

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): November 12, 2020

IMAGEWARE SYSTEMS, INC.
(Exact name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation)

001-15757
(Commission File No.)

33-0224167
(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:

| <u>Title of each class</u> | <u>Trading Symbol(s)</u> | <u>Name of exchange on which registered</u> |
|----------------------------|--------------------------|---|
| 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

See Item 5.02 below.

Item 3.02 Unregistered Sale of Equity Securities.

On November 12, 2020 (“Closing”), ImageWare Systems, Inc., a Delaware corporation (the “Company”), consummated a private placement (the “Series D Financing”) of 11,560 shares of its Series D Convertible Preferred Stock, par value \$0.01 per share (the “Series D Preferred”), resulting in gross proceeds to the Company of \$11.56 million, less fees and expenses. The gross proceeds include approximately \$2.2 million in principal amount due and payable under the terms of certain term loans issued by the Company on September 29, 2020 (“Bridge Notes”), which Bridge Notes were converted into Series D Preferred at Closing (the “Conversion”). The issuance and sale of the Series D Preferred was made pursuant to that certain Securities Purchase Agreement, dated September 28, 2020 (the “Purchase Agreement”), by and between the Company and certain accredited investor signatories thereto (the “Purchasers”), for the purchase price of \$1,000.00 per share of Series D Preferred. The Conversion and Series D Financing was undertaken pursuant to Section 3(a)(9) and/or Rule 506 promulgated under the Securities Act of 1933, as amended (the “Securities Act”).

For additional information regarding the Purchase Agreement and a description of the Series D Preferred Financing and the Bridge Notes, see the Company’s Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on September 30, 2020. See also Item 5.03 of this Current Report on Form 8-K.

Item 3.03 Material Modification to Rights of Security Holders.

See Item 5.03.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Director Resignations

At Closing, Messrs. Steve Hamm, David Loesch, David Carey, Neal Goldman, and Jim Miller resigned as members of the Board of Directors of the Company. Each of the director’s resignations were not the result of any disagreements with respect to the Company’s operations, policies, or practices, and were effected in connection with the consummation of the Series D Financing.

Appointment of Messrs. Ben Smeal and James Demitrius to the Board of Directors

On November 13, 2020, Messrs. Ben Smeal and James Demitrius were appointed by the sole remaining director, Kristin Taylor, to fill two of the vacancies on the Company’s Board of Directors resulting from the resignation of the directors as disclosed above.

Ben Smeal. Mr. Smeal, 43, has been a private investor since April 2018. From April 2017 to April 2018, he served as the Associate Director, Public Equities at Willett Advisors, the family office of Michael R. Bloomberg, managing substantially all of Bloomberg’s personal assets in addition to those of Bloomberg Philanthropies. From November 2007 to April 2017, he held the role of Senior Analyst at Kenmare Management, a hedge fund focused on U.S. equities. Mr. Smeal holds a Bachelor of Arts in Political Economy from Williams College in Williamstown, Massachusetts, and a Master of Business Administration, with a focus on Value Investing, from Columbia Business School in New York, New York.

Mr. Smeal was selected as a member of the Board due to his capital market experience, as well as his experience working with undervalued companies, that management believes will assist in the Board's efforts to create value for shareholders as it executes its business plan following consummation of the Series D Financing.

James Demitrius. Mr. Demitrius, 73, served as Managing Director of Jameson Associates, a specialty investment management and financial advisory firm, from March 2018 to present. Prior to Jameson, he served in multiple positions at Eyelock Corporation beginning in 2009, including Chief Executive Officer from 2010 to 2018. Eyelock Corporation provides iris based biometric solutions to various business verticals. Prior to Eyelock Corporation, he served in various senior executive roles, including as President of Sherwood Valve, a division of Harsco Corporation, and as Chief Executive Officer at Aluma Systems. Earlier in Mr. Demitrius' career, he served in numerous senior accounting and finance roles, including with the public accounting firm of Arthur Andersen & Co. Mr. Demitrius holds a Bachelor's in Business Administration from Adelphi University in New York.

Mr. Demitrius was selected as a member of the Board due to his experience in the field of biometrics, as well as his extensive management, finance and accounting experience, that management believes will provide the Board with valuable insights regarding monetizing the Company's product offerings and intellectual property.

Messrs. Smeal and Demitrius will serve on the Board of Directors until the next annual meeting of shareholders of the Company, or until their successor is elected and qualified. As compensation as an independent director, they will receive (a) a \$30,000 annual cash retainer, payable in equal monthly installments in cash or shares of the Company's Common Stock; (b) an initial grant of options to purchase that number of shares of Common Stock equal to \$60,000 divided by the fair market value of the Company's Common Stock as determined on the date of grant as reported on the OTC Markets ("*Initial Grant*"), the exercise price of which shall be such fair market value, which Initial Grant shall vest one-third (1/3rd) on the first anniversary of the Effective Date, and the remaining two-thirds (2/3rd) shall vest ratably on the second and third anniversary of the Effective Date; (c) reimbursement for expenses related to Board of Director meeting attendance and Committee participation; and (d), beginning on the first anniversary of the Effective Date, and on each annual anniversary thereafter (unless revised by the Board of Directors), an option to purchase that number of shares of Common Stock equal to \$30,000 divided by the fair market value of the Company's Common Stock as determined on the date of grant as reported on the OTC Markets ("*Annual Grant*"), the exercise price of which shall be such fair market value. The Initial Grant and Annual Grant shall contain such other terms and conditions as are customary for director grants and approved by the Board of Directors, including immediate vesting of all unvested options effective upon a change in control of the Company

Consulting Agreement with James Miller.

On November 13, 2020, the Company entered into a Consulting Agreement (the "*Consulting Agreement*") with Mr. Miller, who resigned as the Chair of the Board of Directors of the Company upon consummation of the Series D Financing. Under the terms of the Consulting Agreement, Mr. Miller agreed, for a term of five months (the "*Term*"), to provide certain consulting services to the Company to assist senior management in the execution of the Company's business plan. In consideration, Mr. Miller will be entitled to receive: (i) a monthly consultation fee of \$19,000 during the Term; (ii) full vesting of 525,000 Restricted Stock Units previously granted to Mr. Miller that had not yet vested upon his resignation from the Board of Directors, which was reduced from the original amount of 787,000 Restricted Stock Units; and (iii) a bonus based on the amounts actually paid to the Company resulting from contracts and/or purchase orders received by the Company prior to the end of the Term.

The foregoing description of the Consulting Agreement is qualified, in its entirety, by the full text of the Consulting Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated by reference herein.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Amended and Restated Certificate of Incorporation

On November 12, 2020, the Company filed its Amended and Restated Certificate of Incorporation (the "*Amended Charter*"). The Amended Charter increases the number of authorized shares of Common Stock from 345 million shares to 1.0 billion shares, resulting in a total increase of 655 million shares of Common Stock. The Amended Charter, among other things, includes an exclusive jurisdiction provision, which provides that Delaware is the exclusive jurisdiction, and the Delaware Court of Chancery as the exclusive forum, for all disputes relating to the internal affairs of the Company, and the federal district courts of United States of America as the exclusive forum for the resolution of any causes of action arising under the Securities Act. New Section 13 is not intended to apply to derivative actions brought by shareholders for claims arising under the Securities Exchange Act of 1934, as amended, as the federal district courts have exclusive jurisdiction over all matters arising thereunder.

Amendment to Series A Convertible Preferred Stock

On November 12, 2020, the Company filed an Amended and Restated Certificate of Designations, Preferences, and Rights of Series A Convertible Preferred Stock (the "*Amended Series A Certificate*"). The Amended Series A Certificate, among other things: (i) amends the terms of conversion from Series A Convertible Preferred Stock, par value \$0.01 ("*Series A Preferred*"), to Common Stock by (A) amending the conversion price from \$1.15 per share of Common Stock to \$0.20 per share of Common Stock, (B) amending the voluntary conversion process by providing a voluntary conversion window, beginning on the consummation of the Series D Financing and ending on August 1, 2021 (the "*Conversion Period*"), to voluntarily convert all shares of Series A Preferred into Common Stock upon notice to the Company, and (C) for holders of Series A Preferred that do not voluntarily convert all shares of Series A Preferred into Common Stock, a mandatory, automatic conversion of each such holder's shares of Series A Preferred at a rate of 10% per month beginning on the consummation of the Series D Financing, with all shares converting by August 1, 2021; (ii) amends the dividend payment provisions to reduce the specified rate from 10% to 4%, with dividends now only being payable in Common Stock through the end of the Conversion Period; (iii) a waiver of the protective provisions in Section 9 of the Series A Certificate; and (iv) provides that the Series A Preferred is junior to the newly authorized and issued Series D Preferred.

Amendment to Series A-1 Convertible Preferred Stock

On November 12, 2020, the Company filed an Amended and Restated Certificate of Designations, Preferences, and Rights of Series A-1 Convertible Preferred Stock (the "*Amended Series A Certificate*"). The Amended Series A-1 Certificate, among other things: (i) amends the terms of conversion from Series A-1 Convertible Preferred Stock, par value \$0.01 per share ("*Series A-1 Preferred*"), to Common Stock by (A) amending the conversion price from \$0.65 per share of Common Stock to \$0.20 per share of Common Stock, (B) amending the voluntary conversion process by providing a voluntary conversion window, beginning on the consummation of the Series D Financing and ending on August 1, 2021 (the "*Conversion Period*"), to voluntarily convert all shares of Series A-1 Preferred into Common Stock upon notice to the Company, and (C) for holders of Series A-1 Preferred that do not voluntarily convert all shares of Series A-1 Preferred into Common Stock, a mandatory, automatic conversion of each such holder's shares of Series A-1 Preferred at a rate of 10% per month beginning on the consummation of the Series D Financing, with all shares converting by August 1, 2021; (ii) amends the dividend payment provisions to reduce the specified rate from 10% to 4%, with dividends now only being payable in Common Stock through the end of the Conversion Period; (iii) a waiver of the protective provisions in Section 9 of the Series A-1 Certificate; and (iv) provides that the Series A-1 Preferred is junior to the newly authorized and issued Series D Preferred.

Amendment to Series C Convertible Preferred Stock

On November 12, 2020, the Company filed an Amended and Restated Series C Certificate of Designations, Preferences, and Rights of Series C Convertible Preferred Stock (the "*Amended Series C Certificate*") to, without limitation, provide for a drag-along right whereby if at any time one or more holders of Series C Convertible Preferred Stock, par value \$0.01 per share ("*Series C Preferred*") then holding, in the aggregate, more than 50% of the outstanding shares of Series C Preferred, exchange all (but not less than all) of each such exchanging shareholder's shares of Series C Preferred for shares of Series D Preferred, then such initiating shareholder(s), in their sole discretion, shall have the right to require that all the holders of Series C Preferred similarly exchange their shares of Series C Preferred into shares of Series D Preferred on identical terms and conditions to the majority shareholders that elected to exchange their Series C Preferred into Series D Preferred. Additionally, the Series C Certificate was amended to provide that the Series C Preferred shall rank junior to the newly authorized and issued Series D Preferred.

Creation of Series D Convertible Preferred Stock

On November 12, 2020, the Company filed the Certificate of Designations, Preferences, and Rights of Series D Convertible Preferred Stock (the "*Series D Certificate*"). Pursuant to the Series D Certificate, the Series D Preferred ranks senior to all Common Stock and all other present and future classes or series of capital stock, except for Series B Preferred, and upon liquidation will be entitled to receive the Liquidation Preference Amount (as defined in the Series D Certificate) plus any accrued and unpaid dividends, before the payment or distribution of the Company's assets or the proceeds thereof is made to the holders of any junior securities. Additionally, dividends on shares of Series D Preferred will be paid prior to any junior securities, and are to be paid at the rate of 4% of the Stated Value (as defined in the Series D Certificate) per share per annum in the form of cash or shares of Series D Preferred. Holders of Series D Preferred shall vote together with holders of Common Stock on an as-converted basis, and not as a separate class, except (i) the holders of Series D Preferred, voting as a separate class, shall be entitled to elect two directors, (ii) the holders of Series D Preferred have the right to vote as a separate class regarding the waiver of certain protective provisions set forth in the Series D Certificate, and (iii) as otherwise required by law.

The holders of Series D Preferred may voluntarily convert their shares of Series D Preferred into Common Stock at any time that is at least ninety days following the issuance date, at the conversion price calculated by dividing the Stated Value by the conversion price of \$0.0583 per share of Common Stock, subject to adjustments as set forth in Section 5(e) of the Series D Certificate. The shares of Common Stock issuable upon conversion of the Series D Preferred shall be subject to the following registration rights: (i) one demand registration starting three months after the Closing, (ii) two demand registrations starting one year after the Closing, and (iii) unlimited piggy-back and Form S-3 registration rights with reasonable and customary terms.

The foregoing descriptions of the Amended Charter, Amended Series A Certificate, Amended Series A-1 Certificate, Amended Series C Certificate and Series D Certificate are qualified, in their entirety, by the full text of the foregoing, copies of which are attached to this Current Report on Form 8-K as Exhibits 3.1, 3.2, 3.3, 3.4 and 3.5, respectively, and are incorporated by reference herein.

Item 8.01 Other Events

Exchange Agreement

In connection with the Purchase Agreement, the Company entered into an Exchange Agreement with certain holders of the Series C Preferred which hold, in the aggregate, more than 50% of the outstanding shares of Series C Preferred (the "*Exchange Agreement*"). As contemplated by the parties thereto, after the filing of the Amended Series C Certificate and in connection with the closing of the Purchase Agreement and Exchange Agreement, such holders exercised their right under the Amended Series C Certificate to require all holders of Series C Preferred to similarly exchange their shares of Series C Preferred into shares of Series D Preferred on identical terms and conditions.

Debt Exchange Agreement and Satisfaction and Release

On November 12, 2020, in connection with the Closing of the Series D Financing, Messrs. Jim Miller and Neal Goldman entered into (i) Debt Exchange Agreements (collectively, the "*Debt Exchange Agreements*"), and (ii) Satisfaction and Release Agreements (collectively, the "*Release Agreements*"), for the purpose of satisfying certain obligations of the Company arising under two separate promissory notes executed by the Company in favor of each Mr. Jim Miller (the "*Miller Note*") and Mr. Neal Goldman (the "*Goldman Note*") in the amount of \$100,000 and \$450,000, respectively. Pursuant to the Debt Exchange Agreements and Satisfaction and Release Agreements: (i) the principal and accrued interest on the Miller Note, totaling \$102,808.22, was converted into 102.8 shares of Series D Preferred in full satisfaction of the Company's obligations under the Miller Note; and (ii) one-half of the principal and accrued interest of the Goldman Note, totaling \$231,565.19, was converted into 231.6 shares of Series D Preferred, with the remaining one-half of the principal and accrued interest, totaling \$231,565.19, was paid to Mr. Goldman in cash out of proceeds of the Series D Financing in full satisfaction of the Company's obligations under the Goldman Note.

The foregoing descriptions of the Debt Exchange Agreements and Release Agreements are qualified, in their entirety, by the full text of the Debt Exchange Agreement and Satisfaction and Release dated November 12, 2020, by and between the Company and Mr. S. James Miller, and the Debt Exchange Agreement and Satisfaction and Release dated November 12, 2020, by and between the Company and Mr. Neal Goldman, copies of which are attached to this Current Report on Form 8-K as Exhibits 10.2 and 10.3, respectively, and are incorporated by reference herein.

For more information on the Promissory Notes, see the Company's Current Report on Form 8-K filed on July 6, 2020.

Press Release

On November 16, 2020, the Company issued a press release announcing the consummation of the Series D Financing. A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

EXHIBIT INDEX

| <u>Exhibit Number</u> | <u>Description</u> |
|-----------------------|---|
| 3.1 | Amended and Restated Certificate of Incorporation of ImageWare Systems, Inc., dated November 12, 2020 |
| 3.2 | Amended and Restated Certificate of Designations, Preferences, and Rights of Series A Convertible Preferred Stock of ImageWare Systems, Inc., dated November 12, 2020 |
| 3.3 | Amended and Restated Certificate of Designations, Preferences, and Rights of Series A-1 Convertible Preferred Stock of ImageWare Systems, Inc., dated November 12, 2020 |
| 3.4 | Amended and Restated Certificate of Designations, Preferences, and Rights of Series C Convertible Preferred Stock of ImageWare Systems, Inc., dated November 12, 2020 |
| 3.5 | Certificate of Designations, Preferences, and Rights of Series D Convertible Preferred Stock of ImageWare Systems, Inc., |

| | |
|-----------------------------|--|
| | dated November 12, 2020 |
| <u>10.1</u> | Consulting Agreement by and between ImageWare Systems, Inc. and S. James Miller, dated November 13, 2020 |
| <u>10.2</u> | Debt Exchange Agreement and Satisfaction and Release by and between ImageWare Systems, Inc. and S. James Miller, dated November 12, 2020 |
| <u>10.3</u> | Debt Exchange Agreement and Satisfaction and Release by and between ImgeWare Systems, Inc. and Neal Goldman, dated November 12, 2020 |
| <u>99.1</u> | Press Release dated November 16, 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: November 18, 2020

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

Amended and Restated
Certificate of Incorporation
of
IMAGEWARE SYSTEMS, INC.

ImageWare Systems, Inc. (the "Corporation"), a Delaware corporation hereby certifies as follows:

- A. The original Certificate of Incorporation of the Corporation was filed with the Secretary of the State of Delaware on October 26, 2005 (as amended, amended and restated, supplemented or otherwise modified prior to the filing of this Amended and Restated Certificate of Incorporation, the "Original Certificate of Incorporation"). This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") was duly adopted by the Board of Directors of the Corporation (the "Board") and the stockholders of the Corporation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").
- B. The Original Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:
1. The name of the Corporation is ImageWare Systems, Inc..
 2. The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
 3. The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows: To engage in any lawful act or activity for which corporations may be organized under the DGCL.
 4. Capitalization.
 - (a) The total number of shares of all classes of stock that the Corporation is authorized to issue is One Billion, Five Million (1,005,000,000) shares, consisting of One Billion (1,000,000,000) shares of Common Stock with a par value of \$0.01 per share ("Common Stock") and Five Million (5,000,000) shares of Preferred Stock with a par value of \$0.01 per share ("Preferred Stock").
 - (b) Common Stock.
 - i. Dividends. Subject to the rights, preferences, privileges, restrictions and other matters pertaining to the Preferred Stock that may from time to time be issued, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any assets of the Corporation legally available therefore, such dividends as may be declared from time to time by the Board.
 - ii. Liquidation; Dissolution. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any Preferred Stock of the Corporation that may at the time be outstanding, in proportion to the number of shares held by them, respectively, without regard to class.
 - iii. Voting Rights. Except as otherwise required by law, or as otherwise fixed by resolution or resolutions of the Board with respect to one or more series of Preferred Stock, the entire voting power and all voting rights shall be vested exclusively in the Common Stock, and each stockholder of the Corporation who at the time possesses voting power for any purpose shall be entitled to one vote for each share of such stock standing in his name on the books of the Corporation. There shall be no cumulative voting. Each holder of Common Stock shall have one vote in respect of each share of Common Stock held by him or her on all matters voted upon by the stockholders. Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) that relates primarily to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) or pursuant to the DGCL.
 - (c) Undesignated Preferred Stock. The remaining shares of Preferred Stock may be issued from time to time in one or more series. Subject to the limitations and restrictions in this section 4(c) set forth, the Board, by resolution or resolutions, is authorized to create or provide for any such series, and to fix the designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, the dissolution preferences and the rights in respect to any distribution of assets of any wholly unissued series of Preferred Stock and the number of shares constituting any such series, and the designation thereof, or any of them and to increase or decrease the number of shares of any series so created, subsequent to the issue of that series but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. There shall be no limitation or restriction on any variation between any of the different series of Preferred Stock as to the designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof; and the several series of Preferred Stock may, except as hereinafter in this section 4(c) otherwise expressly provided, vary in any and all respects as fixed and determined by the resolution or resolutions of the Board, providing for the issuance of the various series; provided, however, that all shares of any one series of Preferred Stock shall have the same designation, preferences and relative, participating, optional or other special rights and qualifications, limitations and restrictions.

(d) Series B Preferred Stock. The rights, preferences, restrictions and other matters relating to the Series B Preferred Stock are as follows:

i. Dividends. The holders of shares of Series B Preferred Stock shall be entitled to receive cumulative dividends in cash, subject to the availability of, and only out of, any funds legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of the Corporation; provided, however, that such convertible securities or rights shall not rank, as to dividend or liquidation rights, prior to or on a parity with the Series B Preferred Stock) on the Common Stock or any other series of Preferred Stock or series or class of any other stock of the Corporation and prior and in preference to any payment of monies to any sinking or purchase fund on the common stock or any other series of Preferred Stock or series or class of any other stock of the corporation for the redemption or repurchase thereof, at the rate of \$0.2125 per share per annum payable in equal semiannual installments of \$0.10625 per share, on the last business day of October and April each year, and upon redemption of the Series B Preferred Stock or conversion thereof as otherwise provided herein. Dividends for less than a full calendar semi-annual period shall be prorated, based on the actual number of days elapsed during such semiannual period, divided by 180 days. Declared dividends on outstanding shares of the Series B Preferred Stock shall be paid to record holders as they appear on the stock register of the Corporation at the close of business on the 15th day of the month containing such dividend date as may be fixed by the Board in advance of such dividend date, provided that no such record date shall be more than 30 days prior to such dividend date.

ii. Liquidation; Dissolution. (a) In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or any other series of Preferred Stock or series or class of any other stock of the Corporation by reason of their ownership thereof, an amount per share equal to the sum of (i) \$2.50 for each outstanding share of Series B Preferred Stock (hereafter referred to as the "Original Series B Issue Price") and (ii) an amount equal to accrued but unpaid dividends on such share. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the amount of such stock owned by each such holder. The Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to any liquidation event, a notice setting forth the date on which such event is expected to become effective and the type and amount of anticipated proceeds per share of Common Stock to be distributed with respect thereto and shall afford each such holder the opportunity to convert such shares of Series B Preferred Stock pursuant to paragraph iii of this section 4(d) (conditional upon the consummation of such liquidation event) prior to the consummation thereof, (b) a consolidation or merger of the Corporation with or into any other corporation or corporations, or a sale, conveyance or disposition of all or substantially all of the assets of the Corporation or the effectuation of an acquisition of the Corporation by another entity by means of a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of (a "Sale"), shall be deemed to be a liquidation; provided, however, that if holders of Series B Preferred Stock are to receive more than the preferential amounts due them under subsection (a) of this paragraph ii in the Sale, then the Sale shall not be a liquidation and all holders of Series B Preferred Stock shall participate ratably with the holders of Common Stock and the holders of any other series of Preferred Stock with similar rights in proportion to the amount of shares owned by each such holder on an as-converted basis and shall not be entitled to receive any preferential amounts.

iii. Conversion. The holders of the Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Subject to subsection (c) of this paragraph iii, each share of Series B Preferred Stock plus accrued but unpaid dividends thereon shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Series B Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series B Issue Price plus the aggregate amount of accrued but unpaid dividends thereon by the Conversion Price at the time in effect for such share. The initial Conversion Price per share for shares of Series B Preferred Stock shall be the Original Series B Issue Price; provided however, that the Conversion Price for the Series B Preferred Stock shall be subject to adjustment as set forth in subsection (c) of this paragraph iii.

(b) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to convert the same into shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed in blank, at the office of the Corporation or of any transfer agent for the Series B Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Series B Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Series B Preferred Stock shall not be deemed to have converted such Series B Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Conversion Price Adjustments of Preferred Stock. The Conversion Price of the Series B Preferred Stock shall be subject to adjustment from time to time as follows: (i) in the event the Corporation should at any time or from time to time after the date of the issuance of any shares of Series B Preferred Stock fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of the Series B Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding and those issuable with respect to Common Stock Equivalents or other rights or securities of the Corporation; and (ii) if the number of shares of Common stock outstanding at any time after the date of the issuance of any shares of Series B Preferred Stock is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series B Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(d) Other Distributions. In the event the Corporation shall declare a distribution with respect to the outstanding shares of Common Stock payable in securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets or options or rights not referred to in subsection (c) of this section iii then, in each such case for the purpose of this subsection (d) of section iii, the holders of the Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Corporation entitled to receive such distribution.

(e) Recapitalizations. If at any time or from time to time there shall be a capital reorganization of the Corporation or any reclassification of the Common Stock or in case of the consolidation or merger of the Corporation with any other person or entity or in case of any sale, conveyance or disposition of all or substantially all of the assets of the Corporation to an affiliate of the Corporation (other than a subdivision, combination a liquidation or a Sale as provided for elsewhere herein), the Corporation and the person or entity formed by such consolidation or resulting from such capital reorganization, reclassification of capital stock or merger, as the case may be, shall make provision in the articles or certificate of incorporation or other governing instruments of such person such that each share of Series B Preferred Stock shall thereafter be convertible only into the kind and amount of shares of stock, other securities, cash and other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale, conveyance or disposition, as the case may be, by a holder of the number of shares of Common Stock into which such shares of Series B Preferred Stock was convertible immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger, sale, conveyance or disposition. In any such case, appropriate adjustment shall be made in the application of the provisions of this section 4(d) with respect to the rights of the holders of the Series B Preferred Stock after such capital reorganization, reclassification of capital stock, consolidation, merger, sale, conveyance or disposition to the end that the provisions of this section 4(d) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series B Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Fractional Shares and Certificate as to Adjustments. (i) No fractional shares shall be issued upon conversion of the Series B Preferred Stock. If any fractional interest in shares of Common Stock would, except for the provisions of this subsection 4(f), be deliverable upon the conversion of any Series B Preferred Stock, the Corporation shall, in lieu of delivering the fractional share therefore, adjust such fractional interest by payment to the holder of such converted Series B Preferred Stock an amount in cash equal to the current market value of such fractional interest (computed to the nearest cent). Whether or not cash in lieu of fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series B Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. (ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Series B Preferred Stock pursuant to this paragraph iii of section 4(d), the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Preferred Stock.

(g) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(h) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series B Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(i) Notices. Any notice required by the provisions of this section 4 to be given to the holder of shares of Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

iv. Voting Rights.

(a) The holder of each share of Series B Preferred Stock shall have the right to one (1) vote for each share of Common Stock into which such Series B Preferred Stock could then be converted (with any fractional share determined on an aggregate conversion basis being rounded to the nearest whole share), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders, meeting in accordance with the Bylaws, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote.

(b) Election of Directors. Notwithstanding subsection iv.(a) above, so long as the Corporation is in default in the payment of any dividends due the holders of Series B Preferred Stock, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation and the holders of Series B Preferred Stock and Common Stock, voting on an as converted basis, shall be entitled to elect the remaining directors of the Corporation. At such time as the Corporation is no longer in default on the payment of any dividends due the holders of Series B Preferred Stock, the special voting provisions set forth in the preceding sentence shall no longer be effective and the voting provisions of section iv(a) above shall apply. The director elected by the holders of Series B Preferred Stock shall thereupon be deemed to have resigned. At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the Series B Preferred Stock then outstanding shall constitute a quorum of the Series B Preferred Stock for the election of directors to be elected solely by the holders of Series B Preferred Stock. A vacancy in any directorship elected by the holders of Series B Preferred Stock shall be filled only by vote of the holders of Series B Preferred Stock and a vacancy in the directorship elected by the holders of Series B Preferred Stock and Common Stock voting together shall be filled only by the vote of the holders of Series B Preferred Stock and Common Stock voting together as provided above.

v. Redemption.

(a) Redemption by the Corporation. (i) The Corporation shall have the right, but not the obligation, exercisable at any time or from time to time, upon at least sixty (60) days' prior written notice to the holders of the outstanding shares of Series B Preferred Stock to redeem all or some of the outstanding shares of Series B Preferred Stock, pro rata, by paying a sum per share equal to the Original Series B Issue Price (subject to adjustments as a result of distributions, if any, made pursuant to subsection iii(c) plus an amount equal to all accrued but unpaid dividends, if any, through the date of redemption. (ii) In compliance with the applicable notice period set forth in this subsection v(a), the Corporation shall mail, postage prepaid, to each holder of record of Series B Preferred Stock to be redeemed, at such holder's address last shown on the records of the Corporation, notifying such holder of such redemption, specifying the date fixed for the redemption (the "Redemption Date"), which shall also be the date on which such holder's Conversion Rights as to the shares called for redemption shall terminate, and calling upon such holder to surrender to the Corporation, and in the manner and at the place designated, such holder's certificate or certificates representing the shares of Series B Preferred Stock to be redeemed (such notice is hereinafter referred to as the "Redemption Notice"). On or prior to the Redemption Date, each holder of the Series B Preferred Stock to be redeemed shall surrender its certificate or certificates representing such shares to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the appropriate redemption price as specified in this subsection v(a) (the "Redemption Price") of such shares (except that such number of shares shall be reduced by the number of shares which shall have been converted pursuant to subsection 3 hereof between the date of notice of redemption and the date on which Conversion Rights to such shares terminate) shall be payable to the order of the person whose name appears on such certificate or certificates as the owner therefor and each surrendered certificate shall be canceled. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price (whether because there is no source of funds legally available for such redemption or because such funds shall not be paid or made available for payment), all rights of the holders of the Series B Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(b) Redemption Consideration. Amounts to be paid pursuant to subsection v(a) above shall be paid, at the sole discretion of the Corporation, in cash or notes or any combination of cash and notes. The notes, if issued by the Corporation in satisfaction of the redemption of Series B Preferred Stock, shall bear interest, payable monthly, at ten percent (10%) per annum and shall provide for repayment of the principal amount in two equal installments on the next two immediately succeeding anniversary dates of the date of redemption of the shares of Series B Preferred Stock so requested to be redeemed.

(c) Surrender of Certificate. Except as prohibited pursuant to applicable California corporate law, on or after the Redemption Date, each holder of Series B Preferred Stock to be redeemed shall surrender to this Corporation the certificate or certificates representing such shares, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(d) No Dividends After Redemption. From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all dividends on the Series B Preferred Stock designated for redemption in the Redemption Notice shall cease to accrue, all rights of the holders of such shares as holder of Series B Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. Subject to the rights of series of Preferred Stock which may from time to time come into existence, if the funds of the Corporation legally available for redemption on shares of Series B Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares of Series B Preferred Stock to be redeemed on such date, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed. The shares of Series B Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. Subject to the rights of series of Preferred Stock which may from time to time come into existence, at any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Series B Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed; provided, however, that this Corporation shall give ten (10) days advance written notice to each such holder of shares to be redeemed that the Corporation at that time has funds available for the redemption of shares of Series B Preferred Stock, and any such holder may direct that the Corporation not redeem any or all of that holder's remaining shares previously requested by that holder to be redeemed, and such shall not be redeemed, so long as written notice of such direction is received by the Corporation no later than ten (10) days after this Corporation's advance notice was given.

vi. Covenants. So long as the Corporation is in default on any provision of this section 4(d), the Corporation shall not repurchase or redeem any shares of Common Stock or any shares of any series of Preferred Stock of the Corporation, except for shares of Series B Preferred Stock.

vii. Reissuance of Series B Preferred Stock. Any share or shares of Series B Preferred Stock or of any other series or class of stock of the Corporation acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be restored to the status of authorized by unissued shares of Preferred Stock.

viii. Residual Rights. Preferred Stock shall not have any pre-emptive rights. All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein shall be vested in the Common Stock.

