

# The Shareholders Agreement - A Sample Agreement

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*(Note - this is just a sample agreement to give the reader some basic ideas. It is by no means perfect and reflects the biases and priorities of the writer. It should serve as food for thought. Notes and comments appear italicized and bracketed.)*

Refer to "[The Shareholders Agreement](#)" for Notes and Discussion.

## SHAREHOLDERS AGREEMENT

for

**Carpe Diem Technology Corp**

This agreement is made as of \_\_\_\_\_ (date)

BETWEEN

**Pat Tater** ("Pat") of the Municipality of Whistler, B.C.

of the FIRST PART

and

**Chris Topher** ("Chris") of the Municipality of Whistler, B.C.

of the SECOND PART

and

**Jean Nee** ("Jean") of the Municipality of Whistler, B.C.

of the THIRD PART

and

**Michael Angelo** ("Mikey") of the City of West Vancouver, BC.

of the FOURTH PART

**Carpe Diem Technology Corp** (the "Company")

of the FIFTH PART

*(the following section simply "sets the stage". It is important to clearly announce who owns what at the outset so there are no misunderstandings on this very important aspect)*

WHEREAS:

A. The Company is a company incorporated in British Columbia and carries on the business of designing, manufacturing and selling cellular phone accessories;

B. Pat, Chris and Jean are the founding shareholders (the "Founders") of the Company and Mikey is an angel investor;

C. Pat, Chris, Jean, and Mikey are all of its shareholders and the authorized capital of the Company consists of an unlimited number of common voting shares without par value, of which the following are issued and outstanding as fully paid and non-assessable:

Shareholder: No. of Common Shares: *(could also add a detailed "cap table" - see example - as Schedule A)*

Pat Tater 400,000

Chris Topher 350,000

Jean Nee 250,000

TOTAL COMMON SHARES ISSUED: 1,000,000

AND WHEREAS the Company is doing business as a developer of esoteric software products located at #99 Forest Lawn, Burnaby (the "head office"),

NOW THIS AGREEMENT WITNESSES that in consideration of the premises and mutual covenants and agreements, the parties in this Agreement agree as follows:

**1. DEFINITIONS**

1.1 "Company" or "Corporation" means Carpe Diem Technology Corp.

1.2 "Common Shares" shall mean the common shares in the capital stock of the company.

1.3 "Issued Shares" shall have the meaning given in Article 5.

1.4 "Meeting" shall have the meaning given in Article 5.

1.5 "Offered Shares" shall have the meaning given in Article 3.

1.6 "Offeree" or "Offerees" shall have the meaning given in Article 3.0.

1.7 "Parties" shall mean any two or more of Pat, Chris, and Jean.

1.8 "Seller" shall have the meaning given in Article 3.

1.9 "Selling Notice" shall have the meaning given in Article 3.

1.10 "Shareholder" means any one of Pat, Chris, Jean and Mikey.

1.11 "Shareholders" means any two or more of Pat, Chris, Jean and Mikey.

1.12 "Shares" means all the issued and outstanding common shares in the capital stock of the company beneficially owned by a Shareholder at any time.

1.13 "Special Directors' Resolution" shall mean a resolution passed at a properly constituted meeting of the Board of Directors of the Company, at which meeting 66% of directors in attendance are in favor of such resolution, or, in lieu of such confirmation, a resolution which is consented to by the signatures of all the Directors of the Company. (Note: an Ordinary Directors resolution is one that is passed by a simple majority of all Directors in attendance at a properly convened meeting)

*(could suggest 75% or whatever was negotiated or other if deemed appropriate under the circumstances, esp if/when the Board is increased in size)*  
*(could also have a simple majority vote on ordinary resolutions if the Board has more Directors)*

1.14 "Unanimous Shareholders Resolution" shall mean a resolution passed at a properly constituted meeting of the Shareholders of directors of the Company, at which meeting more than 90% of the Shares are voted in favor of the Resolution, or, in lieu of such confirmation, a resolution which is consented to by the signatures of all the Shareholders of the Company.

