

United States  
Securities and Exchange Commission  
Washington, D.C. 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): June 1, 2017

Black Diamond, Inc.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation)

001-34767  
(Commission File Number)

58-1972600  
(IRS Employer  
Identification Number)

2084 East 3900 South, Salt Lake City, Utah  
(Address of principal executive offices)

84124  
(Zip Code)

Registrant's telephone number, including area code: (801) 278-5552

N/A  
(Former name or former 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:

- 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))

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

- Emerging growth 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 pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01 Entry into a Material Definitive Agreement.**

On June 1, 2017, Black Diamond, Inc. (the “Company”) entered into an employment agreement with Mr. Warren B. Kanders (the “Employment Agreement”), the Company’s current Executive Chairman of the Company’s Board of Directors (the “Board”), which provides for Mr. Kanders’ employment as Executive Chairman of the Board for a term expiring on June 1, 2022, subject to certain termination rights, during which time he will receive an annual base salary of \$350,000. Mr. Kanders’ annual base salary will be subject to annual review by the Compensation Committee of the Board as well as further review in light of any redeployment of assets transaction that the Company may engage in during the term of the Employment Agreement.

Under the terms of the Employment Agreement, the Company issued and granted to Mr. Kanders a restricted stock award of 500,000 restricted shares of common stock pursuant to the Company’s 2015 Stock Incentive Plan, of which (i) 250,000 will vest if, on or before June 1, 2022, the closing share price of the Company’s common stock shall have equaled or exceeded \$10.00 per share for twenty consecutive trading days; and (ii) 250,000 will vest if, on or before June 1, 2022, the closing share price of the Company’s common stock shall have equaled or exceeded \$12.00 per share for twenty consecutive trading days.

In addition, Mr. Kanders is entitled, at the sole and absolute discretion of the Compensation Committee of the Board, to receive performance bonuses, which may be based upon a variety of factors. Mr. Kanders will also be entitled, at the sole and absolute discretion of the Compensation Committee of the Company’s Board, to participate in other bonus plans of the Company. The Company will maintain term life insurance on Mr. Kanders in the amount of \$2,000,000 for the benefit of his designees (the “Kanders Life Insurance”).

The Employment Agreement contains a non-competition covenant and non-interference (relating to the Company’s customers) and non-solicitation (relating to the Company’s employees) provisions effective during the term of Mr. Kanders’ employment and for a period of three years after termination of the Employment Agreement.

In the event that Mr. Kanders’ employment is terminated (i) by the Company without “cause” (as such term is defined in the Employment Agreement), (ii) by Mr. Kanders for certain reasons set forth in the Employment Agreement or (iii) by Mr. Kanders upon a “change in control” (as such term is defined in the Employment Agreement), Mr. Kanders will be entitled to receive, among other things, an amount equal to five times his annual base salary in one lump sum payment, and in each case, any unvested stock options held by Mr. Kanders shall immediately vest and become exercisable and all unvested restricted stock awards held by Mr. Kanders shall immediately vest.

In the event that Mr. Kanders fails to comply with any of his obligations under the Employment Agreement, including, without limitation, the non-competition covenant and the non-interference and non-solicitation provisions, Mr. Kanders will be required to repay such lump sum payment as of the date of such failure to comply and he will have no further rights in or to such lump sum payment. In the event that Mr. Kanders’ employment is terminated upon his death, Mr. Kanders’ designees will be entitled to receive the proceeds of the Kanders Life Insurance.

All payments and benefits provided under the Employment Agreement shall be subject to any compensation recovery or clawback policy as required under applicable law, rule or regulation or otherwise adopted by the Company from time to time.

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The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the Employment Agreement, which is included as Exhibit 10.1 to this Current Report on Form 8-K (the "Report") and incorporated herein by reference.

**Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

(e) The disclosure set forth in Item 1.01 of this Report with respect to Mr. Kanders is incorporated herein by reference.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

(a) On June 1, 2017, the Company held its 2017 Annual Meeting of Stockholders (the "Meeting"). Of the 30,299,122 shares of common stock entitled to vote at the Meeting, 26,655,007 shares of common stock were present in person or by proxy and entitled to vote, representing approximately 87.97% of the Company's outstanding shares of common stock.

