

This Pop Up Shop Vendor Agreement (this “Agreement”) is entered into by you, the vendor, (hereinafter, “you” or “your” or “Vendor’s/Vendors/Vendor” and Pop Up El Paso, Mocha Enterprises, Vicki International (hereinafter, Pop Up El Paso) and sets out the terms and conditions governing your participation in the Holiday Pop Up El Paso on Saturday, December 4, 2021 at the ASYMCA, 7060 Comington, El Paso, Texas 79930. By participating as a vendor at any Pop Up El Paso event you acknowledge that you have read and agree to the terms set out below.

Application & Payment: Participation requires a completed application (which is included on the website and should not be completed until this agreement has been read and agreed to) for each Pop Up El Paso Event. Vendor must complete the application by the deadline in order to be considered and pending space availability, which is not guaranteed without payment.

Date, location, cost of space, and other information is included at the end of this agreement as well as on the flyer and information section.

Space is limited and is available on first-approved basis.

Vendors may submit their application, but final approval is at the sole discretion of Pop Up El Paso and/or its parent and affiliate companies. Vendors must bring their own table no larger than 6’x30”. Vendors will be designated a space upon setup arrival. Once your application is approved and space is available, you will receive an email and/or phone call.

DÉCOR AND SETUP: Vendor is responsible for bringing decorations, tablecloths, and other items needed to setup and define the assigned space. Vendors understand that they may not alter any area of the venue. Objects, tape, etc., may not be used on the walls, windows, or ceilings.

Term: This Agreement will commence upon acceptance of payment by Pop Up El Paso and shall continue in effect through your participation in Event(s), unless otherwise terminated in accordance with the terms contained herein.

Cancellations and Refunds: If there is a cancellation:

By Vendor: If Vendor needs to cancel, they must notify Pop Up El Paso by sending an email to popupelpaso@gmail.com. Any cancellations will not receive a refund. By cancelling, Vendor forfeits their space at the Event.

By Pop Up El Paso: If a cancellation of the Event by Pop Up El Paso is necessary due to unforeseen circumstances, acts of a third party, or other circumstances which (in Pop Up El Paso’s sole judgment) may compromise the safety of Event participants, then the Event will not be rescheduled and there will be no refunds to Vendor.

Assignment: Vendor shall not assign its rights nor delegate its obligations under this Agreement in whole or in part, without the prior written approval of Pop Up El Paso, which approval shall not be unreasonably withheld, conditioned, or delayed. Accepted and approved Vendors are allowed to sell or distribute goods or services, and/or conduct activities during the Event.

Force Majeure: In the event either party is unable to perform its obligations under the terms of this Warrant Agreement because of acts of God, strikes, failure of carrier or utilities, equipment or transmission failure or damage that is reasonably beyond its control, or any other cause that is reasonably beyond its control.

Termination:

1. **Termination for Convenience:** This Agreement may be terminated by Pop Up El Paso at any time, with or without cause, immediately upon notice to the Vendor.
2. **Termination for Default:** Either party may terminate this Agreement immediately upon notice to the other party in the event of a breach or default by the other party of any term, condition, or covenant of this Agreement.

Code of Conduct:

1. You agree to read and abide by all directives, regulations, and Event rules provided to you, including those sent via email to the email address provided on your application. Pop Up El Paso reserves the right to decline, prohibit, or expel any Vendor exhibit, or prevent any activity, displays, product, or conduct, which (in Pop Up El Paso's sole judgment) is out of keeping with the character of the Event or endangers the venue, any attendee, or other vendors.
2. Vendor and its agents, employees, personnel, and/or independent contractors who participate in the Event agree to be bound by this Agreement and shall comply with its terms and all Event rules, regulations, and directives as expressed to Vendor by Pop Up El Paso in any way at any time. The terms of this Agreement, including any limitations and waivers, inures to the benefit of Pop Up El Paso and its affiliates and Event co-producers and sponsors.

NOT ALLOWED; NO EXCEPTIONS:

With the exception of approved vendors, weapons, knives, swords, of any kind, are not allowed on the premises at any time. We DO NOT AND WILL NOT allow any pornography, racist, homophobic/transphobic items, or literature, tobacco products, alcohol products, any illegal substance or productions.

We do accept Vendors representing brands such as Avon, Paparazzi, and other Direct Sales representatives; however, you must seek permission from the Direct Sales Organization, as we promote using logos and images, all of which, by signing, you agree that you have obtained the rights to use to promote your business. Refunds are not allowed, so please verify prior to completing your application.

Miscellaneous:

- The relationship of Vendor to Pop Up El Paso is that of an independent contractor, and nothing contained in this Agreement will be construed as creating a partnership, joint venture, employment relationship, agency, or other relationship between the parties, or to make Pop Up El Paso liable for the debts or obligations of Vendor.
- This Agreement, any Event rules and regulations provided to Vendor by Pop Up El Paso or Pop Up El Paso's affiliates, and the Application completed by Vendor, constitute the entire Agreement and understanding between the parties hereto with respect to Vendor's participation in the Event.

- If any term herein is determined to be unlawful or unenforceable then that term will be severed, and the remainder of the Agreement will remain in force.
- No amendment or revision to this Agreement shall be effective unless agreed to in writing by Pop Up El Paso.
- This Agreement is non-exclusive, and Pop Up El Paso reserves the right to contract with other vendors for the Event.
- Any delay or failure by Pop Up El Paso to exercise any right or power under this Agreement shall not be construed to be a waiver of said right or power or any other right or power under this Agreement.