*(the above two types of resolutions permit decision making where either a Director's resolution is deemed appropriate or a simple majority approval is acceptable.)*

1.15 "Board" shall mean the Board of Directors of the Company. A "Director" shall mean any member of the Board of Directors of the Company.

1.16 "Act" means the **British Columbia Business Corporations Act**, SBC2002, c.57 as may be amended.

1.17 "Articles" means the articles of the Company filed at the office of the Registrar of Companies for the Province of British Columbia as may be amended from time to time.

1.18 "Vesting" means that Shares that have been issued to a Shareholder are subject to forfeiture unless certain events occur during the term of employment of the Shareholder.

1.19 "this Agreement", "hereto", "herein", "hereby", "hereunder", "hereof", and similar expressions refer to this Agreement and not to any particular section, subsection, paragraph, or other portion of this agreement.

## **2. ORGANIZATION OF THE COMPANY**

*(this section spells out, in broad terms, how the Company will be organized and managed)*

### **2.1 Governance**

(a) The Company will be governed by a Board of Directors (the "Board") appointed by the Shareholders as defined in this agreement.

(b) The Board's primary responsibility is to the Company to ensure the viability of the Company as distinct from protecting the interests of any specific Shareholders or groups of Shareholders.

(c) The Board will appoint a Chairman who will preside over Board meetings and who will liaise between the CEO and other Directors and Shareholders.

(d) The Board will be responsible for appointing the President of the Company who shall be referred to as the Chief Executive Officer (the "CEO") and who shall report to the Board on a regular basis.

(e) The President will, with Board approval, recruit other senior managers and executives of the company.

(f) There will be an Annual General Meeting ("AGM") of Shareholders to appoint the Board for the ensuing year and to approve the appointment of accountant (and/or auditor).

### **2.2 Composition of Board**

The Shareholders shall vote their Shares so that the Board shall initially be comprised of at least five (5) directors, which shall include:

- (a) one Director to be nominated by the Founders so long as they hold more than 10% of the voting shares of the Company, initially being Chris;
- (b) one Director to be nominated by Mikey so long as Mikey holds more than 5% of the voting shares of the Company, initially being Mikey;
- (c) two independent Directors to be mutually agreed to by Mikey and the Founders;
- (d) and the Chief Executive Officer of the Company, initially being Joe Bossman.

These appointments are renewed at each Annual General Meeting of the Company. If any interim vacancies arise, the Shareholder whose nominee shall have formerly occupied such position shall be entitled to nominate a new director to fill such vacancy.

In the event that a nominee to the Board of one of the Shareholders shall fail to vote and act as a Director to carry out the provisions of this agreement, then the Shareholders agree to exercise their right as Shareholders of the Company and in accordance with the Articles of the Company to remove such nominee from the Board and to elect in the place or stead thereof such individual who will use his/her best efforts to carry out the provisions of this agreement but only in the event that the Shareholder whose nominee has been removed fails to appoint a successor within a period of fourteen days from the date such nominee has been removed.

*(the above gives the shareholders some clout in the event that a useless nominee is appointed. Initially, this shouldn't be a problem insofar as the shareholders are also acting as directors.)*

*(may want to include a clause that says D&O insurance will be put in place by the Company)*

## **2.3 Compensation of the Board**

The directors will decide, by Special Directors' Resolution, on compensation, if any, for each of the directors.

## **2.4 Meetings of the Board**

(a) In the minimum, regular quarterly board meetings will be scheduled by the Board. In addition, any director of the Company may call a meeting of the Board with at least ten Business Days' prior notice to be given to the other directors of the Company unless the giving of such notice is waived by each director before, during or after the meeting. Attendance at the meeting by a director shall be deemed to be a waiver of the giving of such notice. The notice of meeting shall set out in reasonable detail the business to be considered at such meeting and no other business shall be transacted at such meeting without the consent of all of the directors;

(b) Meetings of the Board may be held by telephone conference, electronic communication or other communication facility so long as all directors participating in the meeting may simultaneously hear and communicate with all other participating directors;

(c) A quorum required for the transaction of any business at a meeting of the Board shall be four directors and must include one Founders' nominee. If a quorum is not obtained at any meeting, the meeting shall be adjourned and will be reconvened on the tenth business day at 10:00 am thereafter and a quorum will be the directors present at that meeting and need not include a Founders' nominee.

