

breach of this Agreement. HPEF may assign its rights and obligations under this Agreement at any time and without the consent of the Exhibitor.

8. **Severability.** If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. Moreover, if a provision of this Agreement is determined to be void or unenforceable for any reason, the parties shall attempt to negotiate a substitute provision in good faith.

9. **Term.** The term of this Agreement shall expire at 5:00 pm EDT on July 20, 2003 unless the Agreement has been previously cancelled or terminated under the provisions hereof. The indemnification and insurance provisions in Section 9 of this Agreement shall survive termination of this Agreement indefinitely.

10. **Termination.** HPEF shall be entitled to terminate this Agreement immediately, and shall be under no obligation to refund any portion of the Payment to the Exhibitor or otherwise compensate the Exhibitor, in the event (i) the Exhibitor fails to make the Payment

when due and payable; (ii) the Exhibitor's products or services infringe on the intellectual property rights of HPEF or third parties; (iii) the Exhibitor fails to obtain licenses, permits, or other authorizations necessary to carry on its business as described in Schedule 1 from the State of Florida; (iv) the Exhibitor fails to claim or staff the Exhibit Space as provided in this Agreement; (v) HPEF determines that the Exhibitor's exhibit and/or products or services, because of noise, method of operation, materials, or for any other reason, are or may become dangerous or objectionable or may detract from the general character of the Symposium as a whole or consists of products or services that are inconsistent with the character of the Symposium; or (vi) the Exhibitor breaches any other provision of this Agreement.

11. **Notice.** Any notice, claim, demand, request or other communication required or permitted under this Agreement shall be valid and effective immediately when personally delivered or when sent by confirmed facsimile, or three (3) business days after mailed, and addressed to the other party at the address designated below such party's signature on the signature page.

12. **Choice of law; choice of forum** All terms and conditions of this Agreement shall be subject to and governed by the laws of the State of Texas without consideration of the State of Texas's choice of law provisions. Any dispute brought under this Agreement shall be brought before the courts of

Texas, which shall be deemed to have jurisdiction over any and all such disputes. The parties agree that any personal jurisdiction defense is hereby waived with regard to the courts located in Texas.

13. **Acceptance and execution of Agreement.** This Agreement shall not be valid until it is accepted and executed by HPEF. Such acceptance and execution are hereby deemed to take place in the State of Texas.

14. **Headings or Captions.** The headings or captions of this Agreement that are used to label the various sections and subparts are included solely to orient the reader, and do not form a substantive part of this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.



Exhibitor and Dealer Agreement

This Exhibitor and Dealer Agreement (the "Agreement"), entered into and effective as of the date designated by HPEF on the signature page to this Agreement, is by and between HP Education Fanon, Inc., a Texas nonprofit corporation ("HPEF"), and the entity or individual named on the signature page of this Agreement (the "Exhibitor").

The terms and provisions included in all schedules to this Agreement are hereby incorporated by reference and made a part of this Agreement in their entirety.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

DEFINITIONS

"**Book-signing**" shall mean a 2 or 3 hour period, as specified in Schedule 1, for published authors to use a designated table in the Exhibitors' Room to sign their published works.

"**Exhibit Hours**" shall mean the hours set forth on Schedule 1 hereto.

"**Exhibit Space**" shall mean the Exhibit Booth(s) and/or the Exhibit Table(s) allocated to the Exhibitor in the Exhibitors' Room for the duration of the Symposium.

"**Exhibitors' Room**" shall mean the space in the Hotel designated by HPEF for the Exhibitors to exhibit and sell products to attendees of the Symposium during the Exhibit Hours.

"**Hotel**" shall mean The Walt Disney World Swan Hotel in Orlando, Florida.

"**Payment**" shall mean the amount of money designated as rent for the Exhibit Space on Schedule 1 hereto.

"**Sponsors**" shall mean those corporations or individuals who have donated funds or property to the Symposium.

"**Symposium**" shall mean Nimbus – 2003: A Harry Potter Symposium, to be held at the Hotel from July 17-20, 2003.