(b) At the Meeting, the Company's stockholders: (i) approved the re-election of each of the following four director nominees standing for re-election: Warren B. Kanders, Donald L. House, Nicholas Sokolow and Michael Henning, (ii) approved an advisory resolution on executive compensation, (iii) approved, on an advisory basis, a one year frequency of future advisory votes on executive compensation and (iv) ratified the appointment of KPMG LLP as the Company's independent registered public accounting firm for the year ending December 31, 2017.

The voting results for each proposal are set forth below:

Proposal 1 – To elect four members to serve on the Company's Board of Directors until the next annual meeting of stockholders and until their successors are duly elected and qualified:

<u>Name</u>	<u>Votes For</u>	<u>Votes Withheld</u>	<u>Broker Non-Votes</u>
Warren B. Kanders	17,454,758	437,281	8,762,968
Donald L. House	15,585,844	2,306,195	8,762,968
Nicholas Sokolow	10,323,301	7,568,738	8,762,968
Michael Henning	14,333,699	3,558,340	8,762,968

Proposal 2 – To approve an advisory resolution on executive compensation:

<u>Votes For</u>	<u>Votes Against</u>	<u>Votes Abstained</u>	<u>Broker Non-Votes</u>
17,569,709	273,780	48,550	8,762,968

Proposal 3 – To approve, on an advisory basis, the frequency of future advisory votes on executive compensation:

<u>Every 1 Year</u>	<u>Every 2 Years</u>	<u>Every 3 Years</u>	<u>Votes Abstained</u>	<u>Broker Non-Votes</u>
10,779,733	18,107	6,314,710	779,489	8,762,968

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Proposal 4 – To ratify the appointment of KPMG LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2017:

<u>Votes For</u>	<u>Votes Against</u>	<u>Votes Abstained</u>	<u>Broker Non-Votes</u>
26,579,445	50,891	24,671	0

(d) After careful consideration of the frequency of future advisory votes on executive compensation, the Board has determined that a say-on-pay vote that occurs every three years is the most appropriate alternative for the Company and its stockholders. Therefore, the Company intends to include an advisory vote on the compensation of its executives in its proxy materials every three years, until the next required stockholder advisory vote on the frequency of future advisory votes on executive compensation or until the Company’s Board otherwise determines that a different frequency of the advisory vote on executive compensation is in the best interests of the Company and its stockholders.

The Board believes that a three-year frequency is the most appropriate alternative for the Company and stockholders for the following reasons:

- A three-year frequency for the say-on-pay vote is consistent with the long-term nature and focus of the Company’s executive compensation program.
- A three-year frequency will provide the Compensation Committee of the Board with a sufficient period to communicate with stockholders and respond to the result of the say-on-pay vote.
- A three-year frequency will provide investors sufficient time to evaluate the effectiveness of the Company’s short- and long-term compensation strategies and the related business outcome of the Company.

**Item 9.01 Financial Statements and Exhibits.**

*(d) Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
10.1	Employment Agreement, dated as of June 1, 2017, between Black Diamond, Inc. and Warren B. Kanders.

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**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.

**BLACK DIAMOND, INC.**

Dated: June 6, 2017

By: /s/ Aaron J. Kuehne

Name: Aaron J. Kuehne

Title: Chief Financial Officer and Chief Administrative Officer

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**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
10.1	Employment Agreement, dated as of June 1, 2017, between Black Diamond, Inc. and Warren B. Kanders.

**EMPLOYMENT AGREEMENT**

**EMPLOYMENT AGREEMENT** (the “Agreement”), dated as of June 1, 2017, between Black Diamond, Inc., a Delaware corporation (the “Company”), and Warren B. Kanders (the “Employee”).

**WITNESSETH:**

**WHEREAS**, the Company desires to continue to employ the Employee as its Executive Chairman of the Board of Directors of the Company and to be assured of his services on the terms and conditions hereinafter set forth; and

**WHEREAS**, the Employee is willing to continue to be employed as Executive Chairman of the Board of Directors of the Company on such terms and conditions; and

**WHEREAS**, the Compensation Committee of the Company’s Board of Directors (the “Compensation Committee”) has recommended to the Company’s Board of Directors (the “Board”) that this Agreement be entered into by the Company, and the Board has authorized and approved the execution and delivery of this Agreement by the Company.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, the Company and the Employee hereby agree as follows:

**1. Term.**

The term of this Agreement shall commence on the date hereof (the “Commencement Date”) and shall terminate on the fifth anniversary of the Commencement Date (the “Term”), subject to earlier termination as provided herein.

