

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): June 26, 2015

Warp 9, Inc.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation)

0-13215

(Commission File Number)

30-0050402

(I.R.S. Employer Identification No.)

1933 Cliff Drive, Suite 11, Santa Barbara, California

(Address of principal executive offices)

93109

(Zip Code)

(805) 964-3313

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, 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 240.14d-2(b))
- Soliciting material pursuant to Rule 14a-12 under 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))

SECTION 1. REGISTRANT'S BUSINESS AND OPERATIONS

Item 1.01 Entry into a Material Definitive Agreement.

On June 26, 2015, Warp 9, Inc., a Nevada corporation (the "Company") entered into an agreement and plan of merger (the "Agreement"), with Indaba Group, LLC, a Colorado limited liability company ("Indaba"), Warp 9, Inc., a Delaware corporation and wholly owned subsidiary of the Company (the "Merger Sub"), and Ryan Shields, an individual holding outstanding membership interests of Indaba, Blake Gindi, an individual holding outstanding membership interests of Indaba, and Jack Gindi, an individual holding outstanding membership interests of Indaba (collectively, the "Sellers" or "Indaba Members"), pursuant to which Indaba will merge with and into the Merger Sub and the Merger Sub will be the surviving entity. At the closing of the Agreement, the Merger Sub will change its name to Indaba Group, Inc. and the Sellers will receive a total of two million dollars (\$2,000,000.00) paid in the form of the issuance of ten thousand (10,000) shares of the Company's Series A Convertible Preferred Stock (the "Series A Preferred Stock"), at a liquidation preference of two hundred dollars (\$200.00) per share, which shall have the rights, preferences and privileges as set forth in the Certificate of Designation, the form of which is attached to this Report as Exhibit 3.1, to be filed with the Nevada Secretary of State prior to the closing of the transaction.

At the closing of the Agreement, the Company will enter into employment agreements with Ryan Shields and Blake Gindi (see Item 5.02 to this Report) and the Merger Sub Board of Directors will consist of five members, Ryan Shields, Blake Gindi, Andrew Van Noy, Zachary Bartlett, and Gregory Boden. In addition, Ryan Shields and Blake Gindi will be appointed to the Company's Board of Directors.

The closing of the Agreement is expected to occur by no later than September 30, 2015. Indaba is engaged in the business of providing digital commerce services. A copy of the Agreement and Plan of Merger is attached to this Report as Exhibit 10.1.

SECTION 5. CORPORATE GOVERNANCE AND MANAGEMENT

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

Compensation Arrangements. Upon the closing of the Agreement, Indaba Group, Inc., a Delaware corporation (reflects pending name change) and wholly owned subsidiary of the Company ("IGI"), will enter into an employment agreement with each of Ryan Shields and Blake Gindi. Pursuant to the employment agreement between IGI and Ryan Shields, Mr. Shields will be the chief executive officer of IGI and receive base compensation of \$175,000 per year with the possibility of receiving an annual cash bonus and equity awards. A copy of the proposed employment agreement between IGI and Mr. Shields is attached to this Report as Exhibit 10.2. Pursuant to the employment agreement between IGI and Blake Gindi, Mr. Gindi will be the chief technology officer of IGI and receive base

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compensation of \$175,000 per year with the possibility of receiving an annual cash bonus and equity awards. A copy of the proposed employment agreement between IGI and Mr. Gindi is attached to this Report as Exhibit 10.3

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

Prior to the closing of the Agreement, the Company will file a Certificate of Designation in order to designate 10,000 shares of its preferred stock as Series A Preferred Stock. Each share of Series A Preferred Stock will have a par value of \$0.001 and no voting rights except as otherwise required by law. Each share of Series A Preferred Stock will be convertible into 10,000 shares of the Company's common stock and will be entitled to receive dividends, payable quarterly, out of any assets of the Company legally available therefor, at the rate of Eight Dollars (\$8.00) per share per annum, or Two Dollars (\$2.00) per share per quarter (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares). The liquidation preference of each share of the Series A Preferred Stock will be Two Hundred Dollars (\$200.00). A copy of the Certificate of Designation for the Company's planned Series A Preferred Stock is attached to this Report as Exhibit 3.1.

SECTION 9. FINANCIAL STATEMENTS, PRO FORMA FINANCIALS & EXHIBITS

(d) Exhibits

3.1 Certificate of Designation for Series A Preferred Stock.

10.1 Agreement and Plan of Merger by and among Indaba Group, LLC, a Colorado limited liability company, Ryan Shields, Blake Gindi, and Jack Gindi, Warp 9, Inc., a Nevada corporation, and Warp 9, Inc., a Delaware corporation.

10.2 Employment Agreement to be made between Indaba Group, Inc., a Delaware corporation, and Ryan Shields.

10.3 Employment Agreement to be made between Indaba Group, Inc., a Delaware corporation, and Blake Gindi.

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SIGNATURES

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

WARP 9, INC.

(Registrant)

Date: June 30, 2015

/s/ Andrew Van Noy.
Andrew Van Noy, Chief Executive
Officer and President

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EXHIBIT 3.1

CERTIFICATE OF DESIGNATION

OF

WARP 9, INC.

1. The name of the corporation is Warp 9, Inc. (the "Corporation").

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

The initial series of the Corporation's Preferred Stock shall be designated "Series A Preferred Stock". The number of shares constituting the Series A Preferred Stock shall be Ten Thousand (10,000) shares. Each share of Series A Preferred Stock is convertible into Ten Thousand (10,000) shares of Common Stock of the Corporation, as adjusted in accordance with Section 3 below. The Series A Preferred Stock shall have the rights, preferences and privileges set forth below:

Section 1. Dividends. The holders of outstanding shares of the Series A Preferred Stock shall be entitled to receive dividends, payable quarterly, out of any assets of the Corporation legally available therefor, at the rate of Eight Dollars (\$8.00) per share per annum, or Two Dollars (\$2.00) per quarter (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares), payable in preference and priority to any payment of any dividend on the Common Stock. The right to such dividend on the Series A Preferred Stock shall be cumulative. If the Board of Directors shall elect to make further distribution of dividends after all dividends on the Series A Preferred Stock, as required by this Section 1, shall have been paid or declared and set apart for payment to holders of the Series A Preferred Stock, such dividends shall be made equally to all outstanding shares, preferred and common on an as-if converted basis.

Section 2. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holder of each outstanding share of the Series A Preferred Stock shall be entitled to receive, out of the assets of the Corporation available for distribution to its shareholders upon such liquidation, whether such assets are capital or surplus of any nature, an amount equal to Two Hundred Dollars (\$200.00) for each such share of the Series A Preferred Stock (as adjusted for any combinations, consolidations, stock distributions or stock dividends with respect to such shares), plus all dividends, if any, declared and unpaid thereon as of the date of such distribution, before any payment shall be made or any assets distributed to the holders of the Common Stock, and, after such payment, the remaining assets of the Corporation shall be distributed the holders of Common Stock.

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- (a) If the assets to be distributed pursuant to Section 2 above to the holders of the Series A Preferred Stock shall be insufficient to permit the receipt by such holders of the full preferential amounts aforesaid, then all of such assets shall be distributed among such holders of Series A Preferred Stock ratably in accordance with the number of such shares then held by each such holder.
- (b) The sale of all or substantially all of the Corporation's assets, any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Corporation, shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 2.

Section 3. Conversion. The Series A Preferred Stock shall be subject to conversion into Common Stock upon the following terms and conditions:

(a) Timing of Conversion.

- (i) Conversion by the Holder. The shares of Series A Preferred Stock held by any holder may be converted in Common Stock as set forth herein, at the option of the holder according to the following schedule: one-third of the shares received by the holder may be converted beginning one year after the first date on which a share of Series A Preferred Stock was issued (the "Original Issue Date"); one-third of such shares may be converted beginning two (2) years after the Original Issue Date; and the remaining one-third of such shares may be converted beginning three years after the Original Issue Date. Notwithstanding the foregoing schedule, holders of Series A Preferred Stock may convert their shares into Common Stock effective immediately prior to the sale of all or substantially all of the Corporation's assets.

- (ii) Conversion at the Option of the Corporation. Prior to any event described in Section 2(b), above, the Corporation may, at its sole option, by written notice given to the holders of the Series A Preferred Stock, cause to have such holder's shares of Series A Preferred Stock converted into Common Stock, with such conversion being deemed to have occurred immediately prior to the closing of such event.

(b) Mechanics of Conversion.

- (i) Voluntary Conversion. As a condition to any conversion of shares of the Series A Preferred Stock pursuant to Section 3(a)(i) above, the holder of the shares to be converted shall surrender the certificate or certificates therefor, duly endorsed, at the principal office of the Corporation or of any transfer agent for such stock, and shall deliver a written notice to the Secretary of the Corporation at the Corporation's principal office stating the number of such shares of the Series A Preferred Stock to be converted. Promptly thereafter, the Corporation shall issue and deliver to such holder a certificate for the number of shares of the Common Stock to which such holder shall be thereby entitled. In addition, if less than all the shares represented by such certificate(s) are surrendered for conversion, the Corporation shall issue and deliver to such holder a new certificate for the balance of the shares of Series A Preferred Stock not so converted. The effective date of such conversion shall be the close of business on the later of the date on which a proper notice is received by the Secretary of the Corporation or the date the duly endorsed certificate(s) is (are) received by the Corporation or the transfer agent, and the person or persons entitled to receive the shares of the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares on such effective date.
 - (ii) Conversion at the Option of the Corporation. In the case of conversion pursuant to Section 3(a)(ii) above, every outstanding share of the Series A Preferred Stock shall be converted automatically without any further action by the holder of such share and whether or not the certificate representing such share shall be surrendered to the Corporation or the transfer agent for such stock; provided, however, that the Corporation shall not be obligated to issue a certificate evidencing the shares of the Common Stock issuable upon such conversion unless the certificate evidencing such share of the Series A Preferred Stock shall be surrendered at the principal office of the Corporation or at the principal office of such transfer agent. Upon such surrender, the Corporation shall promptly issue and deliver to such holder a certificate for the number of shares of the Common Stock to which such holder shall be thereby entitled. The effective date of such conversion shall be the close of business on the date of the occurrence of the event described in Section 3(a)(ii) above. The person or persons entitled to receive the shares of the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares on such effective date.
- (c) Conversion Ratio. Each share of Series A Preferred Stock is convertible into Ten Thousand (10,000) shares of the Corporation's fully paid and nonassessable shares of Common Stock (the "Conversion Ratio"), as adjusted pursuant to Section 3.
- (d) Adjustments to Conversion Ratio for Stock Dividends, Consolidations and Subdivisions. In case the Corporation at any time after the first issuance of a share of the Series A Preferred Stock shall declare or pay on the Common Stock any dividend in shares of Common Stock, or effect a subdivision of

the outstanding shares of the Common Stock into a greater number of shares of the Common Stock (by reclassification or otherwise than by payment of a dividend payable in shares of the Common Stock), or shall combine or consolidate the outstanding shares of the Common Stock into a lesser number of shares of the Common Stock (by reclassification or otherwise), then, and in each such case, the Conversion Ratio (as previously adjusted) in effect immediately prior to such declaration, payment, subdivision, combination or consolidation shall, concurrently with the effectiveness of such declaration, payment, subdivision, combination or consolidation, be proportionately adjusted.

- (e) Adjustments for Reclassifications and Certain Reorganizations. In case the Corporation at any time after the first issuance of a share of the Series A Preferred Stock shall reclassify or otherwise change the outstanding shares of the Common Stock, whether by capital reorganization, reclassification or otherwise, or shall consolidate with or merge with or into any other corporation where the Corporation is not the surviving corporation but not otherwise, then, and in each such case, each outstanding share of the Series A Preferred Stock shall, immediately after the effectiveness of such reclassification, other change, consolidation or merger, be convertible into the type and amount of stock and other securities or property which the holder of that number of shares of the Common Stock into which such share of the Series A Preferred Stock would have been convertible pursuant to Section 3(c) above immediately before the effectiveness of such reclassification, other change, consolidation or merger would be entitled to receive in respect of such shares of the Common Stock as the result of such reclassification, other change, consolidation or merger.
- (f) Fractional Shares. No fractional shares of the Common Stock shall be issuable upon the conversion of shares of the Series A Preferred Stock and the Corporation shall pay the cash equivalent of any fractional share upon such conversion.
- (g) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of the Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, such

number of shares of the Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of the Common Stock shall not be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, the Corporation will take such corporate action as is necessary to increase its authorized by unissued shares of the Common Stock to such number of shares as shall be sufficient for such purpose.

Section 4. Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to holders of shares of the Series A Preferred Stock shall be deemed given three days following the date on which mailed by certified mail, return receipt requested, postage prepaid, addressed to such holder at

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the address last appearing on the books of the Corporation for such holder or given by such holder to the Corporation for the purpose of notice, or if no such address appears or is so given, at the principal office of the Corporation, or upon personal delivery to the aforementioned address.

