(k) with a view to making available to the Purchasers the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Purchasers to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six (6) months after such date as all of the Registrable Securities may be sold without restriction (including without volume or manner-of-sale restrictions) and without the need for current public information by the holders thereof pursuant to Rule 144 or any other rule of similar effect and (B) such date as all of the Registrable Securities shall have been resold; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish to each Purchaser upon request, as long as such Purchaser owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Purchaser of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration. The parties agree that nothing contained herein shall limit the Company's obligations under the Purchase Agreement.

4. Due Diligence Review; Information. The Company shall make available, upon reasonable advance written notice, during normal business hours, for inspection and review by the Purchasers, advisors to and representatives of the Purchasers (who may or may not be affiliated with the Purchasers and who are reasonably acceptable to the Company), all financial and other records, all SEC Documents (as defined in the Purchase Agreement) and other filings with the SEC, and all other corporate documents and properties of the Company as may be reasonably necessary for the purpose of such review, and cause the Company's officers, directors and employees, within a reasonable time period, to supply all such information reasonably requested by the Purchasers or any such representative, advisor or underwriter in connection with such Registration Statement (including, without limitation, in response to all questions and other inquiries reasonably made or submitted by any of them), prior to and from time to time after the filing and effectiveness of the Registration Statement for the sole purpose of enabling the Purchasers and such representatives, advisors and underwriters and their respective accountants and attorneys to conduct initial and ongoing due diligence with respect to the accuracy of such Registration Statement.

The Company shall not disclose material nonpublic information to the Purchasers, or to advisors to or representatives of the Purchasers, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Purchasers, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Purchaser wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

5. Obligations of the Purchasers.

(a) Each Purchaser shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least ten (10) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Purchaser of the information the Company requires from such Purchaser if such Purchaser elects to have any of the Registrable Securities included in the Registration Statement. A Purchaser shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Purchaser elects to have any of the Registrable Securities included in the Registration Statement.

(b) Each Purchaser, by its acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Purchaser has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Purchaser agrees that, upon receipt of any notice from the Company of the happening of an event pursuant to Section 3(h) hereof, such Purchaser will immediately discontinue disposition of Registrable Securities pursuant to the applicable Registration Statement covering such Registrable Securities, until the Purchaser is advised by the Company that such dispositions may again be made.

6. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Purchaser and its officers, directors, members, employees and agents, successors and assigns, and each other person, if any, who controls such Purchaser within the meaning of the 1933 Act (collectively, the "*Purchaser Indemnitees*"), against any losses, claims, damages or liabilities, joint or several, to which such Purchaser Indemnitee may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement or omission or alleged omission of any material fact contained in any Registration Statement, any preliminary Prospectus or final Prospectus, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information herein called a "*Blue Sky Application*"); (iii) the omission or alleged omission to state in a Blue Sky Application a material fact required to be stated therein or necessary to make the statements therein not misleading; (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act or 1934 Act or any state securities laws in connection with the performance of its obligations under this Agreement; or (v) any failure to register or qualify the Registrable Securities included in any such Registration Statement in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company will undertake such registration or qualification on an Purchaser's behalf and will promptly reimburse such Purchaser Indemnitee for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Purchaser or any such controlling person in writing specifically for use in such Registration Statement or Prospectus. The indemnity provided in this Section 6(a) shall survive the transfer of the Registrable Securities by any Purchaser to any other Person.

(b) Indemnification by the Purchasers. Each Purchaser agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) (collectively, the "*Company Indemnitees*") against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Purchaser to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of a Purchaser be greater in amount than the dollar amount of the proceeds (net of all underwriter's discounts and expenses paid by such Purchaser in connection with any claim relating to this Section 6 and the amount of any damages such Purchaser has otherwise been required to pay by reason of such untrue statement or omission) received by such Purchaser upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification under Section 6(a) or Section 6(b) (an "*Indemnitee*") shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the Indemnitee; *provided* that any Indemnitee shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnitee unless (a) the indemnifying party has agreed to pay such fees or expenses, or (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such Indemnitee or (c) in the reasonable judgment of any such Indemnitee, based upon written advice of its counsel, a conflict of interest exists between such Indemnitee and the indemnifying party with respect to such claims (in which case, if such Indemnitee notifies the indemnifying party in writing that such Indemnitee elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Indemnitee); and *provided, further*, that the failure of any Indemnitee to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys (together with appropriate local counsel) at any time for all such Indemnitees. No indemnifying party will, except with the consent of the Indemnitee, consent to entry of any judgment or enter into any settlement that (i) does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect of such claim or litigation or (ii) includes a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of the Indemnitee.

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an Indemnitee or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the Indemnitee as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnitee and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 6 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

7. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Required Purchasers. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Required Purchasers.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made as set forth in the Purchase Agreement.

(c) Assignments and Transfers by Purchasers. The provisions of this Agreement shall be binding upon and inure to the benefit of the Purchasers and their respective successors and assigns. A Purchaser may transfer or assign, in whole or from time to time in part, to one or more persons its rights and obligations hereunder in connection with the transfer of Registrable Securities by such Purchaser to such person, provided that such Purchaser complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected (such transferee, a "*permitted transferee*").

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Purchasers, provided, however, that in the event that the Company is a party to a merger, consolidation, share exchange or similar business combination transaction in which the Common Stock is converted into the equity securities of another Person, from and after the effective time of such transaction, such Person shall, by virtue of such transaction, be deemed to have assumed the obligations of the Company hereunder (and shall have acknowledged such assumption in writing), the term "*Company*" shall be deemed to refer to such Person and the term "*Registrable Securities*" shall be deemed to include the securities received by the Purchasers in connection with such transaction unless such securities are otherwise freely tradable by the Purchasers after giving effect to such transaction.

(e) Benefits of the Agreement. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement and except for any Indemnitee not a party hereto (solely with respect to Section 6).

(f) Counterparts; Faxes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile or other electronic means, which shall be deemed an original.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances. The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

(l) Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties to this Agreement fail to comply with any of the obligations imposed on them by this Agreement and that in the event of any such failure, a non-breaching party hereto will be irreparably damaged and will not have an adequate remedy at law. Any such Person shall, therefore, be entitled to injunctive relief, specific performance or other equitable remedies to enforce such obligations, this being in addition to any other remedy to which such Person is entitled at law or in equity. Each of the parties hereto hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance or other equitable remedies. Each of the parties hereto hereby agrees not to assert that specific performance, injunctive relief and other equitable remedies are unenforceable, violate public policy, invalid, contrary to law or inequitable for any reason. The right of specific performance, injunctive relief and other equitable remedies is an integral part of the transactions contemplated by this Agreement.

(m) Recapitalizations, Exchanges, Etc. The provisions of this Agreement shall apply, to the full extent set forth herein with respect to the Registrable Securities, to any and all shares of capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for or in substitution of, the Registrable Securities and shall be appropriately adjusted for any stock dividends, splits, reverse splits, combinations, recapitalizations and the like occurring after the date hereof

(n) Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser hereunder are several and not joint with the obligations of any other Purchaser hereunder, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Purchasers are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Purchasers are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Without limiting the foregoing, no Purchaser has agreed with any other Purchaser, and no term, provision, obligation or agreement of any Purchaser set forth herein shall be deemed to constitute an agreement with any other Purchaser, to act together for the purposes of acquiring, holding, voting or disposing of equity securities of the Company. Each Purchaser shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Purchaser, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Purchaser. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and an Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among Purchasers.

(o) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Purchasers in this Agreement or otherwise conflicts with the provisions hereof. Neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(p) Prohibition on Filing Other Registration Statements. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to the Initial Registration Statement that is declared effective by the staff of the Commission, *provided* that this Section 7(p) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(*Signature Pages Follow*)

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company: IMAGEWARE SYSTEMS, INC.

By: */s/ Kristin Taylor*
Name: Kristin Taylor
Title: Chief Executive Officer

The Purchasers: ___________________________________

By:______________________________
Name:
Title:

Exhibit 10.3

EXCHANGE AGREEMENT

This Exchange Agreement (together with all schedules hereto, this "***Agreement***") is dated as of September [___], 2020, by and among ImageWare Systems, Inc., a Delaware corporation (the "***Company***"), and each undersigned holder of the Company's Series C Convertible Preferred Stock ("***Series C Preferred***") ("***Holder***").

RECITALS

WHEREAS, each Holder is the "beneficial owner" (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of the number of shares of the Company's Series C Preferred set forth opposite such Holder's name on Schedule A attached hereto (the "***Current Shares***");

WHEREAS, each Holder desires to exchange (the "***Exchange***") all of its Current Shares for the number of shares of the Company's Series D Convertible Preferred Stock, $0.01 par value per share ("***Series D Preferred***"), set forth under the heading "Exchange Shares" on Schedule A attached hereto (such shares of Series D Preferred to be issued as consideration for the Exchange, the "***Exchange Shares***"); and

WHEREAS, the shares of common stock of the Company, par value $0.01 per share, issuable upon conversion of the Series D Preferred, are referred to herein as the "Common Stock" (together with the Series D Preferred, the "***Securities***"; and each, a "***Security***"), and the shares of Common Stock issued or issuable to the holders of Series D Preferred as dividends in accordance with the terms and conditions set forth in the Certificate of Designation (as defined below) are referred to herein as "***Dividend Shares***".

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby agreed and acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Securities Exchange. Subject to the terms and conditions of this Agreement, the parties agree as follows.

(a) each Holder hereby contributes and assigns to the Company all of such Holder's right, title and interest, free and clear of all liens and encumbrances, in and to all of its Current Shares, and each Holder hereby delivers all certificates or other documentation (as applicable) evidencing the Current Shares, to the Company, duly endorsed in blank or accompanied by other duly executed instruments of transfer reasonably satisfactory to the Company;

(b) the Company hereby issues the applicable Exchange Shares to each Holder as consideration for the Exchange;

(c) the closing under this Agreement (the "***Closing***") shall take place upon the satisfaction of each of the conditions set forth in Sections 4 and 5 hereof (the "***Closing Date***"), and shall occur substantially concurrently with, and subject to, the closing of the Concurrent Offering (as defined below); and

(d) within five business (5) business days after the Closing, the Company shall issue and deliver to each a Holder a certificate evidencing the Exchange Shares against delivery of the Current Shares to the Company.

2. Representations, Warranties and Covenants of the Holders. The Holders, individually and not jointly, hereby make the following representations and warranties to the Company, and covenants for the benefit of the Company:

(e) Power and Authorization. This Agreement has been duly authorized, validly executed and delivered by each Holder and is a valid and binding agreement and obligation of each Holder enforceable against them in accordance with its terms, subject to limitations on enforcement by general principles of equity and by bankruptcy or other laws affecting the enforcement of creditors' rights generally, and each Holder has full power and authority to execute and deliver the Agreement and the other agreements and documents contemplated hereby and to perform its obligations hereunder and thereunder.

