

# IMAGEWARE SYSTEMS INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 01/06/21

Address	13500 EVENING CREEK DR. N. SUITE 550 SAN DIEGO, CA, 92128
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**IMAGEWARE SYSTEMS, INC.**  
(Exact name of registrant as specified in its charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

33-0224167  
(I.R.S. Employer  
Identification No.)

13500 Evening Creek Dr. N., Suite 550  
San Diego, California 92128  
(Address of Principal Executive Offices)

2020 Omnibus Equity Incentive Plan  
(Full title of the plan)

Kristin Taylor  
ImageWare Systems, Inc.  
13500 Evening Creek Dr. N., Suite 550  
San Diego, California 92128  
(Name and address of agent for service)

(858) 673-8600  
(Telephone number, including area code, of agent for service)

*Copies to:*  
Daniel W. Rumsey, Esq.  
Jessica R. Sudweeks, Esq.  
Disclosure Law Group,  
a Professional Corporation  
655 West Broadway, Suite 870  
San Diego, California 92101  
Tel: (619) 272-7050  
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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer  Accelerated filer   
Smaller reporting company   
Emerging growth company

(Do not check if a smaller reporting company)

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 Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b><u>Amount to be Registered</u> <sup>(1)</sup></b>	<b><u>Proposed Maximum Offering Price per Share</u> <sup>(2)</sup></b>	<b><u>Proposed Maximum Aggregate Offering Price</u> <sup>(2)</sup></b>	<b><u>Amount of Registration Fee</u></b>
Common Stock, \$0.01 par value per share to be issued under the 2020 Omnibus Equity Incentive Plan	25,000,000	\$ 0.075	\$ 1,875,000	\$ 204.57

- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended (the “*Securities Act*”), this registration statement on Form S-8 (the “*Registration Statement*”) also covers an indeterminate number of shares of the Common Stock, par value \$0.01 (the “*Common Stock*”) of ImageWare Systems, Inc., a Delaware corporation (the “*Company*”), shall also be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions. In addition, any shares subject to outstanding options or other equity (as defined in the Company’s 2020 Omnibus Equity Incentive Plan (the “*Plan*”) (“*Awards*”)) under the Plan that are cancelled, forfeited, expired, terminated, unearned or settled in cash, in any such case does not result in the issuance of shares, shall be again available for issuance pursuant to Awards granted under the Plan.
- (2) Estimated in accordance with Rules 457(c) and (h) solely for the purpose of calculating the registration fee based on the average of the high and low prices of the Company’s Common Stock as reported on the OTCQB Marketplace on December 28, 2020.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 (this “*Registration Statement*”) is filed by ImageWare Systems, Inc. (the “*Registrant*”) to register a total of 25,000,000 shares of its common stock, \$0.01 par value per share (“*Common Stock*”), that may be issued under the Registrant’s 2020 Omnibus Equity Incentive Award Plan (the “*2020 Plan*”).

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

##### **Item 1. Plan Information**

The Registrant has prepared this Registration Statement in accordance with the requirements of Form S-8 under the Securities Act of 1933, as amended (the “*Securities Act*”), to register a total of 25,000,000 shares of the Company’s Common Stock that may be issued as awards under the Company’s 2020 Plan.

The Plan provides for the grant of incentive stock options, non-qualified stock options, shares of our Common Stock, restricted shares of Common Stock, restricted stock units, stock appreciation rights, dividend equivalent rights and other stock-based awards (collectively, “*Awards*”). Awards, other than incentive stock options, may be granted to the Company’s employees, officers, directors and independent contractors. The documents containing the information specified in Part I of Form S-8 will be sent or given to each participant in the Plan as specified by Rule 428(b)(1) of the Securities Act. These documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. Such documents are not filed as part of this Registration Statement in accordance with the Note to Part I of the Form S-8 Registration Statement.

