

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT (this “Agreement”) is made this 18th day of December, 2018 between Andrew Yeckel, an individual with his residence at [REDACTED] (hereinafter “Yeckel”), and Jeffrey Derby, an individual with his residence at [REDACTED] (hereinafter “Derby”) and Regents of the University of Minnesota, a public institution of higher education and research created by charter and perpetuated by the Constitution of the State of Minnesota, Article XIII, Section 3 (hereinafter “University”) (Yeckel, Derby, and the University are each a “Party” and, collectively, the “Parties”). This Agreement is effective on the last date of execution by the Parties (“Effective Date”).

WHEREAS, Yeckel is the copyright owner of the computer software program entitled *The Old Cats2D* (hereinafter the “Software”), U.S. Copyright Registration No. TXu 2-056-546, effective March 31, 2017 (a copy attached as Exhibit A);

WHEREAS, Yeckel filed a lawsuit against Derby and the University in the United States District Court for the District of Minnesota, Case No. 0:18-cv-02618, alleging copyright infringement under federal law based on his rights in the Software (“Pending Action”); and

WHEREAS, the Parties desire to settle the controversy and to avoid future controversies among themselves.

NOW THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are incorporated into this Agreement by reference and are made a part of it as if repeated here.
2. Obligations.
 - a. Authorship Acknowledgment. The University and Derby acknowledge that they do not have authorship rights in the Software, including that the University and Derby have no rights to the Software under the work for hire provisions of the Copyright Act.
 - b. Ownership Acknowledgment. The University and Derby acknowledge that Yeckel has full, complete, exclusive, and absolute ownership rights in the Software. The University and Derby acknowledge that they do not have any ownership interest in the Software.

- c. Use of the Software. The University and Derby agree to cease any and all use of the Software and agree to destroy any copies, including any and all derivative works as defined in 17 U.S.C. § 101, they may have in their possession, custody, or control. This obligation extends to any hard copies; copies of the Software on work or personal computers of Derby or current students in Derby's laboratory, including any copies located in Derby's or the current students' user accounts; copies of the Software found on lab facilities' computer(s) or the University of Minnesota's Supercomputer Institute computer(s); and/or copies located on any other computers throughout the University of Minnesota Twin Cities campus. The University and Derby shall confirm in writing, submitted within 30 days from the Effective Date of this Agreement, that all such copies have been destroyed and no archival or backup copies of the software have been maintained.
 - d. Agreement Not To Register. Derby, the University, and the University's employees, officers, and affiliates shall not file any applications to register any copyright or seek any other intellectual property protection that includes or consists of the Software or portions thereof or that would violate Yeckel's rights in the Software.
 - e. Agreement Not To Challenge. Subject to the terms of this Agreement, the University and Derby hereby agree not to oppose, contest, or otherwise challenge, or to directly or indirectly aid or assist any other persons or entities in challenging, Yeckel's rights in or use of the Software, now or in the future.
 - f. Assignment of Residual Rights. Though the University and Derby admit that Yeckel and Goodwin are the sole authors of the Software and that Yeckel is the sole owner of all rights and interests in the Software, if the University or Derby have any rights in or to the Software, they hereby assign and transfer those rights to Yeckel.
3. Mutual Release. Each Party for itself and for its present and former members, officers, employees, directors, attorneys, agents, representatives, licensees, parents, subsidiaries, successors, assigns, heirs and personal and legal representatives hereby releases and forever discharges the other Party and its present and former members, officers, employees, directors, attorneys, agents, representatives, licensees, parents, subsidiaries, successors, assigns, heirs and personal and legal representatives from any and all claims, counterclaims, liabilities, obligations, demands, actions, and causes of action of every kind, nature, or description, whether known or unknown, for the period of time through and including the Effective Date that were alleged, or could have been alleged, relating to the subject matter of the Pending Action, including all associated costs and attorney fees. The Parties expressly agree that this release and discharge does

not apply to any claims that may accrue based upon facts and circumstances occurring after the Effective Date or to breaches of this Agreement.

a. Within 5 business days of the Effective Date, Yeckel agrees to file a stipulated dismissal with prejudice of the Pending Action.

4. Attorney Fees and Costs. Each Party will bear its own attorney fees, costs, and expenses incurred in connection with, and relating to, the Pending Action and its resolution.
5. Breach. A breach of this Agreement may cause irreparable harm for which monetary damages may be inadequate. In the event that any Party breaches the provisions of this Agreement, the Parties acknowledge that the non-breaching party shall be entitled to seek a preliminary injunction, specific performance, and all of the civil remedies available to it. If a non-breaching party is required to take legal action to enforce this Agreement, the non-breaching party will be entitled to recover its reasonable attorney fees and costs from the breaching party which result as a consequence of said legal action. The non-breaching party may bring a legal action only in state or federal court in Minnesota, and Minnesota law, excluding its conflict of law principles, will apply. Prior to bringing any legal action to enforce this Agreement, the non-breaching party shall provide written notice with a detailed factual description of the alleged breach to the breaching party and give the breaching party thirty (30) days in which to cure the breach. The Parties agree to be subject to personal jurisdiction in Minnesota.
6. Notices. All notices required or permitted to be made or given pursuant to this Agreement shall be in writing and shall be considered as properly given or made when personally emailed, delivered, or mailed to the respective addresses set forth below:

If to Yeckel: Paige Stradley
Merchant & Gould P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2215
pstradley@merchantgould.com

If to Derby or the University: Carrie Ryan Gallia
Associate General Counsel
University of Minnesota
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455
ryang001@umn.edu

A Notice will be deemed to have been duly given (a) three (3) days after mailing if the Notice is served by certified or registered mail with a return receipt requested or (b) the day an email is received (even if not read) by a Party. If a Party undergoes a change of address, it will promptly notify the other Party of the address change.

7. Authority. Each Party represents and warrants (a) it is duly existing; (b) it has the full power and authority to enter into this Agreement; (c) the person executing this Agreement on its behalf has the authority to do so; (d) there are no other persons or entities whose consent to this Agreement or whose joinder herein is necessary to make fully effective the provisions of this Agreement; and (e) this Agreement does not and will not interfere with any other agreement(s) to which it is a party. No Party is relying upon any warranties, representations, assurances, or inducements not expressly set forth here.
8. Successor & Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, personal representatives, devisees, successors in trust, successors and assigns, administrators, officers, directors, shareholders, members, managers, partners, agents, employees, attorneys, subsidiaries, parent corporations, affiliates, successors in interest, successor through merger or corporate restructure, and successors through a sale of all or substantially all of the assets or business, and anyone else acting on their behalf.
9. Benefit of Counsel. Each Party represents that it has consulted with (or had the opportunity to consult with) the counsel of its choice in connection with the matters leading up to and including the negotiation and execution of this Agreement and that it has read and understands the entire Agreement and desires to be bound thereby.
10. Severability. If any term or condition of this Agreement shall, at any time or to any extent, be deemed invalid or unenforceable by a court with competent jurisdiction, the remainder of this Agreement, or the application of such term or condition other than those to which it is held invalid or unenforceable, shall not be affected, and each remaining term and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
11. No Strict Construction. This Agreement will be construed in all respects as jointly drafted. This Agreement will not be construed, in any way, for or against either Party on the ground that the Party or its counsel drafted this Agreement or any portion hereof
12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes any

and all prior oral and written agreements between the Parties with respect to this subject matter.

13. Headings. The headings set forth in this Agreement are for convenience only and will not be used in the construction or interpretation of this Agreement.
14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.