

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
EFFECTIVE DATE:	09/30/2005

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Richard Curtis Associates, Inc.		09/30/2005	CORPORATION: NEW YORK
E-Rights/E-Reads, Ltd.		09/30/2005	CORPORATION: NEW YORK
Richard Curtis		09/30/2005	INDIVIDUAL: UNITED STATES

**RECEIVING PARTY DATA**

Name:	Palm Digital Media, Inc.
Street Address:	2800 Meridian Parkway, Suite 150
City:	Durham
State/Country:	NORTH CAROLINA
Postal Code:	27713
Entity Type:	CORPORATION: MASSACHUSETTS

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
Registration Number:	2621687	E-READS

**CORRESPONDENCE DATA**

Fax Number: (615)252-6392  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: (615) 252-2392  
 Email: csloan@boultcummings.com  
 Correspondent Name: Christopher A. Sloan Esq.  
 Address Line 1: 1600 Division Street, Suite 700  
 Address Line 4: Nashville, TENNESSEE 37203

ATTORNEY DOCKET NUMBER:	104467-011 CAS/SLK
NAME OF SUBMITTER:	Christopher A. Sloan

OP \$40.00 2621687

Signature:	/Christopher A. Sloan/
Date:	06/01/2006
<b>Total Attachments: 15</b> source=E READS Assignment#page1.tif source=E READS Assignment#page2.tif source=E READS Assignment#page3.tif source=E READS Assignment#page4.tif source=E READS Assignment#page5.tif source=E READS Assignment#page6.tif source=E READS Assignment#page7.tif source=E READS Assignment#page8.tif source=E READS Assignment#page9.tif source=E READS Assignment#page10.tif source=E READS Assignment#page11.tif source=E READS Assignment#page12.tif source=E READS Assignment#page13.tif source=E READS Assignment#page14.tif source=E READS Assignment#page15.tif	

## TRADEMARK ASSIGNMENT AGREEMENT

This Trademark Assignment Agreement ("Agreement") is made and entered into effective as of September 30, 2005 (the "Effective Date") by and between Palm Digital Media, Inc. ("PDM"), a Massachusetts corporation with its principal place of business at 2800 Meridian Parkway, Suite 150, Durham, NC 27713, Richard Curtis Associates, Inc. ("RCA"), a New York corporation with its principal place of business at 171 East 74th Street New York, NY 10021, E-Rights/E-Reads, Ltd. ("E-Company"), New York corporation with its principal place of business at 171 East 74th Street New York, NY 10021, and Richard Curtis ("Curtis" and collectively with RCA and E-Company, the "Assignors"), an individual resident of the State of New York with his residence at 422 East 72nd St., NY, NY 10021. For purposes of this Agreement, all obligations of Assignors hereunder are joint and several. Where this Agreement requires a notice or approval by the Assignors, the notice or approval of any one Assignor shall be binding on all of the Assignors.

### RECITALS

WHEREAS, Assignors own the trademark E-READS (the "Assigned Mark"), which they use in connection with an electronic publishing business; and

WHEREAS, Assignors have alleged that PDM's use of the mark EREADER.COM infringes Assignors' rights in the Assigned Mark (the "Claim");

WHEREAS, the parties have agreed to settle fully any and all claims between them relating to the Claim; and

WHEREAS, to enable Assignor to continue its current use of the Assigned Mark and the Assigned Domain Names (as defined below) in connection with the Business (as defined below), PDM is willing to grant to E-Company a license back to certain rights in the Assigned Mark and Assigned Domain Names as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. Assignment and Grantback License

(a) Trademark Assignment. Assignors hereby sell, transfer, assign and deliver unto PDM, effective as of the date hereof, the Assigned Mark (including any stylized versions thereof, and any logos incorporating same), all right, title and interest of Assignors therein, and any registrations therefor, together with the goodwill of the business connected with and symbolized by the Assigned Mark and any registrations or applications to register the Assigned Mark (specifically including United States Patent and Trademark Office Registration Number 2621687), as well as all rights to damages or profits, due or accrued, arising out of past infringement of the Assigned Mark or injury to said goodwill and the right to sue for and recover the same in the Assignee's own name. Nothing contained herein shall be construed to assign, sell, transfer or deliver unto PDM any of Assignors' right, title or interest in the trademark "E-Rights", registered with the United States Patent and Trademark Office, Registration Number 2,478,687 on August 14, 2001.