Section 5. Voting Rights. Except as otherwise required by law, and subject to Section 7, below, the holders of the Series A Preferred Stock shall have no voting rights.

Section 6. Protective Provisions. So long as any shares of the Series A Preferred Stock shall remain outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock voting together as a class:

- (a) alter or change the rights, preferences or privileges of the shares of the Series A Preferred Stock so as to affect materially and adversely such shares; or
- (b) create any new class of shares having preference over the Series A Preferred Stock.

Section 7. Status of Converted Stock. In the event any shares of the Series A Preferred Stock shall be converted pursuant to Section 3 above, the shares so converted shall be cancelled and shall revert to the Corporation's authorized but unissued Preferred Stock.

Section 8. Transferability. The Series A Preferred Stock shall not be transferable, provided that in the event of the death of a holder of shares of the Series A Preferred Stock, to the heirs or estate of such person.

3. Effective date of filing: Immediate.

4. Signature:

By: _____

, President

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EXHIBIT 10.1

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is made and entered into as of June 26, 2015 by Indaba Group, LLC, a Colorado limited liability company, which has a mailing address at 2854 Larimer Street, Denver, CO 80205 ("Indaba" or "Seller"), Ryan Shields ("Shields"), Blake Gindi ("Gindi"), and Jack Gindi ("Jack Gindi") (collectively, the "Indaba Members"), and Warp 9, Inc., a Nevada corporation ("Buyer" or "Company"), and Warp 9, Inc., a Delaware corporation ("Merger Sub"), with respect to the following facts. Each of Indaba, Seller, Shields, Gindi, Jack Gindi, the Indaba Members, Buyer, Company and Merger Sub are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. The Indaba Members own 100% of the membership interests of Indaba.
- B. Indaba is engaged in the business of providing digital commerce services the "Business").
- C. The Board of Managers of Indaba and the board of directors of each of the Merger Sub and the Company have determined that an acquisition of Indaba by the Buyer is advisable, fair to and in the best interests of their respective companies, members and stockholders and, accordingly, have each approved the merger of Indaba with and into Merger Sub (the "Merger"), with the Merger Sub surviving such Merger as the Surviving Corporation, upon the terms and subject to the conditions set forth in this Agreement; and
- D. Neither the Buyer nor the Surviving Corporation shall make, for U.S. federal income tax purposes, an election pursuant to Section 338 of the Code (or any corresponding provision of state Law) in connection with the transactions contemplated by this Agreement.
- E. The Parties hereto intend that the reorganization contemplated by this Merger Agreement shall constitute a tax-free reorganization pursuant to Section 368(a)(1) of the Internal Revenue Code;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties to this Agreement, and in light of the above recitals to this Agreement, the Parties to this Agreement hereby agree as follows:

1. The Merger.

Upon Closing as described in Section 4 below, and subject to the terms and conditions of this Agreement, Indaba shall merge with Merger Sub, and a Certificate of Merger, in the form attached as Exhibit A, shall be filed with the Delaware Secretary of State (the time of such filing is referred to hereafter as the

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"Effective Time"). From and after the Effective Time, the separate existence of Indaba shall cease and Merger Sub shall continue as the Surviving Corporation. The Merger shall have the effects set forth in Section 259 of the Delaware General Corporation Law.

1.1 The Closing. The Closing shall take place in accordance with Section 4 below.

1.2 Merger Consideration. The aggregate consideration to be paid by the Buyer to the Indaba Members in exchange for and in cancellation of their interests in Indaba as a result of the Merger (the "Merger Consideration") shall be two million dollars (\$2,000,000.00) paid in the form of ten thousand (10,000) shares of the Company's Series A Convertible Preferred Stock (the "Series A Preferred Stock"), at two hundred dollars (\$200.00) per share, which shall have the rights, preferences and privileges as set forth in a Certificate of Designation, in the form attached hereto as Exhibit B, to be filed with the Nevada Secretary of State prior to the Effective Time. Each one (1) share of Series A Preferred Stock is convertible into ten thousand (10,000) shares of Common Stock of the Buyer. With respect to the public resale of the Common Stock, each Indaba Member shall at all times be subject to the restrictions, conditions and requirements applicable to an affiliate of the Buyer, as described in Rule 144 of the Securities Act of 1933, as amended, even if the Indaba Members or its assignees and successors are no longer affiliates of the Buyer.

1.3 Certificate of Incorporation and By-laws; Officers and Directors.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of any Party, the Certificate of Incorporation of the Surviving Corporation shall be the Certificate of Incorporation of the Merger Sub immediately prior to the Effective Time, except that the name of the Surviving Corporation set forth therein shall be changed to Indaba Group, Inc.

(b) At the Effective Time, by virtue of the Merger and without any action on the part of any Party, the By-laws of the Surviving Corporation shall be the By-laws of the Merger Sub immediately prior to the Effective Time, except that the name of the Surviving Corporation set forth therein shall be changed to Indaba Group, Inc.

2. Covenant to Remain Employees of the Surviving Corporation.

As an inducement to Buyer to enter into and to perform its obligations under this Agreement, the Indaba Members covenant to enter into employment agreements with Buyer in substantially the form attached here as Exhibit C (each an "Employment Agreement"). In the event that Shields or Gindi (a "Terminating Seller") (i) voluntarily resigns as an employee of the Surviving Corporation without Good Reason, as defined in his Employment Agreement; (ii) terminates his employment with the Surviving Corporation due to death, disability rendering the Terminating Seller unable to work, or (iii) is involuntarily terminated as an employee of the Surviving Corporation for cause, as defined in Section 3 below, in each case prior to the two (2) year anniversary of the Closing, then Buyer will have the sole right, exercisable at any time within one (1) year after such termination, to either (i) cause an immediate conversion of all or any portion of the Terminating Seller's Series A Preferred Stock into shares of Buyer's Common Stock, or (ii) redeem such shares of Series A Preferred Stock in cash at a price equal to the liquidation preference then in effect for such shares; provided, that in the event of any such conversion of the Series A Preferred Stock, all Common

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Stock issued pursuant to such a conversion will be subject to a two (2) year lock-up whereby Seller will not be able to transfer, hypothecate, assign or sell any of those shares for two (2) years after receipt of them. In any event, Seller will, with respect to the resale by any of them of any of the shares of Buyer's common stock issued to them at any time pursuant to any conversion of any portion of their Series A Preferred Stock, be subject to the restrictions, conditions and requirements applicable to an affiliate of Buyer under Rule 144 of the Securities Act of 1933, as amended, even if Seller or the Indaba Members are no longer affiliates of Buyer.

3. Other Covenants.

3.1 Covenant Not to Compete. As a material inducement for Buyer to enter into this Agreement, the Indaba Members agree that for a period of two years following the Closing (the "Non-Competition Period"), they covenant and agree that each of them shall not, directly or indirectly own, manage, operate, participate in, produce, represent, distribute and/or otherwise act on behalf of any person, firm, corporation, partnership or other entity which involves digital commerce services (the "Competitive Business") anywhere within the United States, its possessions and territories, Canada or Mexico (collectively, the "Territory"); or hire any employee or former employee of Buyer, the Surviving Corporation or Indaba to perform services in or involving the Competitive Business, unless the individual hired shall have departed Buyer's, the Surviving Corporation's or Indaba's employment at least twelve (12) months prior to the hiring. The Indaba Members further covenant and agree that during the Non-Competition Period, they will not directly or indirectly solicit or agree to service for their benefit or the benefit of any third-party, any of Buyer's or the Surviving Corporation's customers. Notwithstanding the foregoing, nothing in this Section 3.1 shall prohibit them from owning, managing, operating, participating in the operation of, or advising, consulting or being employed by any entity that is not involved in the Competitive Business. The Indaba Members acknowledge and agree that Buyer will expend substantial time, talent, effort and money in marketing, promoting, managing, selling and otherwise exploiting the businesses Buyer and the Surviving Corporation operate, in part by virtue of Buyer's acquisition of the Assets pursuant to this Agreement, that Indaba Members are all of the members of Indaba, that they are receiving a substantial benefit from the transactions contemplated hereunder and that the benefit received by Buyer and the Indaba Members in agreeing to be bound by this Section 3.1 are a material part of the consideration for the transactions contemplated by this Agreement. The Parties recognize that this Section 3.1 contains conditions, covenants, and time limitations that are reasonably required for the protection of the business of the Surviving Corporation and Buyer. If any limitation, covenant or condition shall be deemed to be unreasonable and unenforceable by a court or arbitrator of competent jurisdiction, then this Section 3.1 shall thereupon be deemed to be amended to provide for modification of such limitation, covenant and/or condition to such extent as the court or arbitrator shall find to be reasonable and such modification shall not affect the remainder of this Agreement. The Indaba Members acknowledge that, in the event an Indaba Member breaches this Agreement, money

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damages will not be adequate to compensate Buyer for the loss occasioned by such breach. The Indaba Members therefore consent, in the event of such a breach, to the granting of injunctive or other equitable relief against the Indaba Members by any court of competent jurisdiction.

3.2 Indaba and Buyer Boards of Directors. At or prior to the Closing, to be effective on the Closing, the Parties will execute all documents, resolutions, resignations, appointments and acceptances in order to cause the Surviving Corporation Board of Directors to consist of the following five members at the Closing: Shields, Gindi, Andrew Van Noy, Zachary Bartlett and Gregory Boden. Shields and Gindi will also be appointed to the Buyer's Board of Directors.

3.3 Cooperation on Tax Matters. The Parties acknowledge and agree that they intend for the transactions set forth in this Agreement to be treated as a tax-free reorganization under IRC § 368(a)(1)(A). From and after the date of this Agreement, each party shall cooperate fully, as and to the extent reasonably requested by any other party, in connection with the preparation of tax returns, forms and/or documents necessary to ensure that the transactions set forth in this Agreement are treated as a tax-free reorganization under IRC § 368(a)(1)(A).

4. Closing and Further Acts.

4.1 Time and Place of Closing. Upon satisfaction or waiver of the conditions set forth in this Agreement, the closing of the Transaction (the "Closing") will take place in Santa Barbara, California at 11:00 a.m. (local time) on the date that the Parties may mutually agree in writing, but in no event later than September 30, 2015 (the "Closing Date"), unless extended by mutual written agreement of the Parties.

4.2 Actions at Closing. At the Closing, the following actions will take place:

(a) Buyer will deliver to each of the Indaba Members a certificate representing their respective shares of Buyer's Series A Preferred Stock.

(b) The Parties shall execute and deliver for filing the Certificate of Merger upon the Closing.

(c) Indaba will deliver to Buyer copies of necessary resolutions of the Board of Managers of Indaba authorizing the execution, delivery, and performance of this Agreement and the other agreements contemplated by this Agreement, which resolutions have been certified by an officer of Indaba as being valid and in full force and effect.

(d) Buyer will deliver to Indaba copies of corporate resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated by this Agreement, which resolutions have been certified by an officer of Buyer as being valid and in full force and effect.

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(e) Indaba will deliver to the Buyer true and complete copies of Indaba's Articles of Organization and a Certificate of Good Standing from the Secretary of State of its state of domicile, which articles and certificate of good standing are dated not more than thirty (30) days prior to the Closing Date.

(f) Delivery of any additional documents or instruments as a party may reasonably request or as may be necessary to evidence and effect the Merger.

4.3 Actions Pre-Closing. Seller and the Indaba Members will at all times prior to and after the Closing cooperate fully with Buyer and Buyer's officers, directors, representatives, accountants and lawyers to enable Buyer to conduct thorough due diligence of Indaba and to enable Indaba to prepare and have audited all financial statements deemed necessary by Buyer to comply with all of its reporting obligations with the Securities and Exchange Commission, including without limitation the preparation and filing of its Reports on Form 8-K within four (4) business days after the Closing, without audited financial statements, and with audited financial statements within seventy-one (71) days after the Closing, subject to the provisions of Section 4.5 of this Agreement.

4.4 Actions Post Closing. The Indaba Members will at all times after the Closing cooperate fully with Buyer and Buyer's officers, directors, representatives, accountants and lawyers to complete the preparation and audit of all financial statements of Buyer and Indaba deemed necessary or appropriate by Buyer, and to enable Buyer to comply with all of its reporting obligations with the Securities and Exchange Commission.

4.5 Costs of Financial Audit of Indaba. Buyer will bear the costs of the 2014 audit of Indaba financial statements, except that Indaba will reimburse Buyer for the total cost of the audit (not to exceed \$25,000), as invoiced by the auditor, if any of the following events occur: (i) the audit cannot be completed due to the lack of reasonable cooperation from Seller, the Indaba Members or Indaba's personnel, or (ii) the audited financials and records of Indaba are, in the opinion of the certified auditors, materially and adversely different than those presented to the Buyer prior to the date of this Agreement, or (iii) Seller or the Indaba Members refuse to proceed with the Closing and Buyer is ready, willing and able to proceed with the Closing, or Seller or the Indaba Members otherwise materially breach this Agreement. With the exception of possible audit fee reimbursement, under no circumstances will either Buyer or Seller or the Indaba Members be due any termination expenses in connection with this Agreement.