PAYMENT

1. **Timing of Payment.** Within seven (7) business days of receipt of an Agreement signed by the Exhibitor, HPEF will notify the Exhibitor, at the notice address listed on the signature page hereto, of its acceptance and execution, or rejection, of this Agreement. The Payment must then be made in full within thirty (30) days of the date of acceptance and execution of this Agreement by HPEF. In no event shall the Exhibitor make the Payment after

June 30, 2003, even if this allows for fewer than thirty (30) days in which the Exhibitor is allowed to make the Payment.

2. **Failure to Make Payment.** Should the Exhibitor fail to make the Payment when due and payable, HPEF shall be permitted to terminate this Agreement and cancel the Exhibitor's right to participate in the Symposium without further notice and without refund of any money that has been paid.

ALLOCATION OF EXHIBIT SPACE

1. HPEF reserves the right to assign Exhibit Space in the Exhibitors' Room in its sole discretion. HPEF reserves the right to change the layout or location of the Exhibitors' Room on or before July 16, 2003.

CANCELLATION

1. **By Exhibitor.** If the Exhibitor can-

IN WITNESS WHEREOF, HPEF and the Exhibitor, by the respective duly authorized officers, have executed and delivered this Agreement on the date designated below by HPEF.

HP EDUCATION FANON, INC.
(a Texas non-profit corporation)
by: _____
its: _____

(a)
by: _____
its: _____

(a)
by: _____
its: _____

Address:
2407 Blue Water Lane
Houston, TX 77018

Address:

Address:

Date: _____

Date: _____

Date: _____

cels the Agreement after signing this Agreement and making the Payment and if HPEF is able to resell the Exhibit Space to another party, HPEF shall return seventy-five percent (75%) of the Payment to the Exhibitor within thirty (30) days after HPEF receives payment for the resold Exhibit Space. If HPEF is unable to resell the Exhibit Space, HPEF shall be entitled to retain the Payment in full. If the Exhibitor cancels after HPEF has accepted and executed this Agreement but before the Payment is made, the Exhibitor shall remain liable for a processing fee of twenty-five percent (25%) of the Payment and shall remit such fee to HPEF within thirty (30) days' following its cancellation of this Agreement. Notwithstanding the foregoing, if the Exhibitor cancels on or after June 30, 2003, HPEF will not be liable to the Exhibitor for any refund of any portion of the Payment.

2. **By HPEF.** If HPEF cancels the Symposium, the Exhibitor shall be entitled to a full refund of the Payment or portion thereof paid to date.

EXHIBIT SPACE; STAFFING

1. **Exhibit Space.** HPEF will provide the Exhibitor with Exhibit Space in the form of Exhibit Booth(s) and/or Exhibit Table(s), as specified in Schedule 1. The Exhibit Space must be set-up for the whole duration of the Exhibitors' Room hours as outlined in Schedule 1 (the "Exhibit Hours").

2. **Failure to Claim Space.** Any space not claimed and occupied, and for which no special arrangements have been made, as of 4:00 pm EDT on July 17, 2003, may be resold or reassigned by HPEF in its sole discretion. Such reselling or reassignment shall not constitute a breach of this Agreement, and HPEF shall not be liable to the Exhibitor for a refund of any kind as a result of such reselling or reassignment.

3. **Staffing.** The Exhibitor must staff the Exhibit Space during the Exhibit Hours, except that Exhibitors may close the Exhibit Space, or may rearrange for another exhibitor to cover the Exhibit Space, at their discretion; provided that, the Exhibitor shall keep the Exhibit Space staffed and open for display or business for at least 75% of the Exhibit Hours. No more than one individual under age 18 may staff any of the

Exhibit Space at any one time, and at least one individual over age 18 must staff the Exhibit Space during the Exhibit Hours. Additional provisions regarding staffing of the Exhibit Space are included on Schedule 1.

USE OF EXHIBIT SPACE

1. **Specified Uses.** The Exhibit Space must only be used for the purposes described in Schedule 1. Any use other than those described in Schedule 1 will result in immediate termination of this Agreement by HPEF without further notice and without refund of any money paid by the Exhibitor. HPEF may request that the Exhibitor vacate the Exhibit Space immediately on such unauthorized use.