## **2.5 Matters Requiring Board Approval by Special Resolution**

The following matters require the approval of Directors by Special Resolution. If any matter arises that is not included herein and if there is any uncertainty as to who should deal with such a matter, it will be the responsibility of the Board to so decide.

(a) Appointment of the CEO.

(b) The appointment and determination of auditors and advisors of the Company. The defining of their duties and functions and the salaries and remuneration to be paid to them will be a function of the Board of Directors. Until changed by the Board of Directors, the Officers of the Company and their annual salaries shall be:

CEO: *Joe Bossman, \$70K/yr plus stock options,*

CFO: *Bill Money Penny, \$60K/yr plus stock options.*

Until changed by the board of directors, the auditors and advisors of the Company shall be:

Auditor: Pricey, Taxing, et al

Legal Advisors: Scarem and Billem Law Corporation

(c) Business Plan: The Parties agree that a Company Business Plan (the "Plan") will be prepared and maintained on an on-going basis with at least annual reviews and updates. This Business Plan will define the operational details of the Company and will include, but not be limited to, items such as: budgets, forecasts, capital expenditures, salaries and wages, hours of operation, market information (products, services, pricing, discounts, etc). The Plan will serve the purpose of giving management direction as to the day-to-day operation of the Company. Any amendments to the Plan require Board approval.

*(A Business Plan is a "must have" in this writer's opinion. This eliminates a lot of day-to-day decision making by committee. Once approved, the team can move forward swiftly to execute the Plan)*

(d) the acquisition of any business interests by the Company;

(e) the payment of any cash dividends or stock dividends to Shareholders of the Company;

(f) the issuance of any secured (i.e. collateralized) debt obligations of the Company;

(g) the disposal of the whole or any part of the business, undertaking, or assets of the Company outside the normal course of business of the Company;

(h) the transfer of any shares of the Company;

(i) changes or variations in the objects or powers of the Company;

(j) the liquidation or winding up of the Company;

(k) the approval of any contracts or transactions outside the normal course of business;

(l) the execution of any contract involving a consideration greater than \$5,000, excluding Work-In-Progress within the normal course of business;

(m) the lending of money by the Company;

(n) the guarantee by the Company of the debts or obligations of any other person, firm or body corporate;

(o) any non-budgeted expenditures greater than \$1,500;

(p) alterations, variations or changes to the authorized or issued capital of the Company;

(q) the salaries and bonuses of officers and directors of the Company;

(r) the issue, redemption or purchase of any Shares;

- (s) changes in the number of directors of the Company;
- (t) payment of all taxes when due; and
- (u) legal and regulatory compliance.

## **2.6 Directors, Shareholders, and Company Obligations**

- (a) The Shareholders may pledge any of their Shares as security for any borrowings by them provided the pledgee executes an agreement, in writing, providing that the pledgee shall be subject to all of the terms of this Agreement.
- (b) Each Shareholder and Director shall use his/her best efforts, skill and abilities to promote the interests of the Company. Each Shareholder and Director agrees that he/she will keep all matters pertaining to the Company strictly confidential other than normal disclosures (e.g. brochures, financing offers and documents) made in the course of business.
- (c) The Company agrees to provide, or make available, to the Shareholders monthly income statements and balance sheets within a reasonable time, but no greater than 30 days, after the end of each month.
- (d) The parties to this Agreement who are salaried full-time employees of the Company shall be required to execute a management contract.
- (e) Every Director of the Company shall exercise the powers and discharge the duties of his/her office honestly, in good faith and in the best interests of the Company, and in connection therewith shall exercise the degree of care and diligence and skill that a reasonably prudent person would exercise in comparable circumstances. It is the responsibility of each Director to familiarize him/herself with the legal and regulatory obligations associated with being a Director of a company incorporated in British Columbia, being especially mind full of potential personal liabilities associated with, among other things, employment matters and taxes.
- (f) Directors will not serve on the Board of any company that competes with the Company nor will they provide advisory or consulting services to such companies while they are Directors of the Company. This does not preclude them from investing on an arms-length basis in *any* company.