5. Representations and Warranties of the Indaba Members and Seller.

Except as set forth on the Disclosure Schedules, attached hereto as Exhibit D, the Indaba Members and Seller represent and warrant, jointly and severally, as of the date hereof, to Buyer as follows:

5.1 Power and Authority; Binding Nature of Agreement. The Indaba Members and Seller have full power and authority to enter into this Agreement and to perform their obligations hereunder. The execution, delivery, and performance of this Agreement by Indaba have been duly authorized by all necessary action on its part. Assuming that this Agreement is a valid and binding obligation of each of the other Parties hereto, this Agreement is a valid and

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binding obligation of the Indaba Members and Seller, except as may be limited by bankruptcy, moratorium, insolvency or other similar laws generally affecting the enforcement of creditors' rights, and the effect or availability of rules of law governing specific performance, injunctive relief or other equitable remedies (regardless of whether any such remedy is considered in a proceeding at law or in equity).

5.2 Subsidiaries. There is no corporation, general partnership limited partnership, joint venture, association, trust or other entity or organization that Indaba directly or indirectly controls or in which Indaba directly or indirectly owns any equity or other interest.

5.3 Good Standing. Indaba (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is

organized, (ii) has all necessary power and authority to own its assets and to conduct its business as it is currently being conducted, and (iii) is duly qualified or licensed to do business and is in good standing in every jurisdiction (both domestic and foreign) where such qualification or licensing is required.

5.4 Financial Statements. Indaba has delivered to Buyer the following unaudited financial statements prior to the Closing (the "Indaba Financial Statements"): (i) the unaudited statement of operations and balance sheet of Indaba for the calendar year ended December 31, 2013, (ii) the unaudited statement of operations and balance sheet of Indaba for the calendar year ended December 31, 2014, and (iii) the unaudited statement of operations and balance sheet of Indaba for the three (3) months ended March 31, 2015. Except as stated therein or in the notes thereto, the Indaba Financial Statements: (a) present fairly the financial position of Indaba as of the respective dates thereof and the results of operations and changes in financial position of Indaba for the respective periods covered thereby; and (b) have been prepared in accordance with Indaba's normal business practices applied on a consistent basis throughout the periods covered. Indaba will cooperate with Buyer to prepare the following audited financial statements prior to the Closing (the "Indaba Audited Financial Statements"): (i) the audited statement of operations, statement of cash flows and balance sheet of Indaba for the calendar year ended December 31, 2014, and the (ii) audited statement of operations, statement of cash flows and balance sheet for the calendar year ended December 31, 2013

5.5 Capitalization. The Indaba Members own 100% of Indaba's membership interests, and there are no options, warrants or other rights to acquire any ownership interest in Indaba, except as set forth in this Agreement. The existing membership interests were issued to the Indaba Members in full compliance with all applicable federal, state and local securities laws and other laws.

5.6 Absence of Changes. Except as otherwise set forth on Schedule 5.6 hereto or otherwise disclosed to and acknowledged by Buyer in writing prior to the Closing, since August 31, 2014:

(a) There has not been any material adverse change in the business, condition, assets, operations or prospects of Indaba and no event has

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occurred that is reasonably likely to have a material adverse effect on the business, condition, assets, operations or prospects of Indaba.

(b) Indaba has not repurchased, redeemed or otherwise reacquired any of its membership interests or other securities.

(c) Indaba has not sold or otherwise issued any of its membership interests.

(d) Indaba has not amended its articles of organization, operating agreement or other charter or organizational documents, nor has it effected or been a party to any merger, recapitalization, reorganization or similar transaction.

(e) Indaba has not formed any subsidiary or contributed any funds or other assets to any subsidiary.

(f) Indaba has not purchased or otherwise acquired any material assets, nor has it leased any assets from any other person, except in the ordinary course of business consistent with past practice.

(g) Indaba has not made any capital expenditure outside the ordinary course of business or inconsistent with past practice.

(h) Indaba has not sold or otherwise transferred any material assets to any other person, except in the ordinary course of business consistent with past practice and at a price equal to the fair market value of the assets transferred.

(i) There has not been any material loss, damage or destruction to any of the material properties or Assets of Indaba (whether or not covered by insurance).

(j) Indaba has not written off as uncollectible any indebtedness or accounts receivable, except for write offs that were made in the ordinary course of business consistent with past practice.

(k) Indaba has not leased any assets to any other person except in the ordinary course of business consistent with past practice and at a rental rate equal to the fair rental value of the leased assets.

(l) Indaba has not mortgaged, pledged, hypothecated or otherwise encumbered any assets, except in the ordinary course of business consistent with past practice.

(m) Indaba has not entered into any contract, or incurred any debt, liability or other obligation (whether absolute, accrued, contingent or otherwise), except for (i) contracts that were entered into in the ordinary course of business consistent with past practice and that have terms of less than six (6)

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months and do not contemplate payments by or to Indaba which will exceed, over the term of the contract, ten thousand dollars (\$10,000) in the aggregate, and (ii) current liabilities incurred in the ordinary course of business consistent with the past

practice.

(n) Indaba has not made any loan or advance to any other person, except for advances that have been made to customers in the ordinary course of business consistent with past practice and that have been properly reflected as "accounts receivables."

(o) Other than annual raises or bonuses paid or provided consistent with past business practices, Indaba has not paid any bonus to, or increased the amount of the salary, fringe benefits or other compensation or remuneration payable to, any of the managers, officers or employees of Indaba.

(p) No contract or other instrument to which Indaba is or was a party or by which Indaba or any of its assets are or were bound has been amended or terminated, except in the ordinary course of business consistent with past practice.

(q) Indaba has not discharged any lien or discharged or paid any indebtedness, liability or other obligation, except for current liabilities that (i) are reflected in the Indaba Financial Statements as of March 31, 2015 or have been incurred since March 31, 2015 in the ordinary course of business consistent with past practice, and (ii) have been discharged or paid in the ordinary course of business consistent with past practice.

(r) Indaba has not forgiven any debt or otherwise released or waived any right or claim, except in the ordinary course of business consistent with past practice.

(s) Indaba has not changed its methods of accounting or its accounting practices in any respect.

(t) Indaba has not entered into any transaction outside the ordinary course of business or inconsistent with past practice.

(u) Indaba has not agreed or committed (orally or in writing) to do any of the things described in clauses (b) through (t) of this Section 5.6.

5.7 Absence of Undisclosed Liabilities. Indaba has no debt, liability or other obligation of any nature (whether due or to become due and whether absolute, accrued, contingent or otherwise) that is not reflected or reserved against in the Indaba Financial Statements as of March 31, 2015, except for obligations incurred since March 31, 2015 in the ordinary and usual course of business consistent with past practice.

5.8 Indaba Assets.

(a) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in a breach of the terms and conditions of, or result in a loss of rights under, or result in the creation of any lien, charge or encumbrance upon, any of its assets (the "Assets").

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(b) Indaba has good and marketable title to the Assets, free and clear of all mortgages, liens, leases, pledges, charges, encumbrances, equities or claims, except as expressly disclosed in writing by Indaba to Buyer prior to the Closing Date.

(c) Except as reflected in the Indaba Financial Statements, the Assets are not subject to any material liability, absolute or contingent, which has not been disclosed by Indaba to and acknowledged by Buyer in writing prior to the Closing Date.

(d) Indaba has provided to Buyer in writing an accurate description of all of the assets of Indaba or used in the business of Indaba.

(e) Indaba has provided to Buyer in writing a list of all contracts, agreements, licenses, leases, arrangements, commitments and other undertakings to which Indaba is a party or by which it or its property is bound. Except as specified by Indaba to and acknowledged by Buyer in writing prior to the Closing Date, all of such contracts, agreements, leases, licenses and commitments are valid, binding and in full force and effect. As soon as practicable after the execution of this Agreement by all Parties, Indaba will provide Buyer with copies of all such documents for Buyer's review.

5.9 Compliance with Laws; Licenses and Permits. Indaba is not in violation of, nor has it failed to conduct its business in material compliance with, any applicable federal, state, local or foreign laws, regulations, rules, treaties, rulings, orders, directives or decrees. Indaba has delivered to Buyer a complete and accurate list and provided Buyer with the right to inspect true and complete copies of all of the licenses, permits, authorizations and franchises to which Indaba is subject and all said licenses, permits, authorizations and franchises are valid and in full force and effect. Said licenses, permits, authorizations and franchises constitute all of the licenses, permits, authorizations and franchises reasonably necessary to permit Indaba to conduct its business in the manner in which it is now being conducted, and Indaba is not in violation or breach of any of the terms, requirements or conditions of any of said licenses, permits, authorizations or franchises.

5.10 Taxes. Except as disclosed herein, Indaba has accurately and completely filed with the appropriate United States state, local and foreign governmental agencies all tax returns and reports required to be filed (subject to permitted extensions applicable to such filings), and has paid or accrued in full all taxes, duties, charges, withholding obligations and other governmental liabilities as well as any interest, penalties, assessments or deficiencies, if any, due to, or claimed to be due by, any governmental authority (including taxes on properties, income, franchises, licenses, sales and payroll). (All such items are collectively referred to herein as "Taxes"). The Indaba Financial Statements fully

accrue or reserve all current and deferred taxes. Indaba is not a party to any pending action or proceeding, nor is any such action or proceeding threatened by any governmental authority for the assessment or collection of Taxes. No liability for taxes has been incurred other than in the ordinary course of business. There are no liens for Taxes except for liens for property taxes not yet delinquent. Indaba is not a

party to any Tax sharing, Tax allocation, Tax indemnity or statute of limitations extension or waiver agreement and in the past year has not been included on any consolidated combined or unitary return with any entity other than Indaba. Indaba has duly withheld from each payment made to each person from whom such withholding is required by law the amount of all Taxes or other sums (including but not limited to United States federal income taxes, any applicable state or municipal income tax, disability tax, unemployment insurance contribution and Federal Insurance Contribution Act taxes) required to be withheld therefore and has paid the same to the proper tax authorities prior to the due date thereof. To the extent any Taxes withheld by Indaba have not been paid as of the Closing Date because such Taxes were not yet due, such Taxes will be paid to the proper tax authorities in a timely manner. All Tax returns filed by Indaba are accurate and comply with and were prepared in accordance with applicable statutes and regulations. The Indaba Members and Seller will cause Indaba to prepare and file all Tax returns and pay all Taxes required prior to the Closing. Such Tax returns will be subject to review and approval by Buyer, which approval will not be unreasonably withheld.

5.11 Environmental Compliance Matters. Indaba has at all relevant times with respect to the Business or otherwise been in material compliance with all environmental laws, and has received no potentially responsible party notices or similar notices from any governmental agencies or private parties concerning releases or threatened releases of any "hazardous substance" as that term is defined under 42 U.S.C. 960(1) (14).

5.12 Compensation. Indaba has provided Buyer with a full and complete list of all officers, directors, employees and consultants of Indaba as of the date hereof, specifying their names and job designations, their respective current wages, salaries or other forms of direct compensation, and the basis of such compensation, whether fixed or commission or a combination thereof.

5.13 No Default.

(a) Each of the contracts, agreements or other instruments of Indaba and each of the standard Customer Agreements or contracts of Indaba is a legal, binding and enforceable obligation by or against Indaba, subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium or other similar federal or state laws affecting the rights of creditors and the effect or availability of rules of law governing specific performance, injunctive relief or other equitable remedies (regardless of whether any such remedy is considered in a proceeding at law or in equity). To the knowledge of Seller, no party with whom Indaba has an agreement or contract is in default there under or has breached any terms or provisions thereof which is material to the conduct of Indaba's business.

(b) Indaba has performed or is now performing the obligations of, and Indaba is not in material default (or would by the elapse of time and/or the giving of notice be in material default) in respect of, any contract, agreement or commitment binding upon it or its assets or properties and material to the conduct of its business. No third party has raised any claim, dispute or controversy with respect to any of the executed contracts of Indaba, nor has

Indaba received notice of warning of alleged nonperformance, delay in delivery or other noncompliance by Indaba with respect to its obligations under any of those contracts, nor are there any facts which exist indicating that any of those contracts may be totally or partially terminated or suspended by the other Parties thereto.

5.14 Product Warranties. Except as otherwise disclosed to and acknowledged by Buyer in the form of a written disclosure schedule prior to the Closing and for warranties under applicable law, (a) there are no warranties, express or implied, written or oral, with respect to the products or projects of Indaba, (b) there are no pending or threatened claims with respect to any such warranty and (c) Indaba has no, and after the Closing Date, will have no, liability with respect to any such warranty, whether known or unknown, absolute, accrued, contingent, or otherwise and whether due or to become due, other than customary returns in the ordinary course of business that are fully reserved against in the Indaba Financial Statements. In the event that warranty claims arise after the Closing, the Indaba Members shall have the right to settle those claims through Indaba, subject only to a cost of labor and materials charge without any mark up.

