**STOCKHOLDER AGREEMENT**

THIS STOCKHOLDER AGREEMENT made this

\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.  
  
**BETWEEN:**

Bjorn Harvold of 154 Atlantic Ave, 3R, Brooklyn, NY 11201

OF THE FIRST PART

and

Paul Fisher of 7 Cornelia St., Suite 1D, New York, NY 10014

OF THE SECOND PART

and

Debra Blum of 240 West 74th St, Apt 9A, New York, NY 10023

OF THE THIRD PART

and

Health XCEL, Inc of 154 Atlantic Ave, 3R, Brooklyn, NY 11201  
(the "Corporation")

OF THE FOURTH PART

**Background**

1. The Corporation is incorporated under the General Corporation Law of the State of Delaware (the "Act").
2. The Stockholders have decided to enter into this agreement (the "Agreement") to govern their respective interests, obligations, liabilities, ownership and rights in the Corporation.
3. All of the Stockholders have executed this Agreement.
4. The Corporation has executed this Agreement for the purpose of acknowledging notice of this Agreement and for the purpose of making certain representations.

**IN CONSIDERATION OF** the premises and mutual covenants and agreements in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**Interpretation**

1. In this Agreement
   1. "Articles" are the Corporation's Articles of Incorporation or Articles of Amalgamation, as the case may be;
   2. "Board" means the board of directors of the Corporation;
   3. "Business Day" means a day other than a Saturday or Sunday or statutory holiday;
   4. "By-laws" means the by-laws of the Corporation as of the date of this Agreement and as may be amended from time to time;
   5. "Fair Market Value" means the fair market value as determined by this Agreement;
   6. "Financial Statements" means the financial statements of the Corporation, prepared in accordance with generally accepted accounting principles;
   7. "Party" or "Parties" means all of the Stockholders and the Corporation;
   8. "Stock" refers to stock in the capital of the Corporation;
   9. "Stockholder" means any one of the Stockholders who is or later becomes a Stockholder in the Corporation;
   10. "Stockholders" mean any two or more of the Stockholders who are or later become Stockholders in the Corporation.

Stockholder Agreement

1. This Agreement will govern the relationship of the Stockholders to the extent permitted by law. Where this Agreement requires that an act be done or a state of affairs be effected and that act is done or that state of affairs is effected by action of the Board, the requirement will be read as requiring the Stockholders to do everything in their power to bring about that act or effect that state of affairs and not as requiring the Board to comply with this Agreement. This Agreement is not intended to restrict the Board's power to manage and supervise the Corporation, nor is it intended to fetter the discretion of any of the directors of the Board.  
     
   By-laws and Articles
2. For the purposes of interpreting this Agreement and the Stockholders rights and obligations under this Agreement, the By-laws will be read as being subject to the provisions of this Agreement. The By-laws will not be amended or repealed except by written Agreement of all of the Stockholders.
3. For the purposes of interpreting this Agreement and the Stockholders rights and obligations under this Agreement, the Articles will be read as being subject to the provisions of this Agreement. The Articles will not be amended or repealed except by written Agreement of all of the Stockholders.  
     
   Warranties
4. The Corporation warrants that as of the date of this Agreement, all issued and outstanding are owned as follows:

|  |  |  |
| --- | --- | --- |
| **Name** | **Number of** | **Class** |
| Bjorn Harvold | 910 | A |
| Paul Fisher | 80 | A |
| Debra Blum | 10 | A |

1. Each holder warrants that the holder is the sole beneficial owner of the identified as being owned by that holder in this Agreement.
2. The Corporation warrants that it has the necessary corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement.
3. Each Stockholder warrants that he or she is not prevented by reason of law or any other contractual agreement from entering into this Agreement.  
     