(b) Domain Name Transfer. Assignors hereby sell, transfer, assign and deliver unto PDM, effective as of the date hereof, the domain names E-READS.COM and EREADS.COM (the "Assigned Domain Names") and all right, title and interest of Assignors therein, and any registrations therefor.

(c) Grantback License. PDM hereby grants to E-Company in perpetuity a royalty-free, fully-paid-up, irrevocable, transferable, world-wide, non-exclusive license to use the Assigned Mark and the Assigned

Domain Names in connection with E-Company's online book publishing and distribution business (including, without limitation, the print on demand business for the publication of books and other printed material in electronic form to be accessed, viewed and/or retrieved from a computer network) as it is being conducted on the date hereof (the "Current Business"), as well as on promotional and advertising material associated therewith. All other rights to the Assigned Mark and the Assigned Domain Names not expressly licensed hereunder are reserved to PDM. Any new use or change in use of the Assigned Mark must be approved in advance in writing by PDM, which approval will not be unreasonably withheld or delayed; PDM's failure to object to any request for approval within five (5) days of PDM's receipt of the request shall be deemed to constitute PDM's approval of that request (the Current Business, together with any new use or change in use by Assignors which is approved or deemed approved by PDM in accordance with this Section, shall hereinafter be referred to as the "Business").

(d) Assignment and Licensing Restrictions. For so long as Assignors and their successors and assigns are engaged in the Current Business, PDM shall not grant any right to use (or any right to grant any other party they right to use) the Assigned Mark or Assigned Domain Name to any third party whose business directly competes with the Current Business (an "Assignor Competitor"). Nothing contained herein shall prohibit PDM from (i) licensing or assigning the Assigned Mark or Assigned Domain Name to a third party, including an Assignor Competitor, for purposes other than with respect to the portions of an Assignor Competitor's business that are directly competitive with the Current Business, or (ii) using, assigning, or licensing in any way, without limitation, PDM's mark and domain name EREADER.COM or any other mark or domain name that is not identical to the Assigned Mark and Assigned Domain Name, or (iii) assigning the Assigned Mark or Assigned Domain Name to an Assignor Competitor where the Assignor Competitor is acquiring all or substantially all of the assets relating to PDM's electronic book distribution business.

(e) Further Assurances. Assignors agree to perform, at PDM's expense, all acts deemed necessary or desirable by PDM to permit and assist it, at its expense, in perfecting and enforcing the full benefits, enjoyment, rights and title throughout the world in the Assigned Mark and the Assigned Domain Names. In the event that PDM is unable for any reason whatsoever to secure Assignors' signature to any lawful and necessary document relating thereto, Assignors hereby irrevocably appoint PDM and its duly authorized officers and agents as their agent and attorney-in-fact to execute and file any such documents and to do all other lawfully permitted acts in connection therewith with the same legal force and effect as if executed by Assignors.

## 2. Release of Claims

(a) Release. The Assignors hereby release and forever discharge PDM and all of its agents, employees, directors, principals, successors, assigns, attorneys, representatives, and affiliated entities, (collectively, the "Released Parties"), of and from any and all claims, debts, liabilities, covenants, agreements, demands, obligations, costs, expenses, actions or causes of action, of every nature, character and description without limitation in law, equity or otherwise, in any federal or state court or other tribunal that relate to or arise or arose out of or by reason of the Claim prior to the date hereof that directly or indirectly relates to or involves the Released Parties, which the Assignors now have, have heretofore had, or may hereafter at any time have against any Released Party with respect to the Claim, whether now known or unknown (the "Released Claims").

(b) Covenant Not to Sue. The Assignors hereby specifically covenant and agree that they shall not initiate, nor cause to be initiated, any action or cause of action against any Released Party in the future asserting any Released Claim, except as necessary to enforce the terms of this Agreement.

