

**EVIE CLAIR**  
**PERFORMANCE AGREEMENT**

This agreement is entered and mutually agreed upon on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 by Hillary Abplanalp the legal guardian (“Guardian”) of Evelyn Clair Abplanalp also known as Evie Clair (“Artist/Performer”), and \_\_\_\_\_ (the “Presenter/Producer”).

**WHEREAS** the Presenter/Producer wishes to retain the services of the Artist/Performer to \_\_\_\_\_.

**NOW, THEREFORE**, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

**1) ENTIRE AGREEMENT.**

The following terms and conditions and, if applicable, any attachment hereto (collectively, the “Agreement”) constitute the complete and exclusive statement of the understanding between Artist/Performer with respect to the services purchased hereunder. The Agreement may be modified only pursuant to a written instrument signed by authorized representatives of both parties. The invalidity in whole or in part of any provision of the Agreement will not affect the validity of the other provisions. To the extent that Artist/Performer’s terms and conditions, or the terms and conditions in an attachment hereto, conflict with the terms contained herein, the latter will control. Either party’s failure to insist upon the Engagement of any term of the Agreement will not be construed as a waiver of that party’s present or future right to such performance and each party’s obligations in respect thereto will continue in full force and effect.

**2) DEFINITION OF MINOR.**

This agreement is made between Hillary Abplanalp on behalf of Evelyn Clair Abplanalp who is a minor, and the Presenter/Producer. The term "minor," as used herein, means any performer under

the age of eighteen (18) years, except that it shall not include any such performer if: (1) the performer has satisfied the compulsory education laws of the state governing the performer's employment; (2) the performer is married; (3) the performer is a member of the armed forces; or (4) the performer is legally emancipated, in which case it is agreed that both the Producer and the minor shall comply fully with the legal terms of the minor's emancipation.

**3) TERMS OF ENGAGEMENT.**

- a) Description of Engagement: \_\_\_\_\_ (“Engagement”).
- b) Date(s) of Engagement: \_\_\_\_\_
- c) Location of Engagement: \_\_\_\_\_
- d) Time(s) of Engagement: \_\_\_\_\_
- e) Number of Sets and Duration: \_\_\_\_\_
- f) Time(s) of Sound Check: \_\_\_\_\_

**4) PAYMENT.**

Presenter/Producer will pay Artist/Performer the sum of \$ \_\_\_\_\_ USD paid in full on the day of the Engagement, and shall be paid 50% down payment at least fourteen (14) days before the Engagement. The Presenter/Producer will not pay or withhold federal, state, or local income, or other payroll taxes on behalf of the Artist/Performer. The Artist/Performer shall be responsible, and will report and pay all applicable taxes.

**5) BOOKING AGENT.**

Booking agent shall be paid a fee of \_\_\_\_\_% the total amount paid to the Artist/Performer for the Engagement. The Booking agent shall be paid when the Artist/Performer is paid her down payment for the Engagement.

**6) ACCOMMODATIONS, TRANSPORTATION, AND MEALS**

The Presenter/Producer will pay the Artist/Performer the sum of \$ \_\_\_\_\_ USD for reimbursed travel expenses. Unless other arrangements are made for the Presenter/Producer to

directly arrange accommodations, travel or meals, the Artist/Performer will directly arrange and pay for all expenses.

## **7) LOGISTICS/STAGE HOSPITALITY**

Artist/Performer must provide Presenter/Producer with the following information prior to the Engagement if requested:

- a)** Backing Tracks;
- b)** Graphics

Presenter/Producer must provide Artist/Performer with the following on the day of sound check, rehearsal, and on the day of the Performance:

- a)** Presenter/Producer shall provide a *smoke free* environment for the Artist/Performer, and individuals that are smokers and around Artist/Performer shall be notified that no smoking is permitted around Artist/Performer.
- b)** Microphone with Reverb, and Sound Mixer to balance the sound;
- c)** Digital Piano with 88 Weighted Keys and pedal, or a Real Piano properly mic'd for performance;
- d)** Two (2) Bottles of Water for each performance;
- e)** Presenter/Producer agrees to hold 5 (5) complimentary tickets, and backstage passes for the Artist/Performer for each performance, Artist/Performer and/or Guardian will provide names of individuals for the complimentary tickets.