   Management of the Corporation
4. The Stockholders agree to exercise, as soon as practicable, any and all voting rights attached to all Stock owned by them to elect the following individuals as directors of the Corporation unless the person that the Stockholders have agreed to elect is unable or unwilling to act as a director:  
     
   Bjorn Harvold and Paul Fisher.
5. The Corporation's auditor will be: Reno Cappello.
6. The Corporation will not mortgage, charge, grant a security interest in or otherwise encumber the Corporation's assets, except for purchase money security interests incurred in the ordinary course of business, without the prior written approval of all of the Stockholders.
7. The Corporation will not give any financial assistance by way of gift, loan, guarantee or otherwise to any Stockholder, director, officer or employee of the Corporation or to any person or entity related to any Stockholder, director, officer or employee. For the purpose of this Agreement, individuals connected by blood relationship, marriage or common-law partnership or adoption are related, and an individual is related to a corporation if the individual has effective or legal control of the corporation, is part of a group that has effective or legal control of the corporation, or is related to an individual or corporation that has effective or legal control of the corporation or is related to a person who is part of a group that has effective or legal control of the corporation.
8. The Corporation will not purchase, redeem or acquire any Stock from any Stockholder except as provided in this Agreement and except in compliance with corporate solvency provisions and capital requirements of the Act.
9. The Corporation will not issue any Stock after the date of this Agreement unless the Stock are issued in accordance with this Agreement or with the prior written approval of all of the Stockholders.
10. Stock will not be issued for other than money consideration, without the prior written approval of the Stockholders. Money includes a debt owing by the Corporation or a debt secured by a guarantee given by the Corporation. Money does not include a promissory note or other promise to pay.  
      
    Capital Requirements of the Corporation
11. If the Board determines that the Corporation requires additional funds to meet the Corporation's obligations to its creditors or to achieve the purpose for which the Corporation was incorporated the Stockholders will at the request of the board and on a pro rata basis, subscribe and pay for additional Stock in the Corporation in an amount that is sufficient to enable the Corporation to meet such obligations or objectives, as the case may be.  
      
    Restrictions on Transfer or other Disposal of Interest
12. Stockholders will not and will not agree to directly or indirectly sell, assign, transfer, give, pledge, hypothecate or otherwise dispose of or in any other way encumber any Stock or any interest in any Stock and will not create any security interest in or grant any option with respect to any Stock or any interest in any Stock, except in accordance with the express provisions of this Agreement or except with the prior written approval of all of the Stockholders.  
      
    Death or Incapacity of Stockholder
13. If a Stockholder dies or becomes incapable (the "Incapacitated Stockholder") of performing duties that the Stockholder is required to perform as a director or officer or as otherwise imposed by this Agreement by reason of sickness, injury, mental or physical incapacity ("Incapacity") and it appears as though the Incapacitated Stockholder will not recover so as to be able to perform those duties within 90 days of the Incapacity, the other Stockholders will purchase all of the Incapacitated Stockholder's Stock at Fair Market Value as soon as practicable but not later than 6 months after the Incapacity. If there is more than one other Stockholder purchasing the Incapacitated Stockholder's Stock, each Stockholder will, subject to the prior written agreement of the other purchasing Stockholders, purchase an equal amount of the Incapacitated Stockholder's Stock. Each Stockholder may obtain insurance on the life of any other Stockholder in an amount not exceeding the estimated Fair Market Value of that Stockholder's Stock. The proceeds from any such life insurance will be used for the sole purpose of purchasing a deceased Stockholder's Stock.  
      
    Mediation
14. Any dispute arising among two or more of the Stockholders that cannot be resolved by discussion within a 30-day time period will be resolved by mediation.
15. Mediation may be commenced by any of the Stockholders by the delivery of written notice to all other Stockholders.
16. The notice will specify the dispute to be mediated, the issues of fact and law to be determined and the proposed mediator (the "Notice of Dispute").
17. Any Stockholder who receives a Notice of Dispute may object to the proposed mediator and propose an alternative mediator by delivering a written notice of objection to all other Stockholders within 15 Business Days of receiving the Notice of Dispute. All of the proposed mediators will jointly appoint a mediator to determine the dispute. If the proposed mediators are unable to agree upon a mediator to determine the dispute, any Stockholder may apply to the Court for the appointment of a mediator.
18. If no Stockholder objects by written notice to the proposed mediator within 15 Business Days of receiving the Notice of Dispute, the proposed mediator will mediate the dispute.
19. The mediator and all proposed mediators will be at arm's-length from every Party to this Agreement and will not have any interest in the dispute.
20. The mediator, subject to applicable legislation, will determine the procedure for hearing the dispute but will give written reasons for material findings of fact and a written decision.
21. The mediator will determine the liability among the parties to the dispute for the cost of the mediation and the payment of the mediator.  
      