5.15 Proprietary Rights.

(a) Indaba has provided Buyer in writing a complete and accurate list and provided Buyer with the right to inspect true and complete copies of all software, patents and applications for patents, trademarks, trade names, service marks, and copyrights, and applications therefore, owned or used by Indaba or in which it has any rights or licenses, except for software used by Indaba and generally available on the commercial market. Indaba has provided Buyer with a complete and accurate description of all agreements or provided Buyer with the right to inspect true and complete copies of all agreements of Indaba with each officer, employee or consultant of Indaba providing Indaba with title and ownership to patents, patent applications, trade secrets and inventions developed or used by Indaba in its business. All of such agreements are valid, enforceable and legally binding, subject to the effect or availability of rules of law governing specific performance, injunctive relief or other equitable remedies (regardless of whether any such remedy is considered in a proceeding at law or in equity).

(b) Indaba owns or possesses licenses or other rights to use all computer software, software programs, patents, patent

applications, trademarks, trademark applications, trade secrets, service marks, trade names, copyrights, inventions, drawings, designs, customer lists, propriety know-how or information, or other rights with respect thereto (collectively referred to as "Proprietary Rights"), used in the business of Indaba, and the same are sufficient to conduct Indaba's business as it has been and is now being conducted.

(c) The operations of Indaba do not conflict with or infringe, and no one has asserted to Indaba that such operations conflict with or infringe on any Proprietary Rights owned, possessed or used by any third party. There are no claims, disputes, actions, proceedings, suits or appeal pending against Indaba with respect to any Proprietary Rights, and none has been threatened against Indaba. There are no facts or alleged fact which would reasonably

serve as a basis for any claim that Indaba does not have the right to use, free of any rights or claims of others, all Proprietary Rights in the development, manufacture, use, sale or other disposition of any or all products or services presently being used, furnished or sold in the conduct of the business of Indaba as it has been and is now being conducted.

(d) To the knowledge of Seller, no current employee of Indaba is in violation of any term of any employment contract, proprietary information and inventions agreement, non-competition agreement, or any other contract or agreement relating to the relationship of any such employee with Indaba or any previous employer.

5.16 Insurance. Indaba has provided Buyer with complete and accurate copies of all policies of insurance and provided Buyer with the right to inspect true and complete copies of all policies of insurance to which Indaba is a party or is a beneficiary or named insured as of the Closing Date. Indaba has in full force and effect, with all premiums due thereon paid the policies of insurance set forth therein. There were no claims in excess of \$10,000 asserted or currently outstanding under any of the insurance policies of Indaba in respect of all motor vehicle, general liability, errors and omissions, workers compensation, and medical claims during the calendar year ending on December 31, 2013 or December 31, 2014.

5.17 Labor Relations. None of the employees of Indaba are represented by any union or are parties to any collective bargaining arrangement, and, to the knowledge of Seller, no attempts are being made to organize or unionize any of Indaba's employees. Except as disclosed in writing to Buyer prior to the Closing, to the knowledge of Seller, there is not presently pending or existing, and there is not presently threatened, any material (a) strike, slowdown, picketing, work stoppage or employee grievance process, or (b) action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) against or affecting Indaba relating to the alleged violation of any legal requirement pertaining to labor relations or employment matters. Indaba is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment, wages and hours, occupational safety and health and is not engaged in any unfair labor practices. Indaba is in compliance with the Immigration Reform and Control Act of 1986. Except as disclosed in Schedule 5.17, Indaba has no employment agreements.

5.18 Condition of Premises. All real property leased by Indaba is in good condition and repair, ordinary wear and tear excepted.

5.19 No Distributor Agreements. Except as disclosed to and acknowledged by Buyer in writing prior to the Closing, Indaba is not a party to, nor is the property of Indaba bound by, any distributors' or manufacturer's representative or agency agreement.

5.20 Conflict of Interest Transactions. No past or present shareholder, director, officer or employee of Indaba or any of their affiliates (i) is indebted to, or has any financial, business or contractual relationship or arrangement with Indaba, or (ii) has any direct or indirect interest in any property, asset or

right which is owned or used by Indaba or pertains to the business of Indaba with the exception of outstanding shareholder loans which will be satisfied and discharged in full prior to the Closing Date.

5.21 Litigation. There is no action, suit, proceeding, dispute, litigation, claim, complaint or, to the knowledge of Seller, investigation by or before any court, tribunal, governmental body, governmental agency or arbitrator pending or threatened against or with respect to Indaba which (i) if adversely determined would have a material adverse effect on the business, condition, assets, operations or prospects of Indaba, or (ii) challenges or would challenge any of the actions required to be taken by Indaba under this Agreement. There exists no basis for any such action, suit, proceeding, dispute, litigation, claim, complaint or investigation.

5.22 Non-Contravention. Neither (a) the execution and delivery of this Agreement, nor (b) the performance of this Agreement will: (i) contravene or result in a violation of any of the provisions of the organizational documents of Indaba; (ii) contravene or result in a violation of any resolution adopted by the members or directors of Indaba; (iii) result in a violation or breach of, or give any person the right to declare (whether with or without notice or lapse of time) a default under or to terminate, any material agreement or other instrument to which Indaba is a party or by which Indaba or any of its assets are bound; (iv) give any person the right to accelerate the maturity of any indebtedness or other obligation of Indaba; (v) result in the loss of any license or other contractual right of Indaba; (vi) result in the loss of, or in a violation of any of the terms, provisions or conditions of, any governmental license, permit, authorization or franchise of Indaba; (vii) result in the creation or imposition of any lien, charge, encumbrance or restriction on any of the assets of Indaba; (viii) result in the reassessment or revaluation of any property of Indaba by any taxing authority or other governmental authority; (ix) result in the imposition of, or subject Indaba to any liability for, any conveyance or transfer tax or any similar tax; or (x) result in a violation of any law, rule, regulation, treaty, ruling, directive, order,

arbitration award, judgment or decree to which Indaba or any of its assets or any limited liability interests are subject.

5.23 Approvals. Indaba has provided Buyer with a complete and accurate list of all jurisdictions in which Indaba is authorized to do business along with the documentation evidencing such authorization. No authorization, consent or approval of, or registration or filing with, any governmental authority is required to be obtained or made by Indaba in connection with the execution, delivery or performance of this Agreement, including the conveyance to Buyer of the Business.

5.24 Brokers. Indaba has not agreed to pay any brokerage fees, finder's fees or other fees or commissions with respect to the Transaction, and no person is entitled, or intends to claim that it is entitled, to receive any such fees or commissions in connection with such transaction.

5.25 Special Government Liabilities. Indaba has no existing or pending liabilities, obligations or deferred payments due to any federal, state or local government agency or entity in connection with its business or with any program sponsored or funded in whole or in part by any federal, state or local government

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agency or entity, nor are the Indaba Members or Seller aware of any threatened action or claim or any condition that could support an action or claim against Indaba or the Business for any of said liabilities, obligations or deferred payments.

5.26 Sales and EBITDA. Indaba's total sales for the year ended December 31, 2014 were in excess of \$1,688,000.00 and EBITDA (defined below) was approximately \$-60,576.26. The Indaba Members and the Seller have estimated in good faith that Indaba's total sales for the six (6) months ending June 30, 2015 will be approximately \$1,300,000 and EBITDA will be approximately \$100,000. The foregoing estimates shall in no event be construed as a guaranty or warranty of future performance. For purposes of this Agreement, "EBITDA" means, for the relevant time period, earnings before interest, taxes, depreciation and amortization, determined in accordance with generally accepted accounting principles, as consistently applied by Indaba, plus (i) all out of pocket costs and expenses incurred by Indaba in connection with the Transaction, (ii) all cash and non-cash compensation expenses and distributions to any of the Indaba Members, (iii) any extraordinary, unusual or non-recurring or non-cash amounts paid or payable for capital expenditures, and (iv) any extraordinary, unusual or non-recurring employee bonuses or similar compensation relating to the Transaction.

5.27 Net Working Capital. Immediately prior to the Closing, Indaba's Working Capital, as hereinafter defined, shall be not less than one hundred fifty thousand dollars (\$150,000). For purposes of this Section 5.27:

- i. "Current Assets" means the current assets of Seller as determined in accordance with U.S. generally accepted accounting principles.
- ii. "Current Liabilities" means the current Liabilities of Seller as determined in accordance with U.S. generally accepted accounting principles.
- iii. "Working Capital" means an amount equal to (a) the amount of the Current Assets, minus (b) the amount of the Current Liabilities.

5.28 Full Disclosure. Neither this Agreement (including the exhibits hereto) nor any statement, certificate or other document delivered to Buyer by or on behalf of Indaba contains any untrue statement of a material fact or omits to state a material fact necessary to make the representations and other statements contained herein and therein not misleading.

5.29 Tax Advice. The Indaba Members and Seller hereby represent and warrant that they have sought their own independent tax advice regarding the Transaction and neither the Indaba Members nor Seller have relied on any representation or statement made by Buyer, Merger Sub, or their representatives regarding the tax implications of such transactions.

5.30 Acknowledgement of Risks. The Indaba Members hereby represent and warrant that they have conducted a thorough review of Buyer's public reports and financial statements filed by it with the Securities and Exchange Commission, and have had an opportunity to ask questions of and to receive additional information from representatives of Buyer. The Indaba Members acknowledge that there are substantial risks associated with owning the Series A Preferred

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Stock and Buyer's common stock into which it is convertible, including but not limited to (i) those risk factors specifically disclosed to the Indaba Members in writing by Buyer, a copy of which has been delivered to the Indaba Members, (ii) Buyer may default on the Series A Preferred Stock and the price of its common stock may decline, (iii) the transferability of Buyer's common stock is restricted by applicable federal and state securities laws as well as by the terms of this Agreement and the Series A Preferred Stock, and may be impaired by a lack of trading volume, and (iv) those additional risks described in public reports filed by Buyer with the Securities and Exchange Commission. The Indaba Members are acquiring the Series A Preferred Stock for investment for their own respective accounts only and not with a view to, or for resale in connection with, any distribution thereof. The Indaba Members represent and warrant that they are sophisticated, knowledgeable and experienced in making investments of this kind and are capable of evaluating the risks and merits of acquiring the Series A Preferred Stock.

6. Representations and Warranties of Buyer.

Buyer represents and warrants to the Indaba Members and Seller as follows:

6.1 Power and Authority; Binding Nature of Agreement. Buyer has full power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all necessary action on its part. Assuming that this Agreement is a valid and binding obligation of the other party hereto, this Agreement is a valid and binding obligation of Buyer.

6.2 Approvals. No authorization, consent or approval of, or registration or filing with, any governmental authority or any other person is required to be obtained or made by Buyer in connection with the execution, delivery or performance of this Agreement.

6.3 Good Standing. Buyer (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, (ii) has all necessary power and authority to own its assets and to conduct its business as it is currently being conducted, (iii) is duly qualified or licensed to do business and is in good standing in every jurisdiction (both domestic and foreign) where such qualification or licensing is required, (iv) has the full right, corporate power and authority to enter into this Agreement and to perform its obligations hereunder; (v)

6.4 Authority. The execution of this Agreement by the individual whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Buyer, have been duly authorized by all necessary corporate action on the part of Buyer;

6.5 Representations True on Closing Date. The representations and warranties of Buyer set forth in this Agreement are true and correct on the date hereof, and will be true and correct on the Closing Date as though such representations and warranties were made as of the Closing Date.

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6.6 Non-Contravention. The execution, delivery and performance of this Agreement by Buyer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Buyer's organizational documents (including its Certificate of Incorporation and By-laws), (ii) any applicable Law or (iii) with or without notice or lapse of time or both, the provisions of any material contract or agreement to which Buyer is a party or to which any of its material assets are bound (the "Buyer Contracts").

6.7 Material Compliance. Buyer is in material compliance with all applicable Laws and Buyer Contracts relating to this Agreement, and the operation of its business.

6.8 Capital Structure.

(a) **Capital Stock.** The authorized capital stock of the Company consists of: (i) Four Hundred Ninety Five Million (495,000,000) Shares and (ii) Five Million (5,000,000) shares of preferred stock, par value \$0.001 per share, of the Company (the "Company Preferred Stock"). As of the date of this Agreement, (105,790,195) Shares were issued and outstanding, (0) ZERO Shares were issued and held by the Company in its treasury and (0) ZERO shares of Company Preferred Stock were issued and outstanding or held by the Company in its treasury. All of the outstanding shares of capital stock of the Company are, and all shares of capital stock of the Company which may be issued as contemplated or permitted by this Agreement will be, when issued, duly authorized and validly issued, fully paid and non-assessable and not subject to any pre-emptive rights. No Subsidiary of the Company owns any Shares. Prior to the Closing, Buyer will deliver to each Seller a schedule describing all stock options (the "Stock Options") and convertible notes of the Company (the "Convertible Notes"), along with the aggregate number of shares that could be issued if all Stock Options were issued and all Convertible Notes were converted into Shares.