(f) Accredited Investor. Each Holder is an "accredited investor" as defined under Rule 501 of Regulation D, promulgated under the Securities Act of 1933, as amended (the "***Securities Act***").

(g) Investment Purposes. Each Holder will be acquiring the Exchange Shares for their own account, for investment purposes, and not with a view to any resale or distribution in whole or in part, in violation of the Securities Act or any applicable securities laws; *provided, however*, that notwithstanding the foregoing, each Holder does not covenant to hold the Series D Preferred for any minimum period of time except as set forth in the Company's Certificate of Designations, Preferences and Rights of Series D Convertible Preferred Stock (the "***Certificate of Designation***").

(h) Title to Current Shares. Each Holder owns and holds, beneficially and of record, the entire right, title, and interest in and to the Current Shares free and clear of all rights and Encumbrances (as defined below), and each Stockholder has full power and authority to transfer and dispose of the Exchange Shares free and clear of any right or Encumbrance. Other than the transactions contemplated by this Agreement, there is no outstanding plan, pending proposal, or other right of any person to acquire all or any of the Exchange Shares. "***Encumbrances***" shall mean any security or other property interest or right, claim, lien, pledge, option, charge, security interest, contingent or conditional sale, or other title claim or retention agreement, interest or other right or claim of third parties, whether perfected or not perfected, voluntarily incurred or arising by operation of law, and including any agreement (other than this Agreement) to grant or submit to any of the foregoing in the future.

(i) Acknowledgement of Concurrent Offering. The Holder understands and acknowledges that concurrently with the Exchange, the Company is (a) issuing and selling the Company's Series D Preferred to certain other purchasers pursuant to that certain Stock Purchase Agreement dated as of the date hereof (the "***Purchase Agreement***" and, such sales thereunder, the "***Concurrent Sale***"), and (b) agreeing to exchange the Company's issued and outstanding Series A Convertible Preferred Stock pursuant to the terms of that certain Series A Exchange Agreement among the Company and the holders identified therein (the "***Series A Exchange***" and, together with the Concurrent Sale, the "***Concurrent Offering***").

(j) Shareholder Approval. The Holder understands and acknowledges that the Concurrent Offering is conditioned upon, among other things, the receipt by the Company of the requisite shareholder approval to amend and restate the Company's Certificate of Incorporation.

3. Representations, Warranties and Covenants of the Company. The Company represents and warrants to each Holder, and covenants for the benefit of each Holder, as follows:

(a) Organization and Qualification; Subsidiaries. The Company and each of its subsidiaries (collectively, the "***Subsidiaries***") listed on Section 3(a) of the Disclosure Schedule attached to the Purchase Agreement (the "***Disclosure Schedule***") is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction in which it is incorporated or organized and has the requisite corporate power to own its properties and to carry on its business as now being conducted. The Company and each of its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary and where the failure so to qualify would have, or would reasonably be expected to result in, a Material Adverse Effect. For purposes of this Agreement, "***Material Adverse Effect***" means any event, occurrence, fact, condition or change that, individually or in the aggregate, results, or would reasonably be likely to result, in a material adverse effect on (i) the Securities or the Dividend Shares, (ii) the ability of the Company to perform its obligations under this Agreement or the other Transaction Documents (as defined in the Purchase Agreement) or (iii) the condition (financial or otherwise) or the earnings, prospects, business, properties, surplus or results of operations of the Company and its Subsidiaries.

(b) Authorization; Enforcement. Other than the Written Consent (as defined in the Purchase Agreement) (i) the Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents, to issue the Series D Preferred in accordance with the terms hereof, to issue the Common Stock upon conversion of the Series D Preferred in accordance with the terms thereof and to issue the Dividend Shares in accordance with the Certificate of Designation and the Company's Certificate of Incorporation as in effect on the date hereof ("***Certificate of Incorporation***"); (ii) the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Series D Preferred and the issuance and reservation for issuance of the Common Stock and the Dividend Shares) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, any committee of the Board of Directors or any of the stockholders of the Company is required, and (iii) this Agreement constitutes, and, upon execution and delivery by the Company of the other Transaction Documents, such Transaction Documents will constitute, valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies. Other than the Written Consent, neither the execution, delivery or performance by the Company of its obligations under this Agreement or the other Transaction Documents, nor the consummation by it of the transactions contemplated hereby or thereby (including, without limitation, the issuance of the Series D Preferred, or the issuance or reservation for issuance of the Common Stock and the Dividend Shares) requires any consent or authorization of the Company's stockholders.

(c) Capitalization. The capitalization of the Company as of the date hereof, including the authorized capital stock, the number of shares issued and outstanding, the number of shares issuable and reserved for issuance pursuant to the Company's stock option plans, all securities exercisable or exchangeable for, or convertible into, any shares of capital stock of the Company ("***Convertible Securities***"), the number of shares issuable and reserved for issuance pursuant to Convertible Securities, any shares of capital stock and the number of shares reserved for issuance upon conversion of the Series D Preferred, is set forth in Section 3(c) of the Disclosure Schedule. All such outstanding shares of capital stock have been, or upon issuance in accordance with the terms of any such Convertible Securities will be, validly issued, fully paid and non-assessable. No shares of capital stock of the Company (including the Common Stock and the Dividend Shares) are subject to preemptive rights or any other similar rights of the stockholders of the Company or any liens or encumbrances. Except as set forth in Section 3(c) of the Disclosure Schedule, (i) there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of capital stock of the Company or any of its Subsidiaries, or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its Subsidiaries, nor are any such issuances or arrangements contemplated, (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of its or their securities under the Securities Act (except the Registration Rights Agreement (as defined in the Purchase Agreement)); (iii) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem any security of the Company; and (iv) the Company does not have any shareholder rights plan, "poison pill" or other anti-takeover plans or similar arrangements. Section 3(c) of the Disclosure Schedule sets forth all of the securities or instruments issued by the Company or any of its Subsidiaries that contain anti-dilution or similar provisions that will be triggered by, and all of the resulting adjustments that will be made to such securities and instruments as a result of, the issuance of the Securities and the Dividend Shares in accordance with the terms of this Agreement or the Certificate of Designation. The Company has no knowledge of any voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among any of the security holders of the Company relating to the securities of the Company held by them. The Company can furnish, upon request, true and correct copies of the Company's Certificate of Incorporation, the Company's Bylaws as in effect on the date hereof (the "***Bylaws***"), and all other instruments and agreements governing any Convertible Securities. The Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or any such Subsidiary.

(d) Issuance of Securities. Subject to the Written Consent, the Series D Preferred are duly authorized and, upon issuance in accordance with the terms of this Agreement and the Certificate of Designation, (i) will be validly issued and free from all taxes, liens, claims, transfer restrictions, and encumbrances (other than restrictions on transfer contained in this Agreement or the Certificate of Designation), (ii) will not be subject to preemptive rights, rights of first refusal or other similar rights of stockholders of the Company or any other Person (as defined below) and (iii) will not impose personal liability on any holder thereof. The Common Stock and the Dividend Shares are duly authorized and reserved for issuance, and, upon issuance of the Dividend Shares or conversion of the Series D Preferred, in each case in accordance with the terms of the Certificate of Designation, (x) will be validly issued, fully paid and non-assessable, and free from all taxes, liens, claims, transfer restrictions, and encumbrances (other than restrictions on transfer contained in this Agreement), (y) will not be subject to preemptive rights, rights of first refusal or other similar rights of stockholders of the Company or any other Person and (z) will not impose personal liability upon any holder thereof. Except for the filing of any notice prior or subsequent to the Closing Date (as defined in the Purchase Agreement) that may be required under applicable state and/or federal securities laws (or comparable laws of any other jurisdiction), and no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency, instrumentality or other third party, is or will be necessary for, or in connection with, the execution and delivery by the Company of this Agreement, the offer, issue, sale, execution or delivery of the Securities and the Dividend Shares, or the performance by the Company of its obligations under this Agreement. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a “***Disqualification Event***”) is applicable to the Company or, to the Company’s knowledge, any Person listed in the first paragraph of Rule 506(d)(1), except for a Disqualification Event as to which Rule 506(d)(2)(ii–iv) or (d)(3), is applicable. “***Person***” means an individual, partnership, corporation, unincorporated organization, joint stock company, limited liability company, association, trust, joint venture or any other entity, or a governmental agency or political subdivision thereof.

(e) No Conflicts. Except as set forth in Section 3(e) of the Disclosure Schedule, and subject to the Written Consent, the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Series D Preferred, and the issuance and reservation for issuance of the Common Stock and the Dividend Shares) will not (i) result in a violation of the Certificate of Incorporation or Bylaws, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including United States federal and state securities laws, rules and regulations and rules and regulations of any self-regulatory organizations to which either the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iv) result in the imposition of a mortgage, pledge, security interest, encumbrance, charge or other lien on any asset of the Company or any Subsidiary.

(f) Compliance. Neither the Company nor any of its Subsidiaries is in violation of its Certificate of Incorporation, Bylaws or other organizational documents, and neither the Company nor any of its Subsidiaries is in default (and no event has occurred that with notice or lapse of time or both would put the Company or any of its Subsidiaries in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party. The businesses of the Company and its Subsidiaries are not being conducted, and shall not be conducted so long as any Purchaser (as defined in the Purchase Agreement) (or any of its respective affiliates) owns any of the Securities or Dividend Shares, in violation of any law, ordinance or regulation of any governmental entity, except for possible violations the sanctions for which either singly or in the aggregate have not had and would not materially affect the Company or any of its Subsidiaries. Neither the Company, nor any of its Subsidiaries, nor any director, officer, agent, employee or other Person acting on behalf of the Company or any Subsidiary has, in the course of his actions for, or on behalf of, the Company, used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee. The Company and its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, provincial or foreign governmental or regulatory authorities that are material to the conduct to their business, and neither the Company nor any of its Subsidiaries has received any notice of proceeding relating to the revocation or modification of any such certificate, authorization or permit. The Company has complied in all material respects with and is not in default or violation in any material respect of, and is not, to the Company’s knowledge, under investigation with respect to or has not been, to the knowledge of the Company, threatened to be charged with or given notice of any violation of, any applicable federal, state, local or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any federal, state, local or foreign governmental or regulatory authority. Except for statutory or regulatory restrictions of general application, no federal, state, local or foreign governmental or regulatory authority has placed any material restriction on the business or properties of the Company or any of its Subsidiaries.