    Shot Gun Provision
22. If any of the Stockholders have a dispute (a "Material Dispute") regarding:
    1. the manner in which the affairs of the Corporation are to be conducted, or
    2. the business in which the Corporation should engage, or
    3. any other matter where the disagreement is of such a nature that it is likely to prejudice the operations or profitability of the Corporation

and if the Material Dispute cannot be resolved after negotiation for a period of not less than thirty (30) days or through the provisions for mediation within this Agreement, then any Stockholder (the "Initiating Stockholder") may initiate a forced buy or sell agreement (the "Shot Gun Provision").

1. If there are only two Stockholders to this Agreement at the time this Shot Gun Provision is utilized, the Initiating Stockholder will give a written offer (the "Offer") to the other Stockholder (the "Offeree") specifying the price per Stock (the "Price") at which the Initiating Stockholder is willing to:
   1. sell all of the Stock owned by the Initiating Stockholder, or
   2. purchase all of the Stock owned by the Offeree.
2. The Offeree will, within 15 Business Days of receiving the Offer, give notice to the Initiating Stockholder indicating that the Offeree has elected to either:
   1. purchase the Initiating Stockholder's Stock at the Price, or
   2. sell the Offeree's Stock at the Price.
3. If the Offeree does not respond to the Offer before 5 o'clock in the afternoon on the 15th Business Day after the date on which the Offer was received, the Offeree will be deemed to have agreed to sell the Offeree's Stock to the Initiating Stockholder at the Price.
4. If the Offeree elects to purchase the Initiating Stockholder's Stock, the Offeree will tender a certified check for the Price within 10 Business Days of notifying the Initiating Stockholder that the Offeree has elected to purchase the Initiating Stockholder's Stock, and the Initiating Stockholder will transfer or cause to be transferred to the Offeree all of the Initiating Stockholder's Stock on receipt of the Price.
5. If the Offeree elects or is deemed to elect to sell the Offeree's Stock to the Initiating Stockholder, the Initiating Stockholder will tender a certified cheque for the Price within 10 Business Days of either the date on which the Initiating Stockholder receives notice that the Offeree has elected to sell the Offeree's Stock or the date on which the Offeree is deemed to have elected to sell the Offeree's Stock to the Initiating Stockholder, and the Offeree will transfer or cause to be transferred to the Initiating Stockholder all of the Offeree's Stock on receipt of the Price.
6. Failure to make a payment required by this Shot Gun Provision or failure to transfer Stock as required by this Shot Gun Provision will be deemed to be a breach of contract and the non-defaulting party will, in addition to any other remedies available by statute or at law or equity, be entitled to and may elect to, by written notice within 30 Business Days of the default, purchase the defaulting party's Stock at 75% of the Price.
7. If there are more than two Stockholders to this Agreement, the Initiating Stockholder may make an Offer to one of the other Stockholders, and the procedure in this Shot Gun Provision will apply as if there were only two Stockholders. The Initiating Stockholder may also make an offer to the other Stockholders as a group, and the other Stockholders will either come to an agreement among themselves to buy the Initiating Stockholder's Stock or will, as a group, elect to sell all of the their Stock to the Initiating Stockholder, and the procedure in this clause will apply.  
     
