

**REQUEST FOR PROPOSAL
NOTICE TO FIRMS
FASHION INSTITUTE OF TECHNOLOGY
BOOKSTORE OPERATIONS
RFP# C1559**

Sealed proposals which must include the entire package for the above work located on the FIT campus will be received by:

**FIT Purchasing Department Office located at
333 Seventh Avenue, 15th Floor,
New York, NY 10001
(Tel: 212-217-3630)**

Each proposal must be sent in digital and hard copy and identified, on the outside of the envelope, with the name and address of the firm and designated as proposal for the project titled above. When a sealed proposal is placed inside another delivery jacket, the proposal delivery jacket must be clearly marked on the outside:

**“PROPOSAL FOR BOOKSTORE OPERATIONS TO BE OPENED ONLY BY
AUTHORIZED OFFICIAL” and “ATTENTION: WALTER WINTER,
PURCHASING OFFICE”**

The Fashion Institute of Technology will not be responsible for improper delivery of proposals that do not comply with these instructions. Late proposals will be returned unopened.

**Only those proposals received at FIT Purchasing Office on or before 1:00 PM on
February 15, 2023, will be considered.**

SECTION ONE - PROPOSAL TERMS AND CONDITIONS

I. SCHEDULE

RFP Release Date December 16, 2022

Mandatory Site Visit **January 3, 2023, 10:30 AM**

Written questions may be submitted to the Purchasing Office via email to: Purchasingbids@fitnyc.edu. Answers will be provided to all firms in a timely manner.

Last day for receipt of written questions January 13, 2023, 3:00 PM

Proposal Due Date February 15, 2023, on or before 1 PM

Presentations/Interviews Week of March 6, 2023

Selection of Vendor Week of April 10, 2023

Commencement of Contract August 1, 2023

The General Terms & Conditions as contained in Section Two of this RFP together with the Proposal Terms and Conditions, and Bookstore Operations Contract attached hereto shall be incorporated into a final agreement (the “Contract”) that shall be delivered by FIT to the successful Contractor to provide Bookstore Operations at the College.

II. INTRODUCTION

- A. The Fashion Institute of Technology, a community college of art and design, business and technology of the State University of New York, currently has an enrollment of approximately 10,000 full and part-time students. Located in the Chelsea area of Manhattan, FIT’s facilities are composed of a twelve-building complex containing administrative/academic offices, classrooms, computer labs, and studios. There are three (3) residence halls located on West 27th Street that currently house approximately 1,250 students and one (1) residence hall located at 406 West 31st Street that houses approximately 1,100 students. F.I.T. Student Housing Corporation is a separate, not-for-profit corporation that was established pursuant to the laws of the State of New York to own and operate these residence halls for the benefit of the College and its students;
- B. FIT extends an invitation to submit proposals for the exclusive operation and management of the Bookstore Operations (the “Bookstore Services”) to include but not limited to, course materials, course specific supplies like fabrics and designer tools, FIT merchandise and all labor and supervision required to provide Bookstore Operations;
- C. FIT is seeking an innovative and proactive partner that is on the cutting-edge of campus retail services to effectively serve the FIT Community;
- D. FIT is considering piloting an Inclusive Access program for a limited number of sections and

courses for the Spring 2024 semester;