## 3. Consideration.

(a) Cash. PDM shall pay Assignors a purchase price for the Assigned Mark and the Assigned Domain Names in the amount of \$50,000, which amount shall be paid immediately upon the execution of this Agreement by PDM and the Assignors.

(b) Publisher Agreement. Simultaneously with the execution of this Agreement, PDM and E-Company shall enter into a new online publishing agreement in substantially the form attached hereto as Exhibit A (the "Publisher Agreement").

#### 4. Warranties; Indemnification

(a) Representations and Warranties of Assignors. The Assignors represent and warrant to PDM that:

(i) the Assignors exclusively own all right, title and interest in the Assigned Mark and the Assigned Domain Names free and clear of any encumbrances; and

(ii) Assignors have not granted any licenses or entered into any other agreements pursuant to which any third party has any rights to use the Assigned Mark or the Assigned Domain Names; and

(iii) to the knowledge of the Assignors, the use of the Assigned Mark and the Assigned Domain Names as currently used by E-Company does not infringe, or misappropriate any intellectual property rights of any other person; and

(iv) no proceeding charging the Assignors with, or an allegation of, infringement or misappropriation of intellectual property rights has been filed or, to the knowledge of the Assignors, is threatened by any person; and

(v) the Assignors have the necessary power and authority to enter into and execute this Agreement and this Agreement represents the legal, valid and binding obligations of the Assignors, enforceable against the Assignors in accordance with its terms and the execution and performance of this Agreement does not conflict with any other agreement to which any of the Assignors is a party.

(b) Representations and Warranties of PDM. PDM represents and warrants to the Assignors that PDM has the necessary power and authority to enter into and execute this Agreement and this Agreement represents the legal, valid and binding obligations of PDM, enforceable against PDM in accordance with its terms and the execution and performance of this Agreement does not conflict with any other agreement to which PDM is a party.

(c) Indemnification by Assignors. The Assignors shall indemnify, defend, and hold harmless PDM, its stockholders, officers, directors, agents, employees, and affiliated entities (each, a "PDM Indemnified Party") at all times after the date of this Agreement against any liability, loss, damages, claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including legal expenses ("Loss"), arising out of or relating to any claim by an unaffiliated third party that if true, would be a misrepresentation or breach by the Assignors of any representation, warranty, or covenant set forth in this Agreement (each a "Third Party Claim").

(d) Indemnification by PDM. PDM shall indemnify, defend and hold harmless the Assignors and each of the Assignors stockholders, officers, directors, agents, employees, and affiliated entities (each, an "Assignor Indemnified Party") at all times after the date of this Agreement against any Loss arising out of or relating to any Third Party Claim that, if true, would be a misrepresentation or breach by PDM of any representation, warranty or covenant set forth in this Agreement.

(e) Indemnification Procedure. For purposes of this Agreement, "Indemnified Party" shall mean the party claiming indemnification under this Section and "Indemnifying Party" shall mean a party against whom a claim for indemnification is being asserted under this Section. The Indemnified Party shall promptly notify the Indemnifying Party in writing of any Third Party Claim known to the Indemnified Party, stating the nature and basis of the Third Party Claim, to the extent known. The Indemnifying Party shall have sole control over the defense and settlement of any Third Party Claim, provided that, within

fifteen (15) days after receipt of the above-described notice, the Indemnifying Party shall notify the Indemnified Party of their election to so assume full control. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (i) the Indemnifying Party fail or refuse to defend the Third Party Claim on or before the fifteenth (15th) day after the Indemnified Party has given written notice to the Indemnifying Party of the Third Party Claim; or (ii) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment against it; or (iii) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.

(f) Settlement of Claims. If the Indemnifying Party assumes the defense of a Third Party Claim, it may not effect any compromise or settlement of the Third Party Claim without the consent of the Indemnified Party, and the Indemnified Party has no liability with respect to any compromise or settlement of any Third Party Claim effected without its consent. Notwithstanding the foregoing, the Indemnifying Party may effect a compromise or settlement of any Third Party Claim without the Indemnified Party's consent if the following three conditions are met: (i) there is no finding or admission of any violation of law or any violation of the rights of any person, and there is no effect on any other claim that may be made against the Indemnified Party; and (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party, and (iii) the compromise or settlement includes, as an unconditional term, the claimant's or the plaintiff's release of the Indemnified Party, in form and substance satisfactory to the Indemnified Party, from all liability in respect of the Third Party Claim.