**2. Duties.**

(a) During the Term of this Agreement, the Employee shall serve as the Executive Chairman of the Board of the Company and shall perform all duties commensurate with his position and as may be assigned to him by the Board, including providing strategic and operational guidance of the Company. The Employee shall devote such business time and energies to the business and affairs of the Company as shall be necessary to perform his duties hereunder and shall use his best efforts, skills and abilities to promote the interests of the Company, and to diligently and competently perform the duties of his position.

(b) The Employee shall report to the Board and shall at all times keep the Board promptly and fully informed (in writing if so requested) of his conduct and of the business or affairs of the Company.

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**3. Compensation, Bonus, Stock Options, Benefits, etc.**

(a) **Salary.** During the Term of this Agreement, the Company shall pay to the Employee, and the Employee shall accept from the Company, as compensation for the performance of services under this Agreement and the Employee's observance and performance of all of the provisions hereof, an annual salary at the rate of \$350,000 (the "Base Compensation"). The Base Compensation shall be payable in accordance with the normal payroll practices of the Company. The Employee's performance and the Base Compensation shall be subject to annual review by the Compensation Committee of the Board. Further, the Compensation Committee of the Board will review the Base Compensation in light of any redeployment of assets transaction the Company may engage in during the Term of this Agreement.

(b) **Bonus.** In addition to the Base Compensation described above, the Employee shall, in the sole and absolute discretion of the Compensation Committee of the Board, be entitled to performance bonuses which may be based upon a variety of factors, including the Employee's performance and the achievement of Company goals, all as determined in the sole and absolute discretion of the Board or the Compensation Committee of the Board. In addition, the Employee may be entitled to participate in such other bonus plans, during the Term of this Agreement, as the Compensation Committee of the Board may, in its sole and absolute discretion, determine. Without limiting the foregoing, the Employee shall, in the sole and absolute discretion of the Compensation Committee of the Board, be entitled to bonuses in the form of cash, stock options and/or restricted stock awards based upon the Employee's provision of strategic advice to the Company in connection with capital markets transactions, financings, capital structure optimization and mergers and acquisitions transactions, including any redeployment of assets. Any such bonus, as determined by the Compensation Committee of the Board, shall be payable to the Employee no later than March 15 of the year following the year in which it was earned.

(c) **Stock Options.** During the Term, the Employee shall be entitled to receive stock options, at such exercise prices and other terms as the Compensation Committee of the Board may, in its sole and absolute discretion, determine.

(d) **Restricted Stock.**

(i) Effective on the date hereof, the Company shall grant and issue to the Employee a restricted stock award pursuant to the 2015 Stock Incentive Plan, subject to vesting, of 500,000 shares of Common Stock (the "Restricted Shares"). The Restricted Shares described in this Section 3(d)(i) shall vest as follows: (A) 250,000 Restricted Shares shall vest if, on or before June 1, 2022, the Fair Market Value (as defined in the 2015 Stock Incentive Plan) of the Company's common stock, par value \$0.0001 (the "Common Stock") shall have equaled or exceeded \$10.00 per share for twenty consecutive trading days; and (B) 250,000 Restricted Shares shall vest if, on or before June 1, 2022, the Fair Market Value (as defined in the 2015 Stock Incentive Plan) of the Company's Common Stock shall have equaled or exceeded \$12.00 per share for twenty consecutive trading days.



(ii) The terms and provisions of the Restricted Shares shall be set forth in a restricted stock award agreement, in form and substance satisfactory to the Compensation Committee of the Board.

(e) **Benefits.** During the Term of this Agreement, the Employee shall be entitled to participate in or benefit from, in accordance with the eligibility and other provisions thereof, the Company's medical insurance and other fringe benefit plans or policies as the Company may make available to, or have in effect for, its senior executive officers from time to time. In addition, during the Term the Company shall maintain term life insurance on the Employee in the amount of \$2,000,000 for the benefit of the Employee's designees (the "Life Insurance"). The Company and its affiliates retain the right to terminate or alter any such plans or policies from time to time. The Employee shall also be entitled to four weeks paid vacation each year, sick leave and other similar benefits in accordance with policies of the Company from time to time in effect for its senior executive officers. In addition, during the Term, the Company shall pay for Bloomberg service, executive assistant service, and cellular telephone/smartphone service for the Employee.