(e) Series D Convertible Preferred Stock. Subject to the terms of the certificate of designations of Series D Convertible Preferred Stock ("Series D Preferred"), the rights, preferences, restrictions and other matters relating to the Series D Preferred are as follows:

i. Election of Directors. Subject to Section 4(d)iv hereof, for so long as any shares of Series D Preferred are outstanding, the holders of Series D Preferred, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation (together, the "Series D Directors"). A vacancy in any directorship elected by the holders of Series D Preferred shall be filled only by vote of a majority of the shares owned by the holders of Series D Preferred. Two (2) of the directors of the Corporation shall be independent directors (together, the "Independent Directors"), and shall initially be appointed by a majority vote of Kristin Taylor and the Series D Directors. From and after the first annual meeting of the Board following the date hereof, each of the Independent Directors shall be elected by vote of a majority of the shares owned by the holders of Preferred Stock, on an as-converted basis, and Common Stock voting together as a single class.

ii. For so long as any shares of Series D Preferred are outstanding, this Certificate of Incorporation may not be modified, amended or waived without the prior written consent of the holders of a majority of the shares of Series D Preferred.

5. Bylaws. The Board is expressly authorized to make, alter or repeal the Bylaws of the Corporation (the "Bylaws").

6. Election of Directors. Except as otherwise provided by resolutions of the Board designating the rights, powers and preferences of any Preferred Stock, the number of directors of the Corporation shall initially be five (5), as set forth on Annex A attached hereto, and may thereafter be fixed from time to time, exclusively by resolution of a majority of the directors then in office, in accordance with the Bylaws. Elections of directors need not be by written ballot unless the Bylaws shall so provide.

7. Removal of Directors. Subject to any limitations imposed by law and to any rights of any class or series of Preferred Stock having the right to elect directors under specified circumstances, any director may be removed from office with or without cause by the affirmative vote of the holders of the majority of the voting power of all the then-outstanding shares of capital stock entitled to vote generally in the election of directors, voting as a single class.

8. Creditors. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

9. Amendment. Notwithstanding Sections 4(b)iii and 4(e)ii hereof, this Certificate of Incorporation may not be amended in a manner that would materially and adversely affect (on its face) the holders of any series of Preferred Stock disproportionately as compared to other series of Preferred Stock, in each case, without the consent of a majority of the holders of such disproportionately affected series of Preferred Stock.

10. Director Liability; Indemnification. To the fullest extent permitted by Delaware statutory or decisional law, as amended or interpreted, no director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This section 10 does not affect the availability of equitable remedies for breach of fiduciary duties. To the extent permitted by applicable law, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others. Any repeal or modification of any of the foregoing provisions of this section 10 shall be prospective and shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

11. Action By Stockholders. Any corporate action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation (either by hand or by certified or registered mail, return receipt requested) at its registered office in the State of Delaware or its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

12. Corporate Opportunities. The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, or in being informed about, an Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries (a "Non-Employee Director"), or (ii) any holder of Preferred Stock or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation. Without limiting the generality of the foregoing, the Corporation specifically renounces any rights the Corporation might have in any Excluded Opportunity, even if the Excluded Opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. Furthermore, it shall not be deemed a breach of any fiduciary or other duties, if any, whether express or implied, for any Non-Employee Director or holder of Preferred Stock to permit itself or one of its affiliates to engage in an Excluded Opportunity in preference or to the exclusion of the Corporation and such Non-Employee Director or holder of Preferred Stock or any of their respective affiliates shall have no obligation to disclose to the Corporation or any of its subsidiaries any information related to its business or opportunities, disclose to the Corporation or the Board any confidential information regarding any Excluded Opportunity in the possession of such Non-Employee Director or holder of Preferred Stock even if it is material and relevant to the Corporation and/or the Board, present Excluded Opportunities to the Corporation, refrain from engaging in any line of business, refrain from investing in any person or refrain from doing business with any person.

13. Exclusive Jurisdiction For Certain Actions.

(a) Exclusive Forum. Unless the Board otherwise approves, in accordance with Section 141 of the DGCL, this Certificate of Incorporation or the Bylaws of the Corporation, the selection of an alternate forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware does not have jurisdiction, the Superior Court of the State of Delaware or, if the Superior Court of the State of Delaware also does not have jurisdiction, the United States District Court for the District of Delaware) shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws of the Corporation, (iv) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation or (v) any action asserting a claim against the Corporation governed by the internal affairs doctrine (each a "Covered Corporate Proceeding").

Unless the Board consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the "Covered Securities Proceeding") and together with "Covered Corporate Proceedings," the "Covered Proceeding"). Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this provision.

(b) Personal Jurisdiction. If any action the subject matter of which is a Covered Corporate Proceeding is filed in a court other than the Court of Chancery of the State of Delaware, or, where permitted in accordance with paragraph (a) above, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware (each, a "Foreign Corporate Action"), in the name of any person or entity (a "Claiming Party") without the prior approval of the Board or one of its committees in the manner described in paragraph (a) above, such Claiming Party shall be deemed to have consented to (i) the personal jurisdiction of the Court of Chancery of the State of Delaware or, where applicable, the Superior Court of the State of Delaware and the United States District Court for the District of Delaware, in connection with any action brought in any such courts to enforce paragraph (a) above (an "Enforcement Action") and (ii) having service of process made upon such Claiming Party in any such Enforcement Action by service upon such Claiming Party's counsel in the Foreign Corporate Action as agent for such Claiming Party.

If any action the subject matter of which is a Covered Securities Proceeding is filed in a court other than a federal district court of the United States of America (each, a "Foreign Securities Action"), in the name of a Claiming Party without the prior consent of the Board or one of its committees in the manner described in paragraph (a) above, such Claiming Party shall be deemed to have consented to (i) the personal jurisdiction of the federal district court of the United States of America, in connection with any Enforcement Action and (ii) having service of process made upon such Claiming Party in any such Enforcement Action by service upon such Claiming Party's counsel in the Foreign Securities Action as agent for such Claiming Party.

(c) Notice and Consent. Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 13 and waived any argument relating to the inconvenience of the forums referenced above in connection with any Covered Proceeding.

14. DGCL Section 203. The Corporation expressly elects not to be governed by Section 203 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Incorporation to be made, executed and acknowledged by its duly authorized officer this 12th day of November, 2020.

IMAGEWARE SYSTEMS, INC.

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

Annex A

Initial Directors

| Name | Address |
|----------------|---|
| Kristin Taylor | 13500 Evening Creek Drive N., Suite 550 San Diego, CA 92128 |
| Jim Demitrieus | 13500 Evening Creek Drive N., Suite 550 San Diego, CA 92128 |
| Benjamin Smeal | 13500 Evening Creek Drive N., Suite 550 San Diego, CA 92128 |

AMENDED AND RESTATED
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF
SERIES A CONVERTIBLE PREFERRED STOCK
OF
IMAGEWARE SYSTEMS, INC.

The undersigned, the Chief Executive Officer of ImageWare Systems, Inc., a Delaware corporation (the “*Company*”), does hereby certify as follows:

WHEREAS, on September 15, 2017, the Board of Directors of the Company (the “*Board of Directors*”) duly adopted a resolution (the “*Original Certificate of Designations of Series A Convertible Preferred Stock*”) creating a series of Preferred Stock designated as the Series A Convertible Preferred Stock; and

WHEREAS, the Board of Directors desires to amend and restate the Original Certificate of Designations of Series A Convertible Preferred Stock.

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors by provisions of the Certificate of Incorporation of the Company (the “*Certificate of Incorporation*”), the Original Certificate of Designations of Series A Convertible Preferred Stock is hereby amended and restated in its entirety to read as follows:

1. Designation and Rank.

(a) The designation of such series of the Preferred Stock shall be the Series A Convertible Preferred Stock, par value \$0.01 per share (the “*Series A Preferred*”). The maximum number of shares of Series A Preferred shall be Thirty Eight Thousand (38,000) shares. The Series A Preferred shall rank senior to the Company’s common stock, par value \$0.01 per share (the “*Common Stock*”), and except as provided in Section 1(b) below, to all other classes and series of equity securities of the Company which by their terms rank junior to the Series A Preferred (“*Junior Stock*”).

(b) The Series A Preferred shall be subordinate to and rank junior to the Company’s Series B Convertible Preferred Stock, Series C Convertible Preferred Stock, Series D Convertible Preferred Stock, and all indebtedness of the Company now or hereafter outstanding. The date of original issuance of the Series A Preferred is referred to herein as the “*Issuance Date*”.

2. Dividends.

(a) Payment of Dividends.

(i) The holders of record of shares of Series A Preferred shall be entitled to receive, out of any assets at the time legally available therefor, cumulative dividends at the Specified Rate per share per annum on a daily basis, commencing on the date hereof and payable quarterly in arrears on each of March 31, June 30, September 30 and December 31 (each, a “*Dividend Payment Date*”), through the issuance of shares of Common Stock. The number of shares of Common Stock to be issued to each applicable holder shall be determined by dividing the total dividend then being paid to such holder in shares of Common Stock by the Price Per Share (as defined below) as of the applicable Dividend Payment Date, and rounding up to the nearest whole share (the “*Dividend Shares*”). As used herein, “*Price Per Share*” means, with respect to a share of Common Stock, the VWAP (as defined below) for the five (5) trading days immediately preceding the applicable Dividend Payment Date.

“*Specified Rate*” means the cumulative dividend rate of four percent (4%) of the stated Liquidation Preference Amount per share per annum.

“*VWAP*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (defined below), the daily volume weighted average price of the Common Stock for such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “*Pink Sheets*” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the daily mean between the closing bid and asked quotations per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“*Trading Market*” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQX or OTCQB (or any successors to any of the foregoing).

(ii) The Company will: (a) prepare and file with the Securities and Exchange Commission (the “SEC”), within thirty (30) days after the date hereof, a Form S-3 (or, if such form is not available to the Company, a Form S-1) to register under the Securities Act of 1933, as amended (the “Securities Act”), the resale, by the holders of shares of Series A Preferred, of any Conversion Shares (as defined below) and Dividend Shares issuable hereunder and not otherwise eligible for resale under Rule 144 promulgated under the Securities Act (“Rule 144”), without volume or manner-of-sale restrictions or current public information requirements (the “Registration Statement”); (b) use its best efforts to cause the Registration Statement to become effective as soon as reasonably practicable after such filing; (c) use its best efforts to cause the Registration Statement to remain effective at all times thereafter until the earlier of (i) the date as of which such holders of Series A Preferred may sell all of such Conversion Shares and/or Dividend Shares without restriction pursuant to Rule 144, without volume or manner-of-sale restrictions or current public information requirements, as determined by counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the holders of Series A Preferred, or (ii) the date when all of the Conversion Shares and Dividend Shares registered thereunder have been disposed of by such holders of Series A Preferred; and (d) prepare and file with the SEC such amendments and supplements to the Registration Statement (including documents filed pursuant to the Securities Exchange Act of 1934, as amended, and incorporated by reference into the Registration Statement) and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the period specified in this sentence above.

(b) In the event of a Voluntary Conversion (as defined in Section 5(a) below), all accrued but unpaid dividends on the Series A Preferred being converted shall be payable in cash or shares of Common Stock within five (5) business days of such Voluntary Conversion Date (as defined in Section 5(b)(i) below). Dividends on the Series A Preferred are prior and in preference to any declaration or payment of any distribution on any outstanding shares of Junior Stock. Such dividends shall accrue on each share of Series A Preferred from day to day, whether or not earned or declared, so that if such dividends with respect to any previous dividend period have not been paid on, or declared and set apart for, all shares of Series A Preferred at the time outstanding, the deficiency shall be fully paid on, or declared and set apart for, such shares on a pro rata basis with all other equity securities of the Company ranking on a parity with the Series A Preferred as to the payment of dividends before any distribution shall be paid on, or declared and set apart for Junior Stock.

(c) So long as any shares of Series A Preferred are outstanding, the Company shall not declare, pay or set apart for payment any dividend or make any distribution on any Junior Stock (other than dividends or distributions payable in additional shares of Junior Stock), unless at the time of such dividend or distribution the Company shall have paid all accrued and unpaid dividends on the outstanding shares of Series A Preferred.

(d) In the event of a dissolution, liquidation or winding up of the Company, all accrued and unpaid dividends on the Series A Preferred shall be payable on the day immediately preceding the date of payment of the Liquidation Preference Amount payable to the holders of Series A Preferred, in accordance with Section 4 below. In the event of the Company’s exercise of its optional redemption right set forth in Section 7 below or conversion of Series A Preferred in accordance with Section 5 below, all accrued and unpaid dividends on the Series A Preferred shall be payable on the day immediately preceding the date of such redemption or conversion, as the case may be.

(e) For purposes hereof, unless the context otherwise requires, “distribution” shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in shares of Common Stock or other Junior securities, or the purchase or redemption of shares of the Company (other than redemptions set forth in Section 7 below or repurchases of Common Stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase or upon the cashless exercise of options held by employees or consultants) for cash or property.

3. Voting Rights.

(a) On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A Preferred held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by Section 3(b) below, holders of Series A Preferred shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) So long as shares of the Series A Preferred representing at least fifty percent (50%) of the total number of shares of Series A Preferred issued on the Issuance Date remain issued and outstanding, the holders of record of the shares of Series A Preferred, exclusively and as a separate class, shall be entitled to elect two directors of the Company (the “Series A Directors”), who shall initially be Robert T. Clutterbuck and Charles Frischer, both of whom shall be elected as directors of the Company effective as of the Issuance Date. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of Series A Preferred, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A Preferred), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Company. At any meeting held for the purpose of electing a Series A Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of Series A Preferred shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of Series A Preferred shall be filled only by vote or written consent in lieu of a meeting of the holders of Series A Preferred or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3(b).

4. Liquidation, Dissolution, Winding-Up or Distribution.

(a) In the event of the liquidation, dissolution, winding up of the affairs of the Company or any other event that causes the Company to make a distribution (as such term is used in Section 2(e) above), whether voluntary or involuntary, the holders of shares of the Series A Preferred then outstanding shall be entitled to receive, out of the assets of the Company available for distribution to its stockholders, an amount equal to the greater of (i) \$1,000 per share plus all accrued and unpaid dividends, or (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 5 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to the foregoing is referred to herein as the “*Liquidation Preference Amount*”) before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock. If the assets of the Company are not sufficient to pay in full the Liquidation Preference Amount payable to the holders of outstanding shares of Series A Preferred and any other series of Preferred Stock ranking on a parity, as to rights on liquidation, dissolution or winding up, with the Series A Preferred, then all of said assets will be distributed among the holders of the Series A Preferred and the holders of the other Preferred Stock on a parity with the Series A Preferred, if any, ratably in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The liquidation payment with respect to each outstanding fractional share of Series A Preferred shall be equal to a ratably proportionate amount of the liquidation payment with respect to each whole outstanding share of Series A Preferred. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined reasonably and in good faith by the Board of Directors of the Company) or a combination thereof; *provided, however*, that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series A Preferred has been paid in cash the full Liquidation Preference Amount to which such holder is entitled, as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series A Preferred will not be entitled to any further participation as such in any distribution of the assets of the Company.

(b) Written notice of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, stating a payment date and the place where the distributable amounts shall be payable, shall, to the extent possible, be given by mail, postage prepaid, no less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series A Preferred at their respective addresses as recorded on the books of the Company.

5. Conversion. The holders of Series A Preferred shall have the following conversion rights (the “*Conversion Rights*”):

(a) Voluntary Conversion.

(i) Following November 1, 2020 (the “*Closing Date*”), for a period extending until August 1, 2021 (the “*Series A Holder Optional Conversion Period*”), the holder of any shares of Series A Preferred may, at such holder's option (subject to Section 5(a)(ii) below), elect to convert (a “*Voluntary Conversion*”) all or any portion of the shares of Series A Preferred (together with any Dividend Shares accrued in connection therewith during the Series A Holder Optional Conversion Period) held into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the Liquidation Preference Amount of the shares of Series A Preferred being converted, divided by (ii) the Conversion Price (as defined in Section 5(c) below) in effect as of the date the holder delivers to the Company their notice of election to convert (the “*Conversion Shares*”); *provided*, that holders of Series A Preferred shall waive any rights granted by Section 9 hereof during the Series A Holder Optional Conversion Period. In the event the Company issues a notice of redemption pursuant to Section 7 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until the redemption price is paid in full. In the event of such a redemption, the Company shall provide to each holder of shares of Series A Preferred notice of such redemption or liquidation, dissolution or winding up, which notice shall (i) be given at least fifteen (15) days prior to the termination of the Conversion Rights and (ii) state the amount per share of Series A Preferred that will be paid or distributed on such redemption or liquidation, dissolution or winding up, as the case may be.

(ii) During the Series A Holder Optional Conversion Period, each holder of Series A Preferred shall convert any remaining issued and outstanding shares of Series A Preferred, in accordance with the Series A Conversion Schedule attached hereto as Exhibit I (the “*Series A Conversion Schedule*”), on or prior to each Conversion Milestone Date (as defined below). Each holder shall convert a percentage of the total issued and outstanding shares of Series A Preferred (as of the Closing Date) held by such holder that is equal to or greater than such holder's respective Minimum Conversion Milestone (as defined below) as of such Conversion Milestone Date; *provided, however*, that each holder of Series A Preferred may convert more than the Minimum Conversion Milestone at any time until all of the shares of Series A Preferred Shares have been converted.

“*Conversion Milestone Date*” means each of the respective dates listed in the column titled “Conversion Milestone Date” on the Series A Conversion Schedule attached hereto as Exhibit I.

“*Minimum Conversion Milestone*” means each of the respective percentages listed in the column titled “Minimum Conversion Milestone” on the Series A Conversion Schedule attached hereto as Exhibit I.

(b) Mandatory Conversion. If, at any time, (i) the Common Stock is registered pursuant to Section 12(b) or (g) under the Exchange Act; (ii) there are sufficient authorized but unissued shares (which have not otherwise been reserved or committed for issuance) to permit the issuance of Conversion Shares; (iii) upon issuance, the Conversion Shares will be either (A) covered by an effective registration statement under the Securities Act, which is then available for the immediate resale of such Conversion Shares by the recipients thereof, and the Board of Directors reasonably believes that such effectiveness will continue uninterrupted for the foreseeable future, or (B) freely tradable without restriction pursuant to Rule 144 promulgated under the Securities Act without volume or manner-of-sale restrictions or current public information requirements, as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected holders; and (iv) the VWAP of the Common Stock is at least \$2.15 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for twenty (20) consecutive trading days, then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert one-half of the issued and outstanding shares of Series A Preferred into Conversion Shares, on a pro-rata basis among all holders of Series A Preferred at such time. Provided that the requirements of subsections (i), (ii), (iii) and (iv) of the preceding sentence are satisfied, and the VWAP of the Common Stock is at least \$2.15 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for at least eighty (80) consecutive trading days, then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert all issued and outstanding shares of Series A Preferred into Conversion Shares.

(c) Mechanics of Conversion. Conversions of Series A Preferred shall be conducted in the following manner:

(i) Voluntary Conversion. To convert Series A Preferred into Conversion Shares on any date (the “*Voluntary Conversion Date*”), the holder thereof shall transmit by facsimile (or otherwise deliver), for receipt on or prior to 5:00 p.m., New York time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit II (the “*Conversion Notice*”), to the Company. As soon as practicable following such Voluntary Conversion Date, the holder shall surrender to a common carrier for delivery to the Company the original certificates representing the shares of Series A Preferred being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the “*Preferred Stock Certificates*”) and the originally executed Conversion Notice.

(ii) Mandatory Conversion. In the event the Company elects to convert outstanding shares of Series A Preferred into Conversion Shares in pursuant to Section 5(b) above, the Company shall give written notice (the “*Mandatory Conversion Notice*”) to all holders of the Series A Preferred of its intention to require the conversion of the shares of Series A Preferred identified therein. The Mandatory Conversion Notice shall set forth the number of Series A Preferred being converted, the date on which such conversion shall be effective (the “*Mandatory Conversion Date*”), and shall be given to the holders of the Series A Preferred not less than fifteen (15) days prior to the Mandatory Conversion Date. The Mandatory Conversion Notice shall be delivered to each holder at the address as it appears on the stock transfer books of the Company. In order to receive the Conversion Shares into which the Series A Preferred is convertible pursuant to Section 5(b), each holder of the Series A Preferred shall surrender to the Company at the place designated in the Mandatory Conversion Notice the certificate(s) representing the number of shares of Series A Preferred specified in the Mandatory Conversion Notice. Upon the Mandatory Conversion Date, such converted Series A Preferred shall no longer be deemed to be outstanding, and all rights of the holder with respect to such shares shall immediately terminate, except the right to receive the shares of Common Stock into which the Series A Preferred is convertible pursuant to Section 5(b).

(iii) Company's Response. Upon receipt by the Company of a copy of the fully executed Conversion Notice or upon giving a Mandatory Conversion Notice, the Company or its designated transfer agent (the “*Transfer Agent*”), as applicable, shall within five (5) business days following the date of receipt by the Company of a copy of the fully executed Conversion Notice or the Mandatory Conversion Date, as the case may be, issue and deliver to the Depository Trust Company (“*DTC*”) account on each applicable holder's behalf via the Deposit Withdrawal Agent Commission System (“*DWAC*”) as specified in the Conversion Notice, registered in the name of each such holder or its designee, for the number of Conversion Shares to which such holder shall be entitled. Notwithstanding the foregoing to the contrary, the Company or its Transfer Agent shall only be required to issue and deliver the Conversion Shares to DTC on a holder's behalf via DWAC if (i) the Conversion Shares may be issued without restrictive legends and (ii) the Company and the Transfer Agent are participating in DTC through the DWAC system. If all of the conditions set forth in clauses (i) and (ii) above are not satisfied, the Company shall deliver physical certificates to each such holder or its designee. If the number of shares of Series A Preferred represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series A Preferred being converted, then the Company shall, as soon as practicable and in no event later than five (5) business days after receipt of the Preferred Stock Certificate(s) and at the Company's expense, issue and deliver to the applicable holder a new Preferred Stock Certificate representing the number of shares of Series A Preferred not converted.

(iv) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the number of Conversion Shares to be issued upon conversion, the Company shall cause its Transfer Agent to promptly issue to the holder the number of Conversion Shares that is not disputed and shall submit the arithmetic calculations to the holder via electronic mail or facsimile as soon as possible, but in no event later than two (2) business days after receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the arithmetic calculation of the number of Conversion Shares to be issued within two (2) business days of such disputed arithmetic calculation being submitted to the holder, then the Company shall, within two (2) business days, submit via electronic mail or facsimile the disputed arithmetic calculation of the number of Conversion Shares to be issued to the Company's independent, outside accountant (the “*Accountant*”). The Company shall cause the Accountant to perform the calculations and notify the Company and the holder of the results no later than five (5) business days from the time it receives the disputed calculations. The Accountant's calculation shall be binding upon all parties absent manifest error. The reasonable expenses of such Accountant in making such determination shall be paid by the Company, in the event the holder's calculation was correct, or by the holder, in the event the Company's calculation was correct, or equally by the Company and the holder in the event that neither the Company's or the holder's calculation was correct. The period of time in which the Company is required to effect conversions or redemptions under this Certificate of Designations shall be tolled with respect to the subject conversion or redemption pending resolution of any dispute by the Company made in good faith and in accordance with this Section 5(c)(iv).

(v) Record Holder. The person or persons entitled to receive Conversion Shares shall be treated for all purposes as the record holder or holders of such shares of Series A Preferred on the Conversion Date.

(d) Conversion Price.

(i) The term “Conversion Price” shall mean \$0.20 per share of Common Stock, subject to adjustment under Section 5(e) hereof.

(ii) Notwithstanding the foregoing to the contrary, if during any period (a “*Black-Out Period*”), a holder of Series A Preferred is unable to trade any Conversion Shares immediately because the Company has informed such holder that an existing prospectus cannot be used at that time in the sale or transfer of such Conversion Shares (provided that such postponement, delay, suspension or fact that the prospectus cannot be used is not due to factors solely within the control of the holder of Series A Preferred) such holder of Series A Preferred shall have the option but not the obligation on any Conversion Date within ten (10) trading days following the expiration of the Black-Out Period of using the Conversion Price applicable on such Conversion Date or any Conversion Price selected by such holder of Series A Preferred that would have been applicable had such Conversion Date been at any earlier time during the Black-Out Period.

(e) Adjustments of Conversion Price.

(i) Adjustments for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date hereof, effect a stock split of its outstanding Common Stock, the Conversion Price shall be proportionately decreased. If the Company shall at any time or from time to time after the date hereof, combine its outstanding shares of Common Stock, the Conversion Price shall be proportionately increased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination becomes effective.

(ii) Adjustments for Certain Dividends and Distributions. If the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Price shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that no such adjustment shall be made if the holders of Series A Preferred simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred had been converted into Conversion Shares on the date of such event or (ii) a dividend or other distribution of shares of Series A Preferred which are convertible, as of the date of such event, into Conversion Shares as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(iii) Adjustment for Other Dividends and Distributions. If the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Price shall be made and provision shall be made (by adjustments of the Conversion Price or otherwise) so that the holders of Series A Preferred shall receive upon conversions thereof, in addition to the Conversion Shares receivable thereon, the number of securities of the Company which they would have received had their Series A Preferred been converted into Conversion Shares on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period), giving application to all adjustments called for during such period under this Section 5(e)(iii) with respect to the rights of the holders of the Series A Preferred; *provided, however*, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Conversion Shares issuable upon conversion of the Series A Preferred at any time or from time to time after the date hereof shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(e)(i), (ii) and (iii), or a reorganization, merger, consolidation, or sale of assets provided for in Section 5(e)(v)), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series A Preferred shall have the right thereafter to convert such share of Series A Preferred into the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of Conversion Shares into which such share of Series A Preferred might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustments for Reorganization, Merger, Consolidation or Sales of Assets. If, at any time or from time to time after the date hereof there shall be a capital reorganization of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Section 5(e)(i), (ii) and (iii)), or a reclassification, exchange or substitution of shares provided for in Section 5(e)(iv)), or a merger or consolidation of the Company with or into another corporation where the holders of outstanding voting securities prior to such merger or consolidation do not own over fifty percent (50%) of the outstanding voting securities of the merged or consolidated entity, immediately after such merger or consolidation, or the sale of all or substantially all of the Company's properties or assets to any other person (an "*Organic Change*"), then as a part of such Organic Change an appropriate revision to the Conversion Price shall be made if necessary and provision shall be made if necessary (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series A Preferred shall have the right thereafter to convert such share of Series A Preferred into the kind and amount of shares of stock and other securities or property which such holder would have had the right to receive had such holder converted its shares of Series A Preferred immediately prior to the consummation of such Organic Change. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5(e)(v) with respect to the rights of the holders of the Series A Preferred after the Organic Change to the end that the provisions of this Section 5(e)(v) (including any adjustment in the Conversion Price then in effect and the number of shares of stock or other securities deliverable upon conversion of the Series A Preferred) shall be applied after that event in as nearly an equivalent manner as may be practicable.

(vi) Consideration for Stock. In case any shares of Common Stock or Convertible Securities other than the Series A Preferred, or any rights or warrants or options to purchase any such Common Stock or Convertible Securities, shall be issued or sold:

(1) in connection with any merger or consolidation in which the Company is the surviving corporation (other than any consolidation or merger in which the previously outstanding shares of Common Stock of the Company shall be changed to or exchanged for the stock or other securities of another corporation), the amount of consideration therefore shall be deemed to be the fair value, as determined reasonably and in good faith by the Board of Directors of the Company, of such portion of the assets and business of the nonsurviving corporation as such Board may determine to be attributable to such shares of Common Stock, Convertible Securities, rights or warrants or options, as the case may be; or

(2) in the event of any consolidation or merger of the Company in which the Company is not the surviving corporation or in which the previously outstanding shares of Common Stock of the Company shall be changed into or exchanged for the stock or other securities of another corporation, or in the event of any sale of all or substantially all of the assets of the Company for stock or other securities of any corporation, the Company shall be deemed to have issued a number of shares of its Common Stock for stock or securities or other property of the other corporation computed on the basis of the actual exchange ratio on which the transaction was predicated, and for a consideration equal to the fair market value on the date of such transaction of all such stock or securities or other property of the other corporation. If any such calculation results in adjustment of the applicable Conversion Price, or the number of shares of Conversion Shares issuable upon conversion of the Series A Preferred, the determination of the applicable Conversion Price or the number of Conversion Shares issuable upon conversion of the Series A Preferred immediately prior to such merger, consolidation or sale, shall be made after giving effect to such adjustment of the number of Conversion Shares issuable upon conversion of the Series A Preferred. In the event any consideration received by the Company for any securities consists of property other than cash, the fair market value thereof at the time of issuance or as otherwise applicable shall be as determined in good faith by the Board of Directors of the Company. In the event Common Stock is issued with other shares or securities or other assets of the Company for consideration which covers both, the consideration computed as provided in this Section 5(e)(vi) shall be allocated among such securities and assets as determined in good faith by the Board of Directors of the Company.

(vii) Record Date. In case the Company shall take record of the holders of its Common Stock or any other Preferred Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the shares of Common Stock shall be deemed to be such record date.

(1) No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred against impairment. In the event a holder shall elect to convert any shares of Series A Preferred as provided herein, the Company cannot refuse conversion based on any claim that such holder or any one associated or affiliated with such holder has been engaged in any violation of law, unless (i) an order from the Securities and Exchange Commission prohibiting such conversion or (ii) an injunction from a court, on notice, restraining and/or adjoining conversion of all or of said shares of Series A Preferred shall have been issued and the Company posts a surety bond for the benefit of such holder in an amount equal to one hundred percent (100%) of the Liquidation Preference Amount of the Series A Preferred such holder has elected to convert, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to such holder in the event it obtains judgment. If the Company is the prevailing party in any legal action or other legal proceeding relating to the Conversion Rights of the holders of the Series A Preferred, then the Company shall be entitled to recover from the holders of Series A Preferred reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the Company may be entitled).

(b) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Price or number of Conversion Shares issuable upon conversion of the Series A Preferred pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series A Preferred a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of the holder of such affected Series A Preferred, at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Price in effect at the time, and the number of Conversion Shares and the amount, if any, of other securities or property which at the time would be received upon the conversion of a share of such Series A Preferred. Notwithstanding the foregoing, the Company shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent of such adjusted amount.

(c) Issue Taxes. The Company shall pay any and all issue, stock transfer, documentary stamp and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of the Series A Preferred Stock, Conversion Shares, Dividend Shares or shares of Common Stock or other securities issued on account of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities; *provided, however*, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer of Conversion Shares requested by any holder to a person other than such holder, but only to the extent such transfer taxes exceed the transfer taxes that would have been payable had the Conversion Shares been delivered to such holder.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by electronic mail, by facsimile or three (3) business days following being mailed by certified or registered mail, postage prepaid, return-receipt requested, addressed to the holder of record at its address appearing on the books of the Company. The Company will give written notice to each holder of Series A Preferred at least thirty (30) days prior to the date on which the Company closes its books or takes a record (i) with respect to any dividend or distribution upon the Common Stock, (ii) with respect to any pro rata subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Organic Change, dissolution, liquidation or winding-up and in no event shall such notice be provided to such holder prior to such information being made known to the public. The Company will also give written notice to each holder of Series A Preferred at least twenty (20) days prior to the date on which any Organic Change, dissolution, liquidation or winding-up will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(e) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to the product of such fraction multiplied by the average of the closing sales price of the Common Stock, as reported on the applicable Trading Market for the five (5) consecutive trading days immediately preceding the Voluntary Conversion Date.