## **2) BACKSTAGE AMENITIES / FOOD.**

Presenter/Producer shall furnish the Artist/Performer and her Guardian, at the Presenter/Producer sole cost, and expense with the following:

- a)** One (1) safe, comfortable private dressing room for the Artist/Performer's sole use with access to a private bathroom, and a mirror within the room. This room is to be clean, dry, heated or cooled as the weather shall require. The dressing room shall have a lock on it, and the key given to either the Artist/Performer, or her Guardian.

- b) The dressing room is to contain the following at the Presenter/Producer sole cost and expense:
  - i) Three (2) Bottles of Cold Water (32 oz);
  - ii) One (1) Bath Towel;
  - iii) One (1) Tray of Fresh Fruit or Vegetables and;
  - iv) One (1) Small bag of Peanut M&M's.

**3) ARTIST/PERFORMER RESPONSIBILITIES.**

- a) The Artist/Performer agrees that she is responsible for learning all music and appearing fully prepared for the first rehearsal.
- b) The Artist/Performer agrees to appear at the sound check scheduled for \_\_\_\_\_(time) at \_\_\_\_\_(address) and performance on time and ready to perform.

**4) PROMOTION/ADVERTISING/BILLING.**

Presenter/Producer shall be responsible for all matters pertaining to the promotion and production of the scheduled engagement, including but not limited to venue rentals, security, and advertising. Presenter/Producer agrees to promote the scheduled performance(s) and will use its best efforts to obtain calendar listings, feature articles, interviews of Artist/Performer, reviews of the performance and Artist/Performer's recordings in all local prints, radio, and television media. Presenter/Producer shall forward all copies of clippings, reviews, and posters to Artist/Performer. Artist/Performer agrees that Presenter/Producer may use Artist/Performer's name, pictures, photo- graphs, recordings, and other likenesses in connection with advertising and publicizing the engagement(s) hereunder, but such use shall not be without prior approval of Artist/Performer and/or her Guardian.

In all news released, announcements, advertisements, posters, and printed programs relative to this engagement, the billing must read:

*Evie Clair*

Artist/Performer will be available for two (2) phone interviews, or will fly out with her Guardian to the area where the Engagement is taking place for an in-person interview at the Presenter/Producer expense. Artist/Performer's Guardian shall be with or within the general vicinity of the Artist/Performer at all times during the interviews.

**5) INTELLECTUAL PROPERTY.**

The Artist/Performer retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artist/Performer's original music for the duration of the copyright. If the Presenter/Producer wants the Artist/Performer to perform cover songs then the Presenter/Producer shall obtain all the necessary intellectual property rights to those songs, and indemnifies the Artist/Performer if those rights are not obtained.

**6) SECURITY.**

Presenter/Producer shall provide adequate security so as to guarantee the safety of the audience and the Artist/Performer. Presenter/Producer will ensure that no unauthorized persons will have access to the stage or backstage area, and the Artist/Performer will provide names of persons or guests authorized to be backstage. Presenter/Producer shall be responsible for any theft or damage to the equipment of Artist/Performer that may occur during the time that the equipment is a located on Presenter/Producer's premise. Special arrangements shall include:

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Artist/Performer will comply with all security measures and procedures adopted by Presenter/Producer. Artist/Performer agrees not to engage in or encourage audience participation in behaviors that in any way threaten or endanger personal safety or security, including but not limited to stage diving, crowd surfing, floating or moshing. Artist/Performer agrees not to enter the audience at any point during the Engagement, nor invite or encourage audience members to come onto the stage, unless previously approved in writing as part of the Engagement. Artist/

Performer acknowledges that such behaviors significantly increase the risk of injury to patrons. Artist/Performer will be responsible for any all damage or injury arising from any such incident.

#### **7) SICKNESS AND ACCIDENT**

Artist/Performer's agreement to perform is subject to proven detention by sickness or accident. In the event of such non-performance, the deposit payment (if any) advanced to the Artist/Performer shall be returned promptly.

#### **8) PYROTECHNIC DEVICES**

No pyrotechnic devices shall be used without the prior express written consent of both Artist/Performer and Presenter/Producer. Any such device shall be subject to applicable fire laws and shall be administered by a person with professional experience in pyrotechnics. Presenter/Producer shall be responsible for obtaining all applicable permits.

#### **9) BACKGROUND MUSIC**

Artist/Performer shall approve all background music played before and after Artist/Performer's performance.

#### **10) EDUCATION.**

Provisions set forth are for when the Artist/Performer will be employed at the Engagement by the Presenter/Producer for three or more consecutive days during the school year.

