

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is entered into as of the date of last signature below (the "Effective Date") by and between, on the one hand, **New College of Florida Board of Trustees** ("NCF"), a Florida public body corporate with an address at 5800 Bay Share Road, Sarasota, Florida 34242, and on the other hand, **AltLiberalArts, Inc.** ("AltLiberalArts"), a Delaware corporation with an address of 101 Lakeland Avenue, Dover, DE 19901; and **Bard College** ("Bard"), a New York corporation with an address at 30 Campus Road, Annandale-on-Hudson, New York 12504. Throughout this Agreement, NCF, AltLiberalArts, and Bard may be referred to individually as a "party" or "Party," and collectively as the "parties" or "Parties."

RECITALS

1. **Recitals.** This Agreement is made with reference to the following:
 - 1.1 NCF is the owner of all rights in the "NOVUM COLLEGIUM FLORIDAE MCMLX & Design" mark, common law rights therein, and variations thereof, including incontestable U.S. Trademark Reg. No. 2,874,703 for "NOVUM COLLEGIUM FLORIDAE MCMLX & Design" in connection with "providing educational courses of instruction at the college level," in International Class 41.
 - 1.2 NCF is the owner of all rights in the "NEW COLLEGE OF FLORIDA" mark, common law rights therein, and variations thereof, including U.S. Trademark Application Serial No. 98/202,348 for "NEW COLLEGE OF FLORIDA" in connection with "educational services, namely, providing courses of instruction for others at the college level," in International Class 41.
 - 1.3 NCF is the owner of common law rights in the "NEW COLLEGE" mark, and U.S. Trademark Application Serial No. 98/20,2339 for "NEW COLLEGE" in connection with "educational services, namely, providing courses of instruction for others at the college level," in International Class 41. (The marks, Registrations, and Applications of Paragraphs 1.1 through 1.3 shall collectively be referred to as the "NCF Marks").
 - 1.4 NCF is the owner of common law rights in various other trademarks, including but not limited to, "NCF," "NEW COLLEGE OF FLORIDA," "THE HONORS COLLEGE," and "THE HONORS COLLEGE OF FLORIDA" in connection with various goods and services (further incorporated into the "NCF Marks").
 - 1.5 Through an online initiative formerly known as "ALT NEW COLLEGE" (now, "ALTLIBERALARTS"), Bard and AltLiberalArts advertised, marketed, promoted, and offered higher education services using at least

some of the NCF Marks, including "NCF," "NEW COLLEGE" and "NEW COLLEGE OF FLORIDA" via www.altnewcollege.org and various social networking platforms (the "Dispute").

- 1.6 The Parties, without admitting fault or liability, now wish to settle all known claims arising out of or relating to the Dispute, and therefore enter into this Agreement for such purpose.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

2. AltLiberalArts and/or Bard Undertakings.

- 2.1 Transfer of Domain. Within fourteen (14) days of the Effective Date, AltLiberalArts shall cause the www.altnewcollege.org domain to be transferred to NCF.

2.2 Restraints on Use of the NCF Marks.

- (a) AltLiberalArts and Bard shall forever cease and desist from using any of the NCF Marks as a trademark, service mark, trade name, business name, corporate name, fictitious name, domain name, product or service name, web page title, social media or social networking username or handle, title tag, meta tag, keyword, product or service description, or search engine optimization technique, including any and all acronyms, phonetic or foreign equivalents thereof, or any confusingly similar variations thereof (including without limitation, ALT NEW COLLEGE), subject to the provisions of Section 2.2(b) below.
- (b) AltLiberalArts and Bard may only use the NCF Marks to refer to NCF in a legally permissible manner that is consistent with nominative fair use. Without limitation, AltLiberalArts and Bard shall not use the NCF Marks in any manner that is likely to cause confusion or that may suggest any connection, affiliation with, sponsorship, or endorsement by NCF.