(f) **Reimbursement of Business Expenses.** During the Term of this Agreement, upon submission of proper invoices, receipts or other supporting documentation reasonably satisfactory to the Company and in accordance with and subject to the Company's expense reimbursement policies, the Employee shall be reimbursed by the Company for all reasonable business expenses actually and necessarily incurred by the Employee on behalf of the Company in connection with the performance of services under this Agreement.

(g) **Taxes.** The Base Compensation and any other compensation paid to Employee, including, without limitation, any bonus, shall be subject to withholding for applicable taxes and other amounts.

#### **4. Representation and Covenant of Employee.**

The Employee represents and warrants that he is not party to, or bound by, any agreement or commitment, or subject to any restriction, including but not limited to agreements related to previous employment containing confidentiality or noncompetition covenants, which limit the ability of the Employee to perform his duties under this Agreement.

#### **5. Confidentiality, Noncompetition, Nonsolicitation and Non-Disparagement.**

For purposes of this Section 5, all references to the Company shall be deemed to include the Company's affiliates and subsidiaries and their respective subsidiaries, whether now existing or hereafter established or acquired. In consideration for the compensation and benefits provided to the Employee pursuant to this Agreement, the Employee agrees with the provisions of this Section 5.

(a) **Confidential Information.** (i) The Employee acknowledges that as a result of his retention by the Company, the Employee has and will continue to have knowledge of, and access to, proprietary and confidential information of the Company including, without limitation, research and development plans and results, software, databases, technology, inventions, trade secrets, technical information, know-how, plans, specifications, methods of operations, product and service information, product and service availability, pricing information (including pricing strategies), financial, business and marketing information and plans, and the identity of customers, clients and suppliers (collectively, the “Confidential Information”), and that the Confidential Information, even though it may be contributed, developed or acquired by the Employee, constitutes valuable, special and unique assets of the Company developed at great expense which are the exclusive property of the Company. Accordingly, the Employee shall not, at any time, either during or subsequent to the Term of this Agreement, use, reveal, report, publish, transfer or otherwise disclose to any person, corporation, or other entity, any of the Confidential Information without the prior written consent of the Company, except to responsible officers and employees of the Company and other responsible persons who are in a contractual or fiduciary relationship with the Company and who have a need for such Confidential Information for purposes in the best interests of the Company, and except for such Confidential Information which is or becomes of general public knowledge from authorized sources other than by or through the Employee.

(ii) The Employee acknowledges that the Company would not enter into this Agreement without the assurance that all the Confidential Information will be used for the exclusive benefit of the Company.

(b) **Return of Confidential Information.** Upon the termination of this Agreement or upon the request of the Company, the Employee shall promptly return to the Company all Confidential Information in his possession or control, including but not limited to all drawings, manuals, computer printouts, computer databases, disks, data, files, lists, memoranda, letters, notes, notebooks, reports and other writings and copies thereof and all other materials relating to the Company’s business, including, without limitation, any materials incorporating Confidential Information.

(c) **Inventions, etc.** During the Term and for a period of one year thereafter, the Employee will promptly disclose to the Company all designs, processes, inventions, improvements, developments, discoveries, processes, techniques, and other information related to the business of the Company conceived, developed, acquired, or reduced to practice by him alone or with others during the Term of this Agreement, whether or not conceived during regular working hours, through the use of Company time, material or facilities or otherwise (“Inventions”).