(g) SEC Documents, Financial Statements. Except as set forth in Section 3(g) of the Disclosure Schedule, the Company has timely filed (within applicable extension periods) all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the Securities Act and/or the Securities Exchange Act of 1934, as amended (including the rules and regulations promulgated thereunder, the "***Exchange Act***") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, the "***SEC Documents***"). As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings made prior to the date hereof). As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC applicable with respect thereto. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("***GAAP***"), consistently applied, during the periods involved (except as may be otherwise indicated in such financial statements or the notes thereto or, in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to immaterial year-end audit adjustments). Except as set forth in the financial statements of the Company included in the Select SEC Documents (as defined below), the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to the date of such financial statements and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in such financial statements, which liabilities and obligations referred to in clauses (i) and (ii), individually or in the aggregate, are not material to the financial condition or operating results of the Company. For purposes of this Agreement, "***Select SEC Documents***" means the Company's (A) Annual Report on Form 10-K for the fiscal year ended December 31, 2019, (B) Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2020, (C) Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2020, and (D) all Current Reports on Form 8-K filed since August 19, 2020.

(h) No Material Adverse Effect in Business. Except as set forth in Section 3(h) of the Disclosure Schedule, and other than effects on the business related primarily to COVID-19, since March 31, 2020 through the date hereof, (i) there has been no Material Adverse Effect, nor any development or event which would result, or be reasonably likely to result, in a Material Adverse Effect, (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets, net current liabilities or net assets of the Company and its Subsidiaries.

(i) Absence of Certain Changes. Except as set forth on Section 3(i) of the Disclosure Schedule, since March 31, 2020, (i) there has not been any change in the capital stock (other than pursuant to the Company's stock plans pursuant to the Company's Approved Share Plan (as defined below), pursuant to the conversion or exercise of outstanding securities that are convertible into or exercisable for Common Stock, or pursuant to publicly disclosed equity or debt financings) or long-term debt of the Company, or any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock; (ii) neither the Company nor any of its Subsidiaries has entered into any transaction or agreement that is material to the Company or any of its Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company or any of its Subsidiaries and, except as contemplated by this Agreement, has made any material change or amendment to a material contract or arrangement by which the Company or any of its Subsidiaries or any of their respective assets or properties is bound or subject; (iii) neither the Company nor any of its Subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority; and (iv) there has been no material adverse change and no material adverse development in the business, properties, operations, prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries has taken any steps, and does not currently expect to take any steps, to seek protection pursuant to any bankruptcy or receivership law, nor does the Company or any of its Subsidiaries have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings with respect to the Company or any of its Subsidiaries. For purposes of this Section 3(i), "*Approved Share Plan*" shall mean the Company's Amended and Restated 1999 Stock Award Plan and 2020 Omnibus Stock Incentive Plan.

(j) Transactions with Affiliates. Except as disclosed in the Select SEC Documents, none of the officers, directors, or employees of the Company or any of its Subsidiaries, or any of their family members, is presently a party to any transaction with the Company or any of its Subsidiaries (other than for ordinary course services solely in their capacity as officers, directors, employees or consultants), including, without limitation, any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director, employee or family member or any corporation, partnership, trust or other entity in which any such officer, director, employee or family member has an ownership interest of five (5%) percent or more or is an officer, director, trustee or partner.

(k) Absence of Litigation. Except as disclosed in Section 3(k) of the Disclosure Schedule, there is no action, suit, proceeding, inquiry or, to the best of the Company's knowledge, investigation before or by any court, public board, government agency, self-regulatory organization or body (including, without limitation, the SEC) pending or affecting the Company, any of its Subsidiaries, or any of their respective directors or officers in their capacities as such. To the knowledge of the Company or any of its Subsidiaries, there are no actions, suits, proceedings, inquiries or investigations before or by any court, public board, government agency, self-regulatory organization or body (including, without limitation, the SEC) threatened against the Company, any of its Subsidiaries, or any of their respective directors or officers in their capacities as such, which, if determined adversely, could, either individually or in the aggregate, be material to the Company or any of its Subsidiaries. There are no facts which, if known by a potential claimant or governmental authority, could give rise to a claim or proceeding which, if asserted or conducted with results unfavorable to the Company or any of its Subsidiaries, could reasonably be expected to be material to the Company or any of its Subsidiaries.

(l) Intellectual Property. Each of the Company and its Subsidiaries owns or is duly licensed (and, in such event, has the unfettered right to grant sublicenses) to use all patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, copyright applications, licenses, permits, inventions, discoveries, processes, scientific, technical, engineering and marketing data, object and source codes, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) and other similar rights and proprietary knowledge (collectively, "***Intellectual Property***") used in or necessary for the conduct of its business as now being conducted and as presently contemplated to be conducted in the future (collectively, the "***Company Intellectual Property***"). Section 3(l) of the Disclosure Schedule sets forth a list of all material Company Intellectual Property owned and/or used by the Company or any of its Subsidiaries in its business. Except as set forth on the Disclosure Schedule, there are no rights of third parties to any of the Company Intellectual Property except through licensing agreements. Except as set forth on the Disclosure Schedule, there are no outstanding options, licenses or agreements of any kind relating to the Company Intellectual Property, nor is the Company or any of its Subsidiaries bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other Person (collectively, the "***Third Party License Agreements***") other than such licenses or agreements arising from the purchase of generally available products, as to which the aggregate consideration paid by or due from the Company or any of its Subsidiaries does not exceed $25,000 in value, or "off the shelf" products. All of the Third Party License Agreements are valid, binding and in full force and effect in all material respects and to the Company's knowledge enforceable by the Company or its applicable Subsidiary in accordance with their respective terms in all material respects, subject to general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies. Neither the Company nor any of its Subsidiaries is in material breach of any such Third Party License Agreements. To the Company's knowledge, no other party to any of the Third Party License Agreements is in material default thereunder. Neither the Company nor any Subsidiary of the Company infringes or is in conflict with any right of any other Person with respect to any third party Intellectual Property. Neither the Company nor any of its Subsidiaries has received written notice of any pending conflict with or infringement upon any third party Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or any of its Subsidiaries' ownership of or licensing rights in or to any Company Intellectual Property. Neither the Company nor any of its Subsidiaries has entered into any consent agreement, indemnification agreement, forbearance to sue or settlement agreement with respect to the validity of the Company's or its Subsidiaries' ownership of or right to use its Company Intellectual Property and there is no reasonable basis for any such claim to be successful. The rights of the Company and its Subsidiaries in the Company Intellectual Property are valid and enforceable and no registration relating thereto has lapsed, expired or been abandoned or canceled or is the subject of cancellation or other adversarial proceedings, and all applications therefor are pending and in good standing. The Company and its Subsidiaries have taken all reasonable steps required to perfect their ownership of and interest in the Company Intellectual Property and has taken reasonable security measures to protect the secrecy, confidentiality and value of all of the Company Intellectual Property. The Company and its Subsidiaries have complied, in all material respects, with their respective contractual obligations relating to the protection of the Company Intellectual Property used pursuant to licenses. No Person is infringing on or violating the Company Intellectual Property owned or used by the Company or its Subsidiaries. The Company and its Subsidiaries have used Company IP Counsel (as defined below) for all Intellectual Property matters since December 31, 2011 and, since such date, neither the Company nor any of its Subsidiaries has consulted any other counsel with respect to any Intellectual Property matters.

(m) Title. The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and merchantable title to all personal property owned by them that is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries. Any real property and facilities held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(n) Tax Status. Except as set forth in Section 3(n) of the Disclosure Schedule, the Company and each of its Subsidiaries has made or filed all foreign, U.S. federal, state, provincial and local income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges due and owing, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to any statute of limitations relating to the assessment or collection of any foreign, federal, state, provincial or local tax. None of the Company’s tax returns is presently being audited by any taxing authority.

(o) Key Employees. Except as set forth on Section 3(o) of the Disclosure Schedule, each of the Company’s and its Subsidiaries’ directors and officers and any Key Employee (as defined below) is currently serving the Company or its Subsidiaries in the capacity disclosed in the Select SEC Documents. No Key Employee is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each Key Employee does not subject the Company or any of its Subsidiaries to any material liability with respect to any of the foregoing matters. Except as set forth on Section 3(o) of the Disclosure Schedule, no Key Employee has, to the knowledge of the Company and its Subsidiaries, any intention to terminate or limit his employment with, or services to, the Company or any of its Subsidiaries, nor is any such Key Employee subject to any constraints which would cause such employee to be unable to devote his full time and attention to such employment or services. For purposes of this Agreement, “*Key Employee*” means the persons listed in Section 3(o) of the Disclosure Schedule and any individual who assumes or performs any of the duties of a Key Employee.

(p) Employee Relations. No application or petition for certification of a collective bargaining agent is pending and none of the employees of Company or any of its Subsidiaries are or have been represented by any union or other bargaining representative and no union has attempted to organize any group of the Company's or any of its Subsidiaries’ employees, and no group of the Company's or any of its Subsidiaries’ employees has sought to organize themselves into a union or similar organization for the purpose of collective bargaining. The Company and its Subsidiaries believe that their relations with their employees are good. No executive officer (as defined in Rule 501(f) of the Securities Act) has notified the Company or any of its Subsidiaries that such officer intends to leave the Company or any of its Subsidiaries or otherwise terminate such officer’s employment with the Company or any of its Subsidiaries. The Company and its Subsidiaries are in compliance with all federal, state and local laws and regulations and, to the Company’s knowledge, all foreign laws and regulations, in each case respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, be material to the Company or any of its Subsidiaries.

(q) Insurance. The Company and each of its Subsidiaries has in force fire, casualty, product liability and other insurance policies, with extended coverage, sufficient in amount to allow it to replace any of its material properties or assets which might be damaged or destroyed or sufficient to cover liabilities to which the Company or any of its Subsidiaries may reasonably become subject, and such types and amounts of other insurance with respect to its business and properties, on both a per occurrence and an aggregate basis, as are customarily carried by Persons engaged in the same or similar business as the Company and its Subsidiaries. No default or event has occurred that could give rise to a default under any such policy.

(r) Environmental Matters. The Company and each of its Subsidiaries is in compliance with all foreign, federal, state and local rules, laws and regulations relating to the use, treatment, storage and disposal of Hazardous Substances (as defined below) and protection of health and safety or the environment which are applicable to its business. There is no environmental litigation or other environmental proceeding pending or threatened by any governmental or regulatory authority or others with respect to the current or any former business of the Company or any of its Subsidiaries or any partnership or joint venture currently or at any time affiliated with the Company or any of its Subsidiaries. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by the Company or any of its Subsidiaries. No Hazardous Substances have been treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by the Company or any of its Subsidiaries or by any partnership or joint venture currently or at any time affiliated with the Company or any of its Subsidiaries in violation of any applicable environmental laws. The environmental compliance programs of the Company and each of its Subsidiaries comply in all respects with all environmental laws, whether foreign, federal, state, provincial or local, currently in effect. For purposes of this Agreement, "***Hazardous Substances***" means any substance, waste, contaminant, pollutant or material that has been determined by any governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

(s) Listing. The Company is not in violation of the listing requirements of the OTCQB Marketplace (the "***OTCQB***") on which it trades, does not reasonably anticipate that the Common Stock will be delisted by the OTCQB for the foreseeable future, and has not received any notice regarding the possible delisting of the Common Stock from the OTCQB. The issuance and sale of the Series D Preferred and the transactions contemplated by the Transaction Documents do not contravene the rules and regulations of the OTCQB.