2. **No Assignment or Sublease of Exhibit Space.** The Exhibitor may not assign, sublet or otherwise apportion all or part of the Exhibit Space to any other person or entity without the prior written consent of an authorized representative of HPEF.

3. **Taxes and Processing Fees.** The Exhibitor shall be solely responsible for obtaining tax identification numbers and paying all taxes, license fees, credit card processing charges, or other charges that shall come due to any local, state or federal governmental authority in connection with the Exhibitor's activities at the Symposium.

4. **Licenses.** The Exhibitor must obtain all the licenses, permits and other authorizations necessary for it to exhibit and/or sell its products or services as described on Schedule 1 at the Exhibit Space, including licenses, permits and other authorizations required by the State of Florida, by the later of (i) May 1, 2003 or (ii) the date on which Exhibitor makes the Payment. If the Exhibitor conducts its business as described on Schedule 1 at the Exhibit Space and cannot produce the proper licenses, permits or other authorizations, the Exhibitor will be in breach of this Agreement, and HPEF reserves the right to terminate this Agreement without further notice or refund of any money paid.

5. The Exhibitor shall be solely responsible for any losses, damages, fines or other penalties associated with its failure to procure any license, permit or other authorization, including violation

of any copyright, trademark, patent, or other intellectual property rights of third parties.

6. If the Exhibitor is interested in playing or performing copyrighted music, the Exhibitor must notify HPEF in writing no later than June 30, 2003. HPEF shall retain the right, in its sole discretion, to deny the Exhibitor the right to play or perform such copyrighted music. The Exhibitor must also obtain any required licenses in connection with playing or performing such music. If the Exhibitor plays or performs copyrighted music and cannot produce the proper licenses or permissions on demand by HPEF, HPEF reserves the right to demand that the music be turned off (or the performance ceased) for the duration of the Symposium.

7. **Laws and Regulations.** All exhibits, including any products used therein, must conform to the fire laws, health regulations, electrical codes, and other applicable local, state and federal laws and regulations.

8. **Appropriateness.** HPEF reserves the right to restrict exhibits that, because of noise, method of operation, materials, or for any other reason are or become dangerous or objectionable. HPEF also reserves the right to prohibit or remove any exhibit that, in the opinion of HPEF, may detract from the general character of the Symposium as a whole, or consists of products or services that are inconsistent with the character of the Symposium. These reservations include persons, things, printed matter, and anything of a character that HPEF determines infringes on the rights, including, without limitation, any intellectual property rights, of any third party. In the event of a removal under this Section 6, HPEF shall not be liable for any refunds or other exhibit expenses. Notwithstanding the foregoing, the Exhibitor may use discretion in permitting adult attendees of the Symposium (as evidenced by their identity badges) to view catalogues or other representations of products that are not available for general viewing in the Exhibit Space.

HPEF INTELLECTUAL PROPERTY

1. **No license for HPEF Intellectual Property.** Nothing in this Agreement shall give the Exhibitor the right to use any intellectual property of HPEF,

including without limitation copyrights, trademarks, trade secrets, logos, patents and patent applications, in any manner whatsoever. Any use of such rights by the Exhibitor constitutes a breach of this Agreement and shall allow HPEF to terminate this Agreement immediately without further notice or return of money paid.

2. **No Adequate Remedy.** The Exhibitor understands that if the Exhibitor infringes on any intellectual property right of HPEF under this Section 7, the damages to HPEF would be very difficult to determine. Therefore, in addition to any other rights and remedies available to HPEF at law, in equity, or by statute, the Exhibitor hereby consents to the specific enforcement of this Section by HPEF through an injunction or restraining order issued by an appropriate court.