**5. Assignors Right of First Offer.** If PDM has received a bona fide offer (a "Transfer Offer") which PDM proposes to accept to sell or otherwise transfer or assign any or all of its interest in the Assigned Mark and/or the Assigned Domain Names (the "Transferred Marks") to any person who is not (either directly or through an affiliate) also acquiring substantially all of the assets relating to PDM's electronic book distribution business (a "Bona Fide Purchaser"), then before PDM may sell, transfer or assign the Transferred Marks, PDM shall provide the Assignors written notice detailing the terms of such Transfer Offer that PDM has received with respect to such Transferred Marks (a "Transfer Notice"). Such Transfer Notice shall identify the proposed price for the Transferred Marks, the identity of the Bona Fide Purchaser and all the other material terms and conditions of such Transfer Offer. The Transfer Notice shall contain an irrevocable offer to sell to the Assignors the Transferred Marks at a price equal to the price and upon substantially the same terms as the terms contained in such Transfer Offer. If the Assignors do not notify PDM of their intent to purchase the Transfer Stock within 15 days of delivery of the Transfer Notice, the Assignors' right of first offer with respect to the Transferred Marks shall terminate. If the Assignors notify PDM that they have decided not to purchase the Transferred Marks, PDM shall have 120 days from the date of such notice to transfer to the Bona Fide Purchaser any or all of its rights and interests in the Transferred Marks at a price not less than and on terms no more favorable than were contained in the Transfer Notice. Promptly after any sale pursuant to this Section 5, PDM shall notify the Assignors of the consummation thereof and shall furnish such evidence of the completion (including time of completion) of such sale and of the terms thereof as the Assignors may reasonably request. If, at the termination of the 120 day sale period specified above, PDM has not completed the sale, transfer or assignment of all of its rights and interests in the Transferred Marks, PDM shall no longer be permitted to transfer such Transferred Marks pursuant to this Section 5 without again fully complying with the provisions of this Section 5 and all the restrictions on transfer contained in this Agreement shall again be in effect with respect to the Assigned Marks and Assigned Domain Names. For further clarification, this Section applies only to the Assigned Mark and Assigned Domain Names, and not to PDM's mark and domain name EREADER.COM or any other mark or domain name that is not identical to the Assigned Mark and Assigned Domain Names.

## 6. General

(a) Relationship Of Parties. The status of the parties will be that of independent contractors. None of the terms set forth in this Agreement create, or shall be construed as creating, any partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between the parties. Neither party shall have the right or the power to serve as an agent of the other party, or to act in any other way on behalf of or in any way that might create a binding obligation on the other party.

(b) Amendment. The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

(c) Waivers. The parties may waive this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

(d) Assignment. Except for an assignment by either party in connection with a change of control of such party, neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party, and any assignment by PDM shall be subject to the provisions of Section 5 of this Agreement. For purposes of this Agreement, "change of control" means any (a) sale of all or substantially all of the assets of the assigning party, or (b) transaction or series of transactions the result of which is that less than fifty percent (50%) of the issued and outstanding voting securities on a fully-diluted basis are controlled, directly or beneficially, by persons who held such securities prior to the commencement of the transaction or series of transactions. Neither party may delegate any performance under this Agreement. Any purported assignment of rights or delegation of performance in violation of this Section is void. If there is an assignment of rights in accordance with this Section, (i) the nonassigning party is deemed to have agreed to perform in favor of the assignee and (ii) a contemporaneous delegation is deemed to have occurred, and the assignee is deemed to have assumed the assignor's performance obligations in favor of the nonassigning party, except if in either instance there is evidence to the contrary. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

(e) No Termination. Each party acknowledges and agrees that PDM's remedy for breach by the Assignors or its successors and assigns of the license granted to E-Company hereunder or of any other provision hereof shall be subject to the requirements of Sections 6(g) and (h), to bring a claim to recover damages subject to the limits set forth in this Agreement and to seek other appropriate equitable relief, other than termination of the licenses granted by PDM under this Agreement.