(f) Reservation of Common Stock. The Company shall, so long as any shares of Series A Preferred are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series A Preferred then outstanding; *provided*, that the number of shares of Common Stock so reserved shall at no time be less than one hundred percent (100%) of the number of shares of Common Stock for which the shares of Series A Preferred are at any time convertible. The initial number of shares of Common Stock reserved as Conversion Shares and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Series A Preferred based on the number of shares of Series A Preferred held by each holder of record at the time of issuance of the Series A Preferred or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's shares of Series A Preferred, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and which remain allocated to any person or entity which does not hold any shares of Series A Preferred shall be allocated to the remaining holders of Series A Preferred, pro rata based on the number of shares of Series A Preferred then held by such holder.

(g) Retirement of Series A Preferred. Conversion of shares of Series A Preferred shall be deemed to have been effected on the applicable Conversion Date. Upon conversion of only a portion of the number of shares of Series A Preferred represented by a certificate surrendered for conversion, the Company shall issue and deliver to such holder, at the expense of the Company, a new certificate covering the number of shares of Series A Preferred representing the unconverted portion of the certificate so surrendered as required by Section 5(c)(i) or Section 5(c)(ii), as the case may be.

(h) Regulatory Compliance. If any shares of Common Stock to be reserved as Conversion Shares require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

(i) Validity of Shares. All Series A Preferred Stock, Conversion Shares, Dividend Shares and shares of Common Stock or other securities issued on account of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities will, upon issuance by the Company, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto.

6. No Preemptive Rights. Except as provided in Section 5 hereof, no holder of the Series A Preferred shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board of Directors on such terms and for such consideration (to the extent permitted by law), and to such person or persons as the Board of Directors in their absolute discretion may deem advisable.

7. Redemption.

(a) Redemption Option Upon Change of Control. In addition to any other rights of the Company or the holders of Series A Preferred contained herein, simultaneous with the occurrence of a Change of Control (as defined below), the Company, at its option, shall have the right to redeem all or a portion of the outstanding Series A Preferred in cash at a price per share of Series A Preferred equal to one hundred and fifteen percent (115%) of the Liquidation Preference Amount plus all accrued and unpaid dividends (the "Change of Control Redemption Price"). Notwithstanding the foregoing to the contrary, the Company may effect a redemption pursuant to this Section 7(a) only if the Company is in material compliance with the terms and conditions of this Certificate of Designations.

(b) "Change of Control". A "Change of Control" shall be deemed to have occurred at such time as a third party not affiliated with the Company on the Issuance Date or any holders of the Series A Preferred shall have acquired, in one or a series of related transactions, equity securities of the Company representing more than fifty percent (50%) of the outstanding voting securities of the Company.

(c) Mechanics of Redemption at Option of Company Upon Change of Control. At any time within ten (10) days prior to the consummation of a Change of Control transaction, the Company may elect to redeem, effective immediately prior to the consummation of such Change of Control, all of the Series A Preferred then outstanding by delivering written notice thereof via facsimile and overnight courier ("Notice of Redemption at Option of Company Upon Change of Control") to each holder of Series A Preferred, which Notice of Redemption at Option of Company Upon Change of Control shall indicate (i) the number of shares of Series A Preferred that the Company is electing to redeem from such holder and (ii) the Change of Control Redemption Price, as calculated pursuant to Section 7(a) above. The Change of Control Redemption Price shall be paid in cash in accordance with Section 7(a) of this Certificate of Designations. On or prior to the Change of Control, the holders of Series A Preferred shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Notice of Redemption at Option of Company Upon Change of Control. The Company shall deliver the Change of Control Redemption Price immediately prior to or simultaneously with the consummation of the Change of Control; *provided*, that a holder's Preferred Stock Certificates shall have been so delivered to the Company (or an indemnification undertaking with respect to such Preferred Stock Certificates in the event of their loss, theft or destruction). From and after the Change of Control transaction, unless there shall have been a default in payment of the Change of Control Redemption Price, all rights of the holders of Series A Preferred as a holder of such Series A Preferred (except the right to receive the Change of Control Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to any redeemed shares of Series A Preferred, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. Notwithstanding the foregoing to the contrary, nothing contained herein shall limit a holder's ability to convert its shares of Series A Preferred following the receipt of the Notice of Redemption at Option of Company Upon Change of Control and prior to the consummation of the Change of Control transaction.

8. Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. In addition to any other right that a holder of Series A Preferred Stock might have, if, upon the Company's receipt of a Conversion Notice, the Company cannot issue Conversion Shares issuable pursuant to such Conversion Notice because the Company (x) does not have a sufficient number of shares of Common Stock authorized and available or (y) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Conversion Shares to be issued to a holder of Series A Preferred pursuant to a Conversion Notice, then the Company shall issue as many Conversion Shares as it is able to issue in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above and, with respect to the unconverted Series A Preferred, the holder, solely at such holder's option, can elect, within five (5) business days after receipt of notice from the Company thereof to:

(i) if the Company's inability to fully convert Series A Preferred is pursuant to Section 8(a)(v) above, require the Company to issue restricted shares of Common Stock in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above; or

(ii) void its Conversion Notice with respect to all or a portion of the Conversion Shares covered by such Conversion Notice and retain or have returned, as the case may be, the shares of Series A Preferred that were to be converted pursuant to such holder's Conversion Notice (provided that a holder's voiding its Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice).

(b) Mechanics of Fulfilling Holder's Election. The Company shall promptly send via electronic mail or facsimile to a holder of Series A Preferred, upon receipt of electronic mail or facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 8(a) above, a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "Inability to Fully Convert Notice"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of Series A Preferred which cannot be converted. Such holder shall notify the Company of its election pursuant to Section 8(a) above by delivering written notice via facsimile to the Company ("Notice in Response to Inability to Convert").

(c) Pro-Rata Conversion and Redemption. In the event the Company receives a Conversion Notice from more than one holder of Series A Preferred on the same day and the Company can convert and redeem some, but not all, of the Series A Preferred pursuant to this Section 8, the Company shall convert and redeem from each holder of Series A Preferred electing to have Series A Preferred converted and redeemed at such time an amount equal to such holder's pro-rata amount (based on the number shares of Series A Preferred held by such holder relative to the number shares of Series A Preferred outstanding) of all shares of Series A Preferred being converted and redeemed at such time.

9. Protective Provisions. So long as shares of the Series A Preferred representing at least fifty percent (50%) of the total number of shares of Series A Preferred issued on the Issuance Date remain issued and outstanding, the Company shall not, without obtaining the approval (by vote or written consent) of the holders of more than fifty percent (50%) of the issued and outstanding shares of Series A Preferred:

(a) create, or authorize the creation of, any class or series, or issue, or authorize the issuance of, any shares of capital stock that ranks senior to the Series A Preferred, other than Series C Preferred and Series D Preferred;

(b) sell, lease or otherwise dispose of intellectual property rights owned by or licensed to the Company or any subsidiary of the Company; and

(c) create, or authorize the creation of, or incur, or authorize the incurrence of, any Indebtedness, other than Permitted Indebtedness, or permit any subsidiary to take any such action.

"Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$500,000 (other than trade accounts payable incurred in the ordinary course of business) and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

"Permitted Indebtedness" means (x) all indebtedness of the Company outstanding on the Issuance Date or thereafter that does not constitute Indebtedness for purposes of this Section 9; and (y) monies borrowed under credit lines of the Company existing on the Issuance Date in an amount not to exceed \$6.0 million.

10. Vote to Change the Terms of or Issue Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than two-thirds (2/3) of the then outstanding shares of Series A Preferred, shall be required for any change to this Certificate of Designations or the Company's Certificate of Incorporation which would amend, alter, change or repeal, or otherwise adversely affect, any of the powers, designations, preferences and rights of the Series A Preferred; *provided, however*, that any changes to (i) Section 5 hereof, or (ii) Exhibit I hereto shall also require the approval of the majority of the Board of Directors.

11. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the shares of Series A Preferred, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder to the Company (in form and substance satisfactory to the Company) and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date; *provided, however*, the Company shall not be obligated to re-issue Preferred Stock Certificates if the holder contemporaneously requests the Company to convert such shares of Series A Preferred into Common Stock and complies with its obligations to issue Conversion Shares set forth herein.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series A Preferred and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach, the holders of the Series A Preferred shall be entitled, in addition to all other available remedies, to an injunction restraining any breach or the Series A Preferred holders' reasonable perception of a threatened breach by the Company of the provisions of this Certificate of Designations, without the necessity of showing economic loss and without any bond or other security being required.

13. Specific Shall Not Limit General; Construction. No specific provision contained in this Certificate of Designations shall limit or modify any more general provision contained herein. This Certificate of Designation shall be deemed to be jointly drafted by the Company and all initial purchasers of the Series A Preferred and shall not be construed against any person as the drafter hereof.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series A Preferred in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

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IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate and does affirm the foregoing as true this 12th day of November, 2020.

IMAGEWARE SYSTEMS, INC.

By: /s/ Kristin Taylor

Kristin Taylor
Chief Executive Officer

EXHIBIT I

Series A Conversion Schedule

| Conversion Milestone Date | Minimum Conversion Milestone |
|----------------------------------|-------------------------------------|
| 11/1/2020 | 10% |
| 12/1/2020 | 20% |
| 1/1/2021 | 30% |
| 2/1/2021 | 40% |
| 3/1/2021 | 50% |
| 4/1/2021 | 60% |
| 5/1/2021 | 70% |
| 6/1/2021 | 80% |
| 7/1/2021 | 90% |
| 8/1/2021 | 100% |

EXHIBIT II

Conversion Notice

Reference is made to the Amended and Restated Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock ("*Series A Preferred*") of ImageWare Systems, Inc. (the "*Certificate of Designations*"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Preferred, par value \$0.01 per share (the "*Preferred Shares*"), of ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), indicated below into shares of Common Stock, par value \$0.01 per share (the "*Common Stock*"), of the Company, by tendering the stock certificate(s) representing the share(s) of Series A Preferred specified below as of the date specified below.

Date of Conversion:

Number of shares of Series A Preferred to be converted:

Stock certificate no(s). of Series A Preferred to be converted:

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be issued:

Number of shares of Common Stock beneficially owned or deemed

beneficially owned by the Holder on the Date of Conversion:

Please issue the Common Stock into which the Preferred Shares are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address:

Issue to:

Facsimile Number:

Name of bank/broker due to receive the underlying Common Stock:

Bank/broker's four-digit "DTC" participant number

(obtained from the receiving bank/broker):

Authorization:

By:

Title:

Dated:

AMENDED AND RESTATED
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF
SERIES A-1 CONVERTIBLE PREFERRED STOCK
OF
IMAGEWARE SYSTEMS, INC.

The undersigned, the Chief Executive Officer of ImageWare Systems, Inc., a Delaware corporation (the “*Company*”), does hereby certify as follows:

WHEREAS, on July 1, 2020, the Board of Directors of the Company (the “*Board of Directors*”) duly adopted a resolution (the “*Original Certificate of Designations of Series A-1 Convertible Preferred Stock*”) creating a series of Preferred Stock designated as the Series A-1 Convertible Preferred Stock; and

WHEREAS, the Board of Directors desires to amend and restate the Original Certificate of Designations of Series A-1 Convertible Preferred Stock.

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors by provisions of the Certificate of Incorporation of the Company (the “*Certificate of Incorporation*”), the Original Certificate of Designations of Series A-1 Convertible Preferred Stock is hereby amended and restated in its entirety to read as follows:

1. Designation and Rank.

(a) The designation of such series of the Preferred Stock shall be the Series A-1 Convertible Preferred Stock, par value \$0.01 per share (the “*Series A-1 Preferred*”). The maximum number of shares of Series A-1 Preferred shall be Thirty Seven Thousand Four Hundred Sixty-Eight (37,468) shares. The Series A-1 Preferred shall rank senior to the Company’s common stock, par value \$0.01 per share (the “*Common Stock*”), and except as provided in Section 1(b) below, to all other classes and series of equity securities of the Company which by their terms rank junior to the Series A-1 Preferred (“*Junior Stock*”). The Series A-1 Preferred shall rank pari-passu to the Company’s Series A Convertible Preferred Stock (“*Series A Preferred*”).

(b) The Series A-1 Preferred shall be subordinate to and rank junior to (i) the Company’s Series B Convertible Preferred Stock; (ii) Series C Convertible Preferred Stock; (iv) Series D Convertible Preferred Stock and (v) all indebtedness of the Company now or hereafter outstanding. The date of original issuance of the Series A-1 Preferred is referred to herein as the “*Issuance Date*”.

2. Dividends.

(a) Payment of Dividends.

(i) The holders of record of shares of Series A-1 Preferred shall be entitled to receive, out of any assets at the time legally available therefor, cumulative dividends at the Specified Rate per share per annum on a daily basis, commencing on the date hereof and payable quarterly in arrears on each of March 31, June 30, September 30 and December 31 (each, a “*Dividend Payment Date*”), through the issuance of shares of Common Stock. The number of shares of Common Stock to be issued to each applicable holder shall be determined by dividing the total dividend then being paid to such holder in shares of Common Stock by the Price Per Share (as defined below) as of the applicable Dividend Payment Date, and rounding up to the nearest whole share (the “*Dividend Shares*”). As used herein, “*Price Per Share*” means, with respect to a share of Common Stock, the VWAP (as defined below) for the five (5) trading days immediately preceding the applicable Dividend Payment Date.

“*Specified Rate*” means the cumulative dividend rate of four percent (4%) of the stated Liquidation Preference Amount per share per annum.

“*VWAP*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (defined below), the daily volume weighted average price of the Common Stock for such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “*Pink Sheets*” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the daily mean between the closing bid and asked quotations per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQX or OTCQB (or any successors to any of the foregoing).

(ii) The Company will: (a) prepare and file with the Securities and Exchange Commission (the “SEC”), within thirty (30) days after the date hereof, a Form S-3 (or, if such form is not available to the Company, a Form S-1) to register under the Securities Act of 1933, as amended (the “Securities Act”), the resale, by the holders of shares of Series A-1 Preferred, of any Conversion Shares (as defined below) and Dividend Shares issuable hereunder and not otherwise eligible for resale under Rule 144 promulgated under the Securities Act (“Rule 144”), without volume or manner-of-sale restrictions or current public information requirements (the “Registration Statement”); (b) use its best efforts to cause the Registration Statement to become effective as soon as reasonably practicable after such filing; (c) use its best efforts to cause the Registration Statement to remain effective at all times thereafter until the earlier of (i) the date as of which such holders of Series A-1 Preferred may sell all of such Conversion Shares and/or Dividend Shares without restriction pursuant to Rule 144, without volume or manner-of-sale restrictions or current public information requirements, as determined by counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the holders of Series A-1 Preferred, or (ii) the date when all of the Conversion Shares and Dividend Shares registered thereunder have been disposed of by such holders of Series A-1 Preferred; and (d) prepare and file with the SEC such amendments and supplements to the Registration Statement (including documents filed pursuant to the Securities Exchange Act of 1934, as amended, and incorporated by reference into the Registration Statement) and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the period specified in this sentence above.

(b) In the event of a Voluntary Conversion (as defined in Section 5(a) below), all accrued but unpaid dividends on the Series A-1 Preferred being converted shall be payable in cash or shares of Common Stock within five (5) business days of such Voluntary Conversion Date (as defined in Section 5(b)(i) below). Dividends on the Series A-1 Preferred are prior and in preference to any declaration or payment of any distribution on any outstanding shares of Junior Stock. Such dividends shall accrue on each share of Series A-1 Preferred from day to day, whether or not earned or declared, so that if such dividends with respect to any previous dividend period have not been paid on, or declared and set apart for, all shares of Series A-1 Preferred at the time outstanding, the deficiency shall be fully paid on, or declared and set apart for, such shares on a pro rata basis with all other equity securities of the Company ranking on a parity with the Series A-1 Preferred as to the payment of dividends before any distribution shall be paid on, or declared and set apart for Junior Stock.

(c) So long as any shares of Series A-1 Preferred are outstanding, the Company shall not declare, pay or set apart for payment any dividend or make any distribution on any Junior Stock (other than dividends or distributions payable in additional shares of Junior Stock), unless at the time of such dividend or distribution the Company shall have paid all accrued and unpaid dividends on the outstanding shares of Series A-1 Preferred.

(d) In the event of a dissolution, liquidation or winding up of the Company, all accrued and unpaid dividends on the Series A-1 Preferred shall be payable on the day immediately preceding the date of payment of the Liquidation Preference Amount payable to the holders of Series A-1 Preferred, in accordance with Section 4 below. In the event of the Company’s exercise of its optional redemption right set forth in Section 7 below or conversion of Series A-1 Preferred in accordance with Section 5 below, all accrued and unpaid dividends on the Series A-1 Preferred shall be payable on the day immediately preceding the date of such redemption or conversion, as the case may be.

(e) For purposes hereof, unless the context otherwise requires, “distribution” shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in shares of Common Stock or other Junior securities, or the purchase or redemption of shares of the Company (other than redemptions set forth in Section 7 below or repurchases of Common Stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase or upon the cashless exercise of options held by employees or consultants) for cash or property.

3. Voting Rights.

(a) On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A-1 Preferred shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series A-1 Preferred held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by Section 3(b) below, holders of Series A-1 Preferred shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

(b) So long as shares of the Series A-1 Preferred representing at least fifty percent (50%) of the total number of shares of Series A-1 Preferred issued on the Issuance Date remain issued and outstanding, the holders of record of the shares of Series A-1 Preferred, exclusively and as a separate class, shall be entitled to elect two directors of the Company (the “Series A Directors”). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of Series A-1 Preferred, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series A-1 Preferred), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Company. At any meeting held for the purpose of electing a Series A Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of Series A-1 Preferred shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of Series A-1 Preferred shall be filled only by vote or written consent in lieu of a meeting of the holders of Series A-1 Preferred or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3(b).

4. Liquidation, Dissolution, Winding-Up or Distribution

(a) In the event of the liquidation, dissolution, winding up of the affairs of the Company or any other event that causes the Company to make a distribution (as such term is used in Section 2(e) above), whether voluntary or involuntary, the holders of shares of the Series A-1 Preferred then outstanding shall be entitled to receive, out of the assets of the Company available for distribution to its stockholders, an amount equal to the greater of (i) \$1,000 per share plus all accrued and unpaid dividends, or (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 5 immediately prior to such liquidation, dissolution or winding up (the amount payable pursuant to the foregoing is referred to herein as the “*Liquidation Preference Amount*”) before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock. If the assets of the Company are not sufficient to pay in full the Liquidation Preference Amount payable to the holders of outstanding shares of Series A-1 Preferred and any other series of Preferred Stock ranking on a parity, as to rights on liquidation, dissolution or winding up, with the Series A-1 Preferred, then all of said assets will be distributed among the holders of the Series A-1 Preferred and the holders of the other Preferred Stock on a parity with the Series A-1 Preferred, if any, ratably in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The liquidation payment with respect to each outstanding fractional share of Series A-1 Preferred shall be equal to a ratably proportionate amount of the liquidation payment with respect to each whole outstanding share of Series A-1 Preferred. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined reasonably and in good faith by the Board of Directors of the Company) or a combination thereof; *provided, however*, that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series A-1 Preferred has been paid in cash the full Liquidation Preference Amount to which such holder is entitled, as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series A-1 Preferred will not be entitled to any further participation as such in any distribution of the assets of the Company.

(b) Written notice of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, stating a payment date and the place where the distributable amounts shall be payable, shall, to the extent possible, be given by mail, postage prepaid, no less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series A-1 Preferred at their respective addresses as recorded on the books of the Company.

5. Conversion. The holders of Series A-1 Preferred shall have the following conversion rights (the “*Conversion Rights*”):

(a) Voluntary Conversion.

(i) Following November 1, 2020 (the “*Closing Date*”), for a period extending until August 1, 2021 (the “*Series A-1 Holder Optional Conversion Period*”), the holder of any shares of Series A-1 Preferred may, at such holder's option (subject to Section 5(a)(ii) below), elect to convert (a “*Voluntary Conversion*”) all or any portion of the shares of Series A-1 Preferred held into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the Liquidation Preference Amount of the shares of Series A-1 Preferred being converted, divided by (ii) the Conversion Price (as defined in Section 5(c) below) in effect as of the date the holder delivers to the Company their notice of election to convert (the “*Conversion Shares*”); *provided*, that holders of Series A-1 Preferred shall waive any rights granted by Section 9 hereof for the Series A-1 Holder Optional Conversion Period. In the event the Company issues a notice of redemption pursuant to Section 7 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until the redemption price is paid in full. In the event of such a redemption, the Company shall provide to each holder of shares of Series A-1 Preferred notice of such redemption or liquidation, dissolution or winding up, which notice shall (i) be given at least fifteen (15) days prior to the termination of the Conversion Rights and (ii) state the amount per share of Series A-1 Preferred that will be paid or distributed on such redemption or liquidation, dissolution or winding up, as the case may be.

(ii) During the Series A-1 Holder Optional Conversion Period, each holder of Series A-1 Preferred shall convert any remaining issued and outstanding shares of Series A-1 Preferred (together with any Dividend Shares accrued by such holder in connection therewith during the Series A-1 Holder Optional Conversion Period), in accordance with the Series A-1 Conversion Schedule attached hereto as Exhibit I (the “*Series A-1 Conversion Schedule*”), on or prior to each Conversion Milestone Date (as defined below). Each holder shall convert a percentage of the total issued and outstanding shares of Series A-1 Preferred (as of the Closing Date) held by such holder that is equal to or greater than such holder's respective Minimum Conversion Milestone (as defined below) as of such Conversion Milestone Date; *provided, however*, that each holder of Series A-1 Preferred may convert more than the Minimum Conversion Milestone at any time until all of the shares of Series A-1 Preferred Shares have been converted.

“*Conversion Milestone Date*” means each of the respective dates listed in the column titled “*Conversion Milestone Date*” on the Series A-1 Conversion Schedule attached hereto as Exhibit I.

“*Minimum Conversion Milestone*” means each of the respective percentages listed in the column titled “*Minimum Conversion Milestone*” on the Series A-1 Conversion Schedule attached hereto as Exhibit I.

(b) Mandatory Conversion. If, at any time, (i) the Common Stock is registered pursuant to Section 12(b) or (g) under the Exchange Act; (ii) there are sufficient authorized but unissued shares (which have not otherwise been reserved or committed for issuance) to permit the issuance of Conversion Shares; (iii) upon issuance, the Conversion Shares will be either (A) covered by an effective registration statement under the Securities Act, which is then available for the immediate resale of such Conversion Shares by the recipients thereof, and the Board of Directors reasonably believes that such effectiveness will continue uninterrupted for the foreseeable future, or (B) freely tradable without restriction pursuant to Rule 144 promulgated under the Securities Act without volume or manner-of-sale restrictions or current public information requirements, as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected holders; and (iv) the VWAP of the Common Stock is at least \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for twenty (20) consecutive trading days, then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert one-half of the issued and outstanding shares of Series A-1 Preferred into Conversion Shares, on a pro-rata basis among all holders of Series A-1 Preferred at such time. Provided that the requirements of subsections (i), (ii), (iii) and (iv) of the preceding sentence are satisfied, and the VWAP of the Common Stock is at least \$1.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for at least eighty (80) consecutive trading days, then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert all issued and outstanding shares of Series A-1 Preferred into Conversion Shares.

(c) Mechanics of Conversion. Conversions of Series A-1 Preferred shall be conducted in the following manner:

(i) Voluntary Conversion. To convert Series A-1 Preferred into Conversion Shares on any date (the "*Voluntary Conversion Date*"), the holder thereof shall transmit by facsimile (or otherwise deliver), for receipt on or prior to 5:00 p.m., New York time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit II (the "*Conversion Notice*"), to the Company. As soon as practicable following such Voluntary Conversion Date, the holder shall surrender to a common carrier for delivery to the Company the original certificates representing the shares of Series A-1 Preferred being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the "*Preferred Stock Certificates*") and the originally executed Conversion Notice.

(ii) Mandatory Conversion. In the event the Company elects to convert outstanding shares of Series A-1 Preferred into Conversion Shares in pursuant to Section 5(b) above, the Company shall give written notice (the "*Mandatory Conversion Notice*") to all holders of the Series A-1 Preferred of its intention to require the conversion of the shares of Series A-1 Preferred identified therein. The Mandatory Conversion Notice shall set forth the number of Series A-1 Preferred being converted, the date on which such conversion shall be effective (the "*Mandatory Conversion Date*"), and shall be given to the holders of the Series A-1 Preferred not less than fifteen (15) days prior to the Mandatory Conversion Date. The Mandatory Conversion Notice shall be delivered to each holder at the address as it appears on the stock transfer books of the Company. In order to receive the Conversion Shares into which the Series A-1 Preferred is convertible pursuant to Section 5(b), each holder of the Series A-1 Preferred shall surrender to the Company at the place designated in the Mandatory Conversion Notice the certificate(s) representing the number of shares of Series A-1 Preferred specified in the Mandatory Conversion Notice. Upon the Mandatory Conversion Date, such converted Series A-1 Preferred shall no longer be deemed to be outstanding, and all rights of the holder with respect to such shares shall immediately terminate, except the right to receive the shares of Common Stock into which the Series A-1 Preferred is convertible pursuant to Section 5(b).

(iii) Company's Response. Upon receipt by the Company of a copy of the fully executed Conversion Notice or upon giving a Mandatory Conversion Notice, the Company or its designated transfer agent (the "*Transfer Agent*"), as applicable, shall within five (5) business days following the date of receipt by the Company of a copy of the fully executed Conversion Notice or the Mandatory Conversion Date, as the case may be, issue and deliver to the Depository Trust Company ("*DTC*") account on each applicable holder's behalf via the Deposit Withdrawal Agent Commission System ("*DWAC*") as specified in the Conversion Notice, registered in the name of each such holder or its designee, for the number of Conversion Shares to which such holder shall be entitled. Notwithstanding the foregoing to the contrary, the Company or its Transfer Agent shall only be required to issue and deliver the Conversion Shares to DTC on a holder's behalf via DWAC if (i) the Conversion Shares may be issued without restrictive legends and (ii) the Company and the Transfer Agent are participating in DTC through the DWAC system. If all of the conditions set forth in clauses (i) and (ii) above are not satisfied, the Company shall deliver physical certificates to each such holder or its designee. If the number of shares of Series A-1 Preferred represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series A-1 Preferred being converted, then the Company shall, as soon as practicable and in no event later than five (5) business days after receipt of the Preferred Stock Certificate(s) and at the Company's expense, issue and deliver to the applicable holder a new Preferred Stock Certificate representing the number of shares of Series A-1 Preferred not converted.

(iv) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the number of Conversion Shares to be issued upon conversion, the Company shall cause its Transfer Agent to promptly issue to the holder the number of Conversion Shares that is not disputed and shall submit the arithmetic calculations to the holder via electronic mail or facsimile as soon as possible, but in no event later than two (2) business days after receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the arithmetic calculation of the number of Conversion Shares to be issued within two (2) business days of such disputed arithmetic calculation being submitted to the holder, then the Company shall, within two (2) business days, submit via electronic mail or facsimile the disputed arithmetic calculation of the number of Conversion Shares to be issued to the Company's independent, outside accountant (the "*Accountant*"). The Company shall cause the Accountant to perform the calculations and notify the Company and the holder of the results no later than five (5) business days from the time it receives the disputed calculations. The Accountant's calculation shall be binding upon all parties absent manifest error. The reasonable expenses of such Accountant in making such determination shall be paid by the Company, in the event the holder's calculation was correct, or by the holder, in the event the Company's calculation was correct, or equally by the Company and the holder in the event that neither the Company's or the holder's calculation was correct. The period of time in which the Company is required to effect conversions or redemptions under this Certificate of Designations shall be tolled with respect to the subject conversion or redemption pending resolution of any dispute by the Company made in good faith and in accordance with this Section 5(c)(iv).

(v) Record Holder. The person or persons entitled to receive Conversion Shares shall be treated for all purposes as the record holder or holders of such shares of Series A-1 Preferred on the Conversion Date.

(d) Conversion Price.

(i) The term "Conversion Price" shall mean \$0.20 per share of Common Stock, subject to adjustment under Section 5(e) hereof.

(ii) Notwithstanding the foregoing to the contrary, if during any period (a "*Black-Out Period*"), a holder of Series A-1 Preferred is unable to trade any Conversion Shares immediately because the Company has informed such holder that an existing prospectus cannot be used at that time in the sale or transfer of such Conversion Shares (provided that such postponement, delay, suspension or fact that the prospectus cannot be used is not due to factors solely within the control of the holder of Series A-1 Preferred) such holder of Series A-1 Preferred shall have the option but not the obligation on any Conversion Date within ten (10) trading days following the expiration of the Black-Out Period of using the Conversion Price applicable on such Conversion Date or any Conversion Price selected by such holder of Series A-1 Preferred that would have been applicable had such Conversion Date been at any earlier time during the Black-Out Period.

(e) Adjustments of Conversion Price.

(i) Adjustments for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date hereof, effect a stock split of its outstanding Common Stock, the Conversion Price shall be proportionately decreased. If the Company shall at any time or from time to time after the date hereof, combine its outstanding shares of Common Stock, the Conversion Price shall be proportionately increased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination becomes effective.

(ii) Adjustments for Certain Dividends and Distributions. If the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Price shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that no such adjustment shall be made if the holders of Series A-1 Preferred simultaneously receive (i) a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A-1 Preferred had been converted into Conversion Shares on the date of such event or (ii) a dividend or other distribution of shares of Series A-1 Preferred which are convertible, as of the date of such event, into Conversion Shares as is equal to the number of additional shares of Common Stock being issued with respect to each share of Common Stock in such dividend or distribution.

(iii) Adjustment for Other Dividends and Distributions. If the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Company other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Price shall be made and provision shall be made (by adjustments of the Conversion Price or otherwise) so that the holders of Series A-1 Preferred shall receive upon conversions thereof, in addition to the Conversion Shares receivable thereon, the number of securities of the Company which they would have received had their Series A-1 Preferred been converted into Conversion Shares on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period), giving application to all adjustments called for during such period under this Section 5(e)(iii) with respect to the rights of the holders of the Series A-1 Preferred; *provided, however*, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Conversion Shares issuable upon conversion of the Series A-1 Preferred at any time or from time to time after the date hereof shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(e)(i), (ii) and (iii), or a reorganization, merger, consolidation, or sale of assets provided for in Section 5(e)(v)), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series A-1 Preferred shall have the right thereafter to convert such share of Series A-1 Preferred into the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of Conversion Shares into which such share of Series A-1 Preferred might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustments for Reorganization, Merger, Consolidation or Sales of Assets. If, at any time or from time to time after the date hereof there shall be a capital reorganization of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Section 5(e)(i), (ii) and (iii), or a reclassification, exchange or substitution of shares provided for in Section 5(e)(iv)), or a merger or consolidation of the Company with or into another corporation where the holders of outstanding voting securities prior to such merger or consolidation do not own over fifty percent (50%) of the outstanding voting securities of the merged or consolidated entity, immediately after such merger or consolidation, or the sale of all or substantially all of the Company's properties or assets to any other person (an "*Organic Change*"), then as a part of such Organic Change an appropriate revision to the Conversion Price shall be made if necessary and provision shall be made if necessary (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series A-1 Preferred shall have the right thereafter to convert such share of Series A-1 Preferred into the kind and amount of shares of stock and other securities or property which such holder would have had the right to receive had such holder converted its shares of Series A-1 Preferred immediately prior to the consummation of such Organic Change. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5(e)(v) with respect to the rights of the holders of the Series A-1 Preferred after the Organic Change to the end that the provisions of this Section 5(e)(v) (including any adjustment in the Conversion Price then in effect and the number of shares of stock or other securities deliverable upon conversion of the Series A-1 Preferred) shall be applied after that event in as nearly an equivalent manner as may be practicable.