   Right of First Refusal
8. Stockholders are prohibited from selling, transferring or otherwise disposing of their Stock or any interest in their Stock unless:
   1. the Stock are first offered at not more than Fair Market Value to the Stockholders of the class of Stock being sold on a pro rata basis ("Offer One"); and
   2. Stock remaining after Offer One are offered to all other Stockholders on an equal basis ("Offer Two") for not less than the price specified in Offer One and on terms not more favorable than those in Offer One.
9. Stock remaining after Offer Two may be offered to any person or entity (the "Third Party Offer") for a period of 180 days from the date on which Offer Two was made for not less than the price specified in Offer Two and on terms not more favorable than those in Offer One.
10. Offer One, Offer Two and the Third Party Offer (collectively and individually the "Offer") will be in writing and will specify:
    1. the price at which the Stock are offered; and
    2. the date by which time the Offer must be accepted, which will be not less than 10 Business Days from the date on which the Offer is made; and
    3. the terms of the Offer; and
    4. the closing date for the sale of the Stock, which will be between 30 and 90 Business Days from the date on which the Offer is accepted.
11. Any Offer not accepted within the time period specified for accepting the Offer will be deemed to be declined.
12. If a transaction involving the sale of Stock to a person, firm, partnership, association, or other entity that was not previously a Stockholder of the Corporation (a "Third Party") will result in the Third Party acquiring 50% or more of the Stock in the Corporation, the selling Stockholder or Stockholders ("Selling Stockholder") will not be entitled to sell the Stock unless the Third Party offers the following option to each remaining Stockholder ("Remaining Stockholder").
    1. The Third Party will offer to purchase any Remaining Stockholder's Stock. This offer will remain open for a period of 90 days from the date on which the Third Party first acquires Stock in the Corporation.
    2. If the Remaining Stockholder is selling Stock of the same class and series as the Stock purchased by the Third Party, the price will be the same.
    3. If the Remaining Stockholder is selling Stock of a class or series other than the Stock purchased by the Third Party, the price will be the Fair Market Value of the Stock. If the Fair Market Value of the Stock is unknown, the Third Party will bear the cost of determining the Fair Market Value of the Stock.
    4. The Third Party will purchase the Remaining Stockholder's Stock on terms that are substantially similar to and not less favorable to the Remaining Stockholder than those in the transaction between the Selling Stockholder and the Third Party.

Valuation

1. The Fair Market Value of the Stock will be set by the Stockholders on an annual basis and will be communicated by way of a Stockholders Resolution declaring that the Stockholders agree that the Fair Market Value of each Stock of each class and series is a specified amount.
2. At the date of this Agreement the Fair Market Value of the Stock is as follows:  
     
   Class A: $1000.00.
3. If the Stockholders cannot agree on the Fair Market Value of the Stock or fail to set the Fair Market Value on an annual basis for whatever reason, the Fair Market Value will be determined as follows:
   1. the Stockholder or Stockholders desiring the valuation will give written notice to all other Stockholders that a valuation is required (the "Valuation Notice").
   2. the Valuation Notice will specify the reason for the valuation and will name 3 firms or persons that specialize in and have substantial experience in business valuation that are at arm's-length from all Parties (the "Potential Valuators").
   3. the Stockholders receiving the Valuation Notice will select one of the Potential Valuator's to act as the valuator (the "Valuator").
   4. the Valuator will value the Stock in accordance with generally accepted accounting principles in the jurisdiction in which the Corporation is incorporated or continued.
   5. the Stockholder requiring the valuation will pay the cost of the valuation.

Dividends

1. Subject to corporate law solvency requirements and to the extent permitted by law and after payment of any stockholder loans and after establishing sufficient reserves for the normal operation of the Corporation's business activities and debt serving requirements, all of the Corporation's profits will be distributed by way of dividend. Dividends will be distributed annually.  
     
   Conflict of Opportunities and Non-Competition
2. Each Stockholder agrees any business opportunity that comes to the attention of the Stockholder while the Stockholder is a Stockholder, director, officer or employee of the Corporation and that is similar to or that relates to the current or anticipated business opportunities of the Corporation or that arises out the Stockholder's connection with the Corporation, belongs to the Corporation.
3. Each Stockholder agrees that while a Stockholder, director, officer or employee of the Corporation and for a period of 1 year after ceasing to be a Stockholder, director, officer or employee of the Corporation, the Stockholder will not, solely or jointly with others:
   1. undertake, plan, organize or be involved in any way with any business or any business activity that competes with the current or anticipated business of the Corporation in the geographic area in which the Corporation carries on its usual business;
   2. be directly or indirectly involved with a business that is in direct competition with the business of the Corporation in the geographic area in which the Corporation carries on its usual business; or
   3. divert or attempt to divert from the Corporation any business the Corporation enjoyed, solicited, or attempted to solicit from its customers, prior to the Stockholder ceasing to be a Stockholder.
4. Each Stockholder agrees that for so long as the Stockholder is a Stockholder, director, officer or employee of the Corporation, the Stockholder will not engage or participate in any other business activities that conflict with the best interests of the Corporation.  
     