(f) Entire Agreement. This Agreement and the Publisher Agreement constitute the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement and the Publisher Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement and the Publisher Agreement are expressly merged into and superseded by this Agreement and the Publisher Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement.

(g) Dispute Resolution. In the event a dispute arises between the parties relating to this Agreement, the parties shall hold one or more meetings, to be attended by representatives with decision-making authority, to attempt in good faith to negotiate a mutually acceptable resolution of the dispute. If the dispute cannot be resolved by the parties within sixty (60) days, which time may be extended by mutual consent of both parties, then the dispute shall be determined by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties shall mutually agree

upon a single neutral arbitrator. If the parties fail to agree on the arbitrator within thirty (30) from the date a demand to arbitrate is made by a party, the AAA shall appoint the arbitrator, who shall be an attorney with at least ten (10) years of trademark law experience. The arbitration shall be held in Raleigh, North Carolina or New York, New York, at the option of the claimant in the dispute between the parties. Judgment on any arbitration award may be entered in any court of competent jurisdiction. Nothing in this paragraph will prevent either party from resorting to a judicial proceeding before the courts to whom the parties have submitted exclusive jurisdiction and venue if interim relief is necessary to prevent serious and irreparable injury to one of the parties.

(h) Governing Law, Jurisdiction & Venue. The laws of the State of North Carolina (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Except as required by Section 6(g) above, any claims or actions regarding or arising out of this Agreement shall be brought exclusively in a court of competent jurisdiction sitting in Raleigh, North Carolina (if an Assignor is a plaintiff) or New York, New York (if PDM is the plaintiff), and each party to this Agreement submits to the nonexclusive jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Raleigh, North Carolina or New York, New York; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(i) Injunctive Relief. PDM acknowledges and agrees that it would be impractical and excessively difficult to determine or quantify the actual damages of the Assignors if PDM terminated E-Company's license to use the Assigned Marks or the Assigned Domain Names in violation of Section 6(e) or breached the covenant contained in the last sentence of Section 1(c). Therefore, in addition to any other remedies that the Assignors or their successors or assigns may have under this Agreement, at law or otherwise, PDM hereby agrees that the Assignors and their successors and assigns shall be entitled to injunctive relief with respect to the matters set forth above and PDM shall not object to such application for injunctive relief except to litigate whether PDM violated the terms of the Agreement.

(j) Expenses. PDM agrees to pay its own costs and expenses and up to \$6,000 of the Assignors' reasonable out-of-pocket expenses (including the reasonable fees and expenses of their counsel) in connection with the preparation, execution and delivery of this Agreement, the Publisher Agreement and the transactions contemplated hereby and thereby.

(k) Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

(l) Third Party Beneficiaries. Except for any Indemnified Party pursuant to Section 4 above, this Agreement does not and is not intended to, nor may it be deemed to, confer any rights or remedies upon any person other than the parties hereto.

(m) Notices. Each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified U.S. Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid). Any party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "Addressee") at the address listed on the signature page of this Agreement or to another Addressee or another address as designated by a party in a Notice pursuant to this Section. Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with this paragraph.



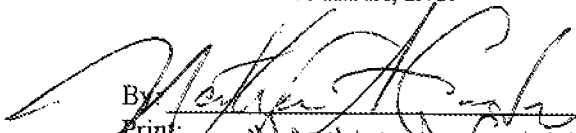
(n) Drafting. The parties have participated jointly in the negotiation and the drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement (or any applicable or relevant provision) shall be construed as if jointly drafted by the parties, and no presumption or burden of proof shall arise favoring or disfavoring a party by virtue of the authorship of any of the provisions of this Agreement.

(o) Counterparts. The parties may execute this Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM DIGITAL MEDIA, INC.**

**RICHARD CURTIS ASSOCIATES, INC.**

By:   
Print: Matthew J. Cannon  
Title: SVP Sales Dev.  
Address: 3000 McFarland Pkwy  
Suite 150  
Winston, NC 27713

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E-RIGHTS/E-READS, LTD.**

**Richard Curtis**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_

Execution Copy

(n) Drafting. The parties have participated jointly in the negotiation and the drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement (or any applicable or relevant provision) shall be construed as if jointly drafted by the parties, and no presumption or burden of proof shall arise favoring or disfavoring a party by virtue of the authorship of any of the provisions of this Agreement.