(vi) Consideration for Stock. In case any shares of Common Stock or Convertible Securities other than the Series A-1 Preferred, or any rights or warrants or options to purchase any such Common Stock or Convertible Securities, shall be issued or sold:

(1) in connection with any merger or consolidation in which the Company is the surviving corporation (other than any consolidation or merger in which the previously outstanding shares of Common Stock of the Company shall be changed to or exchanged for the stock or other securities of another corporation), the amount of consideration therefore shall be deemed to be the fair value, as determined reasonably and in good faith by the Board of Directors of the Company, of such portion of the assets and business of the nonsurviving corporation as such Board may determine to be attributable to such shares of Common Stock, Convertible Securities, rights or warrants or options, as the case may be; or

(2) in the event of any consolidation or merger of the Company in which the Company is not the surviving corporation or in which the previously outstanding shares of Common Stock of the Company shall be changed into or exchanged for the stock or other securities of another corporation, or in the event of any sale of all or substantially all of the assets of the Company for stock or other securities of any corporation, the Company shall be deemed to have issued a number of shares of its Common Stock for stock or securities or other property of the other corporation computed on the basis of the actual exchange ratio on which the transaction was predicated, and for a consideration equal to the fair market value on the date of such transaction of all such stock or securities or other property of the other corporation. If any such calculation results in adjustment of the applicable Conversion Price, or the number of shares of Conversion Shares issuable upon conversion of the Series A-1 Preferred, the determination of the applicable Conversion Price or the number of Conversion Shares issuable upon conversion of the Series A-1 Preferred immediately prior to such merger, consolidation or sale, shall be made after giving effect to such adjustment of the number of Conversion Shares issuable upon conversion of the Series A-1 Preferred. In the event any consideration received by the Company for any securities consists of property other than cash, the fair market value thereof at the time of issuance or as otherwise applicable shall be as determined in good faith by the Board of Directors of the Company. In the event Common Stock is issued with other shares or securities or other assets of the Company for consideration which covers both, the consideration computed as provided in this Section 5(e)(vi) shall be allocated among such securities and assets as determined in good faith by the Board of Directors of the Company.

(vii) Record Date. In case the Company shall take record of the holders of its Common Stock or any other Preferred Stock for the purpose of entitling them to subscribe for or purchase Common Stock or Convertible Securities, then the date of the issue or sale of the shares of Common Stock shall be deemed to be such record date.

(1) No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A-1 Preferred against impairment. In the event a holder shall elect to convert any shares of Series A-1 Preferred as provided herein, the Company cannot refuse conversion based on any claim that such holder or any one associated or affiliated with such holder has been engaged in any violation of law, unless (i) an order from the Securities and Exchange Commission prohibiting such conversion or (ii) an injunction from a court, on notice, restraining and/or adjoining conversion of all or of said shares of Series A-1 Preferred shall have been issued and the Company posts a surety bond for the benefit of such holder in an amount equal to one hundred percent (100%) of the Liquidation Preference Amount of the Series A-1 Preferred such holder has elected to convert, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to such holder in the event it obtains judgment. If the Company is the prevailing party in any legal action or other legal proceeding relating to the Conversion Rights of the holders of the Series A-1 Preferred, then the Company shall be entitled to recover from the holders of Series A-1 Preferred reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the Company may be entitled).

(b) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Price or number of Conversion Shares issuable upon conversion of the Series A-1 Preferred pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series A-1 Preferred a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of the holder of such affected Series A-1 Preferred, at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Price in effect at the time, and the number of Conversion Shares and the amount, if any, of other securities or property which at the time would be received upon the conversion of a share of such Series A-1 Preferred. Notwithstanding the foregoing, the Company shall not be obligated to deliver a certificate unless such certificate would reflect an increase or decrease of at least one percent of such adjusted amount.

(c) Issue Taxes. The Company shall pay any and all issue, stock transfer, documentary stamp and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of the Series A-1 Preferred Stock, Conversion Shares, Dividend Shares or shares of Common Stock or other securities issued on account of Series A-1 Preferred Stock pursuant hereto or certificates representing such shares or securities; *provided, however*, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer of Conversion Shares requested by any holder to a person other than such holder, but only to the extent such transfer taxes exceed the transfer taxes that would have been payable had the Conversion Shares been delivered to such holder.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by electronic mail, by facsimile or three (3) business days following being mailed by certified or registered mail, postage prepaid, return-receipt requested, addressed to the holder of record at its address appearing on the books of the Company. The Company will give written notice to each holder of Series A-1 Preferred at least thirty (30) days prior to the date on which the Company closes its books or takes a record (i) with respect to any dividend or distribution upon the Common Stock, (ii) with respect to any pro rata subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Organic Change, dissolution, liquidation or winding-up and in no event shall such notice be provided to such holder prior to such information being made known to the public. The Company will also give written notice to each holder of Series A-1 Preferred at least twenty (20) days prior to the date on which any Organic Change, dissolution, liquidation or winding-up will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(e) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series A-1 Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to the product of such fraction multiplied by the average of the closing sales price of the Common Stock, as reported on the applicable Trading Market for the five (5) consecutive trading days immediately preceding the Voluntary Conversion Date.

(f) Reservation of Common Stock. The Company shall, so long as any shares of Series A-1 Preferred are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series A-1 Preferred, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series A-1 Preferred then outstanding; *provided*, that the number of shares of Common Stock so reserved shall at no time be less than one hundred percent (100%) of the number of shares of Common Stock for which the shares of Series A-1 Preferred are at any time convertible. The initial number of shares of Common Stock reserved as Conversion Shares and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Series A-1 Preferred based on the number of shares of Series A-1 Preferred held by each holder of record at the time of issuance of the Series A-1 Preferred or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's shares of Series A-1 Preferred, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and which remain allocated to any person or entity which does not hold any shares of Series A-1 Preferred shall be allocated to the remaining holders of Series A-1 Preferred, pro rata based on the number of shares of Series A-1 Preferred then held by such holder.

(g) Retirement of Series A-1 Preferred. Conversion of shares of Series A-1 Preferred shall be deemed to have been effected on the applicable Conversion Date. Upon conversion of only a portion of the number of shares of Series A-1 Preferred represented by a certificate surrendered for conversion, the Company shall issue and deliver to such holder, at the expense of the Company, a new certificate covering the number of shares of Series A-1 Preferred representing the unconverted portion of the certificate so surrendered as required by Section 5(c)(i) or Section 5(c)(ii), as the case may be.

(h) Regulatory Compliance. If any shares of Common Stock to be reserved as Conversion Shares require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

(i) Validity of Shares. All Series A-1 Preferred Stock, Conversion Shares, Dividend Shares and shares of Common Stock or other securities issued on account of Series A-1 Preferred Stock pursuant hereto or certificates representing such shares or securities will, upon issuance by the Company, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto.

6. No Preemptive Rights. Except as provided in Section 5 hereof, no holder of the Series A-1 Preferred shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board of Directors on such terms and for such consideration (to the extent permitted by law), and to such person or persons as the Board of Directors in their absolute discretion may deem advisable.

7. Redemption.

(a) Redemption Option Upon Change of Control. In addition to any other rights of the Company or the holders of Series A-1 Preferred contained herein, simultaneous with the occurrence of a Change of Control (as defined below), the Company, at its option, shall have the right to redeem all or a portion of the outstanding Series A-1 Preferred in cash at a price per share of Series A-1 Preferred equal to one hundred and fifteen percent (115%) of the Liquidation Preference Amount plus all accrued and unpaid dividends (the "*Change of Control Redemption Price*"). Notwithstanding the foregoing to the contrary, the Company may effect a redemption pursuant to this Section 7(a) only if the Company is in material compliance with the terms and conditions of this Certificate of Designations.

(b) "Change of Control". A "*Change of Control*" shall be deemed to have occurred at such time as a third party not affiliated with the Company on the Issuance Date or any holders of the Series A-1 Preferred shall have acquired, in one or a series of related transactions, equity securities of the Company representing more than fifty percent (50%) of the outstanding voting securities of the Company.

(c) Mechanics of Redemption at Option of Company Upon Change of Control. At any time within ten (10) days prior to the consummation of a Change of Control transaction, the Company may elect to redeem, effective immediately prior to the consummation of such Change of Control, all of the Series A-1 Preferred then outstanding by delivering written notice thereof via facsimile and overnight courier ("*Notice of Redemption at Option of Company Upon Change of Control*") to each holder of Series A-1 Preferred, which Notice of Redemption at Option of Company Upon Change of Control shall indicate (i) the number of shares of Series A-1 Preferred that the Company is electing to redeem from such holder and (ii) the Change of Control Redemption Price, as calculated pursuant to Section 7(a) above. The Change of Control Redemption Price shall be paid in cash in accordance with Section 7(a) of this Certificate of Designations. On or prior to the Change of Control, the holders of Series A-1 Preferred shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Notice of Redemption at Option of Company Upon Change of Control. The Company shall deliver the Change of Control Redemption Price immediately prior to or simultaneously with the consummation of the Change of Control; *provided*, that a holder's Preferred Stock Certificates shall have been so delivered to the Company (or an indemnification undertaking with respect to such Preferred Stock Certificates in the event of their loss, theft or destruction). From and after the Change of Control transaction, unless there shall have been a default in payment of the Change of Control Redemption Price, all rights of the holders of Series A-1 Preferred as a holder of such Series A-1 Preferred (except the right to receive the Change of Control Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to any redeemed shares of Series A-1 Preferred, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. Notwithstanding the foregoing to the contrary, nothing contained herein shall limit a holder's ability to convert its shares of Series A-1 Preferred following the receipt of the Notice of Redemption at Option of Company Upon Change of Control and prior to the consummation of the Change of Control transaction.

8. Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. In addition to any other right that a holder of Series A-1 Preferred Stock might have, if, upon the Company's receipt of a Conversion Notice, the Company cannot issue Conversion Shares issuable pursuant to such Conversion Notice because the Company (x) does not have a sufficient number of shares of Common Stock authorized and available or (y) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Conversion Shares to be issued to a holder of Series A-1 Preferred pursuant to a Conversion Notice, then the Company shall issue as many Conversion Shares as it is able to issue in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above and, with respect to the unconverted Series A-1 Preferred, the holder, solely at such holder's option, can elect, within five (5) business days after receipt of notice from the Company thereof to:

(i) if the Company's inability to fully convert Series A-1 Preferred is pursuant to Section 8(a)(v) above, require the Company to issue restricted shares of Common Stock in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above; or

(ii) void its Conversion Notice with respect to all or a portion of the Conversion Shares covered by such Conversion Notice and retain or have returned, as the case may be, the shares of Series A-1 Preferred that were to be converted pursuant to such holder's Conversion Notice (provided that a holder's voiding its Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice).

(b) Mechanics of Fulfilling Holder's Election. The Company shall promptly send via electronic mail or facsimile to a holder of Series A-1 Preferred, upon receipt of electronic mail or facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 8(a) above, a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "*Inability to Fully Convert Notice*"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of Series A-1 Preferred which cannot be converted. Such holder shall notify the Company of its election pursuant to Section 8(a) above by delivering written notice via facsimile to the Company ("*Notice in Response to Inability to Convert*").

(c) Pro-Rata Conversion and Redemption. In the event the Company receives a Conversion Notice from more than one holder of Series A-1 Preferred on the same day and the Company can convert and redeem some, but not all, of the Series A-1 Preferred pursuant to this Section 8, the Company shall convert and redeem from each holder of Series A-1 Preferred electing to have Series A-1 Preferred converted and redeemed at such time an amount equal to such holder's pro-rata amount (based on the number shares of Series A-1 Preferred held by such holder relative to the number shares of Series A-1 Preferred outstanding) of all shares of Series A-1 Preferred being converted and redeemed at such time.

9. Protective Provisions. So long as shares of the Series A-1 Preferred representing at least fifty percent (50%) of the total number of shares of Series A-1 Preferred issued on the Issuance Date remain issued and outstanding, the Company shall not, without obtaining the approval (by vote or written consent) of the holders of more than fifty percent (50%) of the issued and outstanding shares of Series A-1 Preferred:

(a) create, or authorize the creation of, any class or series, or issue, or authorize the issuance of, any shares of capital stock that ranks senior to the Series A-1 Preferred, other than Series C Preferred and Series D Preferred;

(b) sell, lease or otherwise dispose of intellectual property rights owned by or licensed to the Company or any subsidiary of the Company; and

(c) create, or authorize the creation of, or incur, or authorize the incurrence of, any Indebtedness, other than Permitted Indebtedness, or permit any subsidiary to take any such action.

"*Indebtedness*" means (x) any liabilities for borrowed money or amounts owed in excess of \$500,000 (other than trade accounts payable incurred in the ordinary course of business) and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

"*Permitted Indebtedness*" means (x) all indebtedness of the Company outstanding on the Issuance Date or thereafter that does not constitute Indebtedness for purposes of this Section 9; and (y) monies borrowed under credit lines of the Company existing on the Issuance Date in an amount not to exceed \$6.0 million.

10. Vote to Change the Terms of or Issue Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the holders of not less than two-thirds (2/3) of the then outstanding shares of Series A-1 Preferred, shall be required for any change to this Certificate of Designations or the Company's Certificate of Incorporation which would amend, alter, change or repeal, or otherwise adversely affect, any of the powers, designations, preferences and rights of the Series A-1 Preferred; *provided, however*, that any changes to (i) Section 5 hereof, or (ii) Exhibit I hereto shall also require the approval of the majority of the Board of Directors.

11. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the shares of Series A-1 Preferred, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder to the Company (in form and substance satisfactory to the Company) and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date; *provided, however*, the Company shall not be obligated to re-issue Preferred Stock Certificates if the holder contemporaneously requests the Company to convert such shares of Series A-1 Preferred into Common Stock and complies with its obligations to issue Conversion Shares set forth herein.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series A-1 Preferred and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach, the holders of the Series A-1 Preferred shall be entitled, in addition to all other available remedies, to an injunction restraining any breach or the Series A-1 Preferred holders' reasonable perception of a threatened breach by the Company of the provisions of this Certificate of Designations, without the necessity of showing economic loss and without any bond or other security being required.

13. Specific Shall Not Limit General; Construction. No specific provision contained in this Certificate of Designations shall limit or modify any more general provision contained herein. This Certificate of Designation shall be deemed to be jointly drafted by the Company and all initial purchasers of the Series A-1 Preferred and shall not be construed against any person as the drafter hereof.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series A-1 Preferred in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

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IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate and does affirm the foregoing as true this 12th day of November, 2020.

IMAGEWARE SYSTEMS, INC.

By: /s/ Kristin Taylor

Kristin Taylor
Chief Executive Officer

NY 78202036v1

EXHIBIT I

Series A-1 Conversion Schedule

| Conversion Milestone Date | Minimum Conversion Milestone |
|----------------------------------|-------------------------------------|
| 11/1/2020 | 10% |
| 12/1/2020 | 20% |
| 1/1/2021 | 30% |
| 2/1/2021 | 40% |
| 3/1/2021 | 50% |
| 4/1/2021 | 60% |
| 5/1/2021 | 70% |
| 6/1/2021 | 80% |
| 7/1/2021 | 90% |
| 8/1/2021 | 100% |

EXHIBIT II

Conversion Notice

Reference is made to the Amended and Restated Certificate of Designations, Preferences and Rights of the Series A-1 Convertible Preferred Stock ("*Series A-1 Preferred*") of ImageWare Systems, Inc. (the "*Certificate of Designations*"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A-1 Preferred, par value \$0.01 per share (the "*Preferred Shares*"), of ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), indicated below into shares of Common Stock, par value \$0.01 per share (the "*Common Stock*"), of the Company, by tendering the stock certificate(s) representing the share(s) of Series A-1 Preferred specified below as of the date specified below.

Date of Conversion:

Number of shares of Series A-1 Preferred to be converted:

Stock certificate no(s). of Series A-1 Preferred to be converted:

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be issued:

Number of shares of Common Stock beneficially owned or deemed

beneficially owned by the Holder on the Date of Conversion:

Please issue the Common Stock into which the Preferred Shares are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address:

Issue to:

Facsimile Number:

Name of bank/broker due to receive the underlying Common Stock:

Bank/broker's four-digit "DTC" participant number

(obtained from the receiving bank/broker):

Authorization:

By:

Title:

Dated:

AMENDED AND RESTATED
CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF
SERIES C CONVERTIBLE PREFERRED STOCK
OF
IMAGEWARE SYSTEMS, INC.

The undersigned, the Chief Executive Officer of ImageWare Systems, Inc., a Delaware corporation (the “*Company*”), does hereby certify as follows:

WHEREAS, on September 9, 2018, the Board of Directors of the Company (the “*Board of Directors*”) duly adopted a resolution (the “*Original Certificate of Designations of Series C Convertible Preferred Stock*”) creating a series of Preferred Stock designated as the Series C Convertible Preferred Stock; and

WHEREAS, the Board of Directors desires to amend and restate the Original Certificate of Designations of Series C Convertible Preferred Stock.

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors by provisions of the Certificate of Incorporation of the Company (as amended, restated or supplemented, the “*Certificate of Incorporation*”), the Original Certificate of Designations of Series C Convertible Preferred Stock is hereby amended and restated in its entirety to read as follows:

1. Designation and Rank.

(a) The designation of such series of the Preferred Stock shall be the Series C Convertible Preferred Stock, par value \$0.01 per share (the “*Series C Preferred*”). The maximum number of shares of Series C Preferred shall be One Thousand (1,000) shares. The Series C Preferred shall rank senior to the Company’s common stock, par value \$0.01 per share (the “*Common Stock*”), Series A Convertible Preferred Stock (the “*Series A Preferred*”) and, except as provided in Section 1(b) below, to all other classes and series of equity securities of the Company which by their terms do not expressly provide that such equity securities rank senior to or on parity with the Series C Preferred (collectively, “*Junior Stock*”).

(b) The Series C Preferred shall rank junior to the Company’s (i) Series D Convertible Redeemable Preferred Stock (“*Series D Preferred*”) and (ii) Series B Convertible Redeemable Preferred Stock (“*Series B Preferred*”); *provided*, that, with regards to the Series B Preferred, the Series C Preferred shall rank junior solely with respect to (i) dividend rights of the Series B Preferred on the terms expressly provided in paragraph i of Section 4(d) of the Certificate of Incorporation as in effect as of the date hereof (as defined below) and (ii) distribution rights of the Series B Preferred upon a liquidation, dissolution or winding up provided in paragraph ii of Section 4(d) of the Certificate of Incorporation as in effect as of the date hereof; *provided, however*, that nothing in the Series B Preferred shall have any effect on the rights of the Series C Preferred with respect to rights on redemption or conversion. The date of original issuance of the Series C Preferred is referred to herein as the “*Issuance Date*”.

2. Dividends.

(a) Payment of Dividends.

(i) The holders of record of shares of Series C Preferred shall be entitled to receive, and the Company shall be required to declare and pay, out of any assets at the time legally available therefor, cumulative dividends at the Specified Rate per share per annum, commencing on the date hereof and payable quarterly in arrears on each of March 31, June 30, September 30 and December 31 (each, a “*Dividend Payment Date*”), at the option of the Company in cash or through the issuance of shares of Common Stock. Dividends on each outstanding share of Series C Preferred will accrue whether or not such dividends have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. In the event that the Company elects (or is deemed to have elected) to pay dividends in shares of Common Stock, the number of shares of Common Stock to be issued to each applicable holder shall be determined by dividing the total dividend then being paid to such holder in shares of Common Stock by the Price Per Share (as defined below) as of the applicable Dividend Payment Date, and rounding up to the nearest whole share (the “*Dividend Shares*”). With respect to any Dividend Payment Date, to the extent that dividends on the shares of Series C Preferred are not declared and paid in cash on any such Dividend Payment Date, the Company shall be deemed to have elected to declare and pay dividends with respect to such Dividend Payment Date through the issuance of Dividend Shares on such Dividend Payment Date. If the Company shall elect to declare and pay dividends hereunder in a form that consists of a combination of cash and an issuance of Dividend Shares, each holder of the Series C Preferred shall receive the same proportion of cash and Dividend Shares. As used herein, “*Price Per Share*” means, with respect to a share of Common Stock, the VWAP (as defined below) for the five (5) Trading Days (as defined below) immediately preceding the applicable Dividend Payment Date.

“*Specified Rate*” means (i) in the event the Company elects to pay a dividend payable on any Dividend Payment Date in cash, the cumulative dividend rate of eight percent (8%) of the Stated Value (as defined in Section 4 hereof) per share per annum, and (ii) in the event the Company elects, or is deemed to have elected, to pay a dividend payable on any Dividend Payment Date in Dividend Shares, the cumulative dividend rate of ten percent (10%) of the Stated Value per share per annum.

“*VWAP*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (defined below), the daily volume weighted average price of the Common Stock for such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on any Trading Market and if prices for the Common Stock are then reported on the OTC Bulletin Board or in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the daily mean between the closing bid and asked quotations per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Majority Holders (as defined below) and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“*Trading Market*” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQX or OTCQB (or any successors to any of the foregoing).

“*Trading Day*” means a day on which the principal Trading Market is open for trading.

“*Majority Holders*” means, as of any date of determination, the holder or holders of more than fifty percent (50%) of the total number of issued and outstanding shares of Series C Preferred as of such date.

(ii) The Company will: (a) prepare and file with the Securities and Exchange Commission (the “SEC”), within thirty (30) days after the date hereof, a Form S-3 (or, if such form is not available to the Company, a Form S-1) to register under the Securities Act of 1933, as amended (the “*Securities Act*”), the resale, by the holders of shares of Series C Preferred, of any Conversion Shares (as defined below) and Dividend Shares issuable hereunder and not otherwise eligible for resale under Rule 144 promulgated under the Securities Act (“*Rule 144*”), without volume or manner-of-sale restrictions or current public information requirements (the “*Registration Statement*”); (b) use its best efforts to cause the Registration Statement to become effective as soon as practicable after such filing; (c) use its best efforts to cause the Registration Statement to remain effective at all times thereafter until the earlier of (i) the date as of which such holders of Series C Preferred may sell all of such Conversion Shares and/or Dividend Shares without restriction pursuant to Rule 144, without volume or manner-of-sale restrictions or current public information requirements, and (ii) the date when all of the Conversion Shares and Dividend Shares registered thereunder have been disposed of by such holders of Series C Preferred; and (d) prepare and file with the SEC such amendments and supplements to the Registration Statement (including documents filed pursuant to the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), and incorporated by reference into the Registration Statement) and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the period specified in this sentence above.

(b) In the event of a Voluntary Conversion (as defined in [Section 5\(a\)](#) below) or Mandatory Conversion (as defined in [Section 5\(b\)](#) below), all accrued but unpaid dividends on the Series C Preferred being converted shall be payable, at the election of the Company, in cash or shares of Common Stock within five (5) business days after the Voluntary Conversion Date (as defined in [Section 5\(c\)\(i\)](#) below) or Mandatory Conversion Date (as defined in [Section 5\(c\)\(ii\)](#) below), as applicable. In the event of an Exchange Transaction (as defined in [Section 9](#) below) all accrued but unpaid dividends on the Series C Preferred being converted shall be payable into shares of Series D Preferred within five (5) business days after the Exchange Date (as defined in [Section 9\(b\)](#) below) in accordance with the terms of the Exchange Transaction.

(c) So long as any shares of Series C Preferred are outstanding, the Company shall not, and shall not permit any subsidiary of the Company or any other Person (as defined below) directly or indirectly controlled by the Company to, declare, pay or set apart for payment any dividend or make any distribution (as defined below) on or with respect to the Common Stock, the Series A Preferred or any other Junior Stock, except that (i) the Company may pay dividends on the Series A Preferred at the “Specified Rate” (as defined in the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of ImageWare Systems, Inc. (the “*Series A Certificate*”) as in effect on the date hereof) on the terms expressly set forth in Section 2 of the Series A Certificate as in effect on the date hereof, and (ii) the Company may pay dividends on the Common Stock solely in shares of Common Stock. “*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.

(d) In the event of a Liquidation Event (as defined below) or a Deemed Liquidation Event (as defined below), all accrued and unpaid dividends on the Series C Preferred shall be payable in cash on the day immediately preceding the date of payment of the Liquidation Preference Amount payable to the holders of Series C Preferred, in accordance with [Section 4](#) below. In the event of the Company’s exercise of its optional redemption right set forth in [Section 7\(b\)](#) below, all accrued and unpaid dividends on the Series C Preferred shall be payable in cash on the day immediately preceding the date of such redemption.

(e) For purposes hereof, unless the context otherwise requires, “distribution” shall mean the transfer of cash, property, securities, indebtedness, obligations or any other thing of value, whether by way of dividend or otherwise, on or with respect to, or the purchase, redemption, retirement or other acquisition of, shares of the Company (other than repurchases of Common Stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase or upon the cashless exercise of options held by employees or consultants) for cash, property, securities, indebtedness, obligations or any other thing of value.

3. Voting Rights.

On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series C Preferred shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series C Preferred held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter, or if no record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as provided by law or by Sections 10 and 11 below, holders of Series C Preferred shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

4. Liquidation, Dissolution, Winding-Up or Distribution.

(a) In the event of the liquidation, dissolution, winding up of the affairs of the Company or any other event that causes the Company to make a distribution (as such term is used in Section 2(e) above), whether voluntary or involuntary (each, a “*Liquidation Event*”) or a Deemed Liquidation Event, the holders of shares of the Series C Preferred then outstanding shall be entitled to receive, out of the assets of the Company available for distribution to its stockholders, before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock, an amount equal to the greater of (i) \$10,000 per share (such amount, subject to appropriate adjustment in the event of any stock split, combination or other similar recapitalization affecting the shares of Series C Preferred, the “*Stated Value*”) plus all accrued and unpaid dividends, and (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 5 immediately prior to such Liquidation Event or Deemed Liquidation Event (the amount payable pursuant to the foregoing is referred to herein as the “*Liquidation Preference Amount*”). If the assets of the Company are not sufficient to pay in full the Liquidation Preference Amount payable to the holders of outstanding shares of Series C Preferred and any other series of Preferred Stock ranking on a parity with the Series C Preferred as to distribution rights upon a Liquidation Event or Deemed Liquidation Event (“*Parity Stock*”), then all of said assets will be distributed among the holders of the Series C Preferred and the holders of the Parity Stock, if any, ratably in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The payment with respect to each outstanding fractional share of Series C Preferred shall be equal to a ratably proportionate amount of the payment with respect to each whole outstanding share of Series C Preferred. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined reasonably and in good faith by the Board of Directors) or a combination thereof; *provided*, that, in the case of a payment consisting of a combination of cash and property, the holders of the Series C Preferred and the holders of any Parity Stock shall each receive the same proportion of cash and property; and *provided, further*; that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series C Preferred has been paid in cash the full Liquidation Preference Amount to which such holder is entitled, as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series C Preferred will not be entitled to any further participation on account of such shares in any distribution of the assets of the Company.

(b) Written notice of any Liquidation Event or Deemed Liquidation Event, stating a payment date and the place where the distributable amounts shall be payable, shall, to the extent possible, be given by mail, postage prepaid, no less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series C Preferred at their respective addresses as recorded on the books of the Company.

(c) Nothing contained in this Section 4 shall limit the right of the holder of any shares of Series C Preferred to convert such shares of Series C Preferred pursuant to and in accordance with Section 5 hereof.

5. Conversion.

(a) Voluntary Conversion. At any time on or after the date hereof, the holder of any shares of Series C Preferred may, at such holder's option, elect to convert (a "*Voluntary Conversion*") all or any portion of the shares of Series C Preferred held by such holder into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the Stated Value of the shares of Series C Preferred being converted, divided by (ii) the Conversion Price (as defined in Section 5(d) below) in effect as of the date the holder delivers to the Company its notice of election to convert (the "*Conversion Shares*"). In the event the Company issues a notice of redemption pursuant to Section 7 hereof, the rights of the holders of Series C Preferred to elect a Voluntary Conversion pursuant to this Section 5(a) ("*Conversion Rights*") shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for all shares of Series C Preferred shall continue until the redemption price is paid in full. In the event of such a redemption, the Company shall provide to each holder of shares of Series C Preferred notice of such redemption, which notice shall (i) be given at least fifteen (15) days prior to the termination of the Conversion Rights and (ii) state the amount per share of Series C Preferred that will be paid or distributed on such redemption.

(b) Mandatory Conversion. If (i) the Common Stock is registered pursuant to Section 12(b) or (g) under the Exchange Act; (ii) there are sufficient authorized but unissued shares of Common Stock (which have not otherwise been reserved or committed for issuance) to permit the issuance of all Conversion Shares issuable upon conversion of all outstanding shares of Series C Preferred; (iii) upon issuance, the Conversion Shares will be either (A) covered by an effective registration statement under the Securities Act, which is then available for the immediate resale of such Conversion Shares by the recipients thereof, and the Board of Directors reasonably believes that such effectiveness will continue uninterrupted for the foreseeable future, or (B) freely tradable without restriction pursuant to Rule 144 promulgated under the Securities Act without volume or manner-of-sale restrictions or current public information requirements, as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected holders; and (iv) the VWAP of the Common Stock is at least \$3.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for a period of twenty (20) consecutive Trading Days ending on the Trading Day immediately preceding the day on which the Company delivers the Mandatory Conversion Notice (as defined below), then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert (a "*Mandatory Conversion*") all, but not less than all, of the issued and outstanding shares of Series C Preferred into Conversion Shares.

(c) Mechanics of Conversion. Conversions of Series C Preferred shall be conducted in the following manner:

(i) Voluntary Conversion. To convert Series C Preferred into Conversion Shares on any date (the "*Voluntary Conversion Date*"), the holder thereof shall transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m., New York time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the "*Conversion Notice*"), to the Company. As soon as practicable following such Voluntary Conversion Date, the holder shall surrender to a common carrier for delivery to the Company the original certificates representing the shares of Series C Preferred being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the "*Preferred Stock Certificates*") and the originally executed Conversion Notice.