   Non-Solicitation
5. Each Stockholder agrees that while a Stockholder, director, officer or employee of the Corporation and for a period of 1 year after ceasing to be a Stockholder, director, officer or employee of the Corporation, the Stockholder will not in any way, directly or indirectly, induce any Stockholder, director, officer or employee of the Corporation to leave their position with the Corporation or to compete in any way with the Corporation and will not interfere with the Corporation's relationship with its other Stockholders, directors, officers or employees. Such enticement or interference would be harmful and damaging to the Stockholders and to the Corporation.  
     
   Notice of this Agreement on Stock
6. Stock certificates will have subscribed on them the following notice or a notice that is substantially similar to the following notice:  
     
   The Stock represented by this certificate are subject to the provisions of a Stockholder Agreement, made the \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, which restricts the right to sell, transfer or encumber any stock in the Corporation, including the stock represented by this certificate. Notice of the said agreement is hereby given. A copy of the said agreement may be obtained by sending a written request to the Board of Directors for the Corporation.  
     
   Effective Date and Term
7. This Agreement will come into effect on the date of its execution.
8. This Agreement will remain in effect until the earliest of
   1. the date specified in a written agreement, signed by all of the Stockholders, terminating this Agreement;
   2. the date on which there is only one Stockholder in the Corporation; or
   3. the bankruptcy, winding-up or dissolution of the Corporation.

But in any event, this Agreement will not last longer than 10 years unless it is renewed by the Stockholders.  
  
Address for Notice

1. Service of all notices under this Agreement will be sufficient if delivered personally or mailed certified, return receipt requested, postage prepaid, to the following addresses:  
     
   Bjorn Harvold: 154 Atlantic Ave, 3R, Brooklyn, NY 11201  
     
   Paul Fisher: 7 Cornelia St., Suite 1D, New York, NY 10014  
     
   Debra Blum: 240 West 74th St, Apt 9A, New York, NY 10023  
     
   Health XCEL, Inc: 154 Atlantic Ave, 3R, Brooklyn, NY 11201  
     
   Any Stockholder may, on written notice to all other Stockholders and the Corporation, change the Stockholder's address for notice under this Agreement. If the Corporation's registered address changes, the Corporation may, on written notice to all Stockholders, change its address for notice under this Agreement.  
     
   Severability
2. If there is a conflict between any provision of this Agreement and its governing legislation (the "Legislation"), the Legislation will prevail and this Agreement will be amended in order to comply with the Legislation. Further, any provisions required by the Legislation are incorporated into this Agreement.
3. If there is a conflict between any provision of this Agreement and any form of Agreement prescribed by the Legislation, that prescribed form will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with that prescribed form. Further, any provisions that are required by that prescribed form are incorporated into this Agreement.
4. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by the Parties subsequent to the expungement of the invalid provision.  
     
   General Provisions
5. This Agreement will not be amended or modified except by the written agreement of all the Stockholders. All Stockholders, without the consent of the Corporation, may modify, amend or rescind this Agreement.
6. This Agreement constitutes the entire agreement between the Parties and supersedes any previous agreement or representation with respect to the matters set forth in this Agreement, and there are no conditions, warranties, representations, agreements, express or implied, relating to such matters.
7. This Agreement will be construed in accordance with and governed by the laws of the State of Delaware.
8. Headings are inserted for the convenience of the Parties and for the purpose of interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa. Words in the neuter mean and include the masculine and feminine and vice versa.
9. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Parties.
10. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
11. Time is of the essence in this Agreement.
12. The Parties will do all acts and things and execute all documents that are reasonably necessary or advantageous to enforce this Agreement according to its tenor and intent and each Party will bear that Party's own expenses in connection with the same.
13. All dollar amounts in this Agreement refer to U.S. dollars, and all payments required to be paid under this Agreement will be paid in U.S. dollars unless the Parties agree otherwise.
14. No Party will be liable in damages or have the right to terminate this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond that Party's control including, but not limited to acts of God or government restrictions, wars, insurrections, natural disasters, such as earthquakes, hurricanes or floods and/or any other cause beyond the reasonable control of the Party whose performance is affected.

**IN WITNESS WHEREOF** the Parties have executed this Agreement on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | |  |  | | --- | --- | |  |  |   Bjorn Harvold | | |  |  | | --- | --- | |  |  |   Paul Fisher | | |  |  | | --- | --- | |  |  |   Debra Blum | | |  |  |  | | --- | --- | --- | | Health XCEL, Inc | | | | per: |  |  | | |