The Employee agrees that all copyrights created in conjunction with his service to the Company and other Inventions, are “works made for hire” (as that term is defined under the Copyright Act of 1976, as amended). All such copyrights, trademarks, and other Inventions shall be the sole and exclusive property of the Company, and the Company shall be the sole owner of all patents, copyrights, trademarks, trade secrets, and other rights and protection in connection therewith. To the extent any such copyright and other Inventions may not be works for hire, the Employee hereby assigns to the Company any and all rights he now has or may hereafter acquire in such copyrights and any other Inventions. Upon request the Employee shall deliver to the Company all drawings, models and other data and records relating to such copyrights, trademarks and Inventions. The Employee further agrees as to all such Inventions, to assist the Company in every proper way (but at the Company’s expense) to obtain, register, and from time to time enforce patents, copyrights, trademarks, trade secrets, and other rights and protection relating to said Inventions in any and all countries, and to that end the Employee shall execute all documents for use in applying for and obtaining such patents, copyrights, trademarks, trade secrets and other rights and protection on and enforcing such Inventions, as the Company may reasonably request, together with any assignments thereof to the Company or persons designated by it. Such obligation to assist the Company shall continue beyond the termination of the Employee’s service to the Company, but the Company shall compensate the Employee at a reasonable rate after termination of service for time actually spent by the Employee at the Company’s request for such assistance. In the event the Company is unable, after reasonable effort, to secure the Employee’s signature on any document or documents needed to apply for or prosecute any patent, copyright, trademark, trade secret, or other right or protection relating to an Invention, whether because of the Employee’s physical or mental incapacity or for any other reason whatsoever, the Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his agent coupled with an interest and attorney-in-fact, to act for and in his behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights, trademarks, trade secrets, or similar rights or protection thereon with the same legal force and effect as if executed by the Employee.

(d) **Non-Competition**. The Employee agrees not to utilize his special knowledge of the Business and his relationships with customers, prospective customers, suppliers and others or otherwise to compete with the Company in the Business during the Restricted Period. During the Restricted Period, the Employee shall not, and shall not permit any of his respective employees, agents or others under his control, directly or indirectly, on behalf of the Employee or any other Person, to engage or have an interest, anywhere in the world in which the Company conducts business or markets or sells its products, alone or in association with others, as principal, officer, agent, employee, director, partner or stockholder (except as an owner of two percent or less of the stock of any company listed on a national securities exchange or traded in the over-the-counter market), whether through the investment of capital, lending of money or property, rendering of services or capital, or otherwise, in any Competitive Business, it being understood that nothing herein shall prevent Employee from engaging in the business of investing, reinvesting, or trading in any entity or its securities or other financial instruments. During the Restricted Period, the Employee shall not, and shall not permit any of his respective employees, agents or others under his control, directly or indirectly, on behalf of the Employee or any other Person, to accept Competitive Business from, or solicit the Competitive Business of any Person who is a customer of the Business conducted by the Company, or, to the Employee's knowledge, is a customer of the Business conducted by the Company at any time during the Restricted Period.

(e) **Non-Disparagement and Non-Interference**. The Employee shall not, either directly or indirectly, (i) during the Restricted Period, make or cause to be made, any statements that are disparaging or derogatory concerning the Company or its business, reputation or prospects; (ii) during the Restricted Period, request, suggest, influence or cause any party, directly or indirectly, to cease doing business with or to reduce its business with the Company or do or say anything which could reasonably be expected to damage the business relationships of the Company; or (iii) at any time during or after the Restricted Period, use or purport to authorize any Person to use any Intellectual Property owned by the Company or exclusively licensed to the Company or to otherwise infringe on the intellectual property rights of the Company.

(f) **Non-Solicitation**. During the Restricted Period, the Employee shall not recruit or otherwise solicit or induce any Person who is an employee or consultant of, or otherwise engaged by Company, to terminate his or her employment or other relationship with the Company, or such successor, or hire any person who has left the employ of the Company during the preceding one year.

(g) **Certain Definitions**. For purposes of this Agreement: (i) the term "Business" shall mean the business of designing, manufacturing, assembling, licensing, distributing, marketing and selling active outdoor performance products for climbing, mountaineering, backpacking, skiing, cycling and other outdoor recreation activities, avalanche transceiver technology, alpine safety products, and any other business that the Company or its subsidiaries may be engaged in during the Term of this Agreement; (ii) the term "Competitive Business" shall mean any business competitive with the Business; and (iii) the term "Restricted Period" shall mean the Term of this Agreement and a period of three years after termination of this Agreement; provided, that, if Employee breaches the covenants set forth in this Section 5, the Restricted Period shall be extended for a period equal to the period that a court having jurisdiction has determined that such covenant has been breached.