(t) No General Solicitation or Integrated Offering. Neither the Company nor any Person acting for the Company has conducted any "general solicitation" (as such term is defined in Regulation D) with respect to any of the Securities and/or Dividend Shares being offered hereby. Neither the Company nor any of its affiliates, nor any Person acting on its or their behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration of the Securities and/or Dividend Shares being offered hereby under the Securities Act or cause this offering of Securities and/or Dividend Shares to be integrated with any prior offering of securities of the Company for purposes of the Securities Act, which result of such integration would require registration under the Securities Act, or any applicable stockholder approval provisions.

(u) No Brokers. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other third party with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other third parties for fees of a type contemplated in this Section 3(u) that may be due in connection with the transactions contemplated by the Transaction Documents.

(v) Acknowledgment Regarding Securities. The number of Common Stock issuable upon conversion of the Series D Preferred may increase in certain circumstances. The Company's directors and executive officers have studied and fully understand the nature of the Securities being sold hereunder. The Company acknowledges that its obligation to issue (i) Common Stock upon conversion of the Series D Preferred and (ii) the Dividend Shares, in each case, in accordance with the Certificate of Designation, is absolute and unconditional, regardless of the dilution that such issuance may have on the ownership interests of other stockholders and the availability of remedies provided for in this Agreement relating to a failure or refusal to issue Common Stock and Dividend Shares to the extent required by the Certificate of Designation. Taking the foregoing into account, the Company's Board of Directors has determined in its good faith business judgment that the issuance of the Series D Preferred hereunder and the consummation of the other transactions contemplated hereby are in the best interests of the Company and its stockholders.

(w) Internal Control over Financial Reporting. The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company does not have any material weaknesses in its internal control over financial reporting. Since the date of the latest audited financial statements included in the Select SEC Documents, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(x) Disclosure Controls and Procedures. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) of the Exchange Act) that comply with the requirements of the Exchange Act. Such disclosure controls and procedures have been designed to ensure that material information relating to the Company is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, by others within those entities.

(y) Sarbanes-Oxley Compliance. The Company and the Company's directors and officers, in their capacities as such, are in compliance with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith ("***SOX***"), including Section 402 related to loans and Sections 302 and 906 related to certifications, and neither the Company nor any of its officers has received notice from any governmental entity questioning or challenging the accuracy, completeness, content, form or manner of filing or submission of such certifications. The Company has no reasonable basis to believe that it will not continue to be in compliance with SOX as in effect on the Closing Date (including, without limitation, the requirements of Section 404 thereof).

(z) Disclosure. All information relating to or concerning the Company and/or any of its Subsidiaries set forth in this Agreement or provided to the Purchasers pursuant to Section 2(d) hereof or otherwise by the Company in connection with the transactions contemplated hereby is true and correct in all material respects and the Company has not omitted to state any material fact necessary in order to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or exists with respect to the Company or its Subsidiaries or their respective businesses, properties, prospects, operations or financial conditions, which has not been publicly disclosed but, under applicable law, rule or regulation, would be required to be disclosed by the Company in a registration statement filed on the date hereof by the Company under the Securities Act with respect to a primary issuance of the Company's securities.

(aa) Absence of Indebtedness. On the Closing Date, as a result of the transactions contemplated by this Agreement, neither the Company nor any Subsidiary shall have any indebtedness for borrowed money that would be required to be disclosed by the Company on a balance sheet prepared in accordance with GAAP. Section 3(aa) of the Disclosure Schedule sets for the indebtedness for borrowed money of the Company and its Subsidiaries as of immediately prior to the Closing Date.

(bb) No Registration. Assuming the accuracy of the representations and warranties of the Purchasers contained in Section 2 hereof, it is not necessary, in connection with the issuance and sale of the Series D Preferred to the Purchasers, the issuance of the Common Stock upon conversion of the Series D Preferred or the issuance of the Dividend Shares pursuant to the terms of the Certificate of Designation and the Certificate of Incorporation, in each case in the manner contemplated by this Agreement and the other Transaction Documents, to register the Series D Preferred, the Common Stock or the Dividend Shares under the Securities Act, except for any registration that is required under the terms of the Registration Rights Agreement.

(cc) Acknowledgment Regarding Purchasers’ Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm’s length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers’ purchase of the Securities. The Company further represents to each Purchaser that the Company’s decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(dd) Acknowledgment Regarding Purchaser’s Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or “derivative” securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, short sales or “derivative” transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company’s publicly-traded securities, and (iii) each Purchaser shall not be deemed to have any affiliation with or control over any arm’s length counter-party in any “derivative” transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

4. Conditions Precedent to the Obligation of the Holders to Consummate the Exchange. The obligations of each Holder to consummate the transactions contemplated by this Agreement are subject to the accuracy of the representations and warranties set forth in Article II, which shall be true and correct in all material respects (except to the extent any such representation or warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation or warranty shall be true and correct in all respects) as of the Closing with the same effect as though such representations and warranties had been made as of the Closing, and to the timely performance by the Company, as applicable, of their respective covenants and obligations hereunder, and to the satisfaction or waiver prior to or at the Closing, of each of the following conditions:

(a) The Company shall have executed and delivered this Agreement.

(b) The Company shall deliver (or cause to be delivered) the Exchange Shares, to each Holder in the principal amounts set forth on Schedule A hereto, and in accordance with the delivery terms set forth in Article I.

(c) The Company shall have paid the expenses as required by Section 6(b).

(d) The Company shall have satisfied its obligations under Section 7 of the Purchase Agreement.

5. Conditions Precedent to the Obligation of the Company to Consummate the Exchange. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the accuracy of the representations and warranties set forth in Article III, which shall be true and correct in all material respects (except to the extent any such representation or warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation or warranty shall be true and correct in all respects) as of the Closing with the same effect as though such representations and warranties had been made as of the Closing, and to the timely performance by each Holder, as applicable, of the their covenants and obligations hereunder, and to the satisfaction or waiver prior to or at the Closing, of each of the following conditions:

(a) The Holders shall have executed and delivered this Agreement.

(b) The Holders shall deliver (or cause to be delivered) the Current Shares to the Company in the principal amounts set forth on Schedule A hereto, and in accordance with the delivery terms set forth in Article I.

(c) The Purchasers (as defined in the Purchase Agreement) shall have satisfied their obligations under Section 6 of the Purchase Agreement.

6. Certain Covenants.

(a) Further Assurances. The parties hereto agree to use commercially reasonable efforts to take, or cause to be taken, all reasonable actions, to file, or cause to be filed, all documents and to do, or cause to be done, all things necessary, proper or advisable to consummate the Exchange on their account, including preparing and filing as promptly as practicable all documentation to effect all necessary filings, consents, waivers, approvals, and authorizations.

(b) Costs and Expenses. Whether or not the transactions contemplated by this Agreement are consummated, the Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including, without limitation, (i) all expenses incident to the issuance and delivery of the Exchange Shares to the Holders (including all printing and engraving costs), (ii) all necessary issue, transfer and other stamp taxes in connection with the issuance of Exchange Shares to the Holders, and (iii) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors..

(c) Covenant Survival. The obligations of the Company under this Article VI shall survive the transfer of any Exchange Shares, the enforcement, amendment or waiver of any provision of this Agreement or the Certificate of Designation, and the termination of this Agreement.

7. Miscellaneous.

(a) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in the State of New York. The Company and each Holder irrevocably consent to the exclusive jurisdiction of the United States federal courts and the state courts located in the County of New York, State of New York, in any suit or proceeding based on or arising under this Agreement and irrevocably agree that all claims in respect of such suit or proceeding may be determined in such courts. The Company irrevocably waives the defense of an inconvenient forum to the maintenance of such suit or proceeding. The Company further agrees that service of process upon the Company mailed by first class mail shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. Nothing herein shall affect the right of any Holder to serve process in any other manner permitted by law. The Company agrees that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner.

(b) Entire Agreement. This Agreement, together with the Disclosure Schedule, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous oral or written proposals or agreements relating thereto all of which are merged herein. This Agreement may not be amended or any provision hereof waived in whole or in part, except by a written amendment signed by both of the Parties.

(c) Counterparts. This Agreement may be executed by facsimile signature and in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(d) Construction. For purposes of this Agreement, the words "hereof," "herein," "hereby" and other words of similar import refer to this Agreement as a whole unless otherwise indicated. Whenever the singular is used herein, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate. The term "including" means "including but not limited to." The word "or" shall not be exclusive. Whenever used in this Agreement, the masculine gender shall include the feminine and neutral genders. All references herein to Articles, Sections, Subsections, Paragraphs and Exhibits shall be deemed references to Articles and Sections and Subsections and Paragraphs of, and Exhibits to, this Agreement unless the context shall otherwise require. Any reference herein to any statute, agreement or document, or any section thereof, shall, unless otherwise expressly provided, be a reference to such statute, agreement, document or section as amended, modified or supplemented (including any successor section) and in effect from time to time. All terms defined in this Agreement shall have the defined meaning when used in any Exhibit, Schedule, certificate or other documents attached hereto or made or delivered pursuant hereto unless otherwise defined therein. The parties acknowledge and agree that, except as specifically provided herein, they may pursue judicial remedies at law or in equity in the event of a dispute with respect to the interpretation or construction of this Agreement. This Agreement shall be interpreted and enforced in accordance with the provisions hereof without the aid of any canon, custom or rule of law requiring or suggesting construction against the party causing the drafting of the provision in question.

(e) Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed given or delivered: (i) when delivered personally; (ii) one business day following deposit with a recognized overnight courier service, provided such deposit occurs before the deadline imposed by that service for overnight delivery or (iii) when transmitted, if sent by electronic mail, provided confirmation of receipt tis received by send and the notice is sent by an additional method provided under this Agreement, in each case to the parties hereto as follows:

If to a Holder, to the address set forth on such Holder's signature page to this Agreement, with a copy (which shall not constitute notice) to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Attention: Brett Lawrence
Email: blawrence@stroock.com

If to the Company:

ImageWare Systems, Inc.
13500 Evening Creek Drive N, Suite 550

San Diego, California 92127
E-mail: jmorris@iwsinc.com
Attention: Chief Financial Officer

With a copy (which shall not constitute notice) to:

Disclosure Law Group, a Professional Corporation
655 West Broadway, Suite 870
San Diego, CA 92101
Telephone: (619) 272-7062
Facsimile: (619) 330-2101
E-Mail: drumsey@disclosurelawgroup.com
Attention: Daniel W. Rumsey, Managing Director

Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

(f) Severability. In the event that any provision of this Agreement shall be declared invalid or unenforceable by any regulatory body or court having jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

(g) No Third-Party Beneficiary. Nothing in this Agreement is intended or shall be construed to give any person, other than the parties, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

(h) WAIVER OF JURY TRIAL. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(i) Survival. All representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement and the Exchange Shares.