Representative examples of prohibited uses are shown below:



- 2.3 Payment of Attorney's Fees. AltLiberalArts and Bard shall make a payment of \$12,831.73 within fourteen (14) days of the Effective Date, to reimburse NCF for its reasonable attorney's fees incurred in connection with the Dispute. The payment shall be made to Grimes Galvano Trust Account via cashier's check or wire transfer.
- 2.4 Open Letter of Apology. AltLiberalArts shall execute the open letter of apology attached hereto as Exhibit A (the "Letter") and mail it within fourteen (14) days of the Effective Date to President Richard Corcoran and Debra Jenks, Chairman of the New College Board of Trustees. AltLiberalArts and Bard agree that the Letter may be made publicly available by NCF, in NCF's sole discretion.
- 2.5 Refrain from Challenges. Bard and/or AltLiberalArts shall not in any way challenge, continue to challenge, or assist any third party in doing so, NCF's use or registration as a trademark, service mark, domain name or otherwise, the terms "NEW COLLEGE," "NEW COLLEGE OF FLORIDA," "NCF," or any other NCF Marks, or terms contained in any of the NCF Marks.
3. Mutual Releases. Each Party hereby remises, releases, acquits, satisfies, and forever discharges each and every other Party (including each Party's past and present parent, subsidiary, affiliated, related or predecessor entities, and any and all of each such Party's past and present officers, directors, attorneys, accountants,

insurers, employees, shareholders, members, independent contactors, vendors, and partners, with all of the foregoing hereinafter collectively referred to as the "Releasees"), of and from any and all, and all manner of, claims, counterclaims, actions, causes of action, suits, debts, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, damages, and demands whatsoever, in law or in equity, which each Party had from the beginning of the world to the date of this Agreement, relating to the facts, acts, or omissions giving rise to the Dispute. Notwithstanding the foregoing, each Party expressly excludes from the effect of this Release and does not release the Releasees from the terms and conditions of this Agreement.

4. Miscellaneous.

- 4.1 Notice and Cure Provision. In the event that any Party is in default or believed to be in default, then the other Parties, or either one of them, at their option and at any time, must provide written notice to the alleged defaulting Party, with copy to all other Parties (as applicable), of the alleged default. The defaulting Party will have fifteen (15) days from receipt of the notice to cure the default.
- 4.2 Remedies. Each Party acknowledges that money damages may be an inadequate remedy for breach of this Agreement because of the difficulty of ascertaining the amount of damage that may be suffered in the event that this Agreement is breached. Therefore, after using the notice and cure provision described in Section 4.1, any Party shall be entitled to seek equitable relief, including an injunction and specific performance, without posting of bond, in the event of any breach or threatened breach of the provisions of this Agreement, in addition to all other remedies and defenses available at law or in equity.
- 4.3 Licensees, Successors, and Assigns. This Agreement and all terms, provisions, and covenants contained herein are, and shall be, binding upon and shall inure to the benefit of each of the Parties hereto and their subsidiaries, and each of their respective heirs, executors, personal representatives, successors, licensees, and assigns.
- 4.4 Waiver. No provision of or right under this Agreement shall be deemed to have been waived by any act or acquiescence of either Party, its agents or employees, except in an instrument in writing signed by an authorized officer of such Party. No waiver by either Party of any breach of this Agreement shall be effective as to any other breach of this Agreement, whether of the same or any other term or condition and whether occurring before or after the date of such waiver.

- 4.5 Severability. In the event that any provision of this Agreement, in whole or in part, shall be determined to be invalid, unenforceable or void for any reason, such determination shall affect only the portion of such provision determined to be invalid, unenforceable, or void and shall not affect in any way the remainder of such provision or any other provision of this Agreement. The Parties agree that they will negotiate in good faith or will permit a court to replace any provision of this Agreement so held invalid, illegal or unenforceable with a valid provision that is as similar as possible in substance to the invalid, illegal or unenforceable provision.
- 4.6 Counterparts. This Agreement may be executed in two counterparts, each of which shall be an original, and all of which, taken together, shall constitute one and the same instrument. A faxed or electronic (pdf) signature shall be deemed an original for all purposes hereunder. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such fully executed counterpart.
- 4.7 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and shall not be amended except in a written agreement executed by an authorized officer of each Party.
- 4.8 Notice and Communication. Any notice or communication permitted or required to be made hereunder shall be made by reputable overnight courier, with delivery fees prepaid, and with a courtesy copy provided by electronic mail. All notices and communications shall be addressed as follows until further notice:

AltLiberalArts, Inc.
Attn: C. Hill
614 S. Tamiami Trail
Osprey, Florida 34229

Bard College
c/o James R. Hastings, Esq.
Rothwell, Figg, Ernst & Manbeck, P.C.
80 S. Highland Ave.
Ossining, New York 10562
jhastings@rothwellfigg.com

With a copy to:

Jonathan Becker
Executive Vice President
Bard College




Ward Management Gate House
PO Box 5000
Annadale-on-Hudson, New York 12504

New College of Florida
c/o John Cyril Malloy III, Esq.
Malloy & Malloy, P.L.
2800 S.W. Third Avenue
Historic Coral Way
Miami, FL 33129
jcmalloy@malloylaw.com

With a copy to:
David Brickhouse, Esq.
Vice President of Legal Affairs
New College of Florida
5800 Bay Shore Road
Sarasota, FL 34243
dbrickhouse@ncf.edu

- 4.9 Authorization. The Parties hereby represent and warrant to the other that the execution, delivery, and performance of this Agreement by such Party have been duly authorized by all requisite corporate or other action on the part of such Party, and, when executed and delivered by such party, this Agreement will constitute the valid and binding obligation of such Party, enforceable in accordance with its terms.
- 4.10 Captions. Captions of the sections of this Agreement are for reference purposes only and do not constitute terms and conditions of this Agreement, and shall not limit or otherwise affect the terms and conditions of this Agreement.
- 4.11 Scope. The terms of this Agreement shall apply throughout the world.
- 4.12 Term. The term of this Agreement shall begin on the Effective Date and continue in perpetuity.
- 4.13 Governing Law. All questions concerning the construction, validity, enforcement, and interpretation of this Agreement shall be governed by the laws of the State of Florida and of the United States without giving effect to any choice or conflict of law provision or rule.
- 4.14 Venue. Exclusive venue for any claims arising from this Agreement shall lie in the U.S. District Court for the Middle District of Florida, Sarasota County Division. Each of the Parties hereby submits to the jurisdiction and

venue of such Florida court, and agrees that personal jurisdiction and venue are appropriate in such Florida court.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement.

**NEW COLLEGE OF FLORIDA
BOARD OF TRUSTEES**

By: _____

Name: _____

Title: _____

Date: _____

BARD COLLEGE

By: _____

Name: _____

Title: _____

Date: _____

ALTLIBERALARTS, INC.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Dear President Corcoran and Chairman Jenks:

It has come to our attention that use of the name or phrase "Alt New College" for an online liberal arts initiative is allegedly infringing on the intellectual property rights of the New College of Florida. As we understand it, the concern arises from the likelihood that persons affiliated with the New College of Florida and other consumers may mistakenly believe that the name or phrase "Alt New College" represents an affiliation between our liberal arts initiative and the New College of Florida.

We understand that the New College of Florida does not review nor authorize materials shared through our liberal arts initiative. We further understand that the New College of Florida does not provide persons affiliated with New College of Florida with credit for engagement with any materials shared through our liberal arts initiative.

Therefore, we have agreed to change the name of our liberal arts initiative to AltLiberalArts, along with changing associated domains, social media handles, and search engine optimization (SEO) techniques to prevent any possibility of confusion. We further agree to refrain from using unauthorized references to New College or the New College administration in future.

To the extent that anyone has confused the name or phrase "Alt New College" and/or its associated domains and social media handles for the New College of Florida, we apologize. We offer our regrets for any distress that may have been experienced by any student, staff, faculty member, or alumni/ae of the New College of Florida, including yourself and the Board of Trustees.

We hope you will accept this open letter of apology as we wish to honor the legacy represented by the name and the institution of the New College of Florida.

Sincerely,

Mary Ruiz
Spokesperson
AltLiberalArts