(o) Counterparts. The parties may execute this Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

PALM DIGITAL MEDIA, INC.

RICHARD CURTIS ASSOCIATES, INC.

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: Richard Curtis  
Print: Richard Curtis  
Title: President  
Address: 422 East 72nd St  
APT 25A  
New York, NY 10021

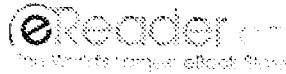
E-RIGHTS/E-READS, LTD.

Richard Curtis  
422 East 72nd St, APT 25A  
New York, NY 10021  
Address: \_\_\_\_\_

By: Richard Curtis  
Print: Richard Curtis  
Title: President  
Address: 422 East 72nd St, APT 25A  
New York, NY 10021

**EXHIBIT A  
PUBLISHER AGREEMENT**

See attached.



## AGREEMENT REGARDING DISTRIBUTION OF ELECTRONIC BOOKS

This Agreement for Distribution of Electronic Books (the "Agreement") is entered into as of September \_\_\_\_\_, 2005 (the "Effective Date") by and between Palm Digital Media, Inc. d/b/a eReader.com ("EREADER"), a subsidiary of Motricity, Inc., a Delaware corporation, with a place of business located at 2800 Meridian Parkway, Suite 150, Durham, North Carolina 27713 and E-Rights/E-Reads, Ltd., a New York corporation with its principal place of business at 171 East 74th Street New York, NY 10021 (the "Publisher").

EREADER has developed software known as the "eReader" application as well as a secure data distribution system and related distribution services, available through EREADER, (hereinafter the "Products") for access to textual and graphic materials from various electronic sources.

EREADER and the Publisher are discussing the electronic distribution via the Products of certain electronic books, periodicals or other materials to be published by the Publisher (hereinafter the "Titles"). The Publisher's electronic editions of these Titles will be maintained on a secure database by EREADER and will be encoded on a "just in time basis" prior to distribution by EREADER to a uniquely identified customer using his/her credit card information and DES encryption technology so that Titles may only be read by the requesting customer and cannot be altered, copied or exported.

The parties wish to formalize their understanding with respect to the use of the electronic versions of the Titles as set forth in this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. DISTRIBUTION APPOINTMENT

The Publisher hereby appoints EREADER as a worldwide distributor of electronic editions of those Publisher Titles listed on Exhibit A attached to this Agreement, including (i) the right to sell and distribute the Titles (under Publisher's ISBNs and imprints), either separately or bundled with other Titles or Products, to individual end users ("Users"), and (ii) the right to sell and distribute the Titles (under Publisher's ISBNs and imprints), either separately or bundled with other Titles or Products, wholesale to retail sales outlets (hereinafter, "Retailers"). The Titles include those listed on Exhibit A attached to this Agreement as well as any electronic books, periodicals or other materials published by the Publisher and provided by Publisher to EREADER under this Agreement. From time to time, Publisher and EREADER may add to the list of Titles by incorporating an amended Exhibit A to this Agreement. Publisher may withdraw a Title from Exhibit A upon 30 days written notice to EREADER should Publisher's right to grant EREADER the foregoing license be terminated.

EREADER shall have the right but not the obligation to distribute any Title provided by Publisher. EREADER may elect to distribute or cease distribution of a Title in its reasonable business judgment.

#### 2. ELECTRONIC FILE PROVISION AND MAINTENANCE

Unless otherwise provided in this Agreement, Publisher will provide to EREADER, at no charge and tagged in the Palm Markup Language (PML), electronic files of each Title and all subsequent updates to each Title. The cost of such electronic files (including cost of disks supplied and shipping costs) shall be paid by Publisher.