(ii) Mandatory Conversion. In the event the Company elects to convert outstanding shares of Series C Preferred into Conversion Shares pursuant to Section 5(b) above, the Company shall give written notice (the “*Mandatory Conversion Notice*”) to all holders of the Series C Preferred of its intention to require the conversion of all of the shares of Series C Preferred. The Mandatory Conversion Notice shall set forth the number of Series C Preferred being converted (which shall be all, and not less than all, issued and outstanding shares of Series C Preferred), the date on which such conversion shall be effective (the “*Mandatory Conversion Date*”), and shall be given to the holders of the Series C Preferred not less than fifteen (15) days prior to the Mandatory Conversion Date. The Mandatory Conversion Notice shall be delivered to each holder at its address as it appears on the stock transfer books of the Company. In order to receive the Conversion Shares into which the Series C Preferred is convertible pursuant to Section 5(b), each holder of the Series C Preferred shall surrender to the Company at the place designated in the Mandatory Conversion Notice the Preferred Stock Certificate(s) representing the shares of Series C Preferred owned by such holder. Upon the Mandatory Conversion Date, such converted Series C Preferred shall no longer be deemed to be outstanding, and all rights of the holder with respect to such shares shall immediately terminate, except the right to receive (x) the shares of Common Stock into which the shares of Series C Preferred are convertible pursuant to Section 5(b), (y) all accrued and unpaid dividends on such shares of Series C Preferred pursuant to Section 2(b), and (z) any cash in lieu of a fractional share of Common Stock pursuant to Section 2(j).

(iii) Company’s Response. Upon receipt by the Company of a copy of the fully executed Conversion Notice or upon giving a Mandatory Conversion Notice, the Company or its designated transfer agent (the “*Transfer Agent*”), as applicable, shall within five (5) business days following the date of receipt by the Company of a copy of the fully executed Conversion Notice or the Mandatory Conversion Date, as the case may be, issue and deliver to the Depository Trust Company (“*DTC*”) account on each applicable holder’s behalf via the Deposit Withdrawal Agent Commission System (“*DWAC*”) as specified in the Conversion Notice or, in the case of a Mandatory Conversion, as otherwise provided to the Company or the Transfer Agent by (or on behalf of) a holder, registered in the name of each such holder or its designee, for the number of Conversion Shares to which such holder shall be entitled. Notwithstanding the foregoing to the contrary, the Company or its Transfer Agent shall only be required to issue and deliver the Conversion Shares to DTC on a holder’s behalf via DWAC if (i) the Conversion Shares may be issued without restrictive legends and (ii) the Company and the Transfer Agent are participating in DTC through the DWAC system. If any of the conditions set forth in clauses (i) and (ii) above are not satisfied, the Company shall deliver physical certificates to each such holder or its designee. In the case of a Voluntary Conversion, if the number of shares of Series C Preferred represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series C Preferred being converted, then the Company shall, as soon as practicable and in no event later than five (5) business days after receipt of the Preferred Stock Certificate(s) and at the Company’s expense, issue and deliver to the applicable holder a new Preferred Stock Certificate representing the number of shares of Series C Preferred not converted. For purposes of this Section 5(e)(iii), the term “Conversion Shares” shall include any shares of Common Stock which the Company elects to issue, pursuant to Section 2(b), as payment of accrued and unpaid dividends on shares of Series C Preferred being converted.

(iv) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the number of Conversion Shares to be issued upon conversion, the Company shall cause its Transfer Agent to promptly issue to the holder the number of Conversion Shares that is not disputed and shall submit the arithmetic calculations to the holder via electronic mail or facsimile as soon as possible, but in no event later than two (2) business days after receipt of such holder’s Conversion Notice. If such holder and the Company are unable to agree upon the arithmetic calculation of the number of Conversion Shares to be issued within two (2) business days of such disputed arithmetic calculation being submitted to the holder, then the Company shall, within two (2) business days, submit via electronic mail or facsimile the disputed arithmetic calculation of the number of Conversion Shares to be issued to the Company’s independent, outside accountant (the “*Accountant*”). The Company shall cause the Accountant to perform the calculations and notify the Company and the holder of the results no later than five (5) business days from the time it receives the disputed calculations. The Accountant’s calculation shall be binding upon all parties absent manifest error. The reasonable expenses of such Accountant in making such determination shall be paid by the Company. The period of time in which the Company is required to effect conversions under this Certificate of Designations shall be tolled with respect to the subject conversion pending resolution of any dispute by the Company made in good faith and in accordance with this Section 5(e)(iv).

(v) Record Holder. The person or persons entitled to receive Conversion Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares as of the close of business on the Voluntary Conversion Date or Mandatory Conversion Date, as applicable.

(d) Conversion Price.

(i) The term “*Conversion Price*” shall mean \$1.00 per share, subject to adjustment under Section 5(e) hereof.

(ii) Notwithstanding the foregoing to the contrary, if during any period (a “*Black-Out Period*”), a holder of Series C Preferred is unable to trade any Conversion Shares immediately because the Company has informed such holder that an existing prospectus cannot be used at that time in the sale or transfer of such Conversion Shares (provided that such postponement, delay, suspension or fact that the prospectus cannot be used is not due to factors solely within the control of the holder of Series C Preferred) such holder of Series C Preferred shall have the option but not the obligation on any Voluntary Conversion Date or Mandatory Conversion Date, as applicable, within ten (10) Trading Days following the expiration of the Black-Out Period of using the Conversion Price applicable on such Voluntary Conversion Date or Mandatory Conversion Date, as applicable, or any Conversion Price selected by such holder of Series C Preferred that would have been applicable had such Voluntary Conversion Date or Mandatory Conversion Date, as applicable, been at any earlier time during the Black-Out Period.

(e) Adjustments of Conversion Price.

(i) Adjustments for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date hereof, effect a stock split of its outstanding Common Stock, the Conversion Price shall be proportionately decreased. If the Company shall at any time or from time to time after the date hereof, combine its outstanding shares of Common Stock, the Conversion Price shall be proportionately increased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination becomes effective.

(ii) Adjustments for Certain Dividends and Distributions. If the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Price shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that no such adjustment shall be made if the holders of Series C Preferred simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series C Preferred had been converted into Conversion Shares on the date of such event.

(iii) Adjustment for Other Dividends and Distributions. If, subject to Section 2(c), the Company shall at any time or from time to time after the date hereof, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities, cash, indebtedness, or other property (other than a dividend or distribution of shares of Common Stock referred to in Section 5(e)(ii)), then, and in each event, on the same date on which holders of Common Stock receive such dividend or other distribution, the holders of Series C Preferred shall receive the number or amount of securities, cash, indebtedness, or other property which they would have received had their Series C Preferred been converted into Conversion Shares immediately prior to such event.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Conversion Shares issuable upon conversion of the Series C Preferred at any time or from time to time after the date hereof shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(e)(i) and (ii), an Organic Change (as defined below) provided for in Section 5(e)(v) or a Liquidation Event or Deemed Liquidation Event), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series C Preferred shall have the right thereafter to convert such share of Series C Preferred into the kind and amount of shares of stock and other securities receivable upon such reclassification, exchange, substitution or other change, by holders of the number of Conversion Shares into which such share of Series C Preferred might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustments for Organic Changes. If at any time or from time to time after the date hereof there shall be a capital reorganization, merger or consolidation of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Sections 5(e)(i) and (ii), or a reclassification, exchange, substitution or change of shares provided for in Section 5(e)(iv), or a Liquidation Event or Deemed Liquidation Event), and the Company is not the surviving, acquiring or resulting entity in any such merger, consolidation or other reorganization (any such merger, consolidation or other reorganization, a “*Organic Change*”), then lawful and adequate provision shall be made so that each share of Series C Preferred outstanding immediately prior to the consummation or effectiveness of such Organic Change shall be converted into, or exchanged for, a security of the surviving, acquiring or resulting entity of such Organic Change having preferences, rights, and privileges that are equivalent to such share of Series C Preferred (any such security, a “*New Security*”), except that in lieu of being able to convert into shares of Common Stock or shares of common stock of the surviving, acquiring or resulting entity of such Organic Change, the holders of such New Securities shall thereafter be entitled to receive upon conversion of such New Securities the shares of capital stock, securities, cash, assets or other property to which a holder of the number of shares of Common Stock into which a share of Series C Preferred would have been convertible immediately prior to such Organic Change would have been entitled to receive upon the consummation or effectiveness of such Organic Change. In any such case, appropriate provisions shall be made with respect to the rights of the holders of such New Security to the end that the provisions of this Section 5 (including, without limitation, provisions for adjustment of the Conversion Price) shall thereafter be applicable, as nearly as may be, with respect to any shares of capital stock, securities, cash, assets or other property to be deliverable thereafter upon the conversion of such New Security.

(f) No Impairment. Subject to Section 9 hereof, the Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series C Preferred against impairment. In the event a holder shall elect to convert any shares of Series C Preferred as provided herein, the Company cannot refuse conversion based on any claim that such holder or any one associated or affiliated with such holder has been engaged in any violation of law, unless (i) an order from the Securities and Exchange Commission prohibiting such conversion or (ii) an injunction from a court, on notice, restraining and/or enjoining conversion of all or of said shares of Series C Preferred shall have been issued and the Company posts a surety bond for the benefit of such holder in an amount equal to one hundred percent (100%) of the Liquidation Preference Amount of the Series C Preferred such holder has elected to convert, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to such holder in the event it obtains judgment.

(g) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Price or number of Conversion Shares issuable upon conversion of the Series C Preferred pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series C Preferred a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of any holder of Series C Preferred at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Price in effect at the time, and the number of Conversion Shares and the amount, if any, of other shares of capital stock, securities, cash, assets or other property which at the time would be received upon the conversion of a share of Series C Preferred.

(h) Issue Taxes. The Company shall pay any and all issue, stock transfer, documentary stamp and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of the Series C Preferred, Conversion Shares, Dividend Shares or shares of Common Stock or other securities issued on account of Series C Preferred pursuant hereto or certificates representing such shares or securities; *provided, however,* that the Company shall not be obligated to pay any transfer taxes resulting from any transfer of Conversion Shares requested by any holder to a person other than such holder, but only to the extent such transfer taxes exceed the transfer taxes that would have been payable had the Conversion Shares been delivered to such holder.

(i) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by electronic mail, by facsimile or three (3) business days following being mailed by certified or registered mail, postage prepaid, return-receipt requested, addressed to the holder of record at its address appearing on the books of the Company. The Company will give written notice to each holder of Series C Preferred at least thirty (30) days prior to the date on which the Company closes its books or takes a record (i) with respect to any dividend or distribution upon the Common Stock, (ii) with respect to any pro rata subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Organic Change, Liquidation Event or Change of Control and in no event shall such notice be provided to such holder prior to such information being made known to the public. The Company will also give written notice to each holder of Series C Preferred at least twenty (20) days prior to the date on which any Organic Change, Liquidation Event or Change of Control will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(j) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series C Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to the product of such fraction multiplied by the average of the closing sales price of the Common Stock, as reported on the applicable Trading Market for the five (5) consecutive Trading Days immediately preceding the Voluntary Conversion Date or Mandatory Conversion Date, as applicable.

(k) Reservation of Common Stock. The Company shall, so long as any shares of Series C Preferred are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series C Preferred and paying dividends on the Series C Preferred (assuming the Company elects to pay all dividends in shares of Common Stock), such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series C Preferred then outstanding and payment of dividends hereunder (assuming the Company elects to pay all dividends in shares of Common Stock); *provided,* that the number of shares of Common Stock so reserved shall at no time be less than one hundred percent (100%) of the number of shares of Common Stock for which the shares of Series C Preferred are at any time convertible. The initial number of shares of Common Stock reserved as Conversion Shares and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Series C Preferred based on the number of shares of Series C Preferred held by each holder of record at the time of issuance of the Series C Preferred or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's shares of Series C Preferred, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and which remain allocated to any Person which does not hold any shares of Series C Preferred shall be allocated to the remaining holders of Series C Preferred, pro rata based on the number of shares of Series C Preferred then held by such holder. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Series C Preferred and payment of dividends on the Series C Preferred (assuming the Company elects to pay all dividends in shares of Common Stock), the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(l) Retirement of Series C Preferred. Conversion of shares of Series C Preferred shall be deemed to have been effected on the Voluntary Conversion Date or Mandatory Conversion Date, as applicable. In the case of a Voluntary Conversion, upon conversion of only a portion of the number of shares of Series C Preferred represented by a certificate surrendered for conversion, the Company shall issue and deliver to such holder, at the expense of the Company, a new certificate covering the number of shares of Series C Preferred representing the unconverted portion of the certificate so surrendered as required by Section 5(c)(i).

(m) Regulatory Compliance. If any shares of Common Stock to be reserved as Conversion Shares or Dividend Shares require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

(n) Validity of Shares. All Series C Preferred, Conversion Shares, Dividend Shares and shares of Common Stock or other securities issued on account of Series C Preferred pursuant hereto or certificates representing such shares or securities will, upon issuance by the Company, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto.

6. No Preemptive Rights. Except as provided in Section 5 hereof, no holder of the Series C Preferred shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board of Directors on such terms (subject to Section 10 hereof) and for such consideration (to the extent permitted by law), and to such person or persons as the Board of Directors in their absolute discretion may deem advisable.

7. Redemption.

(a) Redemption at Option of Holders. At any time and from time to time from and after the third (3rd) anniversary of the Issuance Date, or in the event of the consummation of a Change of Control (as defined in Section 7(c) below), if any shares of Series C Preferred are outstanding, then each holder of Series C Preferred shall have the right (the "*Holder Redemption Right*"), at such holder's option, to require the Company to redeem all or any portion of such holder's shares of Series C Preferred at the Liquidation Preference Amount per share of Series C Preferred, plus an amount equal to all accrued but unpaid dividends, if any, on the Holder Redemption Date (as defined below) (such price, the "*Holder Redemption Price*"), which Holder Redemption Price shall be paid in cash.

(b) Redemption Option Upon Change of Control. In addition to any other rights of the Company or the holders of Series C Preferred contained herein, simultaneous with the occurrence of a Change of Control, the Company, at its option, shall have the right to redeem all, but not less than all, of the outstanding Series C Preferred in cash at a price per share of Series C Preferred equal to one hundred fifteen percent (115%) of the Liquidation Preference Amount plus all accrued and unpaid dividends, if any, as of the date of delivery of the Notice of Redemption at Option of Company Upon Change of Control (as defined below) (the "*Change of Control Redemption Price*"). Notwithstanding the foregoing to the contrary, the Company may effect a redemption pursuant to this Section 7(b) only if the Company is in material compliance with the terms and conditions of this Certificate of Designations.

(c) Change of Control. "*Change of Control*" shall mean any of the following occurring after the date hereof:

(i) a sale, conveyance or disposition of all or substantially all of the assets of the Company and any direct and/or indirect subsidiaries of the Company, taken as a whole (including by or through the sale, conveyance or other disposition of the capital stock of, or reorganization, merger, share exchange, consolidation or other business combination involving, any direct and/or indirect subsidiary or subsidiaries of the Company, if substantially all of the assets of the Company and any direct and/or indirect subsidiaries of the Company, taken as a whole, are held by such subsidiary or subsidiaries);

(ii) a reorganization, merger, share exchange, consolidation or other business combination of the Company with or into any other entity in which transaction the Persons who hold more than fifty percent (50%) of the total voting power of the voting securities of the Company (or, if the Company is not the acquiring, resulting or surviving entity in such transaction, such acquiring, resulting or surviving entity) immediately after such transaction are not Persons who, immediately prior to such transaction, held more than fifty percent (50%) of the total voting power of the voting securities of the Company; or

(iii) an acquisition (in one transaction or a series of related transactions) of voting securities of the Company representing in the aggregate more than fifty percent (50%) of the total voting power of the voting securities of the Company (after giving effect to such acquisition) by any Person or “group” (as such term is used in Section 13(d)(3) of the Exchange Act) of Persons; *provided, however*, that any transaction pursuant to which Neal Goldman, on his own and not part of a group, acquires more than fifty percent (50%) of the total voting power of the voting securities of the Company (after giving effect to such acquisition) shall not constitute a “Change of Control” hereunder. Any Change of Control shall be deemed a Liquidation Event hereunder (a “*Deemed Liquidation Event*”), unless such treatment is waived in writing by the Majority Holders, and in the event of any such Deemed Liquidation Event, each holder of Series C Preferred shall receive payment of the Liquidation Preference Amount in accordance with Section 4.

(d) Mechanics of Redemption at Option of Company Upon Change of Control. At any time within ten (10) days prior to the consummation of a Change of Control, the Company may elect to redeem, effective immediately prior to the consummation of such Change of Control, all (but not less than all) of the Series C Preferred then outstanding by delivering written notice thereof via facsimile and overnight courier (“*Notice of Redemption at Option of Company Upon Change of Control*”) to each holder of Series C Preferred, which Notice of Redemption at Option of Company Upon Change of Control shall indicate (i) the number of shares of Series C Preferred that the Company is electing to redeem from such holder (which shall not be less than all of the shares of Series C Preferred owned by such holder) and (ii) the Change of Control Redemption Price, as calculated pursuant to Section 7(b) above. The Change of Control Redemption Price shall be paid in cash in accordance with Section 7(b) of this Certificate of Designations. On or prior to the Change of Control, the holders of Series C Preferred shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Notice of Redemption at Option of Company Upon Change of Control. The Company shall deliver the Change of Control Redemption Price immediately prior to or simultaneously with the consummation of the Change of Control; *provided*, that a holder’s Preferred Stock Certificates shall have been so delivered to the Company (or an indemnification undertaking with respect to such Preferred Stock Certificates in the event of their loss, theft or destruction). From and after the Change of Control transaction, unless there shall have been a default in payment of the Change of Control Redemption Price, all rights of the holders of Series C Preferred as a holder of such Series C Preferred (except the right to receive the Change of Control Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to shares of Series C Preferred, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. Notwithstanding the foregoing to the contrary, nothing contained herein shall limit a holder’s ability to convert its shares of Series C Preferred following the receipt of the Notice of Redemption at Option of Company Upon Change of Control and prior to the consummation of the Change of Control transaction.

(e) Mechanics of Redemption at Option of Holders Upon Change of Control. From and after the third (3rd) anniversary of the Issuance Date or at any time within ten (10) days prior to, or at any time after, the consummation of a Change of Control, any holder of Series C Preferred may elect to exercise its Holder Redemption Right by delivering a written notice (a “*Holder Redemption Notice*”) to the Company of such election. The date upon which such Holder Redemption Notice is delivered to the Company is the “*Holder Redemption Notice Date*”. The Company shall, on the date proposed in the Holder Redemption Notice for the redemption of the Series C Preferred (which date shall not be less than ten (10) days after the Holder Redemption Notice Date, except that if a Holder Redemption Notice is delivered in connection with and prior to the consummation of a Change of Control, then such date shall be the date on which such Change of Control is consummated) (the “*Holder Redemption Date*”), redeem each outstanding share of Series C Preferred set forth in the Holder Redemption Notice at the Holder Redemption Price. The Holder Redemption Price for each share of Series C Preferred owned by a holder who has exercised its Holder Redemption Right shall be paid to such holder by delivering a check or by wire transfer of immediately available funds to such holder at the address or in accordance with the wire transfer instructions (as applicable) of such holder as set forth in the Holder Redemption Notice.

8. Inability to Fully Convert.

(a) Holder's Option if Company Cannot Fully Convert. In addition to any other right that a holder of Series C Preferred might have, if, upon the Company's receipt of a Conversion Notice, the Company cannot issue Conversion Shares issuable pursuant to such Conversion Notice because the Company (x) notwithstanding Section 5(k), does not have a sufficient number of shares of Common Stock authorized and available or (y) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Conversion Shares to be issued to a holder of Series C Preferred pursuant to a Conversion Notice, then the Company shall issue as many Conversion Shares as it is able to issue in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above and, with respect to the unconverted Series C Preferred, the holder, solely at such holder's option, can elect, within five (5) business days after receipt of an Inability to Fully Convert Notice (as defined below) from the Company thereof to:

(i) if the Company's inability to fully convert Series C Preferred is pursuant to Section 8(a)(y) above, require the Company to issue restricted shares of Common Stock in accordance with such holder's Conversion Notice and pursuant to Section 5(c)(iii) above; or

(ii) void its Conversion Notice with respect to all or a portion of the Conversion Shares covered by such Conversion Notice and retain or have returned, as the case may be, the shares of Series C Preferred that were to be converted pursuant to such holder's Conversion Notice (provided that a holder's voiding its Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice).

(b) Mechanics of Fulfilling Holder's Election. The Company shall promptly send via electronic mail or facsimile to a holder of Series C Preferred, upon receipt of electronic mail or facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 8(a) above, a notice of the Company's inability to fully satisfy such holder's Conversion Notice (the "*Inability to Fully Convert Notice*"). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder's Conversion Notice, and (ii) the number of shares of Series C Preferred which cannot be converted. Such holder shall notify the Company of its election pursuant to Section 8(a) above by delivering written notice via electronic mail or facsimile to the Company ("*Notice in Response to Inability to Convert*").

(c) Pro-Rata Conversion. In the event the Company receives a Conversion Notice from more than one holder of Series C Preferred on the same day and the Company can convert some, but not all, of the Series C Preferred pursuant to this Section 8, the Company shall convert from each holder of Series C Preferred electing to have Series C Preferred converted at such time an amount equal to such holder's pro-rata amount (based on the number of shares of Series C Preferred held each such holder who desires to convert such shares on such date relative to the total number of shares of Series C Preferred held by all such holders who desire to convert such shares on such date) of all shares of Series C Preferred being converted at such time.

9. Mandatory Exchange.

(a) If at any time one or more holders of Series C Preferred then holding, in the aggregate, more than fifty percent (50%) of the outstanding shares of Series C Preferred (the “*Initiating Stockholders*”) desire to effectuate an exchange of all (and not less than all) of each such Initiating Stockholder’s shares of Series C Preferred for shares of Series D Preferred (an “*Exchange Transaction*”), then such Initiating Stockholders, in their sole discretion, shall have the right to require that all holders of Series C Preferred shall participate in such Exchange Transaction, on substantially identical terms and conditions to the Initiating Stockholders, as set forth in the definitive documentation with respect to such Exchange Transaction (the “*Exchange Agreement*”), by delivering to the Company, for delivery by the Company to all the other holders of Series C Preferred (collectively, the “*Dragged Holders*”), written notice of such election. Any such notice (a “*Drag-Along Notice*”) shall contain a description of the material terms and conditions of the Exchange Transaction, including the exchange rate for shares of Series C Preferred with respect to shares of Series D Preferred. The Drag-Along Notice shall be delivered promptly (but in no event later than five (5) business days prior to the Exchange Date) by the Company to each Dragged Holder at its address as it appears on the stock transfer books of the Company, in accordance with the Exchange Agreement. In order to receive the Series D Preferred for which the Series C Preferred is being exchanged pursuant to this Section 9, each holder of the Series C Preferred shall surrender to the Company at the place designated in the Drag-Along Notice the Preferred Stock Certificate(s) representing the shares of Series C Preferred owned by such holder. Upon the Exchange Date (defined below), such exchanged Series C Preferred shall no longer be deemed to be outstanding, and all rights of the holder with respect to such shares shall immediately terminate.

(b) In the event a Drag-Along Notice is delivered with respect to an Exchange Transaction, each of the Dragged Holders shall be obligated to do the following with respect to such Exchange Transaction, in each case to the extent applicable: (i) at the closing of such Exchange Transaction (such date, the “*Exchange Date*”), transfer to the Company, on the same terms as the Initiating Stockholders, all of such Dragged Holder’s shares of Series C Preferred free and clear of any liens and duly endorsed for transfer, or accompanied by duly endorsed stock powers; (ii) vote all such Dragged Holder’s shares of Series C Preferred, whether by proxy, voting agreement or otherwise, in favor of the Exchange Transaction; (iii) enter into reasonable and customary agreements with the Company on terms substantially identical to those applicable to the Initiating Stockholders (including with respect to representations, warranties, indemnities, covenants, conditions, escrow agreements and other provisions and agreements relating to such Exchange Transaction as requested by the Company), so long as the terms of any such agreements are not more onerous (on a per share basis) with respect to the Dragged Holders than with respect to the Initiating Stockholders; (iv) use commercially reasonable efforts to obtain any consents necessary for such Dragged Holder to consummate the Exchange Transaction; (v) refrain from directly or indirectly taking (or causing any other Person to take) any action that is prejudicial to or inconsistent with such Exchange Transaction; and (vi) take any and all reasonably necessary action in furtherance of the foregoing, to the extent requested by the Initiating Stockholders or the Board of Directors, at the Company’s sole expense. Each holder of Series C Preferred shall receive, in respect of each share of Series C Preferred exchanged by such holder in any Exchange Transaction, the same form and amount of consideration issued to each other holder of Series C Preferred (including the Initiating Stockholders) in respect of their Series C Preferred.

(c) The Company shall use commercially reasonable efforts to cause its officers, employees, agents, contractors and others under its control to cooperate in any proposed Exchange Transaction and not to take any action which might impede any such Exchange Transaction. Pending the completion of any proposed Exchange Transaction, the Company shall use commercially reasonable efforts to operate in the ordinary course of business and to maintain all existing business relationships in good standing.

10. Protective Provisions. Notwithstanding anything herein to the contrary, the Company shall not, without obtaining the approval (by vote or written consent) of the Majority Holders:

(a) create, or authorize the creation of, any class or series of shares of capital stock or other securities, or issue, or authorize the issuance of, any class or series of shares of capital stock or other securities that ranks senior to or on a parity with the Series C Preferred in any respect, other than the Series D Preferred;

(b) amend, supplement or otherwise modify any class or series of shares of capital stock or other securities so that such shares or securities, after giving effect to such amendment, supplement or modification, rank senior to or on a parity with the Series C Preferred in any respect, other than the Series D Preferred;

(c) issue, or authorize the issuance of, any additional shares of Series B Preferred, or amend, supplement or otherwise modify any of the powers, designations, preferences, privileges, rights, terms or conditions of the Series B Preferred;

(d) permit any subsidiary of the Company to issue any shares of capital stock or other securities, other than issuances of shares of capital stock or other securities to the Company or to a wholly-owned subsidiary of the Company;

(e) sell, lease or otherwise dispose of intellectual property rights owned by or licensed to the Company or any subsidiary of the Company; and

(f) create, or authorize the creation of, or incur, or authorize the incurrence of, any Indebtedness, other than Permitted Indebtedness, or permit any subsidiary of the Company to take any such action.

“*Indebtedness*” means (x) any liabilities for borrowed money or amounts owed in excess of \$500,000 in the aggregate for all such liabilities and amounts (other than trade accounts payable incurred in the ordinary course of business) and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company’s consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

“*Permitted Indebtedness*” means all indebtedness of the Company outstanding on the date hereof and set forth on the “Disclosure Schedule” to the Securities Purchase Agreement, dated as of the Issuance Date, by and among the Company and the initial purchasers of the Series C Preferred.

11. Vote to Change the Terms of or Issue Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the Majority Holders shall be required for any amendment, supplement, modification or other change (including any amendment, supplement, modification, alteration, repeal or other change that is made pursuant to or in connection with a merger, consolidation or other business combination of or involving the Company) to (i) the Company’s Certificate of Incorporation which would amend, alter, change or repeal, or otherwise adversely affect, any of the powers, designations, preferences, privileges and rights of the Series C Preferred or (ii) this Certificate of Designations (including any amendment, supplement, modification or other change that results in the authorization, creation or designation of additional shares of Series C Preferred).

12. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the shares of Series C Preferred, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder to the Company (in form and substance satisfactory to the Company) and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date; provided, however, the Company shall not be obligated to re-issue Preferred Stock Certificates if the holder contemporaneously requests the Company to convert such shares of Series C Preferred into Common Stock and complies with its obligations to issue Conversion Shares set forth herein.

13. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series C Preferred and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach, the holders of the Series C Preferred shall be entitled, in addition to all other available remedies, to an injunction restraining any breach or the Series C Preferred holders' reasonable perception of a threatened breach by the Company of the provisions of this Certificate of Designations, without the necessity of showing economic loss and without any bond or other security being required.

14. Specific Shall Not Limit General Construction. No specific provision contained in this Certificate of Designations shall limit or modify any more general provision contained herein. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all initial purchasers of the Series C Preferred and shall not be construed against any person as the drafter hereof.

15. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series C Preferred in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate of Designations and does affirm the foregoing as true this 12th day of November, 2020.

IMAGEWARE SYSTEMS, INC.

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

EXHIBIT I
IMAGEWARE SYSTEMS, INC.
CONVERSION NOTICE

Reference is made to the Amended and Restated Certificate of Designations, Preferences and Rights of the Series C Convertible Preferred Stock ("*Series C Preferred*") of ImageWare Systems, Inc. (the "*Certificate of Designations*"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series C Preferred, par value \$0.01 per share (the "*Preferred Shares*"), of ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), indicated below into shares of Common Stock, par value \$0.01 per share (the "*Common Stock*"), of the Company, by tendering the stock certificate(s) representing the share(s) of Series C Preferred specified below as of the date specified below.

Date of Conversion:

Number of shares of Series C Preferred to be

converted:

Stock certificate no(s). of Series C Preferred to be

converted:

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be

issued:

Number of shares of Common Stock beneficially owned or deemed beneficially owned by the Holder on the Date of

Conversion:

Please issue the Common Stock into which the shares of Series C Preferred are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address:

Issue to:

Facsimile Number:

Name of bank/broker due to receive the underlying Common Stock:

Bank/broker's four-digit "DTC" participant number (obtained from the receiving bank/broker): **Authorization:**

[SERIES C PREFERRED HOLDER]

By:

Name:
Title:

Dated:

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF
SERIES D CONVERTIBLE PREFERRED STOCK
OF
IMAGEWARE SYSTEMS, INC.**

The undersigned, the Chief Executive Officer of ImageWare Systems, Inc., a Delaware corporation (the “Company”), does hereby certify that, pursuant to the authority conferred upon the Board of Directors of the Company (the “Board”) by the Amended and Restated Certificate of Incorporation of the Company, the following resolution creating a series of Series D Convertible Preferred Stock, was duly adopted on August 21, 2020.

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board by provisions of the Amended and Restated Certificate of Incorporation of the Company (the “Certificate of Incorporation”), there hereby is created out of the Company’s shares of Preferred Stock, par value \$0.01 per share (the “Preferred Stock”) authorized for issuance in Section 4(a) of the Certificate of Incorporation, a series of Preferred Stock, to be named “Series D Convertible Preferred Stock,” consisting of Twenty Six Thousand (26,000) shares, which series shall have the following designations, powers, preferences and relative and other special rights and the following qualifications, limitations and restrictions:

1. Designation and Rank.

(a) The designation of such series of the Preferred Stock shall be the Series D Convertible Preferred Stock, par value \$0.01 per share (the “Series D Preferred”). The maximum number of shares of Series D Preferred shall be Twenty Six Thousand (26,000) shares. The Series D Preferred shall rank senior to the Company’s common stock, par value \$0.01 per share (the “Common Stock”), Series A Convertible Preferred Stock (the “Series A Preferred”), Series A-1 Convertible Preferred Stock (“Series A-1 Preferred”), Series C Convertible Preferred Stock (the “Series C Preferred”) and, except as provided in Section 1(b) below, to all other classes and series of equity securities of the Company which by their terms do not expressly provide that such equity securities rank senior to or on parity with the Series D Preferred (collectively, “Junior Stock”).

(b) The Series D Preferred shall rank junior to the Company’s Series B Convertible Redeemable Preferred Stock (“Series B Preferred”) solely with respect to (i) dividend rights of the Series B Preferred on the terms expressly provided in paragraph i of Section 4(d) of the Certificate of Incorporation as in effect as of the Issuance Date (as defined below) and (ii) distribution rights of the Series B Preferred upon a liquidation, dissolution or winding up provided in paragraph ii of Section 4(d) of the Certificate of Incorporation as in effect as of the Issuance Date; *provided, however*, that nothing in the Series B Preferred shall have any effect on the rights of the Series D Preferred with respect to rights on redemption or conversion. The date of original issuance of the Series D Preferred is referred to herein as the “Issuance Date”.