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IN WITNESS WHEREOF, this Agreement was duly executed on the date first written above.

IMAGEWARE SYSTEMS, INC.

By: ______________________________

Name: Kristin Taylor
Title: Chief Executive Officer

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

[HOLDER]

By: ______________________
Name: ______________________
Title: ______________________

Address for Notice:

____

____

____

SCHEDULE A

Holder	Current Shares ($)	Exchange Shares ($)

Exhibit 10.4

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (together with any amendments or supplements hereto, this "Agreement") is made and entered into as of September 23, 2020, by and among ImageWare Systems, Inc., a Delaware Corporation, (the "Company"), and Citibank, N.A., as escrow agent (the "Escrow Agent", and together with the Company, each a "Party" and, collectively, the "Parties"). Capitalized terms used herein which are not defined herein shall have the meanings set forth for such terms in the Purchase Agreement (as defined below); *provided, however*, that the Escrow Agent shall not be deemed to have any knowledge of or duty to ascertain the meaning of any capitalized term not otherwise defined in this Agreement.

RECITALS

WHEREAS, the Company and the Purchasers are parties to that certain Securities Purchase Agreement, dated as of September 28, 2020, by and among the Company and the Purchasers (as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the "Purchase Agreement"), pursuant to which the Purchasers, severally and not jointly, will purchase from the Company, and the Company will issue and sell to the Purchasers the Preferred Stock, on the terms and subject to the conditions of the Purchase Agreement;

WHEREAS, pursuant to Section 1(b)(ii) of the Purchase Agreement, on the Effective Date, each of the Purchasers agrees to deposit into escrow certain funds to be held and distributed by the Escrow Agent in accordance with the terms of the Purchase Agreement and this Agreement; and

WHEREAS, the Company and the Purchasers are parties to that certain Loan and Security Agreement (the "Loan and Security Agreement"), dated as of September 28, 2020, by and between the Company and the Purchasers, pursuant to which the Purchasers will provide a short-term, convertible term loan to the Company, the outstanding principal balance of which will be used to purchase shares of Preferred Stock at the Closing.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the Parties agree as follows:

1. Appointment. The Company hereby appoints the Escrow Agent as the escrow agent for the purposes set forth herein. The Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds.

(a) Simultaneous with the execution and delivery of this Agreement, certain Purchasers are depositing with the Escrow Agent, such Purchaser's Initial Purchase Price in immediately available funds into an escrow account established by the Escrow Agent for such purpose (the "Escrow Account"). The amounts deposited by each of the Purchasers, along with any Additional Deposit (as defined herein) shall constitute the "Escrow Funds". The Company shall notify the Escrow Agent of each Purchaser's Initial Purchase Price being deposited as soon as such amounts are known. The Escrow Agent shall acknowledge receipt of the Initial Purchase Price and the Additional Deposit (as defined below), together with all products and proceeds thereof, including all interest, dividends, gains and other income (collectively, the "Escrow Earnings") earned with respect thereto (collectively, the "Escrow Funds").

(b) For greater certainty, all Escrow Earnings shall be retained by the Escrow Agent and reinvested in the Escrow Funds and shall become part of the Escrow Funds, and shall be disbursed as part of the Escrow Funds in accordance with the terms and conditions of this Agreement.

3. Investment of Escrow Funds.

(a) Unless otherwise instructed in writing and executed by an authorized representative of the Company as set forth on Exhibit A (each a "Representative"), the Escrow Agent shall invest the Escrow Funds in a non-interest-bearing deposit obligation of Citibank N.A., insured by the Federal Deposit Insurance Corporation ("FDIC") to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below.

(b) The Escrow Agent shall send an account statement to the Company on a monthly basis reflecting activity in the Escrow Account for the preceding month.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the Escrow Funds, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the Escrow Funds in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Company shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds related to a Purchaser as provided in this Section 4(a) as follows:

(i) The Company agrees to direct the Escrow Agent on the date hereof by Release Instruction, to disburse all of the Escrow Funds to the Company on the date hereof, pursuant to Section 2.1 of the Loan and Security Agreement. Upon receipt of a Release Instruction with respect to the Initial Purchase Price, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Release Instruction, disburse all or part of the Initial Purchase Price in accordance with such Release Instruction.

(ii) Following the Effective Date, upon receipt of one or more additional deposits from certain Additional Purchasers (any such additional deposit, an "Additional Deposit"), the Company agrees to direct the Escrow Agent, upon submission of a Release Instruction, pursuant to and in accordance with the Loan and Security Agreement, to disburse the Escrow Funds to the Company. The Company shall notify the Escrow Agent of such Additional Deposit as soon as such amounts are known. Upon receipt of a Release Instruction with respect to any Additional Deposit, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Release Instruction, disburse all or part of the Additional Deposit in accordance with such Release Instruction.

(iii) Upon receipt by the Escrow Agent of a copy of a Final Determination from the Company, the Escrow Agent shall on the fifth (5th) Business Day following receipt of such determination, disburse as directed, part or all, as the case may be, of the applicable Escrow Funds (but only to the extent funds are available in the Escrow Funds) in accordance with such Final Determination. The Escrow Agent will act on such Final Determination without further inquiry.

(iv) All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds or check as set forth in the Release Instruction or Final Determination, as applicable.

Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in the Escrow Account under the terms of this Agreement must be in writing, executed on behalf the Company by a Representative as set forth on Exhibit A attached hereto, and delivered to the Escrow Agent as an attachment to an e-mail received on a Business Day sent to the e-mail address set forth in Section 11 below (with receipt by the Escrow Agent confirmed). In the event any instruction is delivered to the Escrow Agent, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated on Exhibit A annexed hereto (the "Call Back Authorized Individuals"), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by a Representative, actually received and acknowledged by the Escrow Agent.

(b) Certain Definitions.

(i) "Business Day" means any day that is not a Saturday, a Sunday, or other day on which banks are not required or authorized by law to be closed in New York, New York.

(ii) "Final Determination" means a final non-appealable order of any court having jurisdiction pursuant to Section 13 together with (A) a certificate executed by a Representative to the effect that such order is final and non-appealable and (B) the written payment instructions executed by a Representative to effectuate such order.

(iii) "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

(iv) "Release Instruction" means the written instruction, in the form attached hereto as Exhibit B, executed by a Representative of the Company directing the Escrow Agent to disburse all or a portion of the Escrow Funds, as applicable.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no duties, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between the Parties, in connection herewith, if any, including without limitation the Purchase Agreement, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any Release Instruction or Final Determination furnished to it hereunder and believed by it to be genuine and to have been signed by a Representative. Concurrent with the execution of this Agreement, the Company shall deliver to the Escrow Agent authorized representative's forms in the form of Exhibit A attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due to the Escrow Agent or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from the Company which, in the Escrow Agent's opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise by the Company. The Escrow Agent may interplead all of the assets held hereunder into a court having jurisdiction pursuant to Section 13 or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent's fraud, gross negligence or willful misconduct was the cause of any direct loss to either Party. To the extent practicable, the Company agrees to pursue any redress or recourse in connection with any dispute (other than with respect to a dispute involving the Escrow Agent) without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect, punitive, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such losses or damages and regardless of the form of action.

6. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days advance notice in writing of such resignation to the Company specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by the Company at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow agent pursuant to a written designation from the Company, (ii) as set forth in a Release Instruction or (iii) in accordance with the directions of a Final Determination, and, at the time of such delivery, the Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Company has failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court having jurisdiction pursuant to Section 13 for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

7. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and shall be paid by the Company. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement and shall be paid upon funding of the Escrow Account.

8. Indemnity. The Company shall indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, or reasonable and documented out of pocket costs or expenses (including the reasonable and documented out of pocket fees and expenses of one outside counsel and experts and their staffs and reasonable and documented out of pocket expenses of document location, duplication and shipment) (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnitee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by the fraud, gross negligence or willful misconduct of such Indemnitee, or (b) its following any instructions or other directions from the Company. The Parties acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

9. Tax Matters.

(a) The Company shall be responsible for and the taxpayer on all taxes due on the interest or income earned, if any, on the Escrow Funds for the calendar year in which such interest or income is earned. The Escrow Agent shall report any interest or income earned on the Escrow Funds to the IRS or other taxing authority on IRS Form 1099. Prior to the date hereof, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 as applicable and such other forms and documents that the Escrow Agent may request.

(b) The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Funds. The Escrow Agent shall withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Agreement and any amendments or attachments hereto are not intended or written to be used, and may not be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

10. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with the Company that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

11. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered simultaneously to the Company and the Escrow Agent (i) personally, (ii) on the day of transmission if sent by electronic mail ("e-mail") with a PDF attachment executed by a Representative or an authorized signatory of the Escrow Agent, as applicable, to the e-mail address given below, and written confirmation by electronic mail of receipt is obtained promptly after completion of the transmission, (iii) by overnight delivery with a reputable national overnight delivery service, or (iv) by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five Business Days after the date such notice is deposited with the United States Postal Service. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the other Party in writing of any name or address changes.

if to the Company, then to:

ImageWare Systems, Inc.
13500 Evening Creek Drive N.
Suite 550
San Diego, California 92127
E-mail: jmorris@iwsinc.com
Attention: Chief Financial Officer

with a copy simultaneously transmitted by like means (which transmittal shall not constitute notice hereunder) to:

Disclosure Law Group, a Professional Corporation
655 West Broadway, Suite 870
San Diego, CA 92101
Telephone No.: (619) 272-7062
Facsimile No.: (619) 330-2101
E-mail: drumsey@disclosurelawgroup.com
Attention: Daniel W. Rumsey, Managing Director

or, if to the Escrow Agent, then to:

Citibank, N.A.
Citi Private Bank
388 Greenwich Street, 29th Floor
New York, NY 10013
Attn: Debbie Demarco
Telephone No.: (212) 783-7092
Facsimile No.: (212) 783-7131
E-mail: debra.demarco@citi.com

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clause (i) through (iv) of this Section 11, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

12. Termination. This Agreement shall terminate on the earliest to occur of (a) receipt of notice in writing from a Representative confirming that the Closing Date has occurred, and (b) subject to Section 6, (i) delivery to the Escrow Agent of a written notice of termination executed by the Company or (ii) the Escrow Agent's delivery of a notice of resignation to the Company, after which this Agreement shall be of no further force and effect except that the provisions of Section 8 hereof shall survive termination.

13. Miscellaneous. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by the Company and the Escrow Agent. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party hereto, except as provided in Section 6, without the prior consent of the Escrow Agent. This Agreement shall be governed by and construed under the laws of the State of New York. Each Party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts located in the State of New York. The Parties hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising from or relating to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or electronic transmission in portable document format (.pdf), and such facsimile or .pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the Parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Section 8, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Company any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

14. Compliance with Court Orders. In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

15. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

16. Assignment. No assignment of the interest of any of the Company shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and consented to by the Escrow Agent (such consent not to be unreasonably withheld). Any transfer or assignment of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect.

17. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

18. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Company agrees to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Purchasers depositing funds into the Escrow Account pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent any entity or other relevant documentation.

19. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions “Citibank” by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party’s behalf, without the prior written consent of the Escrow Agent. By execution of this Agreement, the Escrow Agent consents to (i) the disclosure and distribution of this Agreement to any Purchaser.

20. Conflicts. The Parties agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of the Purchase Agreement, as between the Company and the Purchasers, the Purchase Agreement shall govern and control.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

IMAGEWARE SYSTEMS, INC.:

By: */s/ Kristin Taylor*
Name: Kristin Taylor
Its: Chief Executive Officer

ESCROW AGENT:

CITIBANK, N.A.

By: */s/ Debra DeMarco*
Name: Debra DeMarco
Its: Senior Vice President Citi Private Bank

[EXHIBITS INTENTIONALLY OMITTED]

Signature Page to Escrow Agreement

Exhibit 10.5

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (this "Agreement") is entered into as of September 28, 2020, by and between funds and separate accounts under the management of Nantahala Capital Management, LLC (collectively, "Nantahala"), as lenders, and the other lenders set forth on the signature pages (each a "Signature Page") hereto (together with Nantahala, the "Lenders") and ImageWare Systems, Inc. ("Borrower").

RECITALS

This Agreement sets forth the terms on which Lenders will provide a term loan to Borrower, and Borrower will repay the amounts owing to Lenders on the terms and conditions contained herein.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, all capitalized terms shall have the definitions set forth on Exhibit A. Any term used in the Code and not defined herein shall have the meaning given to the term in the Code.

1.2 Accounting Terms. Any accounting term not specifically defined on Exhibit A shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules.

2. LOAN AND TERMS OF PAYMENT.

2.1 Term Loan. Subject to the terms and conditions of this Agreement, each Lender that has a Commitment hereby agrees to make a term loan to Borrower on the Closing Date in the amount set forth on such Lender's Signature Page which, together with all Lenders hereto, will be in the aggregate principal amount of Two Million Dollars and Zero Cents ($2,000,000.00) (as may be increased from time to time pursuant to Section 2.5, the "Loan"). Loan (i) shall not exceed for any Lender at the time outstanding, the Commitment of such Lender at such time and (ii) shall not exceed for all Lenders at any time outstanding, the total amount of all Commitments at such time.

2.2 Conversion Rights.

(a) The Loans shall be convertible into Shares as, and to the extent, provided in Section 2.2(b) hereof unless a Loan Conversion Suspension Event has occurred.

(b) Subject to the next sentence, when (i) the Borrower notifies the Lenders in writing (the "Notice Date") that all the conditions to closing in Section 7 of the Securities Purchase Agreement have been fulfilled and that the transactions contemplated by the Securities Purchase Agreement are ready to be consummated, and (ii) the Required Lenders consent in writing to such conversion (which Required Lenders shall be deemed to have consented to such conversion unless written notice of objection to such conversion is provided to the Borrower within five (5) Business Days following the Notice Date), then the Loans of each Lender shall convert into Shares as set forth on Schedule B hereto (the date of such conversion, the "Loan Conversion Date"). Notwithstanding the foregoing, unless each Lender has otherwise consented to such conversion in writing, the Loans shall not be converted into Shares pursuant to this Section 2(b) if (i) a Loan Conversion Suspension Event has occurred, (ii) the Borrower has not paid interest on the Loans pursuant to Section 2.4(c) hereof, or (iii) the Borrower does not deliver to the Lenders, on the scheduled Loan Conversion Date, duly executed certificates (or if the Shares are not represented by certificates, duly executed statements related to book-entry accounts) representing the number of Shares purchased by each Lender under the Securities Purchase Agreement on the Closing Date (as defined in the Securities Purchase Agreement), registered in such Lender's name.

2.3 Repayment. Amounts borrowed pursuant to this Section 2 may be repaid at any time without penalty or premium prior to the earlier of the Maturity Date and the Loan Conversion Date. All amounts borrowed under this Section 2, together with all accrued but unpaid interest and fees thereon, shall be paid in full in cash no later than the Maturity Date, unless the Loan Conversion has previously occurred. Any such amounts that are repaid, prepaid or converted by Borrower prior to the Maturity Date may not be reborrowed.

2.4 Interest Rates, Payments, and Calculations.

(a) Interest Rate. The outstanding principal balance of the Loan, shall bear interest at a fixed rate per annum equal to twelve percent (12%) ("Interest Rate").

(b) Default Rate. Immediately and automatically upon the occurrence and during the continuance of an Event of Default, all outstanding principal of the Loans and all other Obligations shall accrue and bear interest at the Default Rate.

(c) Payments. Interest hereunder shall be payable by adding such accrued and unpaid interest to the then outstanding principal amount of the Loan on each Interest Payment Date, and from and after such time such interest shall be treated as a Loan for all purposes hereunder.

(d) Computation. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.5 Incremental Loans.

(a) Request for Increase. Subject to satisfaction of the conditions in Section 2.5(e), upon notice to the Lenders, Borrower may from time to time request an increase in the Loans (each such increase in Loans, an "Increase"); provided, that (x) any such request for an Increase shall be in a minimum amount of $200,000, plus additional increments of $100,000, in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above, and (y) the amount of all Increases shall not exceed an aggregate collective amount of One Million Dollars and Zero Cents ($1,000,000.00).

(b) Additional Lenders. It is the intent of the Parties that any Increase will be funded by Eligible Purchasers, which shall become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Lenders (each such Eligible Purchaser executing and delivering such joinder agreement and becoming a Lender, an "Additional Lender").

(c) Conditions to Effectiveness of Increase. As a condition precedent to Borrower's right to request each Increase, each of the conditions precedent set forth in Section 3.1 shall be satisfied and no Default or Event of Default shall have occurred and be continuing.

(d) Interest. The Interest Rates, payments and calculations set forth in Section 2.4 shall apply to each Increase; provided that the Interest Rate on each Increase shall accrue on and from the Increase Effective Date.

(e) Other Increase Terms. Each Increase shall rank pari passu in right of payment in respect of Collateral and with the Obligations in respect of the Loans. In addition, Increases shall have the same terms as the initial Loans (and may participate in prepayments of the Loans on a pro rata or less than pro rata basis) or such other terms as are reasonably acceptable to the Lenders.

2.6 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.8, shall continue in full force and effect for so long as any Obligations remain outstanding. Notwithstanding the foregoing, Borrower shall have the right to terminate this Agreement at any time (including without limitation, upon the occurrence of a Change of Control) so long as Borrower pays in full all outstanding Obligations as of such date of termination.

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Loans. The obligation of any Lender to make any Loan hereunder is subject to the fulfillment (or waiver by Required Lenders) of all of the following conditions:

(a) receipt by Lenders of an executed Disbursement Letter in the form of Exhibit C attached hereto;

(b) in accordance with the terms of the Escrow Agreement, the Borrower shall have delivered a Joint Release Instruction (as defined in the Escrow Agreement) to the Escrow Agent; and

(c) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the funding date as though made at and as of each such date, and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Loan (provided, however, that those representations and warranties expressly referring to another date shall be true, correct and complete in all material respects as of such date). The making of each Loan shall be deemed to be a representation and warranty by Borrower on the date of such Loan as to the accuracy of the facts referred to in this Section 3.1.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Borrower grants and pledges to Lenders a continuing security interest in the Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by Borrower of each of its covenants and duties under the Loan Documents. Except as set forth in the Schedule, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in later-acquired Collateral. Notwithstanding any termination of this Agreement, Lenders' Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

4.2 Perfection of Security Interest. Borrower authorizes Lenders to file at any time financing statements, continuation statements, and amendments thereto that (i) either specifically describe the Collateral or describe the Collateral as all assets of Borrower of the kind pledged hereunder, and (ii) contain any other information required by the Code for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, including whether Borrower is an organization, the type of organization and any organizational identification number issued to Borrower, if applicable. Any such financing statements may be filed by Lenders at any time in any jurisdiction. Borrower shall from time to time endorse and deliver to Lenders, at the request of Required Lenders, all other documents that Required Lenders may reasonably request, in form satisfactory to Required Lenders, to perfect and continue perfection of Lenders' security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents. Borrower shall have the right to possess the Collateral, except where expressly otherwise provided in this Agreement or where Required Lenders choose to perfect its security interest by possession in addition to the filing of a financing statement. Where Collateral is in possession of a third party bailee, Borrower shall take such steps as Required Lenders reasonably request for Lenders to (i) obtain an acknowledgment, in form and substance satisfactory to Required Lenders, of the bailee that the bailee holds such Collateral for the benefit of Lenders, and (ii) obtain "control" of any Collateral consisting of investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such items and the term "control" are defined in Revised Article 9 of the Code) by causing the securities intermediary or depositary institution or issuing bank to execute a control agreement in form and substance satisfactory to Lenders. Borrower will not create any chattel paper without placing a legend on the chattel paper acceptable to Lenders indicating that Lenders have a security interest in the chattel paper. Borrower from time to time may deposit with Lenders specific cash collateral to secure specific Obligations; Borrower authorizes Lenders to hold such specific balances in pledge and to decline to honor any drafts thereon or any request by Borrower or any other Person to pay or otherwise transfer any part of such balances for so long as the specific Obligations are outstanding.

4.3 Release of Security Interest. Upon the earlier of (a) the Loan Conversion, and (b) payment in full of all outstanding Obligations by Borrower, the Lenders shall release their security interest in any remaining Collateral; provided, that if any payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Lenders upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or a trustee or similar officer for the Borrower or any substantial part of its property, the Collateral or otherwise, this Loan Agreement, all rights hereunder and the Liens created hereby shall continue to be effective, or be reinstated, until such payments have been made.

5. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Borrower and each of its Subsidiaries is an entity duly existing under the laws of the jurisdiction in which it is organized and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within Borrower’s powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Borrower’s organizational documents, nor will they constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement by which it is bound, except to the extent such default would not reasonably be expected to cause a Material Adverse Effect.

5.3 Collateral. Borrower and its Subsidiaries have rights in or the power to transfer the Collateral, and their title to the Collateral is free and clear of Liens, adverse claims, and restrictions on transfer or pledge except for Permitted Liens. Any real property and facilities held under lease by the Borrower and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Borrower and its Subsidiaries.

5.4 Saleable Value of Assets. The fair saleable value of Borrower’s and its Subsidiaries’ assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities, and Borrower and its Subsidiaries are not left with unreasonably small capital after the transactions contemplated by this Agreement.