## **2.7 Founders Obligations and Vesting Provisions**

- (a) The Founders agree, for as long as they are employed by the Company, they will devote their full time and attention to the Company and will enter into a management agreement with the Company. While they are employed and for a period of two years after ceasing to be an employee of the Company, they will not engage in any directly competing activities.
- (b) Insofar as the Founders have received Shares ("Founders Shares") in the Company for nominal consideration, the Founders agree that the shares so identified in Schedule A to this agreement, shall be subject to vesting provisions. Vesting means that the shares are encumbered and subject to cancellation or repurchase at cost by the Company unless certain time events occur. In the event that the Company is acquired by a third party or parties, all shares subject to vesting will become fully vested at that time. These vesting provisions are:
  - (i) 50% of the shares held by each of the Founders will vest at such time when the Company is sold to a third party or parties. This condition can be rescinded at any time upon approval by all non-founding Shareholders. Such approval is by a majority vote by Shares voted. Until such time as these shares are vested, they cannot be sold or disposed of. In the event that a Founder's employment is terminated for any reason, the shares held by the terminated employee will be cancelled or repurchased by the Company.
  - (ii) 50% of the shares held by each of the Founders will vest on a daily basis over a period of five years commencing on (date). In the event that a Founder's employment is terminated for any reason, the shares held by the terminated employee will be cancelled and returned to the treasury of the Company.
- (c) In the event of the death or permanent disability (defined as the inability to perform one's duties) of a Founder, 10% of any then unvested shares will vest immediately for the benefit of the estate of the deceased. The Company will, if requested by the estate of the deceased, buy all vested shares from the estate of the deceased at a price equal to the last

agreed upon valuation of the Company as per Schedule B, provided that adequate key man insurance is in place to do so. Failing this, the estate of the deceased may offer the shares according to this agreement.

*(the foregoing clause is totally discretionary. Founders may wish to ensure that their survivors enjoy some benefit from their "sweat equity" and hard work)*

## **2.8 Matters Requiring Unanimous Shareholders Resolution:**

- (a) alterations, variations or changes to the authorized or issued capital of the Company;
- (b) the issue, redemption or purchase of any Shares; and
- (c) changes in the number of directors of the Company

## **3. RIGHT OF FIRST REFUSAL**

*(this entire section simply allows a shareholder to sell his/her shares to the other shareholders, failing which, s/he can sell them to other parties - with conditions!)*

3.1 If any of the Shareholders wishes to sell, transfer or otherwise dispose of any or all of his/her Shares (such party being called the "Seller"), the other Shareholders (the Offerees") shall have a prior right to buy such Shares (the "Offered Shares") and the following shall apply (note that in the event that a Shareholder wishes to buy shares from other Shareholders, that Shareholder may solicit offers from potential Sellers in accordance herewith):

3.2 The Seller shall give to the Offerees notice in writing of his/her desire or intention to sell all or any of his/her Shares to them. Such notice shall be given in writing (via paper or electronic delivery) to the Offerees or by serving such notice upon the Offerees personally, and, if mailed, such notice shall be deemed to have been given to the Offerees on the second business day following the mailing thereof. This notice (the "Selling Notice") shall set out:

- (i) the number of Shares beneficially owned by the Seller;
- (ii) the number and class of Shares which make up the Offered Shares, the price and the terms and conditions of the sale of the Offered Shares.

3.3 Each Offeree may, within a period of thirty (30) days next following the date when the Selling Notice shall be deemed to have been given, give written notice to the Seller or by serving the notice personally on the Seller. This notice (the "Buying Notice") shall state either that such Offeree is willing to purchase the Offered Shares, or that s/he is not willing to purchase the Offered Shares. If an Offeree fails to give the Buying Notice s/he will be deemed to have refused to purchase the Offered Shares.