2. Dividends.

(a) Payment of Dividends.

(i) The holders of record of shares of Series D Preferred shall be entitled to receive, and the Company shall be required to declare and pay, out of any assets at the time legally available therefor, cumulative dividends at the Specified Rate per share per annum, calculated on the basis of actual days elapsed in a year of 360 days, commencing on the Issuance Date and payable quarterly in arrears on each of March 31, June 30, September 30 and December 31 (each, a “Dividend Payment Date”), at the option of the Company in cash or through the issuance of shares of additional Series D Preferred. Dividends on each outstanding share of Series D Preferred will accrue whether or not such dividends have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends. In the event that the Company elects (or is deemed to have elected) to pay dividends in shares of Series D Preferred, the number of shares of Series D Preferred to be issued to each applicable holder shall be determined by dividing the total dividend then being paid to such holder in shares of Series D Preferred by the Liquidation Preference Amount per share of Series D Preferred (as defined below) as of the applicable Dividend Payment Date, and rounding up to the nearest whole share (the “Dividend Shares”). With respect to any Dividend Payment Date, to the extent that dividends on the shares of Series D Preferred are not declared and paid in cash on any such Dividend Payment Date, the Company shall be deemed to have elected to declare and pay dividends with respect to such Dividend Payment Date through the issuance of Dividend Shares on such Dividend Payment Date. If the Company shall elect to declare and pay dividends hereunder in a form that consists of a combination of cash and an issuance of Dividend Shares, each holder of the Series D Preferred shall receive the same proportion of cash and Dividend Shares.

“Specified Rate” means (i) in the event the Company elects to pay a dividend payable on any Dividend Payment Date in cash, the cumulative dividend rate of four percent (4%) of the Stated Value (as defined in Section 4 hereof) per share per annum, and (ii) in the event the Company elects, or is deemed to have elected, to pay a dividend payable on any Dividend Payment Date in Dividend Shares, the cumulative dividend rate of four percent (4%) of the Stated Value per share per annum.

“*VWAP*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market (defined below), the daily volume weighted average price of the Common Stock for such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on any Trading Market and if prices for the Common Stock are then reported on the OTC Bulletin Board or in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the daily mean between the closing bid and asked quotations per share of the Common Stock so reported, or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Majority Holders (as defined below) and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“*Trading Market*” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTCQX or OTCQB (or any successors to any of the foregoing).

“*Trading Day*” means a day on which the principal Trading Market is open for trading.

“*Majority Holders*” means, as of any date of determination, the holder or holders of more than fifty percent (50%) of the total number of issued and outstanding shares of Series D Preferred as of such date.

(ii) The Company will: (a) prepare and file with the Securities and Exchange Commission (the “SEC”), within thirty (30) days after the Issuance Date, a Form S-3 (or, if such form is not available to the Company, a Form S-1) to register under the Securities Act of 1933, as amended (the “*Securities Act*”), the resale, by the holders of shares of Series D Preferred, of any Conversion Shares (as defined below) and Dividend Shares issuable hereunder and not otherwise eligible for resale under Rule 144 promulgated under the Securities Act (“*Rule 144*”), without volume or manner-of-sale restrictions or current public information requirements (the “*Registration Statement*”); (b) use its best efforts to cause the Registration Statement to become effective as soon as practicable after such filing; (c) use its best efforts to cause the Registration Statement to remain effective at all times thereafter until the earlier of (i) the date as of which such holders of Series D Preferred may sell all of such Conversion Shares and/or Dividend Shares without restriction pursuant to Rule 144, without volume or manner-of-sale restrictions or current public information requirements, and (ii) the date when all of the Conversion Shares and Dividend Shares registered thereunder have been disposed of by such holders of Series D Preferred; and (d) prepare and file with the SEC such amendments and supplements to the Registration Statement (including documents filed pursuant to the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), and incorporated by reference into the Registration Statement) and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for the period specified in this sentence above.

(b) In the event of a Voluntary Conversion (as defined in Section 5(a) below) or Mandatory Conversion (as defined in Section 5(b) below), all accrued but unpaid dividends on the Series D Preferred being converted shall be payable, at the election of the Company, in cash or shares of Common Stock within five (5) business days after the Voluntary Conversion Date (as defined in Section 5(c)(i) below) or Mandatory Conversion Date (as defined in Section 5(c)(ii) below), as applicable.

(c) So long as any shares of Series D Preferred are outstanding, the Company shall not, and shall not permit any subsidiary of the Company or any other Person (as defined below) directly or indirectly controlled by the Company to, declare, pay or set apart for payment any dividend or make any distribution (as defined below) on or with respect to the Common Stock, the Series A Preferred, Series A-1 Preferred, Series C Preferred or any other Junior Stock without obtaining the approval (by vote or written consent) of the Majority Holders, except that (i) the Company may pay dividends on the Series A Preferred and Series A-1 Preferred at the “Specified Rate” (as defined in the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of ImageWare Systems, Inc. (the “*Series A Certificate*”) and the Certificate of Designations, Preferences and Rights of Series A-1 Convertible Preferred Stock of ImageWare Systems, Inc. (“*Series A-1 Certificate*”), each as in effect on the Issuance Date) on the terms expressly set forth in Section 2 of the Series A Certificate and Series A-1 Certificate, each as in effect on the Issuance Date, (ii) the Company may pay dividends on the Series C Preferred at the “Specified Rate” (as defined in the Certificate of Designations, Preferences and Rights of Series C Convertible Preferred Stock of ImageWare Systems, Inc. (the “*Series C Certificate*”) as in effect on the Issuance Date) on the terms expressly set forth in Section 2 of the Series C Certificate as in effect on the Issuance Date, and (iii) the Company may pay dividends on the Common Stock solely in shares of Common Stock; *provided*, that the Series D Preferred will participate *pro rata* in any dividends paid on the Series A Preferred, Series A-1 Preferred, Series C Preferred, or Common Stock, pursuant to clauses (i), (ii), or (iii) of this Section 2(c), respectively. “*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.

(d) In the event of a Liquidation Event (as defined below) or a Deemed Liquidation Event (as defined below), all accrued and unpaid dividends on the Series D Preferred shall be payable in cash on the day immediately preceding the date of payment of the Liquidation Preference Amount payable to the holders of Series D Preferred, in accordance with Section 4 below. In the event of the Company’s exercise of its optional redemption right set forth in Section 7(b) below, all accrued and unpaid dividends on the Series D Preferred shall be payable in cash on the day immediately preceding the date of such redemption.

(e) For purposes hereof, unless the context otherwise requires, “distribution” shall mean the transfer of cash, property, securities, indebtedness, obligations or any other thing of value, whether by way of dividend or otherwise, on or with respect to, or the purchase, redemption, retirement or other acquisition of, shares of the Company (other than repurchases of Common Stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase or upon the cashless exercise of options held by employees or consultants) for cash, property, securities, indebtedness, obligations or any other thing of value.

3. Voting Rights.

On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series D Preferred shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series D Preferred held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter, or if no record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as provided by law or by Sections 9 and 10 below, holders of Series D Preferred shall vote together with the holders of Common Stock, and with the holders of any other series of Preferred Stock the terms of which so provide, as a single class.

4. Liquidation, Dissolution, Winding-Up or Distribution.

(a) In the event of the liquidation, dissolution, winding up of the affairs of the Company or any other event that causes the Company to make a distribution (as such term is used in Section 2(e) above), whether voluntary or involuntary (each, a “*Liquidation Event*”) or a Deemed Liquidation Event, the holders of shares of the Series D Preferred then outstanding shall be entitled to receive, out of the assets of the Company available for distribution to its stockholders, before any payment shall be made or any assets distributed to the holders of the Common Stock or any other Junior Stock, an amount equal to the greater of (i) \$1,000 per share (such amount, subject to appropriate adjustment in the event of any stock split, combination or other similar recapitalization affecting the shares of Series D Preferred, the “*Stated Value*”) plus all accrued and unpaid dividends, and (ii) such amount per share as would have been payable had each such share been converted into Common Stock pursuant to Section 5 immediately prior to such Liquidation Event or Deemed Liquidation Event (the amount payable pursuant to the foregoing is referred to herein as the “*Liquidation Preference Amount*”). If the assets of the Company are not sufficient to pay in full the Liquidation Preference Amount payable to the holders of outstanding shares of Series D Preferred, then all of said assets will be distributed among the holders of the Series D Preferred, ratably in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The payment with respect to each outstanding fractional share of Series D Preferred shall be equal to a ratably proportionate amount of the payment with respect to each whole outstanding share of Series D Preferred. All payments for which this Section 4(a) provides shall be in cash, property (valued at its fair market value as determined reasonably and in good faith by the Board) or a combination thereof; *provided*, that, in the case of a payment consisting of a combination of cash and property, the holders of the Series D Preferred shall each receive the same proportion of cash and property; and *provided, further*, that no cash shall be paid to holders of Junior Stock unless each holder of the outstanding shares of Series D Preferred has been paid in cash the full Liquidation Preference Amount to which such holder is entitled, as provided herein. After payment of the full Liquidation Preference Amount to which each holder is entitled, such holders of shares of Series D Preferred will not be entitled to any further participation on account of such shares in any distribution of the assets of the Company.

(b) Written notice of any Liquidation Event or Deemed Liquidation Event, stating a payment date and the place where the distributable amounts shall be payable, shall, to the extent possible, be given by mail, postage prepaid, no less than twenty (20) days prior to the payment date stated therein, to the holders of record of the Series D Preferred at their respective addresses as recorded on the books of the Company.

(c) Nothing contained in this Section 4 shall limit the right of the holder of any shares of Series D Preferred to convert such shares of Series D Preferred pursuant to and in accordance with Section 5 hereof.

5. Conversion.

(a) Voluntary Conversion. At any time that is at least ninety (90) days following the Issuance Date, the holder of any shares of Series D Preferred may, at such holder’s option, elect to convert (a “*Voluntary Conversion*”) all or any portion of the shares of Series D Preferred held by such holder into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the Stated Value of the shares of Series D Preferred being converted, divided by (ii) the Conversion Price (as defined in Section 5(d) below) in effect as of the date the holder delivers to the Company its notice of election to convert (the “*Conversion Shares*”). In the event the Company issues a notice of redemption pursuant to Section 7 hereof, the rights of the holders of Series D Preferred to elect a Voluntary Conversion pursuant to this Section 5(a) (“*Conversion Rights*”) shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for all shares of Series D Preferred shall continue until the redemption price is paid in full. In the event of such a redemption, the Company shall provide to each holder of shares of Series D Preferred notice of such redemption, which notice shall (i) be given at least fifteen (15) days prior to the termination of the Conversion Rights and (ii) state the amount per share of Series D Preferred that will be paid or distributed on such redemption.

(b) Mandatory Conversion. If, on any date that is at least five (5) years following the Issuance Date, (i) the Common Stock is registered pursuant to Section 12(b) or (g) under the Exchange Act; (ii) there are sufficient authorized but unissued shares of Common Stock (which have not otherwise been reserved or committed for issuance) to permit the issuance of all Conversion Shares issuable upon conversion of all outstanding shares of Series D Preferred; (iii) upon issuance, the Conversion Shares will be either (A) covered by an effective registration statement under the Securities Act, which is then available for the immediate resale of such Conversion Shares by the recipients thereof, and the Board reasonably believes that such effectiveness will continue uninterrupted for the foreseeable future, or (B) freely tradable without restriction pursuant to Rule 144 promulgated under the Securities Act without volume or manner-of-sale restrictions or current public information requirements, as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected holders; and (iv) the VWAP of a share of Common Stock is greater than 300% of the Conversion Price (as defined in Section 5(d) below) then in effect (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) for a period of at least twenty (20) Trading Days in any period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the day on which the Company delivers the Mandatory Conversion Notice (as defined below), then the Company shall have the right, subject to the terms and conditions of this Section 5, to convert (a “Mandatory Conversion”) all, but not less than all, of the issued and outstanding shares of Series D Preferred into Conversion Shares.

(c) Mechanics of Conversion. Conversions of Series D Preferred shall be conducted in the following manner:

(i) Voluntary Conversion. To convert Series D Preferred into Conversion Shares on any date (the “Voluntary Conversion Date”), the holder thereof shall transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m., New York time on such date, a copy of a fully executed notice of conversion in the form attached hereto as Exhibit I (the “Conversion Notice”), to the Company. As soon as practicable following such Voluntary Conversion Date, the holder shall surrender to a common carrier for delivery to the Company the original certificates representing the shares of Series D Preferred being converted (or an indemnification undertaking with respect to such shares in the case of their loss, theft or destruction) (the “Preferred Stock Certificates”) and the originally executed Conversion Notice.

(ii) Mandatory Conversion. In the event the Company elects to convert outstanding shares of Series D Preferred into Conversion Shares pursuant to Section 5(b) above, the Company shall give written notice (the “Mandatory Conversion Notice”) to all holders of the Series D Preferred to require the conversion of all of the shares of Series D Preferred. The Mandatory Conversion Notice shall set forth the number of Series D Preferred being converted (which shall be all, and not less than all, issued and outstanding shares of Series D Preferred), the date on which such conversion shall be effective (the “Mandatory Conversion Date”), and shall be given to the holders of the Series D Preferred not less than fifteen (15) days prior to the Mandatory Conversion Date. The Mandatory Conversion Notice shall be delivered to each holder at its address as it appears on the stock transfer books of the Company. In order to receive the Conversion Shares into which the Series D Preferred is convertible pursuant to Section 5(b), each holder of the Series D Preferred shall surrender to the Company at the place designated in the Mandatory Conversion Notice the Preferred Stock Certificate(s) representing the shares of Series D Preferred owned by such holder. Upon the Mandatory Conversion Date, such converted Series D Preferred shall no longer be deemed to be outstanding, and all rights of the holder with respect to such shares shall immediately terminate, except the right to receive (x) the shares of Common Stock into which the shares of Series D Preferred are convertible pursuant to Section 5(b), (y) all accrued and unpaid dividends on such shares of Series D Preferred pursuant to Section 2(b), and (z) any cash in lieu of a fractional share of Common Stock pursuant to Section 5(j).

(iii) Company’s Response. Upon receipt by the Company of a copy of the fully executed Conversion Notice or upon giving a Mandatory Conversion Notice, the Company or its designated transfer agent (the “Transfer Agent”), as applicable, shall within five (5) business days following the date of receipt by the Company of a copy of the fully executed Conversion Notice or the Mandatory Conversion Date, as the case may be, issue and deliver to the Depository Trust Company (“DTC”) account on each applicable holder’s behalf via the Deposit Withdrawal Agent Commission System (“DWAC”) as specified in the Conversion Notice or, in the case of a Mandatory Conversion, as otherwise provided to the Company or the Transfer Agent by (or on behalf of) a holder, registered in the name of each such holder or its designee, for the number of Conversion Shares to which such holder shall be entitled. Notwithstanding the foregoing to the contrary, the Company or its Transfer Agent shall only be required to issue and deliver the Conversion Shares to DTC on a holder’s behalf via DWAC if (i) the Conversion Shares may be issued without restrictive legends and (ii) the Company and the Transfer Agent are participating in DTC through the DWAC system. If any of the conditions set forth in clauses (i) and (ii) above are not satisfied, the Company shall deliver physical certificates to each such holder or its designee. In the case of a Voluntary Conversion, if the number of shares of Series D Preferred represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series D Preferred being converted, then the Company shall, as soon as practicable and in no event later than five (5) business days after receipt of the Preferred Stock Certificate(s) and at the Company’s expense, issue and deliver to the applicable holder a new Preferred Stock Certificate representing the number of shares of Series D Preferred not converted. For purposes of this Section 5(e)(iii), the term “Conversion Shares” shall include any shares of Common Stock which the Company elects to issue, pursuant to Section 2(b), as payment of accrued and unpaid dividends on shares of Series D Preferred being converted.

(iv) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the number of Conversion Shares to be issued upon conversion, the Company shall cause its Transfer Agent to promptly issue to the holder the number of Conversion Shares that is not disputed and shall submit the arithmetic calculations to the holder via electronic mail or facsimile as soon as possible, but in no event later than two (2) business days after receipt of such holder's Conversion Notice. If such holder and the Company are unable to agree upon the arithmetic calculation of the number of Conversion Shares to be issued within two (2) business days of such disputed arithmetic calculation being submitted to the holder, then the Company shall, within two (2) business days, submit via electronic mail or facsimile the disputed arithmetic calculation of the number of Conversion Shares to be issued to the Company's independent, outside accountant (the "Accountant"). The Company shall cause the Accountant to perform the calculations and notify the Company and the holder of the results no later than five (5) business days from the time it receives the disputed calculations. The Accountant's calculation shall be binding upon all parties absent manifest error. The reasonable expenses of such Accountant in making such determination shall be paid by the Company. The period of time in which the Company is required to effect conversions under this Certificate of Designations shall be tolled with respect to the subject conversion pending resolution of any dispute by the Company made in good faith and in accordance with this Section 5(e)(iv).

(v) Record Holder. The person or persons entitled to receive Conversion Shares shall be treated for all purposes as the record holder or holders of such Conversion Shares as of the close of business on the Voluntary Conversion Date or Mandatory Conversion Date, as applicable.

(d) Conversion Price.

(i) The term "Conversion Price" shall mean \$0.0583 per share of Common Stock, subject to adjustment under Section 5(e) hereof.

(ii) Notwithstanding the foregoing to the contrary, if during any period (a "Black-Out Period"), a holder of Series D Preferred is unable to trade any Conversion Shares immediately because the Company has informed such holder that an existing prospectus cannot be used at that time in the sale or transfer of such Conversion Shares (provided that such postponement, delay, suspension or fact that the prospectus cannot be used is not due to factors solely within the control of the holder of Series D Preferred) such holder of Series D Preferred shall have the option but not the obligation on any Voluntary Conversion Date or Mandatory Conversion Date, as applicable, within ten (10) Trading Days following the expiration of the Black-Out Period of using the Conversion Price applicable on such Voluntary Conversion Date or Mandatory Conversion Date, as applicable, or any Conversion Price selected by such holder of Series D Preferred that would have been applicable had such Voluntary Conversion Date or Mandatory Conversion Date, as applicable, been at any earlier time during the Black-Out Period.

(e) Adjustments of Conversion Price.

(i) Adjustments for Stock Splits and Combinations. If the Company shall at any time or from time to time after the Issuance Date, effect a stock split of its outstanding Common Stock, the Conversion Price shall be proportionately decreased. If the Company shall at any time or from time to time after the Issuance Date, combine its outstanding shares of Common Stock, the Conversion Price shall be proportionately increased. Any adjustments under this Section 5(e)(i) shall be effective at the close of business on the date the stock split or combination becomes effective.

(ii) Adjustments for Certain Dividends and Distributions. If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Price shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, plus the number of shares of Common Stock issuable in payment of such dividend or distribution; *provided, however*, that no such adjustment shall be made if the holders of Series D Preferred simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series D Preferred had been converted into Conversion Shares on the date of such event.

(iii) Adjustment for Other Dividends and Distributions. If, subject to Section 2(c), the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities, cash, indebtedness, or other property (other than a dividend or distribution of shares of Common Stock referred to in Section 5(e)(ii)), then, and in each event, on the same date on which holders of Common Stock receive such dividend or other distribution, the holders of Series D Preferred shall receive the number or amount of securities, cash, indebtedness, or other property which they would have received had their Series D Preferred been converted into Conversion Shares immediately prior to such event.

(iv) Adjustments for Reclassification, Exchange or Substitution. If the Conversion Shares issuable upon conversion of the Series D Preferred at any time or from time to time after the Issuance Date shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 5(e)(i) and (ii), an Organic Change (as defined below) provided for in Section 5(e)(v) or a Liquidation Event or Deemed Liquidation Event), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the holder of each share of Series D Preferred shall have the right thereafter to convert such share of Series D Preferred into the kind and amount of shares of stock and other securities receivable upon such reclassification, exchange, substitution or other change, by holders of the number of Conversion Shares into which such share of Series D Preferred might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(v) Adjustments for Organic Changes. If at any time or from time to time after the Issuance Date there shall be a capital reorganization, merger or consolidation of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Sections 5(e)(i) and (ii), or a reclassification, exchange, substitution or change of shares provided for in Section 5(e)(iv), or a Liquidation Event or Deemed Liquidation Event), and the Company is not the surviving, acquiring or resulting entity in any such merger, consolidation or other reorganization (any such merger, consolidation or other reorganization, a “*Organic Change*”), then lawful and adequate provision shall be made so that each share of Series D Preferred outstanding immediately prior to the consummation or effectiveness of such Organic Change shall be converted into, or exchanged for, a security of the surviving, acquiring or resulting entity of such Organic Change having preferences, rights, and privileges that are equivalent to such share of Series D Preferred (any such security, a “*New Security*”), except that in lieu of being able to convert into shares of Common Stock or shares of common stock of the surviving, acquiring or resulting entity of such Organic Change, the holders of such New Securities shall thereafter be entitled to receive upon conversion of such New Securities the shares of capital stock, securities, cash, assets or other property to which a holder of the number of shares of Common Stock into which a share of Series D Preferred would have been convertible immediately prior to such Organic Change would have been entitled to receive upon the consummation or effectiveness of such Organic Change. In any such case, appropriate provisions shall be made with respect to the rights of the holders of such New Security to the end that the provisions of this Section 5 (including, without limitation, provisions for adjustment of the Conversion Price) shall thereafter be applicable, as nearly as may be, with respect to any shares of capital stock, securities, cash, assets or other property to be deliverable thereafter upon the conversion of such New Security.

(f) No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith, assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series D Preferred against impairment. In the event a holder shall elect to convert any shares of Series D Preferred as provided herein, the Company cannot refuse conversion based on any claim that such holder or any one associated or affiliated with such holder has been engaged in any violation of law, unless (i) an order from the Securities and Exchange Commission prohibiting such conversion or (ii) an injunction from a court, on notice, restraining and/or enjoining conversion of all or of said shares of Series D Preferred shall have been issued and the Company posts a surety bond for the benefit of such holder in an amount equal to 100% of the Liquidation Preference Amount of the Series D Preferred such holder has elected to convert, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to such holder in the event it obtains judgment.

(g) Certificates as to Adjustments. Upon occurrence of each adjustment or readjustment of the Conversion Price or number of Conversion Shares issuable upon conversion of the Series D Preferred pursuant to this Section 5, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such Series D Preferred a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon written request of any holder of Series D Preferred at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Price in effect at the time, and the number of Conversion Shares and the amount, if any, of other shares of capital stock, securities, cash, assets or other property which at the time would be received upon the conversion of a share of Series D Preferred.

(h) Issue Taxes. The Company shall pay any and all issue, stock transfer, documentary stamp and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of the Series D Preferred, Conversion Shares, Dividend Shares or shares of Common Stock or other securities issued on account of Series D Preferred pursuant hereto or certificates representing such shares or securities; *provided, however*, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer of Conversion Shares requested by any holder to a person other than such holder, but only to the extent such transfer taxes exceed the transfer taxes that would have been payable had the Conversion Shares been delivered to such holder.

(i) Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by electronic mail, by facsimile or three (3) business days following being mailed by certified or registered mail, postage prepaid, return-receipt requested, addressed to the holder of record at its address appearing on the books of the Company. The Company will give written notice to each holder of Series D Preferred at least thirty (30) days prior to the date on which the Company closes its books or takes a record (i) with respect to any dividend or distribution upon the Common Stock, (ii) with respect to any *pro rata* subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Organic Change, Liquidation Event or Change of Control and in no event shall such notice be provided to such holder prior to such information being made known to the public. The Company will also give written notice to each holder of Series D Preferred at least twenty (20) days prior to the date on which any Organic Change, Liquidation Event or Change of Control will take place and in no event shall such notice be provided to such holder prior to such information being made known to the public.

(j) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series D Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay cash equal to the product of such fraction multiplied by the average of the closing sales price of the Common Stock, as reported on the applicable Trading Market for the five (5) consecutive Trading Days immediately preceding the Voluntary Conversion Date or Mandatory Conversion Date, as applicable.

(k) Reservation of Common Stock. The Company shall, so long as any shares of Series D Preferred are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series D Preferred and paying dividends on the Series D Preferred (assuming the Company elects to pay all dividends in shares of Common Stock), such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series D Preferred then outstanding and payment of dividends hereunder (assuming the Company elects to pay all dividends in shares of Common Stock); *provided*, that the number of shares of Common Stock so reserved shall at no time be less than 100% of the number of shares of Common Stock for which the shares of Series D Preferred are at any time convertible. The initial number of shares of Common Stock reserved as Conversion Shares and each increase in the number of shares so reserved shall be allocated *pro rata* among the holders of the Series D Preferred based on the number of shares of Series D Preferred held by each holder of record at the time of issuance of the Series D Preferred or increase in the number of reserved shares, as the case may be. In the event a holder shall sell or otherwise transfer any of such holder's shares of Series D Preferred, each transferee shall be allocated a *pro rata* portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and which remain allocated to any Person which does not hold any shares of Series D Preferred shall be allocated to the remaining holders of Series D Preferred, *pro rata* based on the number of shares of Series D Preferred then held by such holder. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Series D Preferred and payment of dividends on the Series D Preferred (assuming the Company elects to pay all dividends in shares of Common Stock), the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(l) Retirement of Series D Preferred. Conversion of shares of Series D Preferred shall be deemed to have been effected on the Voluntary Conversion Date or Mandatory Conversion Date, as applicable. In the case of a Voluntary Conversion, upon conversion of only a portion of the number of shares of Series D Preferred represented by a certificate surrendered for conversion, the Company shall issue and deliver to such holder, at the expense of the Company, a new certificate covering the number of shares of Series D Preferred representing the unconverted portion of the certificate so surrendered as required by Section 5(c)(i).

(m) Regulatory Compliance. If any shares of Common Stock to be reserved as Conversion Shares or Dividend Shares require registration or listing with or approval of any governmental authority, stock exchange or other regulatory body under any federal or state law or regulation or otherwise before such shares may be validly issued or delivered upon conversion, the Company shall, at its sole cost and expense, in good faith and as expeditiously as possible, endeavor to secure such registration, listing or approval, as the case may be.

(n) Validity of Shares. All Series D Preferred, Conversion Shares, Dividend Shares and shares of Common Stock or other securities issued on account of Series D Preferred pursuant hereto or certificates representing such shares or securities will, upon issuance by the Company, be validly issued, fully paid and nonassessable and free from all taxes, liens or charges with respect thereto.

6. No Preemptive Rights. Except as provided in Section 2(c) and Section 5 hereof, no holder of the Series D Preferred shall be entitled to rights to subscribe for, purchase or receive any part of any new or additional shares of any class, whether now or hereinafter authorized, or of bonds or debentures, or other evidences of indebtedness convertible into or exchangeable for shares of any class, but all such new or additional shares of any class, or any bond, debentures or other evidences of indebtedness convertible into or exchangeable for shares, may be issued and disposed of by the Board on such terms (subject to Section 9 hereof) and for such consideration (to the extent permitted by law), and to such person or persons as the Board in their absolute discretion may deem advisable.

7. Redemption.

(a) Redemption at Option of Holders. On the fourth (4th) anniversary of the Issuance Date (or the next Trading Day thereafter), or in the event of the consummation of a Change of Control (as defined in Section 7(c) below), if any shares of Series D Preferred are outstanding, then each holder of Series D Preferred shall have the right (the "*Holder Redemption Right*"), at such holder's option, to require the Company to redeem all or any portion of such holder's shares of Series D Preferred at the Liquidation Preference Amount per share of Series D Preferred plus an amount equal to all accrued but unpaid dividends, if any, on the Holder Redemption Date (as defined below) (such price, the "*Holder Redemption Price*"), which Holder Redemption Price shall be paid in cash.

(b) Redemption Option Upon Change of Control. In addition to any other rights of the Company or the holders of Series D Preferred contained herein, simultaneous with the occurrence of a Change of Control, the Company, at its option, shall have the right to redeem all, but not less than all, of the outstanding Series D Preferred in cash at a price per share of Series D Preferred equal to 115% of the Liquidation Preference Amount per share of Series D Preferred plus all accrued and unpaid dividends, if any, as of the date of delivery of the Notice of Redemption at Option of Company Upon Change of Control (as defined below) (the "*Change of Control Redemption Price*"). Notwithstanding the foregoing to the contrary, the Company may effect a redemption pursuant to this Section 7(b) only if the Company is in material compliance with the terms and conditions of this Certificate of Designations.

(c) Change of Control. “*Change of Control*” shall mean any of the following occurring after the Issuance Date:

(i) a sale, conveyance or disposition of all or substantially all of the assets of the Company and any direct and/or indirect subsidiaries of the Company, taken as a whole (including by or through the sale, conveyance or other disposition of the capital stock of, or reorganization, merger, share exchange, consolidation or other business combination involving, any direct and/or indirect subsidiary or subsidiaries of the Company, if substantially all of the assets of the Company and any direct and/or indirect subsidiaries of the Company, taken as a whole, are held by such subsidiary or subsidiaries);

(ii) a reorganization, merger, share exchange, consolidation or other business combination of the Company with or into any other entity in which transaction the Persons who hold more than fifty percent (50%) of the total voting power of the voting securities of the Company (or, if the Company is not the acquiring, resulting or surviving entity in such transaction, such acquiring, resulting or surviving entity) immediately after such transaction are not Persons who, immediately prior to such transaction, held more than fifty percent (50%) of the total voting power of the voting securities of the Company;

(iii) an acquisition (in one transaction or a series of related transactions) of voting securities of the Company representing in the aggregate more than fifty percent (50%) of the total voting power of the voting securities of the Company (after giving effect to such acquisition) by any Person or “group” (as such term is used in Section 13(d)(3) of the Exchange Act) of Persons.

(iv) the initiation, filing or implementation of a Voluntary Insolvency Action with respect to the Company (or any material subsidiary of the Company); or

(v) any liquidation, dissolution, winding up of the affairs of the Company.

Any Change of Control shall be deemed a Liquidation Event hereunder (a “*Deemed Liquidation Event*”), unless such treatment is waived in writing by the Majority Holders, and in the event of any such Deemed Liquidation Event, each holder of Series D Preferred shall receive payment of the Liquidation Preference Amount in accordance with Section 4.

“*Voluntary Insolvency Action*” means, as applied to any Person, for such Person to file any insolvency, or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief in writing under any law relating to relief from debts or the protection of debtors, to consent in writing to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent in writing to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent in writing to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person or to admit in writing in any legal proceeding such Person’s inability to pay its debts generally as they become due.