6. AFFIRMATIVE COVENANTS.

Borrower covenants that, until payment in full of all outstanding Obligations, and for so long as Lenders may have any commitment to make Loans hereunder, Borrower shall do and shall cause its Subsidiaries to do all of the following:

6.1 Good Standing and Government Compliance. Borrower shall maintain its and each of its Subsidiaries' organizational existence and good standing in the state in which such person is organized unless otherwise permitted under this Agreement, shall maintain qualification and good standing in each other jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Borrower shall comply, and shall cause each Subsidiary to comply, with all statutes, laws, ordinances and government rules and regulations to which it is subject, and shall maintain, and shall cause each of its Subsidiaries to maintain, in force all licenses, approvals and agreements, the loss of which or failure to comply with which would reasonably be expected to have a Material Adverse Effect.

6.2 Taxes. Borrower shall make, and cause each Subsidiary to make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, including, but not limited to, those laws concerning income taxes; provided that Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

6.3 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Lenders to effect the purposes of this Agreement.

7. NEGATIVE COVENANTS.

Borrower covenants and agrees that so long as any Obligations (other than contingent indemnity obligations) remain outstanding, Borrower will not and it will not permit its Subsidiaries to do any of the following without Required Lenders' prior written consent, which shall not be unreasonably withheld:

7.1 Dispositions. Convey, sell, lease, license, transfer or otherwise dispose of all or any material portion of its business or property except where no Event of Default has occurred, is continuing or would exist after giving effect to such transactions.

7.2 Mergers or Acquisitions. Merge or consolidate with or into any other business organization or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, except where no Event of Default has occurred, is continuing or would exist after giving effect to such transactions.

7.3 Encumbrances. Create, incur, assume or allow any Lien with respect to any of its property or assign or otherwise convey any right to receive income, except for Permitted Liens, or covenant to any other Person that Borrower in the future will refrain from creating, incurring, assuming or allowing any Lien with respect to any of Borrower's property other than Permitted Liens.

7.4 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock.

7.5 Incurrence of Indebtedness. Incur, assume, become liable for, or make any commitment to incur, Indebtedness.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by Borrower under this Agreement:

8.1 Payment Default. If Borrower fails to pay any (i) principal when due, or (ii) any of the other Obligations within five (5) Business Days from when due;

8.2 Covenant Default.

(a) If Borrower fails to perform any obligation under Section 6 or violates any of the covenants contained in Section 7 of this Agreement; provided, however, that if in the event of a breach of an obligation under Section 6, if such breach is capable of being cured, such breach shall only become an Event of Default if such breach continues for ten (10) Business Days after the occurrence thereof; or

(b) If Borrower fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement between Borrower and Lenders and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten (10) Business Days after Borrower receives notice thereof or any officer of Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) Business Day period or cannot after diligent attempts by Borrower be cured within such ten (10) Business Day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed thirty (30) Business Days) to attempt to cure such default, so long as Borrower continues to diligently attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default;

8.3 Material Adverse Effect. If there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect;

8.4 Defective Perfection. If, at any time, Lenders’ security interest in the Collateral is not prior to all other security interests or Liens;

8.5 Attachment. If any material portion of Borrower’s or its Subsidiaries assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within fifteen (15) Business Days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower’s assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower’s assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within fifteen (15) Business Days after Borrower receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower (provided that no Loans will be made during such cure period);

8.6 Insolvency. If Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against Borrower and is not dismissed or stayed within thirty (30) Business Days (provided that no Loans will be made prior to the dismissal of such Insolvency Proceeding);

8.7 Other Agreements. If there is a default by Borrower or other failure by Borrower to perform under any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness; or

8.8 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Lenders by any Responsible Officer pursuant to this Agreement or to induce Lenders to enter into this Agreement or any other Loan Document.

9. LENDERS' RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Required Lenders may, at their election, without notice of their election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.6(insolvency), all Obligations shall become immediately due and payable without any action by Lender);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Lenders;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Required Lenders reasonably consider advisable;

(d) Make such payments and do such acts as Required Lenders consider necessary or reasonable to protect their security interest in the Collateral. Borrower agrees to assemble the Collateral if Required Lenders so require, and to make the Collateral available to Lenders as Required Lenders may designate. Borrower authorizes Lenders to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Required Lenders' determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Lenders a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Lenders' rights or remedies provided herein, at law, in equity, or otherwise;

(e) Set off and apply to the Obligations any and all (i) balances and deposits of Borrower held by Lenders, and (ii) Indebtedness at any time owing to or for the credit or the account of Borrower held by Lenders;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Lenders are hereby granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Lenders' exercise of their rights under this Section 9.1, Borrower's rights under all licenses and all franchise agreements shall inure to Lenders' benefit;

(g) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Required Lenders determine is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Required Lenders deem appropriate. Lenders may sell the Collateral without giving any warranties as to the Collateral. Lenders may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. If Lenders sell any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lenders, and applied to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Lenders may resell the Collateral and Borrower shall be credited with the proceeds of the sale;

(h) Lenders may credit bid and purchase at any public or private sale;

(i) Apply for the appointment of a receiver, trustee, liquidator or conservator of the Collateral, without notice and without regard to the adequacy of the security for the Obligations and without regard to the solvency of Borrower, any guarantor or any other Person liable for any of the Obligations;

(j) Exercise any other rights of a secured creditor under applicable law; and

(k) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

Lenders may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

9.2 [Reserved].

9.3 Accounts Collection. At any time after the occurrence and during the continuation of an Event of Default, to the extent constituting Collateral, Lenders may notify any Person owing funds to Borrower of Lenders' security interest in such funds. Borrower shall collect all such amounts owing to Borrower for Lenders, receive in trust all payments as Lenders' trustee, and immediately deliver such funds to Lenders in their original form as received from such Person, with proper endorsements for deposit.

9.4 Lender Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Lenders may after reasonable notice to Borrower make payment of the same or any part thereof. Any amounts so paid or deposited by Lenders shall constitute Lender Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Lenders shall not constitute an agreement by Lenders to make similar payments in the future or a waiver by Lenders of any Event of Default under this Agreement.

9.5 Lenders' Liability for Collateral. Lenders have no obligation to clean up or otherwise prepare the Collateral for sale. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

9.6 No Obligation to Pursue Others. Lenders have no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and Lenders may release, modify or waive any collateral provided by any other Person to secure any of the Obligations, all without affecting Lenders' rights against Borrower. Borrower waives any right it may have to require Lenders to pursue any other Person for any of the Obligations.

9.7 Remedies Cumulative. Lenders' rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Lenders shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lenders of one right or remedy shall be deemed an election, and no waiver by Lenders of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Lenders shall constitute a waiver, election, or acquiescence by it. No waiver by Lenders shall be effective unless made in a written document signed on behalf of Lenders and then shall be effective only in the specific instance and for the specific purpose for which it was given. Borrower expressly agrees that this Section 9.7 may only be waived or modified with the express written consent of the Required Lenders and will not be deemed waived or modified by Lenders by course of performance, conduct, estoppel or otherwise.

9.8 Demand; Protest. Except as otherwise provided in this Agreement, Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment and any other notices relating to the Obligations.

11. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by email to Borrower or to Lender, as the case may be, at its addresses set forth below:

If to Borrower:	ImageWare Systems Inc.13500 Evening Creek Drive N.Suite 550 San Diego, California 92127Email: jmorris@iwsinc.comAttn: Chief Financial Officer Disclosure Law Group, a Professional Corporation 655 West Broadway, Suite 870 San Diego, CA 92101 Telephone: (619) 272-7062 Facsimile: (619) 330-2101 Email: drumsey@disclosurelawgroup.com Attention: Daniel W. Rumsey, Managing Director
If to Lender:	If to any Lenders, to the address set forth under such Lender's name on the Signature Page hereto executed by such Lender.

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.

This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the Law of the State of New York. Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against Lenders in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in a forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement or in any other Loan Document shall affect any right that Lenders may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or its properties in the courts of any jurisdiction. Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. GENERAL PROVISIONS.

13.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties and shall bind all persons who become bound as a debtor to this Agreement; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Required Lenders' prior written consent, which consent may be granted or withheld in Required Lenders' sole discretion. Each Lender shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, such Lenders' obligations, rights and benefits hereunder.

13.2 Indemnification. Borrower shall defend, indemnify and hold harmless Lenders and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement and/or the Loan Documents; and (b) all losses or Lender Expenses in any way suffered, incurred, or paid by Lenders, its officers, employees and agents as a result of or in any way arising out of, following, or consequential to transactions between Lenders and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses caused by Lenders' gross negligence or willful misconduct.

13.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

13.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

13.5 Correction of Loan Documents. Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

13.6 Amendments in Writing, Integration. All amendments, modifications or waivers to or terminations of this Agreement or the other Loan Documents must be in writing signed by the Borrower and the Required Lenders, provided, however that not such amendment, modification or waiver shall:

(a) modify this Section 12.6 without the consent of all Lenders;

(b) increase the aggregate amount of the Loans required to be made by a Lender pursuant to its Commitment or extend the Maturity Date for any Loans made (or participated in) by a Lender without the consent of such Lender;

(c) reduce the principal amount of or rate of interest on or premium payable with respect to any Lender's Loans or extend the date on which interest, fees or premiums are payable in respect of such Lender's Loans, in each case, without the consent of such Lender; or

(d) except as otherwise expressly provided in a Loan Document, release the Borrower from its Obligations under the Loan Documents or release all or substantially all of the Collateral, in each case without the consent of all Lenders.

All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the other Loan Documents, if any, are merged into this Agreement and the Loan Documents.

13.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

13.8 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Lender has any obligation to make any Loan to Borrower. The obligations of Borrower to indemnify Lenders with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lenders have run.

13.9 Confidentiality. In handling any confidential information, Lenders and all employees and agents of Lenders shall exercise the same degree of care that Lenders exercise with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the subsidiaries or Affiliates of Lenders in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Loans, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of a Lender, (v) to Lenders' accountants, auditors and regulators, and (vi) as Lenders may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of a Lender when disclosed to such Lender, or becomes part of the public domain after disclosure to such Lender through no fault of such Lender; or (b) is disclosed to a Lender by a third party, provided such Lender does not have actual knowledge that such third party is prohibited from disclosing such information.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

BORROWER:

IMAGEWARE SYSTEMS, INC.

By: /s/ Kristin Taylor
Name: Kristin Taylor
Title: Chief Executive Officer

[Signature Page to Loan and Security Agreement]

LENDER:

(Print or Type Name of Purchaser)

By:
Name:
Title:

ADDRESS:

Telephone:
Facsimile:
E-Mail:
Attention:

LOAN AMOUNT: ______________________

[Signature Page to Loan and Security Agreement]

EXHIBIT A

DEFINITIONS

"Additional Lender" has the meaning assigned to such term in Section 2.5(b).

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of New York are authorized or required to close.

"Closing Date" means the date of this Agreement.

"Code" means the New York Uniform Commercial Code as amended or supplemented from time to time.

"Collateral" means the property described on Exhibit B attached hereto.

"Commitment" means, with respect to each Lender, the amount set forth opposite such Lender's name on Schedule A hereto.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Default Rate" means a per annum rate equal to (i) 2.00% plus (ii) the Interest Rate.