6 . **Remedies**. The restrictions set forth in Section 5 are considered by the parties to be fair and reasonable. The Employee acknowledges that the restrictions contained in Section 5 will not prevent him from earning a livelihood. The Employee further acknowledges that the Company would be irreparably harmed and that monetary damages would not provide an adequate remedy in the event of a breach of the provisions of Section 5. Accordingly, the Employee agrees that, in addition to any other remedies available to the Company, the Company shall be entitled to injunctive and other equitable relief to secure the enforcement of these provisions. In connection with seeking any such equitable remedy, including, but not limited to, an injunction or specific performance, the Company shall not be required to post a bond as a condition to obtaining such remedy. In any such litigation, the prevailing party shall be entitled to receive an award of reasonable attorneys' fees and costs. If any provisions of Sections 5 or 6 relating to the time period, scope of activities or geographic area of restrictions is declared by a court of competent jurisdiction to exceed the maximum permissible time period, scope of activities or geographic area, the maximum time period, scope of activities or geographic area, as the case may be, shall be reduced to the maximum which such court deems enforceable. If any provisions of Sections 5 or 6 other than those described in the preceding sentence are adjudicated to be invalid or unenforceable, the invalid or unenforceable provisions shall be deemed amended (with respect only to the jurisdiction in which such adjudication is made) in such manner as to render them enforceable and to effectuate as nearly as possible the original intentions and agreement of the parties. For purposes of this Section 6, all references to the Company shall be deemed to include the Company's affiliates and subsidiaries, whether now existing or hereafter established or acquired.

7. **Termination.** This Agreement shall terminate at the end of the Term set forth in Section 1. In addition, this Agreement may be terminated prior to the end of the Term set forth in Section 1 upon the occurrence of any of the events set forth in, and subject to the terms of, this Section 7.

(a) **Death or Permanent Disability.** If the Employee dies or becomes permanently disabled, this Agreement shall terminate effective upon the Employee's death or when his disability is deemed to have become permanent. If the Employee is unable to perform his normal duties for the Company because of illness or incapacity (whether physical or mental) for 45 consecutive days during the Term of this Agreement, or for 60 days (whether or not consecutive) out of any calendar year during the Term of this Agreement, his disability shall be deemed to have become permanent. If this Agreement is terminated on account of the death or permanent disability of the Employee, then the Employee or his estate shall be entitled to receive accrued Base Compensation through the date of such termination, all unvested stock options held by the Employee shall immediately vest and become exercisable and the Employee or the Employee's estate, as applicable, shall have no further entitlement to Base Compensation, bonus, or benefits, other than the proceeds of the Life Insurance in the event of the Employee's death, from the Company following the effective date of such termination; except as provided in Section 3(b) of this Agreement; provided, however, that any bonus pursuant to Section 3(b) of this Agreement shall be paid only for the year in which such termination occurred pro rated for the portion of such year prior to such termination and shall be paid at such time as the Board determines the bonuses for all senior executive officers of the Company for such year, but no later than March 15 of the year following the year in which it was earned.

(b) **Cause.** This Agreement may be terminated at the Company's option, immediately upon notice to the Employee, upon the occurrence of any of the following ("Cause"): (i) breach by the Employee of any material provision of this Agreement and the expiration of a 10-business day cure period for such breach after written notice thereof has been given to the Employee (which cure period shall not be applicable to clauses (ii) through (v) of this Section 7(b)); (ii) gross negligence or willful misconduct of the Employee in connection with the performance of his duties under this Agreement; (iii) Employee's failure to perform any reasonable directive of the Board; (iv) fraud, criminal conduct, dishonesty or embezzlement by the Employee; or (v) Employee's misappropriation for personal use of any assets (having in excess of nominal value) or business opportunities of the Company. If this Agreement is terminated by the Company for Cause, then the Employee shall be entitled to receive accrued Base Compensation through the date of such termination, all stock options, whether vested or unvested, and unvested restricted stock awards will be forfeited by the Employee and will terminate and be null and void and the Employee shall have no further entitlement to Base Compensation, bonus, or benefits from the Company following the effective date of such termination.

(c) **Without Cause.** This Agreement may be terminated, at any time by the Company without Cause immediately upon giving written notice to the Employee of such termination. Upon the termination of this Agreement by the Company without Cause, the Employee shall be entitled to receive an amount equal to five times the Base Compensation Employee was entitled to at the time of termination of this Agreement by the Company without cause, in one lump sum within five days of the effective date of such termination, subject to withholding for applicable taxes and other amounts, all unvested stock options held by the Employee shall immediately vest and become exercisable and all unvested restricted stock awards held by the Employee shall immediately vest, and the Employee shall have no further entitlement to Base Compensation, bonus, or benefits from the Company following the effective date of such termination.