(d) Mechanics of Redemption at Option of Company Upon Change of Control. At any time within ten (10) days prior to the consummation of a Change of Control, the Company may elect to redeem, effective immediately prior to the consummation of such Change of Control, all (but not less than all) of the Series D Preferred then outstanding by delivering written notice thereof via facsimile and overnight courier (“*Notice of Redemption at Option of Company Upon Change of Control*”) to each holder of Series D Preferred, which Notice of Redemption at Option of Company Upon Change of Control shall indicate (i) the number of shares of Series D Preferred that the Company is electing to redeem from such holder (which shall not be less than all of the shares of Series D Preferred owned by such holder) and (ii) the Change of Control Redemption Price, as calculated pursuant to Section 7(b) above. The Change of Control Redemption Price shall be paid in cash in accordance with Section 7(b) of this Certificate of Designations. On or prior to the Change of Control, the holders of Series D Preferred shall surrender to the Company the certificate or certificates representing such shares, in the manner and at the place designated in the Notice of Redemption at Option of Company Upon Change of Control. The Company shall deliver the Change of Control Redemption Price immediately prior to or simultaneously with the consummation of the Change of Control; *provided*, that a holder’s Preferred Stock Certificates shall have been so delivered to the Company (or an indemnification undertaking with respect to such Preferred Stock Certificates in the event of their loss, theft or destruction). From and after the Change of Control transaction, unless there shall have been a default in payment of the Change of Control Redemption Price, all rights of the holders of Series D Preferred as a holder of such Series D Preferred (except the right to receive the Change of Control Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to shares of Series D Preferred, and such shares shall not thereafter be transferred on the books of the Company or be deemed to be outstanding for any purpose whatsoever. Notwithstanding the foregoing to the contrary, nothing contained herein shall limit a holder’s ability to convert its shares of Series D Preferred following the receipt of the Notice of Redemption at Option of Company Upon Change of Control and prior to the consummation of the Change of Control transaction.

(e) Mechanics of Redemption at Option of Holders Upon Change of Control. On the fourth (4th) anniversary of the Issuance Date (or the next Trading Day thereafter) or at any time within ten (10) days prior to, or at any time after, the consummation of a Change of Control, any holder of Series D Preferred may elect to exercise its Holder Redemption Right by delivering a written notice (a “*Holder Redemption Notice*”) to the Company of such election. The date upon which such Holder Redemption Notice is delivered to the Company is the “*Holder Redemption Notice Date*”. The Company shall, on the date proposed in the Holder Redemption Notice for the redemption of the Series D Preferred (which date shall not be less than ten (10) days after the Holder Redemption Notice Date, except that if a Holder Redemption Notice is delivered in connection with and prior to the consummation of a Change of Control, then such date shall be the date on which such Change of Control is consummated) (the “*Holder Redemption Date*”), redeem each outstanding share of Series D Preferred set forth in the Holder Redemption Notice at the Holder Redemption Price. The Holder Redemption Price for each share of Series D Preferred owned by a holder who has exercised its Holder Redemption Right shall be paid to such holder by delivering a check or by wire transfer of immediately available funds to such holder at the address or in accordance with the wire transfer instructions (as applicable) of such holder as set forth in the Holder Redemption Notice.

8. Inability to Fully Convert.

(a) Holder’s Option if Company Cannot Fully Convert. In addition to any other right that a holder of Series D Preferred might have, if, upon the Company’s receipt of a Conversion Notice, the Company cannot issue Conversion Shares issuable pursuant to such Conversion Notice because the Company (x) notwithstanding Section 5(k), does not have a sufficient number of shares of Common Stock authorized and available or (y) is otherwise prohibited by applicable law or by the rules or regulations of any stock exchange, interdealer quotation system or other self-regulatory organization with jurisdiction over the Company or its securities from issuing all of the Conversion Shares to be issued to a holder of Series D Preferred pursuant to a Conversion Notice, then the Company shall issue as many Conversion Shares as it is able to issue in accordance with such holder’s Conversion Notice and pursuant to Section 5(c)(iii) above and, with respect to the unconverted Series D Preferred, the holder, solely at such holder’s option, can elect, within five (5) business days after receipt of an Inability to Fully Convert Notice (as defined below) from the Company thereof to:

(i) if the Company’s inability to fully convert Series D Preferred is pursuant to Section 8(a)(v) above, require the Company to issue restricted shares of Common Stock in accordance with such holder’s Conversion Notice and pursuant to Section 5(c)(iii) above; or

(ii) void its Conversion Notice with respect to all or a portion of the Conversion Shares covered by such Conversion Notice and retain or have returned, as the case may be, the shares of Series D Preferred that were to be converted pursuant to such holder’s Conversion Notice (provided that a holder’s voiding its Conversion Notice shall not affect the Company’s obligations to make any payments which have accrued prior to the date of such notice).

(b) Mechanics of Fulfilling Holder’s Election. The Company shall promptly send via electronic mail or facsimile to a holder of Series D Preferred, upon receipt of electronic mail or facsimile copy of a Conversion Notice from such holder which cannot be fully satisfied as described in Section 8(a) above, a notice of the Company’s inability to fully satisfy such holder’s Conversion Notice (the “*Inability to Fully Convert Notice*”). Such Inability to Fully Convert Notice shall indicate (i) the reason why the Company is unable to fully satisfy such holder’s Conversion Notice, and (ii) the number of shares of Series D Preferred which cannot be converted. Such holder shall notify the Company of its election pursuant to Section 8(a) above by delivering written notice via electronic mail or facsimile to the Company (“*Notice in Response to Inability to Convert*”).

(c) Pro-Rata Conversion. In the event the Company receives a Conversion Notice from more than one holder of Series D Preferred on the same day and the Company can convert some, but not all, of the Series D Preferred pursuant to this Section 8, the Company shall convert from each holder of Series D Preferred electing to have Series D Preferred converted at such time an amount equal to such holder’s *pro rata* amount (based on the number of shares of Series D Preferred held each such holder who desires to convert such shares on such date relative to the total number of shares of Series D Preferred held by all such holders who desire to convert such shares on such date) of all shares of Series D Preferred being converted at such time.

9. Protective Provisions. Notwithstanding anything herein to the contrary, and in addition to any other vote or approval required under the Company’s Certificate of Incorporation and Bylaws (the “*Bylaws*”), Company shall not (either directly or by amendment, merger, consolidation, or otherwise), without obtaining the approval (by vote or written consent) of the Majority Holders (“*Majority Holder Approval*”):

(a) create, or authorize the creation of, any class or series of shares of capital stock or other securities, or issue, or authorize the issuance of, any class or series of shares of capital stock or other securities that ranks senior to or on a parity with the Series D Preferred in any respect;

(b) amend, supplement or otherwise modify any class or series of shares of capital stock or other securities so that such shares or securities, after giving effect to such amendment, supplement or modification, rank senior to or on a parity with the Series D Preferred in any respect;

(c) issue, or authorize the issuance of, any additional shares of Series B Preferred, or amend, supplement or otherwise modify any of the powers, designations, preferences, privileges, rights, terms or conditions of the Series B Preferred;

(d) permit any subsidiary of the Company to issue any shares of capital stock or other securities, other than issuances of shares of capital stock or other securities to the Company or to a wholly-owned subsidiary of the Company;

(e) sell, lease or otherwise dispose of intellectual property rights owned by or licensed to the Company or any subsidiary of the Company;

(f) create, or authorize the creation of, or incur, or authorize the incurrence of, any Indebtedness, other than Permitted Indebtedness, or permit any subsidiary of the Company to take any such action;

(g) engage in a transaction that would result in a Change of Control;

(h) purchase or redeem, or pay any dividend on, any class of capital stock of the Company prior to the Series D Preferred; and

(i) increase or decrease the size of the Board;

provided, that, for the purposes of this Section 9, Majority Holder Approval will be deemed provided with respect to Sections 9(e), (f) and (g) if the applicable action by the Company is approved by a majority of the Board (which such majority must include each of the Series D Directors); and *provided, further*, that, for the purposes of this Section 9, the following terms shall be defined as follows:

“*Indebtedness*” means (x) any liabilities for borrowed money or amounts owed in excess of \$500,000 in the aggregate for all such liabilities and amounts (other than trade accounts payable incurred in the ordinary course of business) and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company’s consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

“*Permitted Indebtedness*” means all indebtedness of the Company outstanding on the Issuance Date and set forth on the “Disclosure Schedule” to the Securities Purchase Agreement, dated as of the Issuance Date, by and among the Company and the initial purchasers of the Series D Preferred, and shall not include any exchange, repurchase or refinancing of such Indebtedness.

10. Vote to Change the Terms of or Issue Preferred Stock. The affirmative vote at a meeting duly called for such purpose, or the written consent without a meeting, of the Majority Holders shall be required for any amendment, supplement, modification or other change (including any amendment, supplement, modification, alteration, repeal or other change that is made pursuant to or in connection with a merger, consolidation or other business combination of or involving the Company) to (i) the Company’s Certificate of Incorporation, (ii) the Bylaws, or (iii) this Certificate of Designations (including any amendment, supplement, modification or other change that results in the authorization, creation or designation of additional shares of Series D Preferred); *provided*, that, for the purposes of this Section 10, Majority Holder Approval will be deemed provided with respect to clause (ii) if the amendment to the Bylaws by the Company is approved by a majority of the Board (which such majority must include each of the Series D Directors).

11. Lost or Stolen Certificates. Upon receipt by the Company of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing the shares of Series D Preferred, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder to the Company (in form and substance satisfactory to the Company) and, in the case of mutilation, upon surrender and cancellation of the Preferred Stock Certificate(s), the Company shall execute and deliver new Preferred Stock Certificate(s) of like tenor and date; *provided, however*, the Company shall not be obligated to re-issue Preferred Stock Certificates if the holder contemporaneously requests the Company to convert such shares of Series D Preferred into Common Stock and complies with its obligations to issue Conversion Shares set forth herein.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit a holder’s right to pursue actual damages for any failure by the Company to comply with the terms of this Certificate of Designations. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of the Series D Preferred and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach, the holders of the Series D Preferred shall be entitled, in addition to all other available remedies, to an injunction restraining any breach or the Series D Preferred holders’ reasonable perception of a threatened breach by the Company of the provisions of this Certificate of Designations, without the necessity of showing economic loss and without any bond or other security being required.

13. Specific Shall Not Limit General Construction. No specific provision contained in this Certificate of Designations shall limit or modify any more general provision contained herein. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all initial purchasers of the Series D Preferred and shall not be construed against any person as the drafter hereof.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of a holder of Series D Preferred in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Conflicts. If there is any conflict between the terms of this Certificate of Designations and either the (i) Certificate of Incorporation, or (ii) Bylaws, in each case, this Certificate of Designations shall prevail.

IN WITNESS WHEREOF, the undersigned has executed and subscribed this Certificate of Designations and does affirm the foregoing as true this 12th day of November, 2020.

IMAGEWARE SYSTEMS, INC.

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

NY 78177108v6

EXHIBIT I

IMAGEWARE SYSTEMS, INC.

CONVERSION NOTICE

Reference is made to the Certificate of Designations, Preferences and Rights of the Series D Convertible Preferred Stock ("*Series D Preferred*") of ImageWare Systems, Inc. (the "*Certificate of Designations*"). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series D Preferred, par value \$0.01 per share (the "*Preferred Shares*"), of ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), indicated below into shares of Common Stock, par value \$0.01 per share (the "*Common Stock*"), of the Company, by tendering the stock certificate(s) representing the share(s) of Series D Preferred specified below as of the date specified below.

Date of Conversion: _____

Number of shares of Series D Preferred to be converted: _____

Stock certificate no(s). of Series D Preferred to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Number of shares of Common Stock beneficially owned or deemed beneficially owned by the Holder on the Date of Conversion: _____

Please issue the Common Stock into which the shares of Series D Preferred are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address: _____

Issue to: _____

Facsimile Number: _____

Name of bank/broker due to receive the underlying Common Stock: _____

Bank/broker's four-digit "DTC" participant number (obtained from the receiving bank/broker): _____

Authorization:

[SERIES D PREFERRED HOLDER]

By: _____
Name:
Title:

Dated:

Exhibit 10.1
IMAGEWARE SYSTEMS, INC.

AMENDED AND RESTATED CONSULTING AGREEMENT

This Amended and Restated Consulting Agreement (the “Agreement”) is made and entered into effective as of November 13, 2020 (the “Effective Date”), by and between Mr. S. James Miller, Jr. (the “Consultant”) and ImageWare Systems, Inc., a Delaware corporation (the “Company”).

RECITALS

WHEREAS, Consultant and the Company are currently parties to that certain Transition Services Agreement dated March 2, 2020 (the “Current Agreement”) whereby Consultant serves as the Company’s Executive Chairman of the Board;

WHEREAS, in connection with Consultant’s retirement from the Company, the parties desire to transition Consultant from the Executive Chairman of the Board to a full time consulting position to provide certain consulting services to the Company; and

WHEREAS, the parties have mutually agreed to terminate the Current Agreement and enter into this Agreement to govern the consulting relationship between Consultant and the Company.

AGREEMENT

In consideration of the mutual covenants herein contained, the parties agree as follows:

1. Termination of Current Agreement. Upon the Effective Date, the Current Agreement will be terminated in its entirety and this Agreement shall supersede the Current Agreement in all respects. In connection with the termination of the Current Agreement, the Company shall pay to Consultant, on the Effective Date, the following: (i) any unpaid base salary due to Consultant under the Current Agreement for all periods prior to the Effective Date, (ii) all amounts due for accrued and unused vacation through the Effective Date, and (iii) all amounts for reimbursement of all expenses incurred by Consultant in connection with his employment with the Company for all periods prior to the Effective Date, each of which amounts described in clauses (i), (ii) and (iii) above are set forth on Exhibit A and hereby agreed by the parties.

2. Services of Consultant. Subject at all times to the Company’s right to terminate this Agreement, as set forth in Section 4, the Consultant shall provide such consulting and other services from time to time as reasonably requested by the Company’s Chief Executive Officer which are commensurate with Consultant’s skills and experience and be substantially similar to the services Consultant was providing to the Company prior to the date hereof, it being understood that Consultant’s role and responsibilities shall principally be in the areas of sales and business development (the “Services”). Notwithstanding the following, Consultant shall only be required to provide the Services from the Company’s headquarters in San Diego, California or the Consultant’s home residence, at the discretion of the Consultant. The parties agree and acknowledge that, Consultant shall provide Services to the Company from time to time as requested by the Company up to a maximum of sixteen (16) hours per week (the “Hours Cap”) in fulfilling his obligations hereunder. As an independent contractor, Consultant is free to provide services to other entities during the Term as long as Consultant does not violate any of the terms of this Agreement; *provided, however*, during the Term, Consultant shall not provide advisory, consulting or other services to any entity that directly or indirectly competes with the Company. Subject to the Hours Cap, Consultant agrees to attend such meetings as the Chief Executive Officer may reasonably request for proper communication of his advice and consultation. Consultant shall coordinate the furnishing of Consultant’s Services pursuant to this Agreement with the Company in order that such Services can be provided in such a way as to generally conform to the business schedules of the Company, but the method of performance, time of performance, place of performance, hours utilized in such performance, and other details of the manner of performance of Consultant’s services hereunder shall be within the sole discretion of Consultant.

3. Resignation from the Board of Directors. As of the Effective Date, Consultant hereby resigns from the Board of Directors of the Company.

4. Term of Engagement. Subject to Company's right to terminate this Agreement pursuant to this Section 4, the term of Consultant's engagement under this Agreement shall commence on the Effective Date and shall continue for a full five (5) month term (such period being referred to herein as the "Term", and such date, the "Termination Date").

(a) Termination for Breach. Either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within ten (10) days following written notice thereof from the non-breaching party.

(b) Effect of Termination. Upon the expiration or termination of this Agreement for any reason: (i) Consultant will promptly deliver to Company all Consultant Work Product, including all work in progress on any Consultant Work Product not previously delivered to Company, if any; (ii) Consultant will promptly deliver to Company all Confidential Information in Consultant's possession or control; and (iii) Company will pay Consultant any accrued but unpaid fees due and payable to Consultant pursuant to Section 5.

5. Compensation and Benefits.

(a) Consultant shall be paid a monthly consulting fee ("Consulting Fee"), and shall be entitled to certain benefits, each as more particularly set forth in Exhibit A attached hereto and incorporated by reference herein. The Consulting Fee shall be paid on the 1st day of each month following the date of this Agreement (pro-rated for any portion of a month following the Effective Date). The Company shall arrange for all payments due hereunder to be paid automatically, at the times set forth above, through the Company's accounts payable system.

(b) The Company has accrued 787,000 restricted stock units of the Company (the "RSUs") issuable to Consultant. Upon the Effective Date of this Agreement 525,000 RSUs shall be issued by the Company to Consultant and shall become fully vested as of the effective date. The remaining 262,000 unvested RSUs shall terminate and be of no further force and effect.

(c) Consultant and the Company acknowledge and agree that (a) the Company is not required to, and shall not, withhold federal or state income, gross receipts or similar taxes from the Consulting Fee paid to Consultant hereunder and the Company is not otherwise required to comply with any state or federal law concerning the collection of income, gross receipts or similar taxes at the source of payment of wages, (b) the Company is not required under the Federal Unemployment Tax Act or the Federal Insurance Contribution Act to pay or withhold taxes for unemployment compensation or for social security on behalf of Consultant with respect to the Consulting Fee and (c) the Company is not required under the laws of any state to obtain workers' compensation insurance or to make state unemployment compensation contributions on behalf of Consultant.

6. No Authorization to Engage in Management Activities. No provision of this Agreement shall be interpreted to imply such authorization or obligation on the part of the Consultant to have any management responsibilities, authority or activities including planning, organizing, directing, coordinating, and controlling with respect to all or part of the Company, unless such activities are directed by the Chief Executive Officer of the Company.

7. Release. For and in consideration for the agreements of the parties set forth herein, the parties hereto, on each party's own behalf and on behalf such party's successors and assigns (as the case may be, collectively referred to as "Releasor"), hereby releases and forever discharges the other party, its predecessors, successors, corporate affiliates, parent entities and subsidiaries and its officers, directors, agents, representatives, employees, consultants and advisors (as the case may be, collectively referred to as "Releasee"), from any and all claims, counterclaims, demands, debts, actions, causes of action, suits, expenses, costs, attorneys' fees, damages, indemnities, obligations and/or liabilities of any nature whatsoever ("Release"), whether known or unknown, which Releasor ever had, now has or hereafter can, shall or may have against Releasee, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Release, including, but not limited to, the following: (i) all such claims and demands directly or indirectly arising out of or in any way connected with Consultant's employment with the Company and/or its affiliated entities, parents and subsidiaries or the termination of that employment, (ii) all such claims and demands related to salary, bonuses, commissions, restricted stock, unvested stock options or unvested warrants, or any other benefits or compensation which have, are or may be due to Consultant or his beneficiaries from the Company and/or its affiliated entities, parents and subsidiaries, including vacation pay, fringe benefits, expense reimbursements, severance pay and/or any other form of compensation; (iii) any claims arising under any federal, state or local law, statute or ordinance; and (iv) any claims for breach of contract related to Consultant's employment, express or implied, including any claim for breach of any implied covenant of good faith and fair dealing, wrongful discharge, discrimination, harassment, fraud, defamation, intentional tort, emotional distress and negligence. Notwithstanding the foregoing, Releasor does not release any rights or claims against Releasee that may arise under the terms of this Agreement.

Consultant and the Company do not intend to release claims that Consultant may not release as a matter of law, including but not limited to claims for indemnity under California Labor Code Section 2802.

Notwithstanding the foregoing, Consultant is not releasing, and the Release shall not include, any claims by Consultant for indemnification to which Consultant may be entitled as a current or former director or officer of the Company under the Company's certificate of incorporation, bylaws or any indemnification agreement between Consultant and the Company, in each case, as they exist as of the date of this Agreement.

Nothing in this Section 7 shall prohibit Consultant from filing a charge or complaint with a government agency such as but not limited to the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor, the California Department of Fair Employment and Housing, or other applicable state agency. However,

Nothing in this Section 7 shall prohibit or impair Consultant or the Company from complying with all applicable laws, nor shall this Agreement be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

8. Non-Disparagement. Consultant agrees not to make, or cause any other person to make, any public statement that is intended to criticize or disparage the Company, any of its affiliates, or any of their respective officers, managers or directors. The Company agrees to use commercially reasonable efforts to cause its officers and members of its Board of Directors not to intentionally make, or intentionally cause any other person to make, any public statement that is intended to criticize or disparage Consultant. This Section 8 shall not be construed to prohibit any person from responding publicly to incorrect public statements or from making truthful statements when required by law, subpoena, court order, or the like.

9. Prohibited Activities. Without the Company's prior written consent, for a period of two (2) years from the Effective Date, Consultant shall not (i) solicit, directly or indirectly, or cause to be solicited the employment of or employ any person who is now employed by Company (or whose activities are dedicated to the Company); (ii) engage, directly or indirectly, in or with any business that competes directly or indirectly with the business of the Company; or (iii) solicit any current or prospective customer of the Company, the result of which is that the Company's business with such current or prospective customer is harmed.

10. Independent Contractor. At all times during the Term, Consultant shall be an independent contractor of the Company. In no event shall Consultant be deemed to be an employee of the Company, and Consultant shall not at any time be entitled to any employment rights or benefits from the Company or be deemed to be an agent of the Company or have any power to bind or commit the Company or otherwise act on its behalf, other than as specifically set forth on Exhibit A attached hereto. Consultant acknowledges and agrees that, as a non-employee, Consultant is not eligible for any benefits sponsored by the Company or any other benefit from the Company, other than as specifically set forth on Exhibit A attached hereto, and, accordingly, Consultant shall not participate in any pension or welfare benefit plans, programs or arrangements of the Company. Consultant shall not at any time communicate or represent to any third party, or cause or knowingly permit any third-party to assume, that in performing the Consulting Services hereunder, Consultant is an employee, agent or other representative of the Company or has any authority to bind the Company or act on behalf of the Company. Consultant shall be solely responsible for making all of Consultant's applicable tax filings and remittances with respect to amounts paid to Consultant pursuant to this Agreement and shall indemnify and hold harmless the Company and its respective representatives for all claims, damages, costs and liabilities arising from Consultant's failure to do so. It is not the purpose or intention of this Agreement or the parties to create, and the same shall not be construed as creating, any partnership, partnership relation, joint venture, agency, or employment relationship.

11. Confidentiality and Non-Disclosure

(a) Through the performance of the Consulting Services hereunder, Consultant shall have access to confidential and proprietary information of the Company, including some or all of the following documents, materials and information of the Company (collectively the "Confidential Information"): (i) business strategies, corporate opportunities, research, financial and sales data, pricing terms, evaluations, opinions, interpretations and acquisition prospects, (ii) information relating to the identity of customers or their requirements, the identity of key contacts within customers' organizations or within the organization of acquisition prospects, (iii) information about, marketing and production plans or techniques; (iv) customer and supplier lists, prospective customer information, current and anticipated customer requirements, distribution networks, price lists, market studies and business plans; (v) historical and projected sales data, financial data and projections, capital spending budgets and operating budgets; (vi) employee and agent training techniques and materials and personnel files, (vii) research and development plans or results, and (viii) all other non-public information that gives the Company a competitive advantage by virtue of its not being publicly known.

(b) Consultant hereby acknowledges and agrees that the protection of the Confidential Information is necessary to protect and preserve the value of the Company and its business. Accordingly, subject to the terms and conditions of this Section 11, Consultant hereby covenants and agrees that, without the prior written consent of the Company, Consultant shall not directly or indirectly disclose any Confidential Information to any person or entity outside of the Company and shall not use any Confidential Information other than for the purpose of performing the Consulting Services hereunder.

(c) The provisions of Section 11(b) shall not apply to information (i) that is or becomes generally known to, and available for use by, the public other than as a result of the breach of this Agreement or any other obligation that Consultant owes the Company, (ii) that is available to Consultant on a non-confidential basis from a source that is not prohibited from disclosing such information to Consultant by a contractual, legal, or fiduciary obligation to the Company, (iii) that is required to be disclosed by applicable law, or (iv) the disclosure of which by Consultant is reasonably necessary for Consultant to satisfy and perform Consultant's obligations under this Agreement. If Consultant becomes compelled by applicable law or court or arbitrator's order to disclose any Confidential Information, Consultant shall provide the Company with prompt written notice of such requirement so that the Company may seek a protective order or other remedy prior to, and in respect of, such disclosure. If such a protective order or other remedy is not obtained by, or is not available to the Company, then Consultant shall use commercially reasonable efforts to ensure that only the minimum portion of such Confidential Information that is legally required to be disclosed is so disclosed, and Consultant shall use commercially reasonable efforts to obtain assurances that confidential treatment shall be given to such Confidential Information. Company agrees to furnish Consultant with a list of sources prohibited by the Company from disclosing Confidential information.

12. Non-Circumvention. The parties agree that they will work through each other in all circumstances as to third parties which are introduced through the efforts of one of the parties hereto and agree not to circumvent each other in that regard without permission of the other party hereto.

13. Successors.

(a) Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the Company's obligations under this Agreement and agree expressly to perform the Company's obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets (including any parent company to the Company) which executes and delivers the assumption agreement described in this subsection (a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Consultant's Successors. Without the written consent of the Company, Consultant shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. Notwithstanding the foregoing, the terms of this Agreement and all rights of Consultant hereunder shall inure to the benefit of, and be enforceable by, Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

14. Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered (if to the Company, addressed to its Secretary at the Company's principal place of business on a non-holiday weekday between the hours of 9 a.m. and 5 p.m.; if to Consultant, via personal service to his last known residence) or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid.

15. Indemnity. Consultant will defend, indemnify and hold Company harmless from and against all claims, damages, liabilities, losses, expenses and costs (including reasonable fees and expenses of attorneys and other professionals) arising out of or resulting from any breach by Consultant of any of Consultant's covenants in this Agreement.

16. Disclosure of Work Product. Consultant will, as an integral part of the performance of Services, disclose in writing to Company all inventions, products, designs, drawings, notes, documents, information, documentation, improvements, works of authorship, processes, techniques, know-how, algorithms, specifications, biological or chemical specimens or samples, hardware, circuits, computer programs, databases, user interfaces, encoding techniques, and other materials of any kind that Consultant may make, conceive, develop or reduce to practice, alone or jointly with others, in connection with performing Services, or that result from or that are related to such Services, whether or not they are eligible for patent, copyright, mask work, trade secret, trademark or other legal protection (collectively, "Consultant Work Product").

17. Ownership of Consultant Work Product. Consultant and Company agree that, to the fullest extent permitted by applicable law, each item of Consultant Work Product will be a work made for hire owned exclusively by Company. Consultant agrees that all Consultant Work Product will be the sole and exclusive property of Company. Consultant hereby irrevocably transfers and assigns to Company, and agrees to irrevocably transfer and assign to Company, all right, title and interest in and to the Consultant Work Product, including all worldwide patent rights (including patent applications and disclosures), copyright rights, mask work rights, trade secret rights, know-how, and any and all other intellectual property or proprietary rights (collectively, "Intellectual Property Rights") therein. At Company's request and expense, during and after the term of this Agreement, Consultant will assist and cooperate with Company in all respects, and will execute documents, and will take such further acts reasonably requested by Company to enable Company to acquire, transfer, maintain, perfect and enforce its Intellectual Property Rights and other legal protections for the Consultant Work Product. Consultant hereby appoints the officers of Company as Consultant's attorney-in-fact to execute documents on behalf of Consultant for this limited purpose.

18. Miscellaneous Provisions.

(a) Consultant's Legal Fees. The Company shall reimburse Consultant for all legal fees incurred by Consultant in connection with the matters contemplated by this Agreement, not to exceed \$10,000. Any such amounts shall be paid by the Company to Consultant within five business days of the Consultant providing the Company with an invoice from Consultant's legal counsel.

(b) Waiver. No provision of this Agreement may be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Consultant and by an authorized officer of the Company (other than the Consultant). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Entire Agreement; Amendments. This Agreement constitutes the entire and final agreement between the parties with respect to the subject matter hereof and supersedes any and all other written or oral agreements or understandings between the parties. Notwithstanding the foregoing, this Agreement shall not affect any non-disclosure, invention assignment, confidentiality or other agreements executed by the parties governing the termination of Consultant's employment with the Company, which agreements by their terms survive the termination of Consultant's employment with the Company. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the parties

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to choice of law principles.

(e) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(f) Counterparts. This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, and may be delivered by facsimile or other electronic means, but all of which shall be deemed originals and taken together will constitute one and the same Agreement.

(g) Headings. The headings of the Articles and Sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

(h) Construction of Agreement. In the event of a conflict between the text of the Agreement and any summary, description or other information regarding the Agreement, the text of the Agreement shall control.

(i) Survival. Sections 7, 8, 9, 11, 15 and 16 of this Agreement shall survive its termination for any reason.

(j) Cooperation with Investigations. Consultant shall cooperate in good faith in all respects with the Company in connection with any request by Company, its current or former shareholders, officers, directors, or auditors, or a federal or state governmental authority for additional information and documents, or in any governmental investigation, complaint, action or other inquiry.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

COMPANY: IMAGEWARE SYSTEMS, INC.

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

CONSULTANT: /s/ James Miller
S. James Miller, Jr.

[Signature Page to Consultant Agreement]

EXHIBIT A

BENEFITS

I. **Compensation and Benefits.** Consultant's compensation and other benefits under this Agreement shall be as follows and is based on the status change to terminated as of November 12, 2020:

A. \$8,550 gross salary minus standard tax deductions and elected contributions consisting of 401(k), flexible spending account, and portion of spouse medical premium.

B. Unused accrued Paid Time Off balance of 204 hours valued at \$39,314.88.

C. \$767.76 has been paid via ACH on 9/23/20. This represents all outstanding business-related expenses.

D. **Consulting Fee.** The Company shall pay to Consultant a monthly consulting fee (the "**Consulting Fee**") of \$19,000.00 per Month from the Effective Date and thereafter monthly for a period of five full months from the Effective Date. The Consulting Fee shall be paid on the 1st day of each month following the Effective Date (pro-rated for any portion of a month following the Effective Date).

E. **Commission.** In addition to his Consulting Fee, Consultant shall be eligible for a commission equal to 1.00% of all amounts actually paid to the Company resulting from contracts and or purchase orders received by the Company prior to the Termination Date from the Government of Mexico or its prime contractors for products and services from the Company ("**Qualifying Payments**"); *provided, however,* Consultant's entitlement to the foregoing commission or any commission for Qualifying Payments under this Paragraph E. shall only apply to Qualifying Payments actually received by the Company in excess of \$1.7 million; *provided, further,* that the maximum amount of commissions payable hereunder shall not exceed \$228,000; *provided, further,* that Consultant's entitlement to, and the Company's responsibility to pay, the foregoing commission or any commission for Qualifying Payments under this Paragraph E. resulting from contracts or purchase orders received by the Company after the Termination Date shall cease as of the Termination Date.

F. **Expenses.** Consultant shall be solely responsible for all expenses incurred except those incurred at the request of and approved in advance by the Chief Executive Officer. All air travel must be approved prior to travel and such travel will be booked by the Company. All other expenses incurred by Consultant require prior approval by the Chief Executive Officer. The Company will reimburse Consultant for such expenses within thirty (30) days following presentation by Consultant of such accounts and records as the Company reasonably requires for accounting purposes.

G. **Benefits and Insurance.** Consultant's eligibility for Company- sponsored and paid group life, long term disability and accidental death and dismemberment, 401K eligibility and flexible spending account (Ameri-Flex) and related plans shall each terminate on the Effective Date. During the Term, the Company shall provide to Consultant and his dependents the same level of health insurance benefits (medical, dental and vision) through COBRA continuation paid for by the Company. The Company's obligation to provide the coverage referred to in the preceding sentence shall terminate for Consultant and his dependents as of the Termination Date.