- a)** If a minor is guaranteed three (3) or more consecutive days of employment, Presenter/Producer agrees to employ a teacher, from the first day of such employment or at the start of the Engagement, whenever the minor is engaged on any day during which the primary or secondary school regularly attended by the minor is in session. The same shall apply when the Presenter/Producer's production and/or performance schedule for a given production and/or performance plans for scenes to be photographed, and/or performances given with the minor on three (3) or more consecutive days. When the minor is employed in an Engagement that is planned on the production and/or performance schedules for

only two (2) consecutive days and it is subsequently determined that additional calls will be necessary, Presenter/Producer shall use its best efforts to provide a teacher on the third consecutive day of such employment or, at the latest, on the fourth consecutive day of such employment and thereafter. On any day a minor is employed, but is not otherwise entitled to have a teacher, the minor shall nevertheless be taught if the primary or secondary school such minor regularly attends is in session and Presenter/Producer has employed a teacher to instruct another performer engaged on the same production and/or performance. If Presenter/Producer employs a minor for post-production and/or performance work, no teacher need be provided if the minor's call for such work is after the minor's regular school has been dismissed for the day. Presenter/Producer shall provide schooling as required by this Agreement during Producer's work week for the production.

- b)** Such teacher shall have proper teaching credentials appropriate to the level of education required (*i.e.*, primary or secondary level) from any state within the United States, but need not be credentialed by or a resident of the state wherein the minor's employment occurs unless otherwise required by law.
- c)** The teacher's remuneration shall be paid by Presenter/Producer.
- d)** Presenter/Producer shall provide a ratio of not more than ten (10) minors per teacher, except that up to twenty (20) minors may be taught per teacher if the minors are in not more than two (2) grade levels.
- e)** A teacher may not serve more than one (1) production and/or performance in any one (1) day, except in an emergency.
- f)** However, on any day that the minor is not required to report to the set or stage, the minor may attend his or her regular school, but Presenter/Producer shall not count more than three (3) hours of the hours attended per day at the minor's regular school as school time for purposes of this Agreement. If the minor's parent or guardian does not choose to have the minor attend regular school on such day, Presenter/Producer may elect to either teach the minor on the set or in the minor's home or in the home of the teacher employed by

Producer, but only if there are no other minors present in the home who are not also being taught by the teacher.

- g)** Presenter/Producer agrees to provide a school facility, such as a schoolhouse, classroom, trailer schoolhouse or other schooling area, which closely approximates the basic requirements for classrooms, especially with respect to adequate lighting, heating, desks and chairs. Stationary buses or cars are not adequate school facilities unless used exclusively for the minors during instruction. A moving car or bus shall never be used as a school facility; minors must not be taught while being transported to or from local locations.
- h)** Presenter/Producer shall provide schooling equipment and supplies. However, the minor's parent or guardian must, if permitted by the minor's regular school, secure school assignments and the minor's school books for use at the place of employment.
- i)** No one shall be allowed in an area being utilized by Presenter/Producer as a school facility except the teacher and those minors being taught, and the minor's legal guardian.
- j)** The teacher shall determine the required number of hours to be devoted to instruction during a day, but the minor must be taught an average of at least three (3) hours per day, no period of less than twenty (20) minutes duration being acceptable as school time. The maximum number of hours that may be set aside for the minor's instruction in any one (1) day shall be as follows: for kindergarten, four (4) hours; for grades one (1) through six (6), five (5) hours; and for grades seven (7) through twelve (12), six (6) hours.
- k)** Presenter/Producer shall require the teacher to prepare a written report for each minor covering attendance, grades, etc. These reports shall be given to the minor's parents or Guardian to deliver to the minor's regular school at the end of each assignment or at such intervals as required by such school.

## **11) SUPERVISION.**

- a)** On days when the minor's regular school is in session, Presenter/Producer must require the minor to report to the teacher immediately upon arrival at the place of employment.

When school is in session, the teacher has primary responsibility for the education and supervision of the minor.

- b) Presence of the teacher does not relieve parents, however, of the responsibility of caring for their own children. A parent or guardian must be present at all times while a minor is working, and shall have the right, subject to Performance requirements, to be within sight and sound of the minor.
- c) When a parent is working at the minor's place of employment but not at the scene of employment, either the other parent or a guardian must be present with the minor.
- d) A guardian, as that term is used in this Section, must be at least eighteen (18) years of age, have the written permission of the minor's parent(s) to act as a guardian, and show sufficient maturity to be approved by Presenter/Producer (and teacher, if teacher is present).
- e) No minor may be sent to wardrobe, make-up, hairdressing, or employed in any manner unless under the general supervision of a teacher, parent or guardian.
- f) If Presenter/Producer engages any minor under the age of fourteen (14), Presenter/Producer or Guardian must designate one (1) individual on each set or stage to coordinate all matters relating to the welfare of the minor and shall notify the minor's parent or guardian and teacher, when one is present, of the name of such individual.