(d) **By Employee.**

(i) Subject to the provisions of clause (ii) of this Section 7(d), the Employee may terminate this Agreement at anytime upon providing the Company with six weeks prior written notice. If this Agreement is terminated by the Employee pursuant to this Section 7(d)(i), then the Employee shall be entitled to receive his accrued Base Compensation and benefits through the effective date of such termination, any unvested stock options and unvested restricted stock awards will terminate and be null and void and the Employee shall have no further entitlement to Base Compensation, bonus, or benefits from the Company following the effective date of such termination.

(ii) The Employee may terminate this Agreement upon the occurrence of any of the following: (A) a breach by the Company of any material provision of this Agreement and the expiration of a 10-business day cure period for such breach after written notice thereof has been given to the Company by the Employee; (B) any material diminution in the authority or responsibilities delegated to the Employee as the chief executive officer of the Company; or (C) any reduction in the Employee's Base Compensation. Upon the termination of this Agreement by the Employee pursuant to this Section 7(d)(ii), the Employee shall be entitled to receive an amount equal to five times the Base Compensation Employee was entitled to at the time of termination of this Agreement by the Employee pursuant to this Section 7(d)(ii), in one lump sum within five days of the effective date of such termination, subject to withholding for applicable taxes and other amounts, all unvested stock options held by the Employee shall immediately vest and become exercisable and all unvested restricted stock awards held by the Employee shall immediately vest, and the Employee shall have no further entitlement to Base Compensation, bonus, or benefits from the Company following the effective date of such termination.

(e) **Change in Control.** Upon the occurrence of a Change in Control (as hereinafter defined), the Employee shall have the right to terminate this Agreement within 30 days of the occurrence of such Change in Control. Upon the termination of this Agreement by the Employee due to the occurrence of a Change in Control, the Employee shall be entitled to receive an amount equal to five times the Base Compensation Employee was entitled to at the time of such termination, in one lump sum within five days of the effective date of such termination, subject to withholding for applicable taxes and other amounts, all unvested stock options held by the Employee shall immediately vest and become exercisable and all unvested restricted stock awards held by the Employee shall immediately vest. For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to have occurred in the event that: (i) individuals who, as of the date hereof, constitute the Board cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Board shall be considered as though such individual was a member of the Board as of the date hereof; (ii) the Company shall have been sold by either (A) a sale of all or substantially all its assets, or (B) a merger or consolidation, other than any merger or consolidation pursuant to which the Company acquires another entity, or (C) a tender offer, whether solicited or unsolicited; or (iii) any party, other than the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of voting securities of the Company representing 50% or more of the total voting power of all the then-outstanding voting securities of the Company.

(f) **Return of Payments and Cancellation of Benefits.** In the event that the Employee fails to comply with any of his obligations under this Agreement, including, without limitation, the covenants contained in Section 5 hereof, the Employee shall repay to the Company the five year Base Compensation lump sum payment received by the Employee from the Company pursuant to Section 7(c), 7(d)(ii) or Section 7(e) hereof as of the date of such failure to comply, and the Employee will have no further rights in or to such amounts.

(g) **Release.** Notwithstanding anything to the contrary contained herein, the payments described in Sections 7(c), 7(d)(ii) and 7(e) hereof shall only be payable by the Company to the Employee if the Employee has executed and delivered to the Company a reasonable and customary release agreement that is satisfactory to the Company.

8. **Miscellaneous.**

(a) **Survival.** The provisions of Sections 4, 5, 6, 7 and 8 shall survive the termination of this Agreement.

(b) **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and, except as specifically set forth herein, merges and supersedes any prior or contemporaneous agreements between the parties pertaining to the subject matter hereof.

(c) **Modification.** This Agreement may not be modified or terminated orally, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

(d) **Waiver.** Failure of a party to enforce one or more of the provisions of this Agreement or to require at any time performance of any of the obligations hereof shall not be construed to be a waiver of such provisions by such party nor to in any way affect the validity of this Agreement or such party's right thereafter to enforce any provision of this Agreement, nor to preclude such party from taking any other action at any time which it would legally be entitled to take.