6.9 Governmental Consents. No consent, approval, order or authorization of, or registration, declaration or filing with, or notice to (any of the foregoing being a "Consent"), any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other governmental authority, or any quasi-governmental or private body exercising any regulatory or other governmental or quasi-governmental authority (a "Governmental Entity") is required to be obtained or made by the Buyer in connection with the execution, delivery and performance by the Company of this Agreement or the consummation by the Buyer of the Merger and other transactions contemplated hereby, except for: (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware; (ii) if required by Nevada law, the filing of the Buyer Proxy Statement with the Securities and Exchange Commission ("SEC") in accordance with the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such reports under the Exchange Act as may be required in connection with this Agreement, the Merger and the other transactions contemplated by this Agreement; (iii) such Consents as may be required under (A) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or (B) any other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments or lessening of competition or creation or

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strengthening of a dominant position through merger or acquisition ("Foreign Antitrust Laws" and, together with the HSR Act, the "Antitrust Laws"), in any case that are applicable to the transactions contemplated by this Agreement; (iv) such Consents as may be required under applicable state securities or "blue sky" Laws and the securities Laws of any foreign country; (v) the other Consents of Governmental Entities listed in Schedule 6.7(c); and (vi) such other Consents which if not obtained or made would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

6.10 SEC Filings; Financial Statements; Internal Controls; Sarbanes-Oxley Act Compliance.

(a) **SEC Filings.** Buyer has timely filed with or furnished to, as applicable, the SEC all registration statements, prospectuses, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 1998 (the "**Buyer SEC Documents**"). Buyer has made available to Seller all such Buyer SEC Documents that it has so filed or furnished prior to the date hereof. To the knowledge of Buyer's management and board of directors, as of their respective filing dates (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), each of the Buyer SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), and the Exchange Act, and the rules and regulations of the SEC thereunder applicable to such Buyer SEC Documents. To the knowledge of Buyer's management and board of directors, none of the Buyer SEC Documents, including any financial statements, schedules or exhibits included or incorporated by reference therein at the time they were filed (or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseding filing prior to the date hereof), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Buyer 's Subsidiaries is required to file or furnish any forms, reports or other documents with the SEC.

(b) **Undisclosed Liabilities.** The audited balance sheet of Buyer dated as of June 30, 2014 contained in the Buyer SEC Documents filed prior to the date hereof is hereinafter referred to as the "**Buyer Balance Sheet.**" Neither Buyer nor any of its Subsidiaries has any Liabilities other than Liabilities that (i) are reflected or recorded on the Buyer Balance Sheet (including in the notes thereto), (ii) were incurred since the date of the Buyer Balance Sheet in the ordinary course of business, (iii) are incurred in connection with the transactions contemplated by this Agreement, or (iv) would not reasonably be expected to have, individually or in the aggregate, a material adverse effect.

(c) **Off-balance Sheet Arrangements.** Neither Buyer nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off balance sheet partnership or any similar contract (including any contract or arrangement relating to any transaction or relationship between or among Buyer and any of its Subsidiaries, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose entity or person, on the other hand, or any "off balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)), where the result,

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purpose or intended effect of such contract is to avoid disclosure of any material transaction involving, or material liabilities of, Buyer or any of its Subsidiaries in Buyer's or such Subsidiary's published financial statements or other Buyer SEC Documents.

6.11 Full Disclosure. Neither this Agreement (including the exhibits hereto) nor any statement, certificate or other document delivered to Seller by or on behalf of Buyer contains any untrue statement of a material fact or omits to state a material fact necessary to make the representations and other statements contained herein and therein not misleading.

7. Conditions to Closing.

7.1 Conditions Precedent to Buyer's Obligation to Close. Buyer's obligation to close the transaction as contemplated in this Agreement is conditioned upon the occurrence or waiver by Buyer of the following:

- (a) The Indaba Members have delivered an updated list of assets and liabilities that is accurate and complete as of not more than five (5) business days prior to the Closing.
- (b) All representations and warranties of the Indaba Members and Seller made in this Agreement or in any exhibit or schedule hereto delivered by the Indaba Members and Seller shall be true and correct as of the Closing Date with the same force and effect as if made on and as of that date.
- (c) The Indaba Members and Seller shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing Date.
- (d) Buyer must be satisfied in its sole and absolute discretion with its due diligence of the Indaba Members and Seller.
- (e) Buyer shall have received a report from the Secretary of State for Colorado showing the existence or absence of liens, financing statements and other encumbrances recorded against any of the Assets, dated not more than five (5) days prior to the Closing, and such report shall be satisfactory to Buyer in its sole and absolute discretion.

7.2 Conditions Precedent to the Indaba Members' and Seller's Obligation to Close. The Indaba Members' and Sellers' obligation to close the transaction as contemplated in this Agreement is conditioned upon the occurrence or waiver by the Indaba Members of the following:

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- (a) All representations and warranties of Buyer made in this Agreement or in any exhibit hereto delivered by Buyer shall be true and

correct on and as of the Closing Date with the same force and effect as if made on and as of that date.

(b) Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

(c) Buyer shall have executed and delivered an Employment Agreement to Shields and Gindi.

8. Survival of Representations and Warranties.

All representations and warranties made by each of the Parties hereto will survive the Closing for eighteen (18) months after the Closing Date, or longer if expressly and specifically provided in the Agreement. Indaba and the Indaba Members will have joint and several liability under this Agreement, except for the covenant not to compete in Section 3.1 of this Agreement or where otherwise expressly and specifically provided in this Agreement.

9. Indemnification.

9.1 Indemnification by the Indaba Members. The Indaba Members agree jointly and severally, to indemnify, defend and hold harmless Buyer and its affiliates against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including interest, penalties and reasonable attorney's fees and costs ("Losses"), incurred by Buyer or any of its affiliates arising, resulting from, or relating to any and all liabilities of Indaba incurred prior to the Closing Date or relating to the Assets prior the Closing Date, any misrepresentation of a material fact or omission to disclose a material fact made by the Indaba Members or Seller in this Agreement, in any exhibits to this Agreement or in any other document furnished or to be furnished by Indaba or Sellers under this Agreement, or any breach of, or failure by the Indaba Members or Seller to perform, any of their representations, warranties, covenants or agreements in this Agreement or in any exhibit or other document furnished or to be furnished by the Indaba Members or Seller under this Agreement.

9.2 Indemnification by Buyer. Buyer agrees to indemnify, defend and hold harmless the Indaba Members and Seller arising, resulting from, or relating to any misrepresentation of a material fact or omission to disclose a material fact made by the Buyer in this Agreement, in any exhibits to this Agreement or in any other document furnished or to be furnished by the Buyer under this Agreement, or any breach of, or failure by Buyer to perform, any of its representations, warranties, covenants or agreements in this Agreement or in any exhibit or other document furnished or to be furnished by Buyer under this Agreement.

9.3 Procedure for Indemnification Claims.

(a) Whenever any parties become aware that a claim (an "Underlying Claim") has arisen entitling them to seek indemnification under Section 9 of

this Agreement, such parties (the "Indemnified Parties") shall promptly send a notice ("Notice") to the parties liable for such indemnification (the "Indemnifying Parties") of the right to indemnification (the "Indemnity Claim"); provided, however, that the failure to so notify the Indemnifying Parties will relieve the Indemnifying Parties from liability under this Agreement with respect to such Indemnity Claim only if, and only to the extent that, such failure to notify the Indemnifying Parties results in the forfeiture by the Indemnifying Parties of rights and defenses otherwise available to the Indemnifying Parties with respect to the Underlying Claim. Any Notice pursuant to this Section 9.3(a) shall set forth in reasonable detail, to the extent then available, the basis for such Indemnity Claim and an estimate of the amount of damages arising therefore.

(b) If an Indemnity Claim does not result from or arise in connection with any Underlying Claim or legal proceedings by a third party, the Indemnifying Parties will have thirty (30) calendar days following receipt of the Notice to issue a written response to the Indemnified Parties, indicating the Indemnifying Parties' intention to either (i) contest the Indemnity Claim or (ii) accept the Indemnity Claim as valid. The Indemnifying Parties' failure to provide such a written response within such thirty (30) day period shall be deemed to be an acceptance of the Indemnity Claim as valid. In the event that an Indemnity Claim is accepted as valid, the Indemnifying Parties shall, within fifteen (15) business days thereafter, pay Losses incurred by the Indemnified Parties in respect of the Underlying Claim in cash by wire transfer of immediately available funds to the account or accounts specified by the Indemnified Parties. To the extent appropriate, payments for indemnifiable Losses made pursuant to this Agreement will be treated as adjustments to the Purchase Price.

(c) In the event an Indemnity Claim results from or arises in connection with any Underlying Claim or legal proceedings by a third party, the Indemnifying Parties shall have fifteen (15) calendar days following receipt of the Notice to send a Notice to the Indemnified Parties of their election to, at their sole cost and expense, assume the defense of any such Underlying Claim or legal proceeding; provided that such Notice of election shall contain a confirmation by the Indemnifying Parties of their obligation to hold harmless the Indemnified Parties with respect to Losses arising from such Underlying Claim. The failure by the Indemnifying Parties to elect to assume the defense of any such Underlying Claim within such fifteen (15) day period shall entitle the Indemnified Parties to undertake control of the defense of the Underlying Claim on behalf of and for the account and risk of the Indemnifying Parties in such manner as the Indemnified Parties may deem appropriate, including, but not limited to, settling the Underlying Claim. The parties controlling the defense of the Underlying Claim shall not, however, settle or compromise such Underlying Claim without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed. The non-controlling parties shall be entitled to participate in (but not control) the defense of any such action, with their own counsel and at their own expense.

(d) The Indemnifying Parties and the Indemnified Parties will cooperate reasonably, fully and in good faith with each other, at the sole expense of

the Indemnifying Parties subject to the last sentence of Section 9.3(c) of this Agreement, in connection with the defense, compromise or settlement of any Underlying Claim including, without limitation, by making available to the other parties all pertinent information and witnesses within their reasonable control.

(e) **Basket; Limitations on Indemnification; Calculation of Losses.**

(i) **Basket.** A Buyer Indemnified Party shall not be entitled to make a claim for indemnification for any Losses arising out of Section 9.1 until the aggregate amount of all claims for Losses which arise out of Section 9.1 exceeds ten thousand dollars (\$10,000) (the "Basket"). In the event the aggregate amount of such Losses exceeds the Basket, then the Seller shall indemnify such Buyer Indemnified Party with respect to the amount of all Losses exceeding the amount of the Basket.

(ii) **Seller's and Indaba Member Cap.** The maximum aggregate liability of the Seller and Indaba Members, collectively, under Section 8.2(a) for all Losses shall be an amount equal to the Purchase Price actually received by such Seller or Indaba Member (the "Seller's Cap").

(iii) **Exclusions from the Basket and Seller's Cap.** Notwithstanding the foregoing, the following Losses shall not be subject to the provisions of the Basket and the Seller's Cap and a Buyer Indemnified Party shall be entitled to indemnification with respect to such Losses in accordance with this Article 9 as though the Basket and the Seller's Cap were not a part of this Agreement:

(1) Losses relating to, caused by or resulting from the breach of any of the Seller's and/or Indaba Members representations and warranties as a result of fraud or intentional misrepresentation; and

(2) Losses relating to, caused by or resulting from the breach of any ongoing covenant of the Seller or Indaba Member.

9.4 Recovery Losses for which a Buyer Indemnified Party may be entitled to recover pursuant to this Article 9 shall be offset by the pro rata cancellation of Series A Preferred Shares held by the Indaba Members at the rate of \$200.00 per share, if any, against any Seller or Indaba Member in accordance with this Article 9. Except for specific performance and injunctive relief, the indemnification obligations and procedures set forth in this Article 9 shall be the sole and exclusive remedy for liabilities arising out of this Agreement and the transactions contemplated hereby.

10. Injunctive Relief.

10.1 Damages Inadequate. Each party acknowledges that it would be impossible to measure in money the damages to the other party if there is a failure to comply with any covenants and provisions of this Agreement, and agrees that in the event of any breach of any covenant or provision, the other party to this Agreement will not have an adequate remedy at law.

10.2 Injunctive Relief. It is therefore agreed that the other party to this Agreement who is entitled to the benefit of the covenants and provisions of this Agreement which have been breached, in addition to any other rights or remedies which they may have, will be entitled to immediate injunctive relief to enforce such covenants and provisions, and that in the event that any such action or proceeding is brought in equity to enforce them, the defaulting or breaching party will not urge a defense that there is an adequate remedy at law.

11. Further Assurances.

Following the Closing, the Indaba Members and Seller shall furnish to Buyer such instruments and other documents as Buyer may reasonably request for the purpose of carrying out or evidencing the transactions contemplated hereby.

12. Fees and Expenses.

Each party hereto shall pay all fees, costs and expenses that it incurs in connection with the negotiation and preparation of this Agreement and in carrying out the transactions contemplated hereby (including, without limitation, all fees and expenses of its counsel and accountant).

13. Waivers.

If any party at any time waives any rights hereunder resulting from any breach by the other party of any of the provisions of this Agreement, such waiver is not to be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement. Resort to any remedies referred to herein will not be construed as a waiver of any other rights and remedies to which such party is entitled under this Agreement or otherwise.