## **12) WORKING HOURS.**

Artist/Performer is under the age of sixteen, therefore the Presenter/Producer must abide by the following:

- a) Minors who have reached the age of nine (9) years but who have not attained the age of sixteen (16) years may be permitted at the place of employment for nine (9) hours (excluding meal periods, but including school time). The work day for a minor shall begin no earlier than 5:00 a.m. and shall end no later than 10:00 p.m. on evenings proceeding school days. On evenings preceding non-school days, the minor's work day shall end no later than 12:30 a.m. on the morning of the non-school day.

- b) If a minor is at location, the minor must leave location as soon as reasonably possible following the end of his or her working day, and may not be held for transportation.
- c) Interviews and fittings for children who are attending school shall be held outside of school hours. Such interviews and fittings shall be held not later than 9:00 p.m. At least two (2) adults, one being the Artist/Performer legal guardian, shall be present at all times during a fitting.
- d) A minor shall not work more than six (6) consecutive days. However, for this purpose, a day of school only or travel only shall not be counted as one of said consecutive days.
- e) Presenter/Producer shall set the first call at the beginning of the minor's employment and dismissal on the last day of the minor's employment so as to ensure that the minor will have a twelve (12) hour rest period prior to and at the end of the employment. For example, if a minor's last day of employment is Wednesday, and the minor will be attending school at 8:30 a.m. on Thursday, the minor must be dismissed by 8:30 p.m. on Wednesday.

**13) MEDICAL CARE AND SAFETY.**

- a) The Artist/Performer's Parent or Guardian must provide Presenter/Producer a certificate signed by a doctor licensed to practice medicine within the state wherein the minor resides or is employed, stating that the minor has been examined within six (6) months prior to the date he or she was engaged by Presenter/Producer and has been found to be physically fit.
- b) Prior to a minor's first call or rehearsal, Presenter/Producer must obtain the written consent of the minor's parent or legal guardian for medical care in the case of an emergency. However, if the parent or legal Guardian refuses to provide such consent because of religious convictions, Presenter/Producer must at least obtain written consent for external emergency aid, provided.

**14) CHILD LABOR LAWS.**

- a) A summary of the applicable state child labor laws governing the employment of the minor shall be kept in the Presenter/Producer's production office if such summary is readily available.
- b) Any provision of this Section which is inconsistent and less restrictive than any child labor law or regulation in applicable state or other jurisdictions shall be deemed modified to comply with the State in which the Engagement is taking place.

**15) FORCE MAJEURE.**

In the event that either party is unable to perform its obligations under this Agreement as a result of *Force Majeure*, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "*Force Majeure*" shall mean fires, earthquakes, floods, acts of God, strikes, work stoppages or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any foreign nation, power of government or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

**16) TERMINATION.**

- a) Without Cause. Either Presenter/Producer or Artist/Performer may cancel or terminate this contract and the services to be rendered without liability, with written notice to the other party at least (30) days before the Engagement.
- b) With Cause. Either party may terminate this contract for cause. For this purpose, "cause" means a material breach of this Agreement by the other party that is not cured within five (5) days of the receipt of notice of the alleged breach by the non-breaching party to the breaching party.

**17) INDEPENDENT CONTRACTOR.**

Artist/Performer is an independent contractor and not an employee or agent of Presenter/Producer. All persons furnished or retained by Artist/Performer in connection with this Agreement are so furnished or retained as Artist/Performer's employees or agents. The

arrangements contemplated by this Agreement shall not be deemed to constitute a partnership or joint venture between Artist/Performer and Presenter/Producer. Artist/Performer shall not be entitled to any Presenter/Producer Employee Benefits of any nature whatsoever, including, but not limited to fringe benefits, health and unemployment insurance, worker's compensation and pension plans. Artist/Performer will not make commitments on behalf of Presenter/Producer unless expressly authorized in writing by Presenter/Producer. Artist/Performer shall not represent to any person or entity that the Artist/Performer is associated with Presenter/Producer in any capacity other than that of an independent contractor. Artist/Performer will defend, indemnify and hold harmless Presenter/Producer from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including attorney's fees, in connection with any claim that Artist/Performer is an employee of Presenter/Producer.