(e) **Successors and Assigns.** Neither party shall have the right to assign this Agreement, or any rights or obligations hereunder, without the consent of the other party; provided, however, that upon the sale of all or substantially all of the assets, business and goodwill of the Company to another company, or upon the merger or consolidation of the Company with another company, this Agreement shall inure to the benefit of, and be binding upon, both Employee and the company purchasing such assets, business and goodwill, or surviving such merger or consolidation, as the case may be, in the same manner and to the same extent as though such other company were the Company; and provided, further, that the Company shall have the right to assign this Agreement to any affiliate or subsidiary of the Company. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their legal representatives, heirs, successors and assigns.

(f) **Communications.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given at the time personally delivered or when mailed in any United States post office enclosed in a registered or certified postage prepaid envelope and addressed to the addresses set forth below, or to such other address as any party may specify by notice to the other party; provided, however, that any notice of change of address shall be effective only upon receipt.

*If to the Company:*

Black Diamond, Inc.  
2084 East 3900 South  
Salt Lake City, Utah 84124  
Facsimile: (801) 278-5544  
Attention: Aaron Kuehne

*With a copy to:*

Kane Kessler, P.C.  
666 Third Avenue  
New York, New York 10017  
Facsimile: (212) 245-3009  
Attention: Robert L. Lawrence, Esq.



*If to the Employee:*

Warren B. Kanders  
One Landmark Square  
Suite 1730  
Stamford, Connecticut 06901

(g) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity and enforceability of the other provisions of this Agreement and the provisions held to be invalid or unenforceable shall be enforced as nearly as possible according to its original terms and intent to eliminate such invalidity or unenforceability.

(h) **Jurisdiction; Venue.** This Agreement shall be subject to the non-exclusive jurisdiction of the federal courts or state courts of the State of New York, County of New York, for the purpose of resolving any disputes among them relating to this Agreement or the transactions contemplated by this Agreement and waive any objections on the grounds of forum non conveniens or otherwise. The parties hereto agree to service of process by certified or registered United States mail, postage prepaid, addressed to the party in question. The prevailing party in any proceeding instituted in connection with this Agreement shall be entitled to an award of its/his reasonable attorneys' fees and costs.

(i) **Governing Law.** This Agreement is made and executed and shall be governed by the laws of the State of New York, without regard to the conflicts of law principles thereof.

(j) **Counterparts.** This Agreement may be executed in any number of counterparts (and by facsimile or other electronic signature), but all counterparts will together constitute but one agreement.

(k) **Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto and, except as provided herein, shall not be deemed for the benefit of any other person or entity.

(l) **Headings and References.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References in this Agreement to any section refer to such section of this Agreement unless the context otherwise requires.

(m) **IRC Section 409A.** The parties to this Agreement intend that the Agreement complies with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), where applicable, and this Agreement shall be interpreted in a manner consistent with that intention. To the extent not otherwise provided by this Agreement, and solely to the extent required by Section 409A of the Code, no payment or other distribution required to be made to the Employee hereunder (including any payment of cash, any transfer of property and any provision of taxable benefits) as a result of his termination of employment with the Company shall be made earlier than the date that is six (6) months and one day following the date on which the Employee separates from service with the Company and its affiliates (within the meaning of Section 409A of the Code).

(n) **Recovery of Compensation.** All payments and benefits provided under this Agreement shall be subject to any compensation recovery or clawback policy as required under applicable law, rule or regulation or otherwise adopted by the Company from time to time.

(o) **Participation of the Parties.** The parties hereto acknowledge and agree that (i) this Agreement and all matters contemplated herein have been negotiated among all parties hereto and their respective legal counsel, if any, (ii) each party has had, or has been afforded the opportunity to have, this Agreement and the transactions contemplated hereby reviewed by independent counsel of its own choosing, (iii) all such parties have participated in the drafting and preparation of this Agreement from the commencement of negotiations at all times through the execution hereof, and (iv) any ambiguities contained in this Agreement shall not be construed against any party hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Employment Agreement as of the date set forth above.

**Black Diamond, Inc.**

**Employee**

By: /s/ Aaron Kuehne

Name: Aaron Kuehne

Title: Chief Administrative Officer and Chief Financial Officer

/s/ Warren B. Kanders

Warren B. Kanders

(Signature Page to Employment Agreement of Warren B. Kanders)

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