14. Successors and Assigns.

Each covenant and representation of this Agreement will inure to the benefit of and be binding upon each of the Parties, their personal representatives, assigns and other successors in interest.

15. Entire and Sole Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all other agreements, representations, warranties, statements, promises and undertakings, whether oral or written, with respect to the subject matter of this Agreement. This Agreement may be modified or amended only by a written agreement signed by all Parties to this Agreement. The Parties acknowledge that as of the date of the execution of this Agreement, any and all other agreements, either written or verbal, regarding the substance of this Agreement will be terminated and be of no further force or effect.

16. Governing Law.

This Agreement will be governed by the laws of California without giving effect to applicable conflict of law provisions. With respect to any litigation

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arising out of or relating to this Agreement, each party agrees that it will be filed in and heard by the state or federal courts with jurisdiction to hear such suits located in Santa Barbara County, California.

17. Counterparts.

This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts will be deemed to be an original, and such counterparts will constitute but one and the same instrument.

18. Assignment.

Except in the case of an affiliate of Buyer, this Agreement may not be assignable by any party without prior written consent of the other Parties.

19. Remedies.

Except as otherwise expressly provided herein, none of the remedies set forth in this Agreement are intended to be exclusive, and each party will have all other remedies now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

20. Section Headings.

The section headings in this Agreement are included for convenience only, are not a part of this Agreement and will not be used in construing it.

21. Severability.

In the event that any provision or any part of this Agreement is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability will not affect the validity or enforceability of any other provision or part of this Agreement.

22. Notices.

Each notice or other communication hereunder must be in writing and will be deemed to have been duly given on the earlier of (i) the date on which such notice or other communication is actually received by the intended recipient thereof, or (ii) the date five (5) days after the date such notice or other communication is mailed by registered or certified mail (postage prepaid) to the intended recipient at the following address (or at such other address as the intended recipient will have specified in a written notice given to the other Parties hereto):

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If to the Indaba Members and Seller:

Indaba Group, LLC
2854 Larimer Street
Denver, CO 80205
Attn: Ryan Shields, President
Telephone: 720-545-0120

Facsimile:

If to Buyer:

Warp 9, Inc.
1933 Cliff Dr. Suite 11
Santa Barbara, CA 93109
Attention: Andrew Van Noy, CEO
Telephone: 805-964-3313
Facsimile: 805-964-6968

23. Publicity.

Except as may be required in order for a party to comply with applicable laws, rules, or regulations or to enable a party to comply with this Agreement, or necessary for Buyer to prepare and disseminate any private or public placements of its securities or to communicate with its stakeholders, no press release, notice to any third party or other publicity concerning the Transaction will be issued, given or otherwise disseminated without the prior approval of each of the Parties hereto.

[Signatures on following page.]

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IN WITNESS WHEREOF, this Agreement has been entered into as of the date first above written.

Indaba: Indaba Group, LLC.
By: /s/ Ryan Shields
Ryan Shields, President

Indaba Members: /s/ Ryan Shields
Ryan Shields, Individually

/s/ Blake Gindi
Blake Gindi, Individually

/s/ Jack Gindi
Jack Gindi, Individually

Company: **WARP 9, INC.**, a Nevada corporation
By: /s/ Andrew Van Noy
Andrew Van Noy, Chief Executive Officer

Merger Sub: **WARP 9, INC.**, a Delaware corporation
By: /s/ Andrew Van Noy
Andrew Van Noy, Chief Executive Officer

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EXHIBIT A

Certificate of Merger

CERTIFICATE OF MERGER

OF

DOMESTIC CORPORATION AND FOREIGN LIMITED LIABILITY COMPANY

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Warp 9, Inc., a Delaware Corporation, and the name of the limited liability company being merged into this surviving corporation is Indaba Group, LLC, a Colorado limited liability company.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.

THIRD: The name of the surviving corporation is Indaba Group, Inc.

FOURTH: The merger is to become effective on _____.

FIFTH: The Agreement of Merger is on file at _____, the place of business of the surviving corporation.

SIXTH: A copy of the Agreement of Merger will be furnished by the corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.

SEVENTH: The certificate of incorporation of the surviving corporation shall be amended and restated in its entirety as set forth on Exhibit A attached hereto, and in accordance with Article I therein, the surviving corporation's name shall be changed to "Indaba Group, Inc."

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the _____ day of _____, A.D., 2015.

By: _____

Name: _____

Title: _____

EXHIBIT B

Certificate of Designation

EXHIBIT C

Employment Agreement

EXHIBIT D

Disclosure Schedules

EXHIBIT 10.2

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "Agreement") is made as of the [Closing Date] 2015, by and between Indaba Group, Inc., a Delaware corporation (the "Company", which is a wholly owned subsidiary of Warp 9, Inc., a Nevada corporation ("Warp 9"), and Ryan Shields, an individual ("Employee"), and is made with respect to the following facts:

RECITALS

A. The Company and the Employee wish to ensure that the Company will receive the benefit of Employee's loyalty and service during Employee's tenure and that the Employee will be appropriately treated and compensated for services rendered.

B. The parties have entered into this Agreement for the purpose of setting forth the terms of employment of the Employee by the Company.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, **THE PARTIES HERETO AGREE AS FOLLOWS:**

1 . **Employment of Employee and Duties.** The Company hereby hires Employee and Employee hereby accepts employment upon the terms and conditions described in this Agreement. The Employee shall be the Chief Executive Officer of the Company, with the responsibility for the day-to-day management of the Company's operations. Subject to (a) the general supervision of the board of directors of the Company (the "Board of Directors"), and (b) the Employee's duty to report to the Board of Directors periodically, as specified by them from time-to-time, Employee shall have all of the authority to perform his employment duties for the Company.

2 . **Time and Effort.** Employee agrees to devote his full working time and attention to the management of the Company's business affairs, the implementation of its strategic plan, as determined by the Board of Directors, and the fulfillment of his duties and responsibilities as Chief Executive Officer. Expenditure of a reasonable amount of time for personal matters and business and charitable activities shall not be deemed to be a breach of this Agreement, provided that those activities do not materially interfere with the services required to be rendered to the Company under this Agreement.

3 . **The Company's Authority.** Employee agrees to comply with the Company's reasonable rules and regulations as adopted by the Company's Board of Directors regarding performance of his duties, and to carry out and perform those orders, directions and policies established by the Company with respect to his engagement. Employee shall promptly notify the Company's Board of Directors of any objection he has to the Board's directives and the reasons for such objection.

4 . **Noncompetition by Employee.** Employee is subject to noncompetition obligations pursuant to Section 3.1 of that certain Agreement and Plan of Merger, dated as of _____, 2015, by and among Indaba Group, LLC, a Colorado limited liability company, Employee, Blake Gindi, Jack Gindi,

Warp 9, and Warp 9, Inc., a Delaware corporation (the "Merger Agreement"). Upon the expiration of the term of those obligations, and if Employee is then employed by the Company, then thereafter and throughout the remaining term of this Agreement, Employee shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder (in a private company), corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is in direct competition with the business of the Company or its affiliates. Furthermore, any commissions, referral fees or other compensation paid to Employee by other payors during the term of this Agreement will be the property of the Company, and therefore, all such compensation will promptly be remitted by Employee to the Company.

5 . **Term of Agreement.** Subject to earlier termination as provided herein, the term of this Agreement shall be for two (2) years. Notwithstanding the foregoing, the Company and Employee agree that Employee's employment hereunder may be terminated by the Employee resigning with or without "Good Reason" or by the Company's declaration of termination with or without "Cause" at any time, subject to the terms of this Section 5 and Section 6. Such termination shall be effective upon delivery of written notice from the acting party to the other of its election to terminate employment pursuant to this Section 5. "Cause" when used in connection with the termination of employment with the Company, shall mean the termination of the Employee's employment by the Company by reason of (i) Employee's material breach of any of this Agreement which breach, if curable, is not cured within thirty (30) days of written notice to Employee of such breach; (ii) the conviction of, or the entering of a guilty plea or no contest plea by, the Employee for a crime involving moral turpitude by a court of competent jurisdiction; (iii) the commission by the Employee of an act of fraud upon the Company or any of its affiliates; (iv) the misappropriation of any funds or property of the Company or any of its affiliates by the Employee; (v) the failure by the Employee to perform material duties reasonably assigned to him or otherwise assigned to and accepted by Employee, or to comply with any written Company policy after reasonable written notice and opportunity to cure such performance; (vi) the engagement by the Employee in any direct, material conflict of interest with the Company without compliance with the Company's conflict of interest policy, if any, then in effect; or (vii) the engagement in any activity which would constitute a material violation of the provisions of the Company's insider trading policy, if any, then in effect.

Cause shall not be present unless (1) the Company shall have given Employee written notice specifying in reasonable detail the event or circumstances constituting Cause, and (2) Employee fails to cure such event or circumstances within forty-five (45) days from the date of such notice from the Company. "Good Reason" when used in connection with the resignation of employment from the Company by Employee, shall mean the resignation from the Company by Employee by reason of: (i) any deliberate breach by the Company with any of the material provisions of this Agreement, other than an isolated, insubstantial or inadvertent failure which is remedied by Company promptly after Company's receipt of written notice thereof from Employee; (ii) a material diminution in Executive's authorities, duties or responsibilities normally associated with Employee's position or Employee is assigned duties and responsibilities that are inconsistent, in a material respect, with the scope of duties and responsibilities associated with Employee's status as a senior executive officer; (iii) the Company's failure to nominate the Employee for election to the Board of Directors and to use its best efforts to have him elected and re-elected, as applicable or (iii) a material breach by the Company of the Company's Articles of Incorporation or By-laws if such breach would materially prejudice Employee. Good Reason shall not be

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present unless (1) Employee shall have given the Company written notice specifying in reasonable detail the event or circumstances constituting Good Reason, and (2) the Company fails to cure such event or circumstances within forty-five (45) days from the date of such notice from Employee.

6. **Severance Benefits.**

6.1 **Continuation of Salary and Benefits.** In the event that the Employee's employment is terminated by the Employee for Good Reason prior to the end of the initial term, the Company shall, subject to the terms of Sections 6.2 and 6.3 below, and only if and as long as Employee is not in breach of his obligations under this Agreement, pay compensation to Employee in the manner set forth below. If the Employee's employment is terminated by the Employee for Good Reason during the term of this Agreement, then the Company shall continue to pay to Employee his current base salary provided for under this Agreement in periodic payments in accordance with its customary payroll practices for a period of until the second (2nd) anniversary date of this Agreement (the "Severance Payment Period"). If the Employee's employment is terminated by the Employee for Good Reason, the Company shall also continue to provide benefits in the kind and amounts provided to its employees generally throughout the Severance Payment Period, including continuation of any Company-paid benefits provided pursuant hereto, for the Employee and, if applicable, the Employee's spouse and minor children, provided such benefits will be subject to immediate termination to the extent Employee receives benefits under another similar benefit plan. Employee agrees that the above payments shall be a full settlement of the Company's obligations to Employee hereunder in the event of a termination for Good Reason.

6.2 **Disability; Death.** If at any time during the term of this Agreement, Employee is unable, due to physical or mental disability, to perform effectively his duties hereunder, the Company shall continue payment of compensation as provided in Section 9.1 during the first six (6) months of such disability to the extent not covered by the Company's disability insurance policies. Upon the expiration of such six-month period, the Company, at its sole option, may continue payment of Employee's salary for such additional periods as the Company elects, or may terminate this Agreement without any further obligations hereunder. If Employee should die during the term of this Agreement, Employee's employment and the Company's obligations hereunder shall terminate as of the end of the month in which Employee's death occurs and there will be no salary and benefit continuation period. Employee shall be deemed to have incurred a disability if Employee suffers a physical or mental condition which (i) satisfies the definition of "total disability" in the Company's disability insurance policies, or (ii) if no such policy or plan is then covering Employee, in the reasonable judgment of the Board of Directors, prevents Employee from engaging in any substantial gainful employment with the Company for a period of more than six (6) months.

6.3 **Standstill Agreement; Lock-up Letters.** So long as Employee is employed by the Company or receives severance compensation as provided in Section 6.1 above, Employee agrees that he will sign any reasonable securities lock-up letters, standstill agreements, or other similar documentation required by an underwriter in connection with a public offering of securities by the Company or its parent corporation or take other actions reasonably related thereto as requested by the Board of Directors under similar terms and conditions as for other management employees of the Company generally. Failure to take

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any such action shall be a "Cause" for termination and shall cause Employee to forfeit any further rights to compensation or other payments hereunder. In addition, Employee agrees that in such event the Company can seek and obtain specific performance of such covenant, including any injunction requiring execution thereof, and the Employee hereby appoints the then current president of the Company to sign any such documents on his behalf so long as such documents are prepared on the same basis as for other management shareholders generally.

6.4 **Relocation or Material Changes in Duties.** If Employee's employment is terminated because of Employee's refusal to relocate to another office of the Company that is more than twenty (20) statute miles from the Employee's then current office, or to accept a material change in duties, such termination shall be deemed a termination with Cause.