"Eligible Purchaser" means (i) a Lender, (ii) an Affiliate of a Lender, and (iii) any other Person (other than a natural person) approved by the Borrower.

"Equity Interests" with respect to any Person, means all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the

purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Escrow Agent" means Citibank, N.A.

"Escrow Agreement" means that certain Escrow Agreement, dated as of the date hereof, by and among the Borrower, the Lenders and the Escrow Agent, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Event of Default" has the meaning assigned to such term in Section 8.

"GAAP" means generally accepted accounting principles, consistently applied, as in effect from time to time.

"Increase" has the meaning assigned to such term in Section 2.5(a).

"Increase Effective Date" means the date of funding of an Increase by an Additional Lender.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments (c) all capital lease obligations and (d) all Contingent Obligations, if any.

"Insolvency Proceeding" means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Interest Payment Date" means the first calendar day of each month following the Closing Date.

"Interest Rate" has the meaning assigned to such term in Section 2.4(a).

"Lender Expenses" means all reasonable costs or expenses (including reasonable attorneys' fees and expenses, whether generated in-house or by outside counsel) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Lenders' reasonable attorneys' fees and expenses (whether generated in-house or by outside counsel) incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan" has the meaning assigned to such term in Section 2.2.

"Loan Conversion" means the conversion of all outstanding Loan and all interest thereon that has come due and payable into Shares in accordance with the terms of this Agreement.

"Loan Conversion Date" has the meaning assigned to such term in Section 2.2(b).

"Loan Conversion Suspension Event" means the occurrence of any of the following: (i) any Event of Default; (ii) a Material Adverse Effect; or (iii) the non-compliance by the Borrower with any requirement of law.

"Loan Documents" means, collectively, this Agreement, any note or notes executed by Borrower, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means (i) a material impairment in the perfection or priority of Lenders' Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"Maturity Date" means the six-month anniversary of the Closing Date.

"Obligations" means all debt, principal, interest, Lender Expenses and other amounts owed to Lender by Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding and including any debt, liability, or obligation owing from Borrower to others that Lender may have obtained by assignment or otherwise.

"Parties" means the Borrower and the Lenders and any Additional Lenders that may be joined to this Agreement from time to time.

"Periodic Payments" means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Lender pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between Borrower and Lender.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date, including those set forth on the Schedule;

(b) Liens arising under this Agreement or the other Loan Documents; and

(c) Liens to which the Required Lenders have consented in writing in their sole and absolute discretion.

Exhibit A-2

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

“Purchaser” has the meaning set forth in the Securities Purchase Agreement.

“Required Lenders” means Lenders holding at least 50% of the aggregate principal amount of loans outstanding at any time.

“Responsible Officer” means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer and the Controller of Borrower.

“Schedule” means the schedule of exceptions attached hereto and approved by Lenders, if any.

“Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated as of [ ], 2020 by and among the Borrower and each of the purchasers set forth on the signature pages thereto.

“Segregated Account” means an account of the Escrow Agent with the account number ending in [ ], maintained at Citibank, N.A., which shall at all times be subject to the Escrow Agreement.

“Shares” means the Borrower’s Series D Convertible Preferred Stock, par value $0.01 per share, which Preferred Stock has the rights and privileges set forth in the Borrower’s Certificate of Designations, Preferences and Rights of Series D Convertible Preferred Stock filed with the Secretary of State for the State of Delaware.

“Subsidiary” means any corporation, partnership or limited liability company or joint venture in which (i) any general partnership interest or (ii) more than fifty percent (50%) of the stock, limited liability company interest or joint venture of which by the terms thereof ordinary voting power to elect the Board of Directors, managers or trustees of the entity, at the time as of which any determination is being made, is owned by Borrower, either directly or through an Affiliate.

DEBTOR **IMAGEWARE SYSTEMS, INC.**

SECURED PARTIES: **FUND AND SEPARATE ACCOUNT LENDERS UNDER THE MANAGEMENT OF NANTAHALA CAPITAL MANAGEMENT, LLC AND THE OTHER LENDERS LISTED ON THE SIGNATURE PAGES TO THE LOAN AND SECURITY AGREEMENT**

EXHIBIT B

COLLATERAL DESCRIPTION ATTACHMENT TO LOAN AND SECURITY AGREEMENT

The following property of Borrower and its Subsidiaries whether presently existing or hereafter created or acquired, and wherever located:

(a) any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible including Equity Interests; and

any and all cash proceeds and/or noncash proceeds of any of the foregoing, including, without limitation, insurance proceeds, and all supporting obligations and the security therefor or for any right to payment. All terms above have the meanings given to them in the New York Uniform Commercial Code, as amended or supplemented from time to time.

EXHIBIT C

DISBURSEMENT LETTER

IMAGEWARE SYSTEMS, INC.

The undersigned duly elected and acting officer of **IMAGEWARE SYSTEMS, INC.** ("Borrower") does hereby certify to the Lenders, in connection with that certain Loan and Security Agreement dated as of September [ ], 2020, by and between Borrower, the Lenders and any Additional Lenders from time to time party thereto (as modified, amended and/or restated from time to time, the "Loan Agreement"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.

2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan(s) to be made on or about the date hereof have been satisfied or waived by Lenders.

5. No event having a Material Adverse Effect has occurred.

6. The undersigned is a Responsible Officer.

7. The proceeds of the Loan, as set forth below, shall be disbursed from the Segregated Account in accordance with the Joint Release Instruction (as defined in the Escrow Agreement) to the Borrower's account set forth below.

Amount*Plus*	$	___________________
Accrued interest	$	___________________
Net Proceeds of the Loan	**$**	___________________

Balance – credited to Borrower's wire account as follows:

Beneficiary Name ___________________

Beneficiary Account Number ___________________

Beneficiary Address ___________________

ABA Routing Number (9 Digits) ___________________

Receiving Institution Name ___________________

Receiving Institution Address ___________________

[Balance of Page Intentionally Left Blank]

Dated as of the date first set forth above.

BORROWER:

IMAGEWARE SYSTEMS, INC.

By: ______________________________

Name: Kristin Taylor
Title: Chief Executive Officer

[ADDITIONAL] LENDER:

[ ].

By: ______________________________

Name:
Title:

SCHEDULE A

COMMITMENTS

Lender	Commitment

SCHEDULE B

SHARES

Lender	No. of Shares

Schedule of Exceptions

SCHEDULE OF EXCEPTIONS

Permitted Liens

None.

Exhibit 99.1

ImageWare® Propels Business Plan with Closing a $2.2 Million Equity Advance, Representing First Tranche of Capital Raise

Advance is Part of $10.9 Million Proposed Private Placement

San Diego (September 30, 2020) – ImageWare® Systems, Inc. (OTCQB: IWSY), a leader in biometric identification and authentication, today announced it has closed a $2,187,000 senior secured bridge loan, representing an advance against investor commitments to purchase $10,935,000 in Series D Convertible Preferred Stock in a proposed private placement.

The bridge loan matures on the six-month anniversary of the loan and bears interest at the rate of 12% per annum. Upon closing of the private placement of Series D Preferred, all principal and accrued interest under the terms of the bridge loan will be converted into shares of Series D Preferred. The bridge loan is secured by all present after-acquired assets of the Company. Proceeds from the bridge loan will be used for general corporate and working capital purposes.

Kristin A. Taylor, President and CEO, said, "This strategic financing, anchored by funds and accounts managed by Nantahala Capital Management, LLC, supports ImageWare's plan for substantial growth. We continue our focus of evolving ImageWare into a "biometrics first" identity company. Our biometric solutions enable Governments, Public Services, and Enterprises to transform how they use identity to build trust with their employees, partners, and customers, sell their products, and deliver their services. We revolutionize traditional security models - providing critical identity infrastructure, biometrically verified - to drive effective employee and customer on-boarding, verification, authentication, and access solutions, while giving the customer full control of their data across a wide range of devices and readers. We are targeting not only more public sector projects (including state/local/federal law enforcement and public safety, as well as national identity), but we are also carving out an improved Enterprise offering.

"We are grateful to the institutional investors and existing shareholders who believe in our organized new business plan and talented management team," continued Taylor. "The successful Series D Preferred commitments come on the heels of revenue from an existing contract with the U.S. Department of Veterans Affairs to provide smart badge technology and a new contract for professional services to expand user functionality, valued at $1.2 million.

"These developments are in addition to our focus on rationalizing our products and our operating expenses where we have eliminated legacy products that were not generating revenue, and reduced expenses that were weighing the business down. As a result of our renewed focus, we are seeing measurable growth of our law enforcement software and intend to aggressively go after more international markets in the public safety sector in the coming year," concluded Taylor.

Series D Preferred Financing
The private placement of Series D Preferred is expected to close in approximately thirty days resulting in a minimum of $10 million and a maximum of $15 million, subject to the satisfaction of certain conditions to closing.

Organizational Restructuring
The Series D Preferred financing marks the beginning of many proposed pivotal changes intended to increase shareholder value, including:

- A restructuring of the Company's Board of Directors, leaving only Kristin A. Taylor, President and CEO on the Board, with four new members anticipated to join upon closing of the Series D Preferred financing;
- A plan to list the Company's Common Stock on the NASDAQ Capital Market;
- A strategic initiative to monetize the Company's intellectual property with the objective of driving incremental revenue through licensing its deep portfolio of IP.

Collectively, these actions represent meaningful markers that a new ImageWare 2.0 is in the making.

Continued

Readers are referred to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission today (and available on the Investor Relations page of the Company's website) for more detailed descriptions of the senior secured bridge loan, the proposed private placement of Series D Preferred and organizational changes.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy securities. The securities offered and sold in the private placement have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be offered or sold in the United States absent registration, or an applicable exemption from registration, under the Securities Act and applicable state securities laws.

About ImageWare® Systems, Inc.
Founded in 1987, ImageWare is a "biometrics first" identity company. We have a heritage in law enforcement, having built the first statewide digital booking platform for United States local law enforcement and have more than three decades of experience in the challenging government and commercial sectors. We use the unique characteristics of the human body to more accurately identify a person, not the device they may use. www.iwsinc.com

Forward-Looking Statements
Any statements contained in this document that are not historical facts are forward-looking statements as defined in the U.S. Private Securities Litigation Reform Act of 1995. Words such as "anticipate," "believe," "estimate," "expect," "forecast," "intend," "may," "plan," "project," "predict," "if," "should" and "will" and similar expressions as they relate to ImageWare Systems, Inc. are intended to identify such forward-looking statements. ImageWare may from time to time update publicly announced projections, but it is not obligated to do so. Any projections of future results of operations should not be construed in any manner as a guarantee that such results will in fact occur. These projections are subject to change and could differ materially from final reported results. For a discussion of such risks and uncertainties, see "Risk Factors" in ImageWare's Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and its other reports filed with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the dates on which they are made.

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