3.4 After receipt by the Seller of each Buying Notice, or after the expiry of thirty (30) days from the date of the Selling Notice, whichever is earlier, the Seller shall be bound to sell all the Offered Shares to the Offerees who have indicated in the Buying Notice that they wish to purchase the Offered Shares (the "Buyers") at such price and on such terms as contained in the Selling Notice.

3.5 If more than one Offeree has given a Buying Notice to the Seller indicating his/her willingness to purchase the Offered Shares, then, the Buyers shall purchase all the Shares comprising the Offered Shares in such proportions as they may agree upon, or, in the absence of agreement, in the Common Share Ratios of each Buyer, computed without reference to the Seller's Shares.

3.6 If the Offerees by reason of the provisions hereinbefore contained, do not purchase the Offered Shares then the Seller shall be at liberty to sell the Offered Shares to an Outsider but only at a price equal to or in excess of the price contained in the Selling Notice and on the same terms as disclosed in the Selling Notice. If, within the earlier of sixty (60) days of the date of the Selling Notice or thirty (30) days of the date or receipt of the last

Buying Notice by the Seller indicating the refusal of the Offerees to purchase the Offered Shares, the Seller has not received an unconditional offer to purchase the Shares from an Outsider and has not completed the sale of the Offered Shares to the Outsider within thirty (30) days of the date of receipt of the unconditional offer, then the rights of the Offerees shall revive in respect of the Offered Shares and if the Seller shall thereafter desire to sell any of his/her Shares s/he shall again give notice pursuant to Article 3 and so on from time to time. The Seller shall serve a copy of the Outside Offer upon the Offerees pursuant to Article 3 prior to selling the Offered Shares to the Outsider.

3.7 Any offer to purchase Shares from an Outsider must include the condition that the Outsider agrees to become a party to this agreement pursuant to the purchase of the Shares.

#### **4. COATTAIL ("TAG ALONG") AND FORCED ("DRAG ALONG") PROVISIONS**

*(This section simply gives a smaller shareholder the right to "tag along" in case a group of shareholders, holding a majority of shares, wishes to sell its shares. Similarly, if most shareholders receive an offer from a buyer for 100% of the Company, some shareholders may be "dragged along" and forced to sell their shares)*

4.1 In the event that each member of a group of Shareholders, which group holds a majority of the common shares, serves a Selling Notice in connection with the same Outside Offer and if after the Outside Offer is served upon the Offerees in accordance with Article 3, one or more of the Offerees decide that s/he or they wish to sell their Shares to the Outsider on the same terms and conditions as contained in the Outside Offer, then the group shall not be entitled to sell, transfer or otherwise dispose of the Offered Shares unless the Outsider purchases at the same time and on the same terms and conditions all of the Shares of the Offerees who so desire to sell their Shares.

4.2 In the event that any Shareholder serves a Selling Notice in accordance with Article 3 in connection with an Outside Offer which provides for a sale, the completion of which would result in the ownership by the Outsider of a majority of the common shares, and should one or more of the Offerees decide that s/he or they wish to sell their Shares to the Outsider on the same terms and conditions as contained in the Outside Offer, then the Shareholder serving the Selling Notice shall not be entitled to sell, transfer or otherwise dispose of the Offered Shares unless the Outsider purchases at the same time and on the same terms and conditions all of the Shares of the Offerees who so desire to sell their Shares.

4.3 In the event that some of the Shareholders accept an offer from an Outsider to purchase a minimum of 75% *(or 90%?)* of the common shares, then all of the Shareholders (including any Shareholder who did not accept the Outsider's offer to purchase) shall be required to sell all of their common shares to the Outsider on the same terms and conditions, if the Outsider desires to purchase such Shares, and only if the purchase price is at least equal to the Valuation Schedule attached as Schedule B to this agreement.

4.4 For the purpose of Article 4, separate offers addressed to each member of a group of Shareholders or any combination of them by the same Outsider or by separate Outsiders or any combination of Outsiders acting in concert shall be considered a single Outside Offer.