7. **Confidential Information: Nondisclosure Covenant.**

7.1. **Confidential Information.** As used herein the term "Confidential Information" shall mean all customer and contract lists, records, financial data, trade secrets, business and marketing plans and studies, suppliers, investors, financing sources, manuals for employee and personnel policies, manufacturing and/or production manuals, computer programs and software, strategic plans, formulas,

manufacturing and production processes and techniques (including without limitation types of machinery and equipment used together with improvements and modifications thereon), tools, applications for patents, designs, models, patterns, drawings, tracings, sketches, blueprints, and all other similar information developed and/or used by Company in the course of its business and which is not known by or readily available to the general public.

7.2 **Nondisclosure Covenant.** Employee acknowledges that, in the course of performing services for and on behalf of Company, Employee has had and will continue to have access to Confidential Information. Employee hereby covenants and agrees to maintain in strictest confidence all Confidential Information in trust for Company, its successors and assigns, and to disclose such information only on a "need-to-know" basis in furtherance and for the benefit of the Company's business. During the period of Employee's employment with Company and at any and all times following Employee's termination of employment for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination with Cause, Employee agrees to not misappropriate, utilize for any purpose other than for the direct benefit of the Company, or disclose or make available to anyone outside Company's organization, any Confidential Information or anything relating thereof without the prior written consent of Company, which consent may be withheld by Company for any reason or no reason at all.

7.3 **Return of Property.** Upon Employee's termination of his employment with Company for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination by the Company with Cause, Employee hereby agrees to immediately return to Company's possession all copies of any writings, computer discs or equipment, drawings or any other information relating to Confidential Information which are in Employee's possession or control. Employee further agrees that, upon the request of Company at any time during Employee's period of employment

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with Company, Employee shall promptly return to Company all such copies of writings, computer discs or equipment, drawings or any other information relating to Confidential Information which are in Employee's possession or control.

7.4 **Rights to Inventions and Trade Secrets.** Employee hereby assigns to Company all right, title and interest in and to any ideas, inventions, original works or authorship, developments, improvements or trade secrets which Employee solely or jointly has conceived or reduced to practice, or will conceive or reduce to practice, or cause to be conceived or reduced to practice during his employment with Company. All original works of authorship which are made by Employee (solely or jointly with others) within the scope of Employee's services hereunder and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act.

8 **Noninterference and Nonsolicitation Covenants.** In further reflection of the Company's important interests in its proprietary information and its trade, customer, vendor and employee relationships, Employee agrees that, during the thirty-six (36) month period following the termination of Employee's employment with Company for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination by the Company with Cause, Employee will not directly or indirectly, for or on behalf of any person, firm, corporation or other entity, (a) interfere with any contractual or other business relationships that Company has with any of its customers, clients, service providers or materials suppliers as of the date of Employee's termination of employment, or (b) solicit or induce any employee of Company to terminate his/her employment relationship with Company.

9. **Compensation.** During the term of this Agreement, the Company shall pay the following compensation to Employee:

9.1 **Base Salary.** The Company shall pay Employee an annual rate of base salary of One Hundred Seventy Five Thousand Dollars (\$175,000.00) in periodic installments in accordance with the Company's customary payroll practices, but no less frequently than monthly. Employee's base salary shall be reviewed at least annually by the Board of Directors and the Board of Directors may, but shall not be required to, increase the base salary during the term. Employee's annual base salary, as in effect from time to time, is hereinafter referred to as "Base Salary."

9.2 **Annual Bonus.** Any compensation bonuses to be paid to Employee will be mutually determined by the Company and Warp 9.

9.3 **Equity Awards.** During the term, Employee shall be eligible to participate in any Company incentive compensation plan, as determined by the Board of Directions, in its discretion.

9.4 **Benefits.** So long as Employee is employed by the Company, the Employee shall participate in any employee benefit plans sponsored by the Company generally for its employees serving in similar employment capacities as the Employee as determined from time to time by the Board of Directors or any compensation committee of the Board of Directors, if any, and on terms at least as favorable to Employee as are generally offered to other employees of the Company serving in a similar capacity.

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10 **Office and Staff.** In order to enable Employee to perform his obligations and duties pursuant to this Agreement, the Company agrees that it shall provide suitable office space for Employee in Denver, Colorado, or in another location mutually agreed upon, together with all necessary and appropriate supporting staff and secretarial assistance, equipment, stationery, books and supplies. Employee agrees that the office space and supporting staff presently in place is suitable for the purposes of this Agreement. The Company agrees to provide at its expense parking for one (1) vehicle by the Employee at the Company's executive offices.

11. **Reimbursement of Expenses.** The Company shall reimburse Employee for the reasonable (and pre-approved by the Company in writing) travel and other expenses incurred by Employee in connection with the performance of Employee's duties under this Agreement. Employee's pre-approved reimbursable expenses shall be paid by the Company in cash or check within a reasonable time after presentment by Employee of an itemized list of invoices sufficiently describing such expenses. All compensation provided in Sections 8 of this Agreement shall be subject to customary withholding tax and other employment taxes, to the extent required by law. Expense reimbursements will not be subject to withholding.

12. **Rights In And To Inventions And Patents.**

12.1 **Description of Parties' Rights.** The Employee agrees that with respect to any inventions made by him or the Company during the term of this Agreement, solely or jointly with others, (i) which are made with the Company's equipment, supplies, facilities, trade secrets or time, or (ii) which relate to the business of the Company or the Company's actual or demonstrably anticipated research or development, or (iii) which result from any work performed by the Employee for the Company, such inventions shall belong to the Company. The Employee also agrees that the Company shall have the right to keep such inventions as trade secrets, if the Company chooses.

12.2 **Disclosure Requirements.** For purposes of this Agreement, an invention is deemed to have been made during the term of this Agreement if, during such period, the invention was conceived or first actually reduced to practice. In order to permit the Company to claim rights to which it may be entitled, the Employee agrees to disclose to the Company in confidence the nature of all patent applications filed by the Employee during the term of this Agreement.

13. **Assignability of Benefits.** Except to the extent that this provision may be contrary to law, no assignment, pledge, collateralization or attachment of any of the benefits under this Agreement shall be valid or recognized by the Company. Except as provided by law, payment provided for by this Agreement shall not be subject to seizure for payment of any debts or judgments against the Employee, nor shall the Employee have any right to transfer, modify, anticipate or encumber any rights or benefits hereunder.

14. **Notice.** All notices and other communications required or permitted hereunder shall be in writing or in the form of email, facsimile or letter to be given only during the recipient's normal business hours unless arrangements have otherwise been made to receive such notice outside of normal business hours, and can be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger, email or facsimile (as provided above) addressed (a)

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if to the Employee, at the address for such Employee set forth on the signature page hereto or at such other address as such Employee shall have furnished to the Company in writing or (b) if to the Company, to its principal executive offices and addressed to the attention of the Chairman of the Board, or at such other address as the Company shall have furnished in writing to the Employee.

In case of the Company:

Indaba Group, Inc.
C/O Warp 9, Inc.
1933 Cliff Dr. Suite 11
Santa Barbara, CA 93109
Attention: Andrew Van Noy, CEO
Telephone: 805-964-3313
Facsimile: 805-964-6968

In case of the Employee:

The address listed below signature to this Agreement.

15. **Attorneys' Fees.** In the event that any of the parties must resort to legal action in order to enforce the provisions of this Agreement or to defend such suit, the prevailing party shall be entitled to receive reimbursement from the nonprevailing party for all reasonable attorneys' fees and all other costs incurred in commencing or defending such suit.

16. **Entire Agreement.** This Agreement and the Merger Agreement embody the entire understanding among the parties and merge all prior discussions or communications among them, and no party shall be bound by any definitions, conditions, warranties, or representations other than as expressly stated in this Agreement and the Merger Agreement or as subsequently set forth in a writing signed by the duly authorized representatives of all of the parties to this Agreement.

17. **No Oral Change; Amendment.** This Agreement may only be changed or modified and any provision hereof may only be waived in writing signed by the party against whom enforcement of any waiver, change or modification is sought. This Agreement may be amended only in writing by mutual consent of the parties.

18. **Severability.** In the event that any provision of this Agreement shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force and effect. The remaining provisions of this Agreement shall, however, continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

19. **Applicable Law.** This Agreement shall be construed as a whole and in accordance with its fair meaning. This Agreement shall be interpreted in accordance with the laws of the State of California.

20. **Successors and Assigns.** Each covenant and condition of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, assigns and successors in interest. Without limiting the generality of the foregoing sentence, this Agreement shall be binding upon any successor to the Company whether by merger, reorganization or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

COMPANY:

INDABA GROUP, INC.

a Delaware corporation

By: _____

Andrew Van Noy, Chairman of the Board

EMPLOYEE:

Ryan Shields

Street Address

City, State and Zip Code

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

EXHIBIT 10.3

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "Agreement") is made as of the [Closing Date] 2015, by and between Indaba Group, Inc., a Delaware corporation (the "Company", which is a wholly owned subsidiary of Warp 9, Inc., a Nevada corporation ("Warp 9"), and Blake Gindi, an individual ("Employee"), and is made with respect to the following facts:

RECITALS

A. The Company and the Employee wish to ensure that the Company will receive the benefit of Employee's loyalty and service during Employee's tenure and that the Employee will be appropriately treated and compensated for services rendered.

B. The parties have entered into this Agreement for the purpose of setting forth the terms of employment of the Employee by the Company.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, **THE PARTIES HERETO AGREE AS FOLLOWS:**

1 . **Employment of Employee and Duties.** The Company hereby hires Employee and Employee hereby accepts employment upon the terms and conditions described in this Agreement. The Employee shall be the Chief Executive Officer of the Company, with the responsibility for the day-to-day management of the Company's operations. Subject to (a) the general supervision of the board of directors of the Company (the "Board of Directors"), and (b) the Employee's duty to report to the Board of Directors periodically, as specified by them from time-to-time, Employee shall have all of the authority to perform his employment duties for the Company.

2 . **Time and Effort.** Employee agrees to devote his full working time and attention to the management of the Company's business affairs, the implementation of its strategic plan, as determined by the Board of Directors, and the fulfillment of his duties and responsibilities as Chief Executive Officer. Expenditure of a reasonable amount of time for personal matters and business and charitable activities shall not be deemed to be a breach of this Agreement, provided that those activities do not materially interfere with the services required to be rendered to the Company under this Agreement.

3 . **The Company's Authority.** Employee agrees to comply with the Company's reasonable rules and regulations as adopted by the Company's Board of Directors regarding performance of his duties, and to carry out and perform those orders, directions and policies established by the Company with respect to his engagement. Employee shall promptly notify the Company's Board of Directors of any objection he has to the Board's directives and the reasons for such objection.

4 . **Noncompetition by Employee.** Employee is subject to noncompetition obligations pursuant to Section 3.1 of that certain Agreement and Plan of Merger, dated as of _____, 2015, by and among Indaba Group, LLC, a Colorado limited liability company, Employee, Blake Gindi, Jack Gindi,

Warp 9, and Warp 9, Inc., a Delaware corporation (the "Merger Agreement"). Upon the expiration of the term of those obligations, and if Employee is then employed by the Company, then thereafter and throughout the remaining term of this Agreement, Employee shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder (in a private company), corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is in direct competition with the business of the Company or its affiliates. Furthermore, any commissions, referral fees or other compensation paid to Employee by other payors during the term of this Agreement will be the property of the Company, and therefore, all such compensation will promptly be remitted by Employee to the Company.

5 . **Term of Agreement.** Subject to earlier termination as provided herein, the term of this Agreement shall be for two (2) years. Notwithstanding the foregoing, the Company and Employee agree that Employee's employment hereunder may be terminated by the Employee resigning with or without "Good Reason" or by the Company's declaration of termination with or without "Cause" at any time, subject to the terms of this Section 5 and Section 6. Such termination shall be effective upon delivery of written notice from the acting party to the other of its election to terminate employment pursuant to this Section 5. "Cause" when used in connection with the termination of employment with the Company, shall mean the termination of the Employee's employment by the Company by reason of (i) Employee's material breach of any of this Agreement which breach, if curable, is not cured within thirty (30) days of written notice to Employee of such breach; (ii) the conviction of, or the entering of a guilty plea or no contest plea by, the Employee for a crime involving moral turpitude by a court of competent jurisdiction; (iii) the commission by the Employee of an act of fraud upon the Company or any of its affiliates; (iv) the misappropriation of any funds or property of the Company or any of its affiliates by the Employee; (v) the failure by the Employee to perform material duties reasonably assigned to him or otherwise assigned to and accepted by Employee, or to comply with any written Company policy after reasonable written notice and opportunity to cure such performance; (vi) the engagement by the Employee in any direct, material conflict of interest with the Company without compliance with the Company's conflict of interest policy, if any, then in effect; or (vii) the engagement in any activity which would constitute a material violation of the provisions of the Company's insider trading policy, if any, then in effect.