COVID-19 WAIVER OF LIABILITY AND INDEMNIFICATION

- I agree that I am personally responsible for my safety and actions while vending with the Pop Up El Paso. I agree to comply with all PUEP policies and rules, including but not limited to all Pop Up El Paso policies, guidelines, signage, and instructions. Because Holiday Pop Up Event is open to the public and open to other individuals, I recognize that I am at higher risk of contracting COVID-19. With full awareness and appreciation of the risks involved, I, for myself and on behalf of my family, spouse, estate, heirs, executors, administrators, assigns, and personal representatives, hereby forever release, waive, discharge, and covenant not to sue the Pop Up El Paso, ASYMCA or its board members, our parent company, Vendors, Attendees and Guests, Vicki International, MOCHA Enterprises, it's officers, agents, servants, independent contractors, affiliates, employees, successors, and assigns (collectively the "Released Parties") from any and all liability, claims, demands, actions, and causes of action whatsoever, directly or indirectly arising out of or related to any loss, damage, or injury, including death, that may be sustained by me related to COVID-19 whether caused by the negligence of the Released Parties, any third-party attending or vending with Pop Up El Paso, or otherwise, while participating in any activity while in, on, or around Pop Up El Paso and/or while using any Pop Up El Paso facilities, tools, equipment, or materials, whether owned, leased, or rented.
- I agree to indemnify, defend, and hold harmless the Released Parties from and against any and all costs, expenses, damages, claims, lawsuits, judgments, losses, and/or liabilities (including attorney fees) arising either directly or indirectly from or related to any and all claims made by or against any of the Released Parties due to bodily injury, death, loss of use, monetary loss, or any other injury from or related to my use of Pop Up El Paso, AND its rented, leased, or utilized facilities, tools, equipment, or materials, whether caused by the negligence of the Released Parties or otherwise specifically related to COVID-19.
- By signing below I acknowledge and represent that I have read the foregoing Waiver of Liability, understand it and sign it voluntarily as my own free act and deed, including without limitation the Release of Liability and Indemnification requirements contained in this document; I am sufficiently informed about the risks involved and in deciding whether to sign this document; no oral representations, statements, or inducements, apart from the foregoing written agreement, have been made; I am at least eighteen (18) years of age and fully competent; and I execute this document for full, adequate, and complete consideration fully intending to be bound by the same. I agree that this Wavier of Liability shall be governed by and construed in accordance with Texas law, and that if

any of the provisions hereof are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Waiver of Liability as a whole. This waiver remains in effect until all COVID-19 related mandates have been lifted throughout the UNITED STATES by the CDC and the city and county of El Paso, Texas; it's coverage will remain in perpetuity.

By participating as a Vendor for Pop Up El Paso, you agree to comply with all guidelines, rules, regulations, times, etc. You agree to allow Pop Up El Paso to take and/or use photographs, video and/or recordings of your booth for promotional purposes in print or televised advertisements, brochures, postcards, fliers, website, and other marketing collateral. You agree not to hold Pop Up El Paso, its partners, its staff, or its ownership responsible if you do not make a profit. You understand that Pop Up El Paso reserves the right to reject any vendor registration if it feels items for sale do not meet the mission of Pop Up El Paso. You certify that you have read or been given the opportunity to read and fully understand the Pop Up El Paso vendor agreement.

Liability: By registering to be a vendor at Pop Up El Paso, you agree to all terms and conditions. You agree to the fullest extent permitted by law that Pop Up El Paso shall not be responsible for any loss or damage incurred by Vendor, including, without limitation, damage to Vendor's property, loss of sales, or injury to or death of Vendor (or its agents, employees, and/or personnel). Pop Up El Paso's maximum liability arising out of or relating to this Agreement shall not exceed, in the aggregate, the amounts paid to it by Vendor, and in no event shall Pop Up El Paso be liable for any consequential, incidental, indirect, punitive, or special damages regardless of the cause of such damages. Vendor expressly assumes all risks of loss, damage, liability, injury, or destruction resulting from any cause whatsoever, including but not limited to acts or omissions by Vendor, and hereby releases and waives any claims against Pop Up El Paso related to such loss, damage, liability, injury, and/or destruction. Vendor covenants that it shall be fully responsible for any damages resulting from its participation in any Event, and agrees to indemnify, defend, and hold Pop Up El Paso (and its officers, employees, agents, vendors, affiliates, and representatives) harmless against any claims arising out of or related to Vendor's participation in any Event, including for claims arising out of Vendor's negligent actions or omissions.

Representations and Warranties: Pop Up El Paso makes no representation, guarantee, or warranty with respect to any Event. All warranties, express or implied, are hereby disclaimed, including, without limitation, the warranties of marketability and fitness for a particular purpose. Pop Up El Paso does not guarantee any level of attendance at the Event and there will be no refund to Vendors, under any circumstances, except as expressly provided for herein, even after the Event is over. The vendor list, map, and space assignments are subject to change without notice.

Independent Contractor: It is mutually understood and agreed upon by both parties that the relationship that exists is one of independent contractor and is hereby established under the terms of this Agreement. As an independent contractor, you understand that you are responsible for any taxes due or monies received from your sales. The Vendor agrees to comply with rules and regulations of all municipal, county, state, and federal ordinances, laws, rules, and regulations in

providing speaking services, including, but not limited to obtaining necessary permits and licenses.

The State of Texas Comptroller requires that all vendors be registered with the State of Texas to collect sales tax. If you are not registered with the State of Texas to collect sales tax, you may do so by visiting the Comptroller's Website at comptroller.texas.gov. Please note that although this is not a requirement to become a vendor with Pop Up El Paso, this is a requirement of the State of Texas, if your business type is required to do so.

Please note: If in doubt, contact the local El Paso office at 401 E. Franklin Ave., Suite 160 El Paso, Texas 79901-1209 | 915-533-0506.

By submitting your application and information, whether or online and/or by returning the signed document, you agree this entire agreement.

Signature _____

Date: _____ / _____ / 2021
Month Day