#### **5. PRE-EMPTIVE RIGHTS**

*(this section simply ensures that shareholders cannot be diluted by having the Company issue more shares. It gives shareholders the right to participate, on a pro-rata basis, in new share sales from the treasury.)*

5.1 Notwithstanding the articles of incorporation of the Company, the following shall apply to the allotment and issuance by the Company of any Shares:

5.2 If the Company proposes to issue further shares (the "Issued Shares"), the Issued Shares shall be offered to the Shareholders at a price and upon terms determined by the board of directors. The Company shall give written notice (the "Issuing Notice") to each of the Shareholders, setting forth the price at which, and terms on which the Issued Shares are being offered.



5.3 Each Shareholder wishing to purchase part or all of the Issued shares should notify the Company in writing (paper or electronically).

5.4 If any Shareholders accept the offer stated in the Issuing Notice, the Shareholders shall subscribe for the Issued Shares in accordance with the Issuing Notice and shall execute a written subscription in accordance therewith which shall be accepted forthwith by the Company. The Shareholders shall be entitled to subscribe for and purchase the Issued Shares in such proportions as they may agree upon or, in default of such agreement, in their Common Share Ratios.

5.5 Any Issued Shares which are not subscribed for by the Shareholders in accordance with this Article 5 may be offered by the Company to a third party at the price and on the terms in the Issuing Notice, provided that no subscription shall be accepted by the Company for the sale of any such shares to a third party except with the written consent of the holders of not less than two-thirds of the common shares in the capital stock of the Company at such time outstanding.

## **6. RESTRICTIONS OF TRANSFER, ETC.**

6.1 No Shareholder, without the prior written consent of the remaining Shareholders, shall sell, assign, transfer, dispose of, donate, mortgage, pledge, hypothecate, charge or otherwise encumber or deal with any of his/her Shares unless in accordance with this Agreement.

6.2 The parties hereby agree that notice of this Agreement shall be endorsed in red ink on all certificates representing Shares from time to time held or beneficially owned by them; and that a copy of this Agreement shall be maintained in the legal records of the Company.

6.3 In the event that pursuant to any provisions of this agreement, any one or more of the Shareholders shall sell, assign, transfer or convey any of his/her Shares to any person, firm or corporation other than one of the present parties hereto, no such transfer shall be made or shall be effective and no application shall be made to the Company to register any such transfer until the proposed transferee enters into an agreement with the other parties hereto to the same effect as this Agreement, and any further agreement with respect to the Company to which the transferor is a party.

## **7. TERMINATION OF AGREEMENT**

This Agreement shall terminate on the occurrence of any of the following events:

(a) the Company is dissolved, wound-up, surrenders its charter, makes an assignment in bankruptcy, makes a proposal to its creditors, or has a receiving order made against it;

(b) unanimous agreement of the Shareholders; or

(c) sale of the Company to another party.

## **8. GENERAL COVENANTS**

(a) This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators and assigns.

(b) The parties agree to hold and cause to be held all such meetings of directors and Shareholders of the Company and to deliver and execute all such documents as may be necessary to give full effect to this Agreement.

(c) This Agreement shall be construed in accordance with the laws of the Province of British Columbia.

(d) Words in the singular shall include the plural and vice-versa, and words importing the masculine shall include the feminine and the neuter and vice-versa, and words importing persons shall include corporations and

vice-versa.

**IN WITNESS WHEREOF** the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SIGNED, SEALED, AND DELIVERED**

In the presence of: ) \_\_\_\_\_

) Pat Tater

) \_\_\_\_\_

) Chris Topher

) \_\_\_\_\_

) Jean Nee

) \_\_\_\_\_

)Michael Angelo

) \_\_\_\_\_

) Carpe Diem Technology Corp

) Per: \_\_\_\_\_

**SCHEDULE A: (new page)**

List of all Parties to this agreement, showing their names, addresses, and number of Shares held in the Company.

(Also attach a Capitalization Table - [see sample](#))

**SCHEDULE B: (new page)**

Valuation of Company agreed to (and initialed) by all parties and updated from time to time by Unanimous Shareholder Vote (ie.90%):

<u>Date</u>	<u>Total Value of Company</u>	<u>Pat</u>	<u>Chris</u>	<u>Jean</u>	<u>Mikey</u>
30May2008	\$1,150,000.00	PT	CT	JN	MA



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