INDEMNIFICATION, INSURANCE AND LIABILITY

1. **Indemnification.** Neither HPEF nor the Hotel nor any of their affiliated organizations, directors, officers, agents, employees, volunteers or other representatives or assigns shall be liable for any claim, demand, damage, loss, liability, harm, or injury (including reasonable attorneys' fees, expenses, costs or fees) to the property or person of the Exhibitor or any of its business invitees, directors, officers, agents, employees, contractors or other representatives, regardless of cause or of any concurrent or contributory fault or negligence of HPEF or any of its officers, directors, employees or agents. The Exhibitor agrees to defend, indemnify and hold harmless HPEF and the Hotel, and their owners, managers, officers, directors, agents, employees, volunteers, subsidiaries and affiliates from any claims, demands, damages, losses, liabilities or charges resulting from the Exhibitor's use of the Exhibit Space. The Exhibitor's liability shall include all costs, damages and expenses (including reasonable attorneys' fees) arising from, out of, or by reason of any accident or bodily injury or other occurrences to any person or persons, including the Exhibitor, its agents, employees and business invitees that arise from or out of the Exhibitor's occupancy and use of the Exhibit Space, the Hotel or any part thereof.

2. **Insurance.** The Exhibitor acknowl-

edges that neither HPEF nor the Hotel maintains insurance covering the property of the Exhibitor. If the Exhibitor wishes to insure exhibit materials, goods and/or equipment against theft, damage by fire or accident, or loss of any kind, the Exhibitor must procure such insurance at its sole expense. Furthermore, it is the sole responsibility of the Exhibitor to obtain business interruption and property damage insurance covering such losses by the Exhibitor. The Exhibitor agrees that HPEF and its directors, officers, employees, agents, volunteers, and affiliates shall not be responsible for items lost, stolen, damaged or destroyed during the Symposium.

3. **Force Majeure.** Each party shall be excused for any failure or delay in performing any of its obligations under this Agreement and neither party shall be liable to the other party for failure to perform obligations hereunder, if such failure or delay is caused by Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean any act of God, act of terrorism, accident, explosion, fire, storm, hurricane, earthquake, flood, drought, riot, embargo, strike, civil commotion, war act of war, construction or renovation of the Hotel or any other circumstances or event beyond the reasonable control of the party relying on such circumstance or event.

4. **Acts and Omissions of Agents.** The Exhibitor assumes full responsibility and liability for the acts and omissions of its agents, representatives, employees, or independent contractors, whether acting within or without the scope of their authority, and agrees to hold HPEF and the Hotel harmless from all responsibility or liability that results directly or indirectly from such acts or omissions.

5. **Limitation of Liability.** EXCLUSIVE OF LIABILITY UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR ITS SUBJECT MATTER, WHETHER

SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

MISCELLANEOUS

1. **Non-exclusive.** The Exhibitor acknowledges that HPEF grants no terms of exclusivity to the Exhibitor.

2. **No Licensing Rights.** The Exhibitor acknowledges that HPEF grants no licensing rights of any kind to the Exhibitor.

3. **Entire Agreement.** By signing this Agreement, the Exhibitor agrees to abide by all terms and perform all obligations detailed herein. This Agreement contains the entire agreement between the parties and supercedes any prior agreement.

4. **Modification.** The terms of this Agreement may not be modified or amended except by a written instrument executed by authorized representatives of the parties to this Agreement.

5. **Waiver.** All waivers of any breach of any provision of this Agreement shall be in writing. A waiver of any breach of any provision of this Agreement shall not be construed as a waiver of other breaches of the same provision or other provisions of this Agreement.

6. **Relationship of the Parties.** For the purposes of this Agreement, the parties hereto shall be independent contractors as to one another and shall not be deemed, expressly or by implication, to be agents, employees, or servants of one another for any purpose whatsoever. Neither party shall have the power to control the manner in which the other party performs its obligations under this Agreement. In the performance of this Agreement, each party shall comply with all applicable laws and shall be individually responsible for the consequences of any violation thereof.

7. **No Assignment.** Neither the rights nor obligations granted herein to the Exhibitor may be assigned by the Exhibitor without HPEF's prior written consent, which consent shall not be unreasonably withheld. Any purported assignment in violation of this provision shall be void and shall constitute a