Cause shall not be present unless (1) the Company shall have given Employee written notice specifying in reasonable detail the event or circumstances constituting Cause, and (2) Employee fails to cure such event or circumstances within forty-five (45) days from the date of such notice from the Company. "Good Reason" when used in connection with the resignation of employment from the Company by Employee, shall mean the resignation from the Company by Employee by reason of: (i) any deliberate breach by the Company with any of the material provisions of this Agreement, other than an isolated, insubstantial or inadvertent failure which is remedied by Company promptly after Company's receipt of written notice thereof from Employee; (ii) a material diminution in Executive's authorities, duties or responsibilities normally associated with Employee's position or Employee is assigned duties and responsibilities that are inconsistent, in a material respect, with the scope of duties and responsibilities associated with Employee's status as a senior executive officer; (iii) the Company's failure to nominate the Employee for election to the Board of Directors and to use its best efforts to have him elected and re-elected, as applicable or (iii) a material breach by the Company of the Company's Articles of Incorporation or By-laws if such breach would materially prejudice Employee. Good Reason shall not be

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present unless (1) Employee shall have given the Company written notice specifying in reasonable detail the event or circumstances constituting Good Reason, and (2) the Company fails to cure such event or circumstances within forty-five (45) days from the date of such notice from Employee.

6. **Severance Benefits.**

6.1 **Continuation of Salary and Benefits.** In the event that the Employee's employment is terminated by the Employee for Good Reason prior to the end of the initial term, the Company shall, subject to the terms of Sections 6.2 and 6.3 below, and only if and as long as Employee is not in breach of his obligations under this Agreement, pay compensation to Employee in the manner set forth below. If the Employee's employment is terminated by the Employee for Good Reason during the term of this Agreement, then the Company shall continue to pay to Employee his current base salary provided for under this Agreement in periodic payments in accordance with its customary payroll practices for a period of until the second (2nd) anniversary date of this Agreement (the "Severance Payment Period"). If the Employee's employment is terminated by the Employee for Good Reason, the Company shall also continue to provide benefits in the kind and amounts provided to its employees generally throughout the Severance Payment Period, including continuation of any Company-paid benefits provided pursuant hereto, for the Employee and, if applicable, the Employee's spouse and minor children, provided such benefits will be subject to immediate termination to the extent Employee receives benefits under another similar benefit plan. Employee agrees that the above payments shall be a full settlement of the Company's obligations to Employee hereunder in the event of a termination for Good Reason.

6.2 **Disability; Death.** If at any time during the term of this Agreement, Employee is unable, due to physical or mental disability, to perform effectively his duties hereunder, the Company shall continue payment of compensation as provided in Section 9.1 during the first six (6) months of such disability to the extent not covered by the Company's disability insurance policies. Upon the expiration of such six-month period, the Company, at its sole option, may continue payment of Employee's salary for such additional periods as the Company elects, or may terminate this Agreement without any further obligations hereunder. If Employee should die during the term of this Agreement, Employee's employment and the Company's obligations hereunder shall terminate as of the end of the month in which Employee's death occurs and there will be no salary and benefit continuation period. Employee shall be deemed to have incurred a disability if Employee suffers a physical or mental condition which (i) satisfies the definition of "total disability" in the Company's disability insurance policies, or (ii) if no such policy or plan is then covering Employee, in the reasonable judgment of the Board of Directors, prevents Employee from engaging in any substantial gainful employment with the Company for a period of more than six (6) months.

6.3 **Standstill Agreement; Lock-up Letters.** So long as Employee is employed by the Company or receives severance compensation as provided in Section 6.1 above, Employee agrees that he will sign any reasonable securities lock-up letters, standstill agreements, or other similar documentation required by an underwriter in connection with a public offering of securities by the Company or its parent corporation or take other actions reasonably related thereto as requested by the Board of Directors under similar terms and conditions as for other management employees of the Company generally. Failure to take

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any such action shall be a "Cause" for termination and shall cause Employee to forfeit any further rights to compensation or other payments hereunder. In addition, Employee agrees that in such event the Company can seek and obtain specific performance of such covenant, including any injunction requiring execution thereof, and the Employee hereby appoints the then current president of the Company to sign any such documents on his behalf so long as such documents are prepared on the same basis as for other management shareholders generally.

6.4 **Relocation or Material Changes in Duties.** If Employee's employment is terminated because of Employee's refusal to relocate to another office of the Company that is more than twenty (20) statute miles from the Employee's then current office, or to accept a material change in duties, such termination shall be deemed a termination with Cause.

7. **Confidential Information: Nondisclosure Covenant.**

7.1. **Confidential Information.** As used herein the term "Confidential Information" shall mean all customer and contract lists, records, financial data, trade secrets, business and marketing plans and studies, suppliers, investors, financing sources, manuals for employee and personnel policies, manufacturing and/or production manuals, computer programs and software, strategic plans, formulas,

manufacturing and production processes and techniques (including without limitation types of machinery and equipment used together with improvements and modifications thereon), tools, applications for patents, designs, models, patterns, drawings, tracings, sketches, blueprints, and all other similar information developed and/or used by Company in the course of its business and which is not known by or readily available to the general public.

7.2 **Nondisclosure Covenant.** Employee acknowledges that, in the course of performing services for and on behalf of Company, Employee has had and will continue to have access to Confidential Information. Employee hereby covenants and agrees to maintain in strictest confidence all Confidential Information in trust for Company, its successors and assigns, and to disclose such information only on a "need-to-know" basis in furtherance and for the benefit of the Company's business. During the period of Employee's employment with Company and at any and all times following Employee's termination of employment for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination with Cause, Employee agrees to not misappropriate, utilize for any purpose other than for the direct benefit of the Company, or disclose or make available to anyone outside Company's organization, any Confidential Information or anything relating thereof without the prior written consent of Company, which consent may be withheld by Company for any reason or no reason at all.

7.3 **Return of Property.** Upon Employee's termination of his employment with Company for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination by the Company with Cause, Employee hereby agrees to immediately return to Company's possession all copies of any writings, computer discs or equipment, drawings or any other information relating to Confidential Information which are in Employee's possession or control. Employee further agrees that, upon the request of Company at any time during Employee's period of employment

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with Company, Employee shall promptly return to Company all such copies of writings, computer discs or equipment, drawings or any other information relating to Confidential Information which are in Employee's possession or control.

7.4 **Rights to Inventions and Trade Secrets.** Employee hereby assigns to Company all right, title and interest in and to any ideas, inventions, original works or authorship, developments, improvements or trade secrets which Employee solely or jointly has conceived or reduced to practice, or will conceive or reduce to practice, or cause to be conceived or reduced to practice during his employment with Company. All original works of authorship which are made by Employee (solely or jointly with others) within the scope of Employee's services hereunder and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act.

8 **Noninterference and Nonsolicitation Covenants.** In further reflection of the Company's important interests in its proprietary information and its trade, customer, vendor and employee relationships, Employee agrees that, during the thirty-six (36) month period following the termination of Employee's employment with Company for any reason, including without limitation Employee's voluntary resignation with or without Good Reason or involuntary termination by the Company with Cause, Employee will not directly or indirectly, for or on behalf of any person, firm, corporation or other entity, (a) interfere with any contractual or other business relationships that Company has with any of its customers, clients, service providers or materials suppliers as of the date of Employee's termination of employment, or (b) solicit or induce any employee of Company to terminate his/her employment relationship with Company.

9. **Compensation.** During the term of this Agreement, the Company shall pay the following compensation to Employee:

9.1 **Base Salary.** The Company shall pay Employee an annual rate of base salary of One Hundred Seventy Five Thousand Dollars (\$175,000.00) in periodic installments in accordance with the Company's customary payroll practices, but no less frequently than monthly. Employee's base salary shall be reviewed at least annually by the Board of Directors and the Board of Directors may, but shall not be required to, increase the base salary during the term. Employee's annual base salary, as in effect from time to time, is hereinafter referred to as "Base Salary."

9.2 **Annual Bonus.** Any compensation bonuses to be paid to Employee will be mutually determined by the Company and Warp 9.

9.3 **Equity Awards.** During the term, Employee shall be eligible to participate in any Company incentive compensation plan, as determined by the Board of Directions, in its discretion.

9.4 **Benefits.** So long as Employee is employed by the Company, the Employee shall participate in any employee benefit plans sponsored by the Company generally for its employees serving in similar employment capacities as the Employee as determined from time to time by the Board of Directors or any compensation committee of the Board of Directors, if any, and on terms at least as favorable to Employee as are generally offered to other employees of the Company serving in a similar capacity.

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10 **Office and Staff.** In order to enable Employee to perform his obligations and duties pursuant to this Agreement, the Company agrees that it shall provide suitable office space for Employee in Denver, Colorado, or in another location mutually agreed upon, together with all necessary and appropriate supporting staff and secretarial assistance, equipment, stationery, books and supplies. Employee agrees that the office space and supporting staff presently in place is suitable for the purposes of this Agreement. The Company agrees to provide at its expense parking for one (1) vehicle by the Employee at the Company's executive offices.

11. **Reimbursement of Expenses.** The Company shall reimburse Employee for the reasonable (and pre-approved by the Company in writing) travel and other expenses incurred by Employee in connection with the performance of Employee's duties under this Agreement. Employee's pre-approved reimbursable expenses shall be paid by the Company in cash or check within a reasonable time after presentment by Employee of an itemized list of invoices sufficiently describing such expenses. All compensation provided in Sections 8 of this Agreement shall be subject to customary withholding tax and other employment taxes, to the extent required by law. Expense reimbursements will not be subject to withholding.

12. **Rights In And To Inventions And Patents.**

12.1 **Description of Parties' Rights.** The Employee agrees that with respect to any inventions made by him or the Company during the term of this Agreement, solely or jointly with others, (i) which are made with the Company's equipment, supplies, facilities, trade secrets or time, or (ii) which relate to the business of the Company or the Company's actual or demonstrably anticipated research or development, or (iii) which result from any work performed by the Employee for the Company, such inventions shall belong to the Company. The Employee also agrees that the Company shall have the right to keep such inventions as trade secrets, if the Company chooses.

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13. **Assignability of Benefits.** Except to the extent that this provision may be contrary to law, no assignment, pledge, collateralization or attachment of any of the benefits under this Agreement shall be valid or recognized by the Company. Except as provided by law, payment provided for by this Agreement shall not be subject to seizure for payment of any debts or judgments against the Employee, nor shall the Employee have any right to transfer, modify, anticipate or encumber any rights or benefits hereunder.

14. **Notice.** All notices and other communications required or permitted hereunder shall be in writing or in the form of email, facsimile or letter to be given only during the recipient's normal business hours unless arrangements have otherwise been made to receive such notice outside of normal business hours, and can be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger, email or facsimile (as provided above) addressed (a)

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if to the Employee, at the address for such Employee set forth on the signature page hereto or at such other address as such Employee shall have furnished to the Company in writing or (b) if to the Company, to its principal executive offices and addressed to the attention of the Chairman of the Board, or at such other address as the Company shall have furnished in writing to the Employee.

In case of the Company:

Indaba Group, Inc.
C/O Warp 9, Inc.
1933 Cliff Dr. Suite 11
Santa Barbara, CA 93109
Attention: Andrew Van Noy, CEO
Telephone: 805-964-3313
Facsimile: 805-964-6968

In case of the Employee:

The address listed below signature to this Agreement.

15. **Attorneys' Fees.** In the event that any of the parties must resort to legal action in order to enforce the provisions of this Agreement or to defend such suit, the prevailing party shall be entitled to receive reimbursement from the nonprevailing party for all reasonable attorneys' fees and all other costs incurred in commencing or defending such suit.

16. **Entire Agreement.** This Agreement and the Merger Agreement embody the entire understanding among the parties and merge all prior discussions or communications among them, and no party shall be bound by any definitions, conditions, warranties, or representations other than as expressly stated in this Agreement and the Merger Agreement or as subsequently set forth in a writing signed by the duly authorized representatives of all of the parties to this Agreement.

17. **No Oral Change; Amendment.** This Agreement may only be changed or modified and any provision hereof may only be waived in writing signed by the party against whom enforcement of any waiver, change or modification is sought. This Agreement may be amended only in writing by mutual consent of the parties.

18. **Severability.** In the event that any provision of this Agreement shall be void or unenforceable for any reason whatsoever, then such provision shall be stricken and of no force and effect. The remaining provisions of this Agreement shall, however, continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

19. **Applicable Law.** This Agreement shall be construed as a whole and in accordance with its fair meaning. This Agreement shall be interpreted in accordance with the laws of the State of California.

20. **Successors and Assigns.** Each covenant and condition of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, assigns and successors in interest. Without limiting the generality of the foregoing sentence, this Agreement shall be binding upon any successor to the Company whether by merger, reorganization or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

COMPANY:

INDABA GROUP, INC.

a Delaware corporation

By: _____

Andrew Van Noy, Chairman of the Board

EMPLOYEE:

Blake Gindi

Street Address

City, State and Zip Code

Telephone Number: _____

Facsimile Number: _____

Email Address: _____