#### 3. CONSIDERATION

Publisher shall establish a "Suggested List Price" for all Titles it supplies to EREADER, which Publisher may change from time to time. In full consideration of the rights granted and for retail distribution of the Titles to Users, EREADER will pay Publisher a fee of 70% of the net sales for each copy of a Title. EREADER may make a

reasonable number of copies of the Titles for customer support and related purposes and no fee or other consideration shall be due for such copies. "Net sales" means the amount actually received by EREADER, less taxes, refunds and chargebacks that may occur, and, in the case of any distributions through third party distribution channels, less any commissions paid to such third parties.

EREADER will provide Publisher will a sales report on a quarterly basis. Such reports will be made available to Publisher no later than 45 days following the end of each calendar quarter. Payment will be attached to each sales report.

During the term of this Agreement and for one (1) year thereafter, Publisher may, upon at least thirty (30) days written notice and at its own expense, audit EREADER's applicable records in order to verify any report rendered. In the event the audit reveals an underpayment in the amounts paid or payable under this Agreement, Licensee shall remit payment to Publisher for such underpayment within thirty (30) days. The audit shall be performed by independent third party and may be performed no more than once annually.

EREADER shall have the sole right to determine the price it will charge to Users for the Titles.

#### 4. COPYRIGHT

Publisher and EREADER acknowledge and agree that, as between the two parties Publisher owns or controls all rights in and to the Titles herein granted to EREADER, and that EREADER owns all of the patent, trademark, copyright, trade secret and other intellectual property rights in and to the Products.

The form of the copyright notice to be used is the copyright notice as it appears in Publisher's edition of the Title. An abbreviated form, acceptable to Publisher, of the copyright notice may be used to meet system limitations. Publisher shall be solely responsible for determining and including in the master copy provided to EREADER, the appropriate copyright notice.

#### 5. NO MODIFICATION OF CONTENT

EREADER shall not amend or modify the textual and/or graphic content of the Titles in any way without the express permission of the Publisher.

#### 6. WARRANTY AND INDEMNIFICATION; LIMITATION OF LIABILITY

A. Publisher represents and warrants to EREADER that it has all requisite right and authority to enter into this Agreement, and to grant all rights and licenses granted herein. Publisher agrees, at its own expense, to defend or to settle, at its option, any claim or action brought against EREADER to the extent based on a claim that any Title or any portion thereof, infringes any copyright, trademark or other intellectual property right of any third party. Publisher shall pay any and all settlements or damages awarded against EREADER as a result of such claims or actions and indemnify EREADER against any and all costs, including reasonable legal fees, incurred under any such claim or action.

B. EREADER represents and warrants to the Publisher that it has all requisite right and title in and to the Products and the right and authority to enter into this Agreement and to perform its obligations hereunder. EREADER shall defend at its expense any action brought against Publisher alleging infringement by the Products of any copyright, trademark or other intellectual property right of any third party, shall pay any and all settlements or damages awarded against Publisher as a result of such claims and to indemnify Publisher against any and all costs, including reasonable legal fees, incurred under any such claim or action.

The provisions of this Section and Section 9 shall survive the termination of this Agreement for any reason whatsoever.

C. The remedies provided herein are each parties sole and exclusive remedies for any claim by any third party relating to intellectual property infringement. IN NO EVENT SHALL EITHER PARTY BE LIABLE

FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES INCURRED BY THE OTHER AS A RESULT OF ANY BREACH OF THIS AGREEMENT.

## 7. EFFECTIVE DATE/ TERM/ TERMINATION

### A. Term.

This Agreement shall become effective on the Effective Date and shall remain in effect for an initial term of ~~ten (10)~~ years. Thereafter, this Agreement shall automatically renew for successive three (3) year renewal terms unless either party gives the other party at least thirty (30) days notice of its intent not to renew the Agreement. Notwithstanding the foregoing, this Agreement may be terminated at any time as set forth in Section 7.B. In the event of termination of this Agreement, EREADER shall return all electronic files of the Titles provided by the Publisher in its possession, custody and control, destroy all duplicate electronic files of the Titles in its possession, custody and control, and cease promotion of the Titles; provided, however, that EREADER may continue to maintain on its secure database copies of any Titles that were purchased by Users before the effective date of termination and may continue thereafter to permit such Users to download copies of such Titles, it being agreed that after the effective date of termination EREADER will have no right to distribute any Title to any third party other than to Users who purchase such Title before the effective date of termination. The provisions of Sections 3, 4 and 6 will survive any termination or expiration of this Agreement.