**18) INDEMNIFICATION.**

To the fullest extent permitted by law, Presenter/Producer will defend, indemnify, and hold harmless Artist/Performer, its respective affiliates, contractors, officers, directors, trustees, employees and agents from and against any and all claims, demands, liabilities, damages and expenses, losses of every nature and kind, including attorney's and other professional's fees, (collectively, "Claims"), arising out of the intentional or negligent acts or omissions in the performance of the Engagement by the Presenter/Producer or Presenter/Producer's failure to render services in compliance with this Agreement, including, but not limited to, any third party claims relating to the Engagement,, advertising, product liability claims, or infringement of any trademark, copyright, patent, trade secrets or nonproprietary right of a third party (including, without limitation, defamation, libel or violation of privacy or publicity).

**19) INSURANCE**

Presenter/Producer shall obtain and maintain, at its own expense, adequate personal injury and property damage liability insurance coverage and such coverage shall extend to all activities related to Artist's engagement and performance, including time of set up and take down. Except

for claims arising from Artist/Performer's willful or intentional acts, Presenter/Producer shall indemnify Artist for any third party claims.

Indemnify Artist/Performer for any third-party claims. Artist/Performer will NOT ENTER upon Presenter/Producer property to perform hereunder unless Presenter/Producer is insured in accordance with the above requirements.

**20) ARBITRATION.**

Any dispute, controversy or claim arising out of or relating in any way to the agreement including without limitation any dispute concerning the construction, validity, interpretation, enforceability or breach of the agreement, shall be exclusively resolved by binding arbitration upon a Party's submission of the dispute to arbitration. In the event of a dispute, controversy or claim arising out of or relating in any way to the agreement, the complaining Party shall notify the other Party in writing thereof. Within thirty (30) days of such notice both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after two years from when the aggrieved party knew or should have known of the controversy, claim, dispute or breach.

**21) NON-INFRINGEMENT.**

Artist/Performer represents and warrants that the Artist/Performer is free to enter into this Agreement and that Engagement does not violate the terms of any agreement between Artist/Performer and any third party. Artist/Performer represents and warrants that Engagement will not infringe, violate the copyright, patent, trademark trade secret or any other right of any third party, and no additional permissions, clearances, assignments, or licenses are necessary to give full effect to the provisions of this Agreement. Artist/Performer represents and warrants that all copyright or similar permissions or licenses that may be necessary to perform the Engagement

have been obtained and shall provide documentation to Presenter/Producer of such permissions upon request.

**22) CONFLICTS.**

Artist/Performer represents that no trustee, officer employee or any other person affiliated with the Presenter/Producer and having involvement with this Agreement:

- a) Is affiliated with the Artist/Performer; and
- b) Received, was promised, or will received anything of value in connection with this Agreement or performance contemplate.

**23) GOVERNING LAW.**

All disputes regarding the construction, interpretation and parties' obligations under this Agreement will be governed by the laws of the State of Arizona, notwithstanding any of that state's laws to the contrary, regardless of the location of the Engagement. The venue and jurisdiction for the resolution of any such disputes will be State or Federal court in state of Arizona.

**24) COMPLIANCE WITH LAW/POLICIES**

Artist/Performer agrees to abide by all applicable federal, state and local laws and the policies of set forth by this Engagement and Venue.

**25) NO ASSIGNMENT**

By signing this document, the Artist/Performer's Guardian hereby represent that such person is duly authorized and that the Artist/Performer agrees to be bound by the provisions of this Agreement. It is expressly understood and agreed that in acting hereunder solely in the capacity of Guardian of the Artist/Performer, said person is a party to this contract and shall be liable or responsible in any way for the omissions of Artist/Performer, nor for any failure by Artist/Performer to adequately perform or comply with any term or condition hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement, by their respective officers hereunto duly authorized, the day and year written above.

**AGREED TO AND ACCEPTED:**

**PRESENTER/PRODUCER**

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print/Type Name)

\_\_\_\_\_ (Print/Type Title)

\_\_\_\_\_ (Date)

**ARTIST AND LEGAL GUARDIAN**

**HILLARY ABPLANALP** (Legal Guardian of Evelyn Clair Abplanalp):

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print/Type Name)

\_\_\_\_\_ (Date)

**EVELYN CLAIR ABPLANALP:**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print/Type Name)

\_\_\_\_\_ (Date)