H. **Disability.** In the event that Consultant suffers from a permanent disability during the Term of this Agreement, then Consultant shall continue to receive his Consulting Fee for the entire remainder of the Term. In such event, Consultant's service to the Company hereunder shall continue after his disability and until the first to occur of (a) the Termination Date, or (b) the death of Consultant; and during such period of time, Consultant shall not be entitled to payment of expenses or benefits specified in Section above.

DEBT EXCHANGE AGREEMENT

This **DEBT EXCHANGE AGREEMENT** (this "*Agreement*") is made as of November 12, 2020 (the "*Agreement Date*") between ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), and Neal Goldman (the "*Lender*").

RECITALS

WHEREAS, Lender made certain loans to the Company in the aggregate amount of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00) (the "*Principal*"), as evidenced by that certain Convertible Promissory Note dated July 24, 2020 (the "*Note*"), whereby Company promised to pay Lender the Principal, together with interest thereon at a rate equal to five percent (5%) per annum, on or before October 14, 2020;

WHEREAS, the current outstanding principal amount of the indebtedness, together with accrued interest, under the Note is Four Hundred Sixty Three Thousand One Hundred Thirty Dollars and Thirty-Seven Cents (\$463,130.137) (the "*Accrued Loan Amount*");

WHEREAS, the Company has requested that the Lender exchanges fifty percent (50%) of the Accrued Loan Amount, totalling Two Hundred Thirty-One Thousand Five Hundred Sixty-Five Dollars and Nineteen Cents (\$231,565.19) (the "*Indebtedness*") for shares of newly created Series D Convertible Preferred Stock of the Company ("*Preferred Stock*"), as described below (the "*Exchange*");

WHEREAS, the Exchange is being made in connection with, and as a condition to, that certain Securities Purchase Agreement dated September 28, 2020 (the "*Purchase Agreement*") by and between the Company and certain accredited investors as set forth on the signature page thereto (collectively, the "*Purchasers*"); and

WHEREAS, the Lender is willing to consummate the Exchange upon the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

AGREEMENT1. Terms and Conditions of Exchange.1.1. Exchange of Indebtedness.

1.1.1. Exchange. Subject to the terms and conditions hereinafter set forth, the Lender hereby agrees to consummate the Exchange, pursuant to which the entire Indebtedness shall be exchanged for that number of shares of Preferred Stock (the "*Shares*") equal to the total Indebtedness divided by One Thousand and 00/100 Dollars (\$1,000.00), which amount represents the liquidation preference of each Share of Preferred Stock ("*Liquidation Preference*"). Each Share shall be convertible into that number of shares of Common Stock ("*Conversion Shares*") as determined by the conversion ratio set forth in the Certificate of Designations of Rights, Powers, and Privileges of the Series D Convertible Preferred Stock (the "*Series D Certificate*"). Subject to the terms and conditions contained herein, the Lender hereby subscribes for, and agrees to accept from the Company, the Shares, in lieu of repayment of all amounts due under the terms of the Note, and the Company agrees to issue the Shares to the Lender. Against delivery of the Shares issued in the name of the Lender in accordance with the procedures more fully described in Section 1.2(ii) below, the Lender shall deliver to the Company that certain Satisfaction and Release, substantially in the form attached hereto as Exhibit A (the "*Satisfaction and Release*").

1.1.2. Closing. Subject to the terms and conditions of this Agreement, the consummation of the Exchange shall take place at a closing (the “*Closing*”) to be held on November 12, 2020 (the “*Closing Date*”), or such later date as agreed to by the parties in writing.

1.2. Deliveries by the Lender. At the Closing, the Lender shall:

- (i) Date, complete and execute this Agreement and the Satisfaction and Release; and
- (ii) Deliver to the Company settlement instructions (“*Settlement Instructions*”), which Settlement Instructions shall set forth the Lender’s election to receive the Shares in the form of book-entry notations in the records of the Company’s transfer agent.

1.3. Deliveries by the Company. At the Closing, the Company shall:

- (i) Date, complete and execute this Agreement; and
- (ii) Within three (3) business days following the Closing, provide for book-entry notations in the records of the Company’s transfer agent, in either case, according to the Settlement Instructions, which Settlement Instructions shall be delivered to the Company’s transfer agent at the Closing, together with irrevocable instructions to the transfer agent directing the transfer agent to issue duly authorized, validly issued, fully paid and non-assessable Shares to the Lender.

2. Representations and Warranties of the Lender. The Lender hereby represents and warrants to the Company as set forth below.

2.1. Investment Risk. The Lender recognizes that the investment in the Shares in connection with the Exchange involves a high degree of risk. Such risks include, but are not limited to, the risks associated with the business of the Company, as more particularly set forth in the Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and other filings (“*Company SEC Filings*”) with the U.S. Securities and Exchange Commission (“*SEC*”) which have been made available to the Lender.

2.2. Accredited Investor. The Lender is an “accredited investor” as defined under Rule 501 of Regulation D, promulgated under the Securities Act of 1933, as amended (the “*Securities Act*”).

2.3. Investment Purposes. The Lender will be acquiring the Shares for its 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, the Lender does not covenant to hold the Series D Preferred for any minimum period of time except as set forth in the Series D Certificate.

2.3. Investigation. The Lender has been afforded the opportunity to ask questions of and receive answers from the Company regarding the terms and conditions of this Agreement and about the Company; *provided, however*, that no investigation performed by or on behalf of the Lender regarding the terms and conditions of this Agreement or the Company shall limit or otherwise affect its right to rely on the representations and warranties of the Company contained herein.

2.4. Professional Counsel. To the extent necessary, the Lender has obtained professional advice regarding the investment, tax and legal merits and consequences of the Exchange and an investment in the Shares and the Conversion Shares issuable upon conversion of the Shares (together with the Shares, the “*Exchange Securities*”).

2.5. Authority, Enforceability. The Lender represents that the Lender has full power and authority (corporate, statutory and otherwise) to execute and deliver this Agreement and to consummate the Exchange. Subject to the foregoing and once executed and delivered by all parties hereto, this Agreement will constitute the legal, valid and binding obligation of the Lender, enforceable against the Lender in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. If the Lender is a corporation, partnership, limited liability company, trust, employee benefit plan, individual retirement account, or other tax-exempt entity, it is authorized and qualified to invest in the Company and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Lender as set forth below.

3.1. Organization and Qualification. The Company has been duly incorporated and is validly existing and in good standing under the laws of the state of Delaware, with full corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted, and is duly registered and qualified to conduct its business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification, except where the failure to register or qualify would not have a Material Adverse Effect. For purposes of this Agreement, "*Material Adverse Effect*" shall mean 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 Shares or the Conversion Shares, (ii) the ability of the Company to perform its obligations under this Agreement or (iii) the condition (financial or otherwise) or in the earnings, prospects, business, properties, surplus or results of operations of the Company.

3.2. Power and Authorization. The Shares have been duly authorized by all necessary corporate action and, when paid for or issued in accordance with the terms hereof, the Shares shall be validly issued and outstanding, fully paid and nonassessable, free and clear of all liens, encumbrances and rights of refusal of any kind.

3.3. Valid and Enforceable Agreement: No Violations. This Agreement has been duly authorized, validly executed and delivered on behalf of the Company and is a valid and binding agreement and obligation of the Company enforceable against the Company 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 the Company 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.

3.4. Compliance. The Company has complied and will comply with all applicable federal and state securities laws in connection with the offer, issuance and delivery of the Exchange Securities hereunder.

3.5. Representations and Warranties from Purchase Agreement. Each of the representations and warranties as set forth in Article 3 of the Purchase Agreement are hereby incorporated by reference herein and made a part hereof, as if the same were specifically set forth in this Section 3.

4. Conditions to Obligations of the Lender. The Lender's obligation to consummate the Exchange is subject to the fulfillment of the following conditions at the Closing:

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

(b) The representations and warranties made by the Company in Article 3 hereof shall be true and correct as of date of the Closing and all covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the date hereof shall have been performed or complied with in all material respects; and

(c) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the Exchange and the consummation of the other transactions contemplated by this Agreement.

Notwithstanding the forgoing, for the avoidance of doubt, the effectiveness of this Agreement (and the Exchange) is contingent upon the consummation of the transactions contemplated by the Purchase Agreement (the "*Closing*"), and in the event that the Closing does not occur, or the Purchase Agreement is terminated, this Agreement shall be *void ab initio*.

5. Conditions to the Obligations of the Company. The Company's obligation to consummate the Exchange is subject to the fulfillment of the following conditions at the Closing:

(a) The Lender shall have executed and delivered this Agreement and the Satisfaction and Release;

(b) The representations and warranties made by the Lender in Article 2 hereof shall be true and correct as of date of the Closing and all covenants, agreements and conditions contained in this Agreement to be performed by the Lender on or prior to the date hereof shall have been performed or complied with in all material respects; and

(c) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the Exchange and the consummation of the other transactions contemplated by this Agreement.

6. Miscellaneous.

6.1. Except as otherwise provided herein, this Agreement shall not be changed, modified or amended except by a writing signed by the parties, and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be charged. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

6.2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, legal representatives, successors and assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of the other party. Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement.

6.3. This Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

6.4. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California, United States, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in San Diego County, California. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in San Diego County, California for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of this Agreement), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding.

6.5. The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

6.6. The Lender and Company agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

6.7. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

[Signature page follows]

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

“COMPANY”

ImageWare Systems, Inc.

By: */s/ Kristin Taylor*

Kristin Taylor
Chief Executive Officer

“LENDER”

By: */s/ Neal Goldman*

Neal Goldman

EXHIBIT A
SATISFACTION AND RELEASE

This SATISFACTION AND RELEASE ("*Agreement*") is made and entered into this 12th day of November, 2020 (the "*Effective Date*"), between ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), and Neal Goldman, an individual (the "*Lender*"). Capitalized terms not otherwise defined herein shall have the meanings as set forth in that certain Debt Exchange Agreement dated November 12, 2020 (the "*Exchange Agreement*"), by and between the Company and Lender.

RECITALS

WHEREAS, the Lender and the Company are parties to the Exchange Agreement pursuant to which Lender has agreed to exchange Indebtedness for the Shares, as more particularly set forth in the Exchange Agreement;

WHEREAS, the Lender desires to accept the Shares in full and complete satisfaction of the Indebtedness and to fully release and discharge the Company for all matters and liabilities, including from any and all further liability for repayment of such Indebtedness under the terms of the Note;

WHEREAS, the Lender desires to accept the remainder of the Accrued Loan Amount as a cash payment;

WHEREAS, the Exchange Agreement provides that, at Closing, the Lender execute and deliver this Agreement to the Company;

WHEREAS, the Company is currently negotiating an equity financing with certain accredited investors (the "*Financing*"), and the execution of this Agreement by Lender is a condition to consummation of the Financing; and

WHEREAS, this Agreement is the Satisfaction and Release that is referred to in, and as is attached as Exhibit A to, the Exchange Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

AGREEMENT

1. Confirmation of Indebtedness. The (i) principal amount of the Indebtedness, including interest accruing thereon as of the Effective Date is Two Hundred Thirty-One Thousand Five Hundred Sixty-Five Dollars and Nineteen Cents (\$231,565.19), and (ii) the remaining Accrued Loan Amount, including interest accruing thereon as of the Effective Date is Two Hundred Thirty-One Thousand Five Hundred Sixty-Five Dollars and Nineteen Cents (\$231,565.19) (the "*Cash Payment*"), which such amounts the Lender agrees constitutes all amounts due to the Lender under the Note.

2. Delivery of Preferred Stock in Satisfaction of Indebtedness. Subject to the terms and conditions set forth in the Exchange Agreement, the Company agrees to deliver (i) that number of Shares calculated in accordance with Section 1.1.1 of the Exchange Agreement ("*Settlement Shares*") in accordance with the Settlement Instructions delivered by the Lender to the Company on the Effective Date, and (ii) the Cash Payment in the form of a wire transfer of immediately available funds to an account designated by the Lender in writing to the Company on the Closing Date.

3. Satisfaction of Indebtedness. Upon delivery of the Settlement Shares and the Cash Payment by the Company in accordance with the Settlement Instructions and wiring instructions, (a) the Lender hereby agrees that the Accrued Loan Amount will have been fully and completely satisfied; and (b) the Lender hereby compromises, settles, resolves, discharges, and releases the Company, and its successors and assigns, from the payment of any and all amounts due and payable to the Lender under the Note.

4. Termination. This Agreement shall automatically be terminated and be of no further force and effect if the Company does not consummate the Financing on or before November 30, 2020.

5. Entire Agreement. This Agreement, the Exchange Agreement, and the Note represents the entire agreement between the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations, or warranties, written or oral, except as set forth herein.

6. Amendment or Waiver. Every right and remedy provided herein shall be cumulative with every other right and remedy, whether conferred herein, at law, or in equity and may be enforced concurrently herewith, and no waiver by any party of the performance of any obligation by the other shall be construed as a waiver of the same or any other default then, theretofore, or thereafter occurring or existing. At any time prior to the Closing Date, this Agreement may be amended by a writing signed by all parties hereto, respecting any of the terms contained herein, and any term or condition of this Agreement may be waived or the time for performance thereof may be extended by a writing signed by the party or parties for whose benefit the provision is intended.

7. Form of Execution; Counterparts. A valid and binding signature hereto or on any notice or demand hereunder may be in the form of a manual execution or a true copy made by photographic, xerographic, conversion to portable document format (pdf), or other electronic process that provides similar copy accuracy of a document that has been executed, and such electronic signature or record shall be of the same legal effect, validity, or enforceability as a manually executed signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall be but a single instrument.

8. Governing Law. This Agreement shall be governed by, and construed under and in accordance with, the laws of the state of California without giving effect to any choice or conflict of law provision or rule (whether the state of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of California.

9. Interpretation. Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

[The Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

“COMPANY”

ImageWare Systems, Inc.

By: */s/ Kristin Taylor*

Kristin Taylor
Chief Executive Officer

“LENDER”

By: */s/ Neal Goldman*

Neal Goldman

DEBT EXCHANGE AGREEMENT

This **DEBT EXCHANGE AGREEMENT** (this "*Agreement*") is made as of November 12, 2020 (the "*Agreement Date*") between ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), and S. James Miller (the "*Lender*").

RECITALS

WHEREAS, Lender made certain loans to the Company in the aggregate amount of One Hundred Dollars and No Cents (\$100,000.00) (the "*Principal*"), as evidenced by that certain Convertible Promissory Note dated July 24, 2020 (the "*Note*"), whereby Company promised to pay Lender the Principal, together with interest thereon at a rate equal to five percent (5%) per annum, on or before October 14, 2020;

WHEREAS, the current outstanding principal amount of the indebtedness, together with accrued interest, under the Note is One Hundred Two Thousand Eight Hundred Eight Dollars and Twenty-Two Cents (\$102,808.22), (the "*Indebtedness*");

WHEREAS, the Company has requested that the Lender exchanges the Indebtedness, for shares of newly created Series D Convertible Preferred Stock of the Company ("*Preferred Stock*"), as described below (the "*Exchange*");

WHEREAS, the Exchange is being in connection with, and as a condition to, that certain Securities Purchase Agreement dated September 23, 2020 (the "*Purchase Agreement*") by and between the Company and certain accredited investors as set forth on the signature page thereto (collectively, the "*Purchasers*"); and

WHEREAS, the Lender is willing to consummate the Exchange upon the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

AGREEMENT1. Terms and Conditions of Exchange.1.1. Exchange of Indebtedness.

1.1.1. Exchange. Subject to the terms and conditions hereinafter set forth, the Lender hereby agrees to consummate the Exchange, pursuant to which the entire Indebtedness shall be exchanged for that number of shares of Preferred Stock (the "*Shares*") equal to the total Indebtedness divided by One Thousand and 00/100 Dollars (\$1,000.00), which amount represents the liquidation preference of each Share of Preferred Stock ("*Liquidation Preference*"). Each Share shall be convertible into that number of shares of Common Stock ("*Conversion Shares*") as determined by the conversion ratio set forth in the Certificate of Designations of Rights, Powers, and Privileges of the Series D Convertible Preferred Stock (the "*Series D Certificate*"). Subject to the terms and conditions contained herein, the Lender hereby subscribes for, and agrees to accept from the Company, the Shares, in lieu of repayment of all amounts due under the terms of the Note, and the Company agrees to issue the Shares to the Lender. Against delivery of the Shares issued in the name of the Lender in accordance with the procedures more fully described in Section 1.2(ii) below, the Lender shall deliver to the Company that certain Satisfaction and Release, substantially in the form attached hereto as Exhibit A (the "*Satisfaction and Release*").

1.1.2. Closing. Subject to the terms and conditions of this Agreement, the consummation of the Exchange shall take place at a closing (the "*Closing*") to be held on November 12, 2020 (the "*Closing Date*"), or such later date as agreed to by the parties in writing.

1.2. Deliveries by the Lender. At the Closing, the Lender shall:

(i) Date, complete and execute this Agreement and the Satisfaction and Release; and

(ii) Deliver to the Company settlement instructions ("*Settlement Instructions*"), which Settlement Instructions shall set forth the Lender's election to receive the Shares in the form of book-entry notations in the records of the Company's transfer agent.

1.3. Deliveries by the Company. At the Closing, the Company shall:

(i) Date, complete and execute this Agreement; and

(ii) Within three (3) business days following the Closing, provide for book-entry notations in the records of the Company's transfer agent, in either case, according to the Settlement Instructions, which Settlement Instructions shall be delivered to the Company's transfer agent at the Closing, together with irrevocable instructions to the transfer agent directing the transfer agent to issue duly authorized, validly issued, fully paid and non-assessable Shares to the Lender.

2. Representations and Warranties of the Lender. The Lender hereby represents and warrants to the Company as set forth below.

2.1. Investment Risk. The Lender recognizes that the investment in the Shares in connection with the Exchange involves a high degree of risk. Such risks include, but are not limited to, the risks associated with the business of the Company, as more particularly set forth in the Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and other filings ("*Company SEC Filings*") with the U.S. Securities and Exchange Commission ("*SEC*") which have been made available to the Lender.

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

2.3. Investment Purposes. The Lender will be acquiring the Shares for its 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, the Lender does not covenant to hold the Series D Preferred for any minimum period of time except as set forth in the Series D Certificate.

2.3. Investigation. The Lender has been afforded the opportunity to ask questions of and receive answers from the Company regarding the terms and conditions of this Agreement and about the Company; *provided, however*, that no investigation performed by or on behalf of the Lender regarding the terms and conditions of this Agreement or the Company shall limit or otherwise affect its right to rely on the representations and warranties of the Company contained herein.

2.4. Professional Counsel. To the extent necessary, the Lender has obtained professional advice regarding the investment, tax and legal merits and consequences of the Exchange and an investment in the Shares and the Conversion Shares issuable upon conversion of the Shares (together with the Shares, the "*Exchange Securities*").

2.5. Authority, Enforceability. The Lender represents that the Lender has full power and authority (corporate, statutory and otherwise) to execute and deliver this Agreement and to consummate the Exchange. Subject to the foregoing and once executed and delivered by all parties hereto, this Agreement will constitute the legal, valid and binding obligation of the Lender, enforceable against the Lender in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. If the Lender is a corporation, partnership, limited liability company, trust, employee benefit plan, individual retirement account, or other tax-exempt entity, it is authorized and qualified to invest in the Company and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Lender as set forth below.

3.1. Organization and Qualification. The Company has been duly incorporated and is validly existing and in good standing under the laws of the state of Delaware, with full corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted, and is duly registered and qualified to conduct its business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification, except where the failure to register or qualify would not have a Material Adverse Effect. For purposes of this Agreement, "*Material Adverse Effect*" shall mean 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 Shares or the Conversion Shares, (ii) the ability of the Company to perform its obligations under this Agreement or (iii) the condition (financial or otherwise) or in the earnings, prospects, business, properties, surplus or results of operations of the Company.

3.2. Power and Authorization. The Shares have been duly authorized by all necessary corporate action and, when paid for or issued in accordance with the terms hereof, the Shares shall be validly issued and outstanding, fully paid and nonassessable, free and clear of all liens, encumbrances and rights of refusal of any kind.

3.3. Valid and Enforceable Agreement; No Violations. This Agreement has been duly authorized, validly executed and delivered on behalf of the Company and is a valid and binding agreement and obligation of the Company enforceable against the Company 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 the Company 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.

3.4. Compliance. The Company has complied and will comply with all applicable federal and state securities laws in connection with the offer, issuance and delivery of the Exchange Securities hereunder.

3.5. Representations and Warranties from Purchase Agreement. Each of the representations and warranties as set forth in Article 3 of the Purchase Agreement are hereby incorporated by reference herein and made a part hereof, as if the same were specifically set forth in this Section 3.

4. Conditions to Obligations of the Lender. The Lender's obligation to consummate the Exchange is subject to the fulfillment of the following conditions at the Closing:

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

(b) The representations and warranties made by the Company in Article 3 hereof shall be true and correct as of date of the Closing and all covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to the date hereof shall have been performed or complied with in all material respects; and

(c) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the Exchange and the consummation of the other transactions contemplated by this Agreement.

Notwithstanding the foregoing, for the avoidance of doubt, the effectiveness of this Agreement (and the Exchange) is contingent upon the consummation of the transactions contemplated by the Purchase Agreement (the "*Financing Closing*"), and in the event that the Financing Closing does not occur, or the Purchase Agreement is terminated, this Agreement shall be *void ab initio*.

5. Conditions to the Obligations of the Company. The Company's obligation to consummate the Exchange is subject to the fulfillment of the following conditions at the Closing:

(a) The Lender shall have executed and delivered this Agreement and the Satisfaction and Release;

(b) The representations and warranties made by the Lender in Article 2 hereof shall be true and correct as of date of the Closing and all covenants, agreements and conditions contained in this Agreement to be performed by the Lender on or prior to the date hereof shall have been performed or complied with in all material respects; and

(c) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the Exchange and the consummation of the other transactions contemplated by this Agreement.

6. Miscellaneous.

6.1. Except as otherwise provided herein, this Agreement shall not be changed, modified or amended except by a writing signed by the parties, and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be charged. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

6.2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to their respective heirs, legal representatives, successors and assigns. No party hereto may assign its rights or obligations hereunder without the prior written consent of the other party. Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement.

6.3. This Agreement, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

6.4. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California, United States, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in San Diego County, California. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in San Diego County, California for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of this Agreement), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding.

6.5. The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

6.6. The Lender and Company agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

6.7. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

[Signature page follows]

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

“COMPANY”

ImageWare Systems, Inc.

By: */s/ Kristin Taylor*

Kristin Taylor
Chief Executive Officer

“LENDER”

By: */s/ James Miller*

James Miller

EXHIBIT A
SATISFACTION AND RELEASE

This SATISFACTION AND RELEASE ("*Agreement*") is made and entered into this 12th day of November, 2020 (the "*Effective Date*"), between ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), and S. James Miller, an individual (the "*Lender*"). Capitalized terms not otherwise defined herein shall have the meanings as set forth in that certain Debt Exchange Agreement dated November 12, 2020 (the "*Exchange Agreement*"), by and between the Company and Lender.

RECITALS

WHEREAS, the Lender and the Company are parties to the Exchange Agreement pursuant to which Lender has agreed to exchange Indebtedness for the Shares, as more particularly set forth in the Exchange Agreement;

WHEREAS, the Lender desires to accept the Shares in full and complete satisfaction of the Indebtedness and to fully release and discharge the Company for all matters and liabilities, including from any and all further liability for repayment of such Indebtedness under the terms of the Note;

WHEREAS, the Exchange Agreement provides that, at Closing, the Lender execute and deliver this Agreement to the Company;

WHEREAS, the Company is currently negotiating an equity financing with certain accredited investors (the "*Financing*"), and the execution of this Agreement by Lender is a condition to consummation of the Financing; and

WHEREAS, this Agreement is the Satisfaction and Release that is referred to in, and as is attached as Exhibit A to, the Exchange Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

AGREEMENT

1. Confirmation of Indebtedness. The principal amount of the Indebtedness, including interest accruing thereon as of the Effective Date is One Hundred Two Thousand Eight Hundred Eight Dollars and Twenty-Two Cents (\$102,808.22), which amount the Lender agrees constitutes all amounts due to the Lender under the Note.
 2. Delivery of Preferred Stock in Satisfaction of Indebtedness. Subject to the terms and conditions set forth in the Exchange Agreement, the Company agrees to deliver that number of Shares calculated in accordance with Section 1.1.1 of the Exchange Agreement ("*Settlement Shares*") in accordance with the Settlement Instructions delivered by the Lender to the Company on the Effective Date.
 3. Satisfaction of Indebtedness. Upon delivery of the Settlement Shares by the Company in accordance with the Settlement Instructions, (a) the Lender hereby agrees that the Indebtedness will have been fully and completely satisfied; and (b) the Lender hereby compromises, settles, resolves, discharges, and releases the Company, and its successors and assigns, from the payment of any and all amounts due and payable to the Lender under the note.
 4. Termination. This Agreement shall automatically be terminated and be of no further force and effect if the Company does not consummate the Financing on or before November 30, 2020.
 5. Entire Agreement. This Agreement and the Exchange Agreement represents the entire agreement between the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations, or warranties, written or oral, except as set forth herein.
-

6. Amendment or Waiver. Every right and remedy provided herein shall be cumulative with every other right and remedy, whether conferred herein, at law, or in equity and may be enforced concurrently herewith, and no waiver by any party of the performance of any obligation by the other shall be construed as a waiver of the same or any other default then, theretofore, or thereafter occurring or existing. At any time prior to the Closing Date, this Agreement may be amended by a writing signed by all parties hereto, respecting any of the terms contained herein, and any term or condition of this Agreement may be waived or the time for performance thereof may be extended by a writing signed by the party or parties for whose benefit the provision is intended.

7. Form of Execution; Counterparts. A valid and binding signature hereto or on any notice or demand hereunder may be in the form of a manual execution or a true copy made by photographic, xerographic, conversion to portable document format (pdf), or other electronic process that provides similar copy accuracy of a document that has been executed, and such electronic signature or record shall be of the same legal effect, validity, or enforceability as a manually executed signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall be but a single instrument.

8. Governing Law. This Agreement shall be governed by, and construed under and in accordance with, the laws of the state of California without giving effect to any choice or conflict of law provision or rule (whether the state of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of California.

9. Interpretation. Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

[The Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

“COMPANY”

ImageWare Systems, Inc.

By: */s/ Kristin Taylor*

Kristin Taylor
Chief Executive Officer

“LENDER”

By: */s/ James Miller*

James Miller



**ImageWare® Poised for Growth with
Closing of \$11.56 Million Private Placement**

Restructures Outstanding Capital and Board of Directors

San Diego, CA (November 16, 2020) - ImageWare® Systems, Inc. ([OTCOB: IWSY](#)), a leader in biometric identification and authentication, today announced that it has closed a \$11.56 million private placement of Series D Convertible Preferred Stock. The Company also announced the simultaneous restructuring of certain of its outstanding Preferred Stock and its Board of Directors, leaving Kristin A. Taylor, President and CEO, on the Board and appointing James (Jim) M. Demitrius and Benjamin (Ben) Smeal effective immediately. Taylor has also been appointed Chair of the Board.

[Kristin A. Taylor](#), Chair, President and CEO, said “With the closing of this financing, my enthusiasm and optimism have reached new heights. For the first time in its long history, ImageWare now has:

- Updated, ready-to-market product offerings to address a large and growing market
- Upgraded its senior management team by recruiting impact players with demonstrated success
- Has the capital necessary to execute its business plan

Series D Preferred

This financing was anchored by funds and accounts managed by Nantahala Capital Management, LLC, based in New Canaan, Connecticut. It also included participants comprised of institutional investors and existing accredited investors. In connection with the financing, the Company amended and restated certain of its issued and outstanding series of Preferred Stock intended to facilitate the financing and to simplify the Company’s capital structure.

Proceeds from the financing will be used for general corporate and working capital purposes.

Further details regarding the financing and restructuring of certain of the Company’s issued and outstanding Preferred Stock is described in the Form 8-K to be filed with the Securities and Exchange Commission by the Company and the information herein is qualified in its entirety by the Current Report on Form 8-K to be filed.

Organizational Restructuring

The closing of 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, now comprised of Kristin Taylor, Jim Demitrius and Ben Smeal. Additional members are expected to be appointed in the near term
- The Company plans to apply to list its Common Stock on the NASDAQ Capital Market and expects to file the listing application in December

New Board Members

- James M. Demitrius has served from 2018 to present as Managing Director of Jameson Associates, a specialty investment management and financial advisory firm. Prior to Jameson, he served in multiple positions at Eyelock Corporation beginning in 2009, including Chief Executive Officer from 2010 to 2018. Eyelock Corporation provides iris-based biometric solutions to various business verticals. Prior to Eyelock, Demitrius served in various senior executive roles, including as President of Sherwood Valve, a division of Harsco Corporation, and as Chief Executive Officer at Aluma Systems. Earlier in his career, Demitrius served in numerous senior accounting and finance roles, including with the public accounting firm of Arthur Andersen & Co. Demitrius holds a Bachelor’s in Business Administration from Adelphi University in New York.

Continued

- Benjamin Smeal most recently served as Associate Director, Public Equities at Willett Advisors, the family office of Michael R. Bloomberg, managing substantially all of Bloomberg's personal assets in addition to those of Bloomberg Philanthropies. From November 2007 to April 2017, he held the role of Senior Analyst at Kenmare Management, a hedge fund focused on U.S. equities. Smeal holds a Bachelor of Arts in Political Economy from Williams College in Massachusetts, and a Master of Business Administration, with a focus on Value Investing, from Columbia Business School in New York.

Taylor continued, "Jim brings to ImageWare knowledge and experience in the field of biometrics, in addition to extensive Fortune 1000 plus start up leadership, go-to-market, finance and accounting skills. We look forward to his valuable insights, particularly as we accelerate the monetization our product offerings and intellectual property.

"Ben's capital market expertise, coupled with his substantial experience working with undervalued companies and his ability to ask difficult questions, will help to guide our efforts and further position us for growth as we progress to deliver on our business plan and continue to build value for our shareholders."

Business Outlook

Added Taylor, "With the world quickly evolving to remote work and contactless interactions, the time for biometrics is now. Whether its community banks onboarding new customers, enterprises hiring remote workers, or healthcare facilities checking in patients, only biometrics can provide complete identity assurance in a remote, contactless manner.

"ImageWare is at the nexus of this new world, providing an open platform that integrates multiple biometrics types across different vendors and hardware platforms - offering the most flexible and cost-efficient solution for organizations to manage biometric identity lifecycles at scale. With our new team and renewed strategy, ImageWare is positioned to execute and will drive these solutions across government, financial, transportation, education, and telecommunications sectors to deliver profit," Taylor concluded.

About ImageWare® Systems, Inc.

Founded in 1987, ImageWare provides defense-grade biometric identification and authentication for access to your data, products, services or facilities. We are experts in biometric authentication and considered a preeminent patent holder of multimodal IP, having many of the most-cited patents in the industry. Our patented IWS Biometric Engine® (BE) is the most accurate and fastest biometrics matching engine in the industry, capable of our patented fusion of multiple biometrics. Part of our heritage is in law enforcement having built the first statewide digital booking platform for United States local law enforcement - and more than three decades of experience in the challenging government sector creating biometric smart cards and logical access for millions of individuals. We are a "biometrics first" company, leveraging your unique human characteristics to provide unparalleled accuracy to identify you while protecting your identity. Please visit 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.

Media

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