##### **Item 2. Registrant Information and Employee Plan Annual Information.**

The Company will provide to each Recipient a written statement advising of the availability of documents incorporated by reference in Item 3 of Part II of this Registration Statement (which documents are incorporated by reference in this Section 10(a) prospectus) and of documents required to be delivered pursuant to Rule 428(b) under the Securities Act without charge and upon written or oral request by contacting:

Sheryl Edwards  
ImageWare Systems, Inc.  
13500 Evening Creek Dr. N., Suite 550  
San Diego, California 92128  
Tel. (858) 673-8600

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents, which have been previously filed by the Company with the Securities and Exchange Commission (the “SEC”), are hereby incorporated by reference in this Registration Statement:

- our Annual Report on Form 10-K for the year ended December 31, 2019, filed on May 15, 2020, as amended May 19, 2020;
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, filed on June 26, 2020, as amended June 29, 2020;
- our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020, filed on August 19, 2020;
- our Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, filed on November 23, 2020
- our Current Report on Form 8-K, filed on February 27, 2020;
- our Current Report on Form 8-K, filed on March 3, 2020;
- our Current Report on Form 8-K, filed on March 16, 2020;
- our Current Report on Form 8-K, filed on April 6, 2020;
- our Current Report on Form 8-K, filed on April 15, 2020;
- our Current Report on Form 8-K, filed on May 1, 2020;
- our Current Report on Form 8-K, filed on May 6, 2020;
- our Current Report on Form 8-K, filed on May 11, 2020;
- our Current Report on Form 8-K, filed on May 27, 2020;
- our Current Report on Form 8-K, filed on June 8, 2020;
- our Current Report on Form 8-K, filed on June 12, 2020;
- our Current Report on Form 8-K, filed on June 26, 2020;
- our Current Report on Form 8-K, filed on July 1, 2020;
- our Current Report on Form 8-K, filed on July 6, 2020;
- our Current Report on Form 8-K, filed on July 15, 2020;
- our Current Report on Form 8-K, filed on July 28, 2020, as amended July 29, 2020;
- our Current Report on Form 8-K, filed on August 21, 2020;
- our Current Report on Form 8-K, filed on September 30, 2020;
- our Current Report on Form 8-K, filed on November 18, 2020;
- our Current Report on Form 8-K, filed on November 27, 2020;
- our Current Report on Form 8-K, filed on December 30, 2020;
- our Current Report on Form 8-K, filed on December 31, 2020; and
- The description of our Common Stock contained in the Registration Statement on Form 8-A filed pursuant to Section 12(b) of the Exchange Act on March 21, 2000, including any amendment or report filed with the SEC for the purpose of updating this description.

Until such time that a post-effective amendment to this Registration Statement has been filed which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold at the time of such amendment, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which is also deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities.

Not applicable

#### Item 5. Interests of Named Experts and Counsel.

Not applicable.

#### Item 6. Indemnification of Directors and Officers

Our certificate of incorporation and bylaws contain provisions relating to the limitation of liability and indemnification of directors and officers. Our certificate of incorporation provides that a director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of the director’s duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law (the “DGCL”); or
- for any transaction from which the director derived any improper personal benefit.

Our certificate of incorporation also provides that if the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL.

Our bylaws provide that we will indemnify our directors and officers to the fullest extent not prohibited by the DGCL; *provided, however*, that we may limit the extent of such indemnification by individual contracts with our directors and executive officers; and provided, further, that we are not required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against us or our directors, officers, employees or other agents unless:

- such indemnification is expressly required to be made by law;
- the proceeding was authorized by the Board of Directors; or
- such indemnification is provided by us, in our sole discretion, pursuant to the powers vested in us under the DGCL.

Our bylaws provide that we shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses by any director or executive officer in connection with any such proceeding upon receipt of any undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under Article XIII of our bylaws or otherwise. Notwithstanding the foregoing, unless otherwise determined, no advance shall be made by us if a determination is reasonably and promptly made by the Board of Directors by a majority vote of a quorum of directors who were not parties to the proceeding, or if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to our best interests.

Our bylaws also authorize us to purchase insurance on behalf of any person required or permitted to be indemnified pursuant to Article XIII of our bylaws.

Section 145(a) of the DGCL authorizes a corporation to indemnify any person who was or is a party, or is threatened to be made a party, to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the DGCL provides in relevant part that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The DGCL also provides that indemnification under Section 145(d) can only be made upon a determination that indemnification of the present or former director, officer or employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 145(a) and (b).

Section 145(g) of the DGCL also empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under Section 145 of the DGCL.