### B. Termination

This Agreement may be terminated by either party for breach of one or more of the material terms of this Agreement on thirty (30) days' prior written notice to the other party, which notice shall specify the term or terms allegedly breached; provided, however, if the party receiving such notice shall cure and remedy such breach within the thirty (30) days period, such notice of termination shall be null and void, and this Agreement shall continue in full force and effect.

## 8. MARKETING RELATED ACTIVITIES

For EREADER's use in marketing the Titles, including the display of Title cover art and descriptions in any EREADER website and its advertising and promotional materials, Publisher shall upon request and as available provide EREADER, at no charge, with applicable collateral promotional materials developed by the Publisher in electronic formats, including access to advertising materials designed for use on the Publisher's Website. Any materials provided shall be deemed licensed pursuant to Paragraph 2 above but may be reproduced by EREADER on a royalty free basis when used for promotional purposes. EREADER acknowledges Publisher can grant use of Title cover art only to the extent Publisher controls such rights to said art.

EREADER may make available to Publisher demographic and/or market data related to the Titles that it might obtain in the course of evaluating and distributing the Titles, but not information on individual users, consistent with EREADER's privacy policy.

Publisher will make available to EREADER cooperative advertising funds on the same basis and with the same requirements as offered to Publisher's other retail channels.

EREADER will build and host a custom landing page on the eReader.com web site, which landing page will specially promote Publisher's electronic book titles that are available on eReader.com. EREADER will provide Publisher with a URL for the custom landing page, and Publisher may use the link solely on any website owned or controlled by Publisher, its affiliates, or its authors.

## 9. CONFIDENTIALITY

"Confidential Information" shall mean any tangible information disclosed by one party to the other party pursuant to this Agreement which is marked in a manner which indicates its confidential nature. "Confidential Information"

also includes oral information disclosed by one party to the other party pursuant to this Agreement which is designated as confidential at the time of disclosure and is subsequently confirmed in writing to be confidential no later than thirty (30) days after the oral disclosure.

Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth herein, and shall use reasonable efforts not to disclose such Confidential Information to any third party; provided, that such obligations shall not apply to any Confidential Information of the other party which (i) was known to the receiving party at the time of disclosure, (ii) was independently developed by the receiving party, (iii) because known to the receiving party from a source other than the disclosing party and without any violation of the disclosing party's rights, (iv) is or enters into the public domain through no fault of the receiving party, or (v) is required to be disclosed by law or court order.

Upon termination or expiration of this Agreement, each party shall return the other party's tangible Confidential Information.

#### 10. NOTICES

All notices and reports required to be sent to EREADER under this Agreement will be sent in writing to:

Business Development  
eReader.com  
2800 Meridian Parkway, Suite 150,  
Durham, North Carolina 27713

Any notices sent to Publisher will be sent in writing to:  
E-Rights/E-Reads, Ltd.  
171 East 74th Street  
New York, NY 10021

#### 11. MISCELLANEOUS

Any term of this Agreement may be amended or waived only with the written consent of the parties. The laws of the State of North Carolina (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement shall be brought exclusively in a court of competent jurisdiction sitting in Raleigh, North Carolina (if Publisher is the plaintiff) or New York, New York (if EREADER is the plaintiff), and each party to this Agreement submits to the nonexclusive jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Raleigh, North Carolina or New York, New York; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. This Agreement may be executed in counterparts. Any provision of this Agreement which is held to be unenforceable shall be severed from the remainder of the Agreement, which shall in writing and delivered to the respective parties' addresses set forth above (or new address provided by giving notice hereby) and shall be deemed effective upon receipt. This Agreement may not be assigned by a party without the written consent of the other party, except to an acquirer of all or substantially all of the business or assets of the assigning party, or in connection with a merger or reorganization of the assigning party. This Agreement (including all Exhibits) constitutes the entire Agreement of the parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein.

AGREED AND ACCEPTED:

E-Rights/E-Reads, Ltd.

eReader.com

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT A

TITLES