Section 102(b)(7) of the DGCL permits a corporation to provide for eliminating or limiting the personal liability of one of its directors for any monetary damages related to a breach of fiduciary duty as a director, as long as the corporation does not eliminate or limit the liability of a director for acts or omissions which (1) which breached the director's duty of loyalty to the corporation or its stockholders, (2) which were not in good faith or which involve intentional misconduct or knowing violation of law, (3) under Section 174 of the DGCL; or (4) from which the director derived an improper personal benefit.

We have obtained directors' and officers' insurance to cover our directors and officers for certain liabilities.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Incorporation by Reference</b>
<a href="#">5.1</a>	Opinion of Disclosure Law Group, a Professional Corporation.	Filed herewith.
<a href="#">10.1</a>	ImageWare Systems, Inc. 2020 Omnibus Equity Incentive Plan	Incorporated by reference from the Registrant's Definitive Proxy Statement, filed with the SEC on <a href="#">April 30, 2020</a> , and as revised on <a href="#">May 1, 2020</a> .
<a href="#">23.1</a>	Consent of Mayer Hoffman McCann P.C.	Filed herewith.
<a href="#">23.2</a>	Consent of Disclosure Law Group, a Professional Corporation.	Included in Exhibit 5.1.
<a href="#">24.1</a>	Power of Attorney	Included in the signature page of this Registration Statement

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act; and

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; and

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

*Provided, however,* that paragraphs (1)(i) and (1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act that are incorporated by reference in the Registration Statement.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of San Diego, State of California, on January 6, 2021.

### ImageWare Systems, Inc.

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

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Kristin Taylor and Jonathan Morris, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title(s)</b>	<b>Date</b>
<u>/s/ Kristin Taylor</u> Kristin Taylor	Chief Executive Officer, Principal Financial and Accounting Officer, and Director	January 6, 2021
<u>/s/ Douglas Morgan</u> Douglas Morgan	Director	January 6, 2021
<u>/s/ James Demitrius</u> James Demitrius	Director	January 6, 2021

DISCLOSURE LAW GROUP  
a Professional Corporation



January 6, 2021

ImageWare Systems, Inc.  
13500 Evening Creek Dr. N., Suite 350  
San Diego, CA 92128

Re: Registration Statement on Form S-8 for ImageWare Systems, Inc.

Dear Ladies and Gentlemen:

We have acted as counsel to ImageWare Systems, Inc., a Delaware corporation (the "*Company*"), in connection with the preparation of a Registration Statement on Form S-8 (the "*Registration Statement*") under the Securities Act of 1933, as amended (the "*Act*"). The Registration Statement relates to the registration of a total of 25,000,000 shares (the "*Plan Shares*") of the Company's common stock, par value \$0.01 per share, issuable under the ImageWare Systems, Inc. 2020 Omnibus Incentive Plan (the "*Plan*").

In connection with this opinion letter, we have examined the Registration Statement and originals, or copies certified or otherwise identified to our satisfaction as being true copies, of the Amended and Restated Articles of Incorporation of the Company, and the Amended and Restated Bylaws of the Company, and such other documents, records and other instruments as we have deemed appropriate for purposes of the opinion set forth herein.

We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals, the conformity with the originals of all documents submitted to us as certified, facsimile or photostatic copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon the foregoing, we are of the opinion that the Plan Shares have been duly authorized and, when and to the extent issued in accordance with the terms of the Plan and, with respect to the Plan Shares, when and to the extent issued in accordance with the terms of any award agreement entered into under the Plan, the Plan Shares will be validly issued, fully paid and nonassessable.

In rendering the opinion set forth above, we express no opinion as to the laws of any jurisdiction other than the Delaware General Corporation Law and the federal laws of the United States of America.

We hereby consent to the use of this opinion as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not hereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the U.S. Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Disclosure Law Group

Disclosure Law Group, a Professional Corporation

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated May 15, 2020, with respect to the consolidated financial statements of ImageWare Systems, Inc. (“Company”) as of December 31, 2019 and 2018 and for each of the two years in the period ended December 31, 2019 (which report includes explanatory paragraphs related to the change in the method of accounting for leases and the existence of substantial doubt about the Company’s ability to continue as a going concern) and the effectiveness of ImageWare Systems, Inc.’s internal control over financial reporting as of December 31, 2019.

/s/ Mayer Hoffman McCann P.C.

San Diego, California  
January 6, 2021

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