- E. Qualified and experienced proposer will submit proposals for either a.) brick and mortar college Bookstore or b.) hybrid college Bookstore with a virtual Bookstore and on-campus retail location that offers, including but not limited to, course-related and general art supplies and FIT branded merchandise, gifts and apparel;
- F. Proposer will assist in managing the educational costs to students through fair pricing of course materials including, but not limited to, innovative course materials solutions, new, used, rental or digital options and course-related supplies as well as through fair buyback methods;
- G. Increase sales and market share of FIT branded merchandise;
- H. Offer state-of-the-art website, mobile app and active social media platforms;
- I. Meet industry service standards to provide College students, employees and visitors with multiple purchasing and delivery options;
- J. Integrate Proposer internal systems and College's Student Information System (SIS), Banner, and Learning Management System (LMS), Blackboard. (Note: FIT will begin piloting D2L in spring 2023 with full integration expected for fall 2023);
- K. Provide credible advising of faculty and administrators on adoption of course materials and required supplies and offer an online portal with adoption tools, data analysis and reporting capabilities;
- L. College is particularly interested in learning more about Proposer's Inclusive/Equitable Access programs and revenue sharing as well as experience in offering art supplies class kits;
- M. Proposers experience in improving customer satisfaction, on-campus marketing and campus engagement;
- N. Special attention will be paid to innovative ideas that genuinely enhance the quality of student life, in conjunction with College's stated goals.

III. PROPOSAL REQUIREMENTS

All Proposer shall meet the following requirements and furnish all necessary information with the Proposal. *Submit one (1) digital copy on a flash drive and two (2) complete hard copies* of the Proposal. Failure to comply with these requirements shall be grounds for rejection of your Proposal. FIT reserves the right to determine that a Proposer has substantially met all the requirements of the RFP and/or ask for additional information. Those items for which Proposers have or assert proprietary rights, or which must remain confidential per the terms of any prior contract, shall be clearly indicated. Submission of Proposal shall be deemed to grant FIT the right to utilize submissions in any way, with or without prior notice. Absent affirmative

assertion, FIT reserves such right to use.

Additionally, all proposals submitted in response to this RFP will become the property of FIT and a matter of public record. You must identify, in writing, all copyrighted materials, trade secrets, or other proprietary information that it claims is exempt from disclosure. If you are claiming such an exemption, you must also state in your proposal that you agree to hold harmless, indemnify and defend FIT and its agents, officials and employees in any action or claim brought against FIT for its refusal to disclose such materials, trade secrets or other proprietary information to any party making a request thereof. If you fail to include such a statement shall be deemed to have waived its right to exemption from disclosure.

Proposals shall be submitted on or before 1:00 PM on February 15, 2023, to:

**Walter Winter
Purchasing Office
FASHION INSTITUTE OF TECHNOLOGY
PURCHASING OFFICE
333 SEVENTH AVENUE, 15 FLOOR
NEW YORK, NY 10001**

Envelopes should clearly be marked:

**Bookstore Operations
Request for Proposal No. C1559
Proposal Due Date and Time:
February 15, 2023, on or before 1:00 PM.**

- A. A **mandatory** campus visit will be held on *January 3, 2023, at 10:30 AM* at 227 West 27 St, between 7th & 8th Aves, Feldman Lobby, New York, NY 10001. **Proposer shall attend the mandatory pre-bid meeting and site inspection. Failure to comply with this requirement shall be grounds for rejection of RFP.** Proposer is responsible for all necessary field measurements, all necessary data on the existing conditions and verification of all quantities and dimensions. Masks are required to be worn.
- B. Questions shall be submitted in writing to the attention of the FIT Purchasing Office via email to Purchasingbids@fitnyc.edu no later than *January 13, 2023, 3:00 PM*, Answers will be provided in writing in a timely manner.
- C. Proposer shall provide a comprehensive and complete proposal with individual sections. Each section shall be tabbed and organized in the sections detailed below. Each section shall contain, at a minimum, the information described below.
- D. FIT is exempt from payment of any federal, state, and local sales and use taxes. Do not include these taxes in your proposal.

- E. Sign your proposal. Your proposal must be completed in the legal name of your company and must be signed by an authorized person.
- F. Seal your proposal. The sealed envelope must clearly state: (i) your company's name and address, (ii) the title of this RFP, and (iii) the date and time the proposal is due.
- G. FIT reserves the right to award a contract based on Proposer's submitted proposal without further discussion. Proposer's ideas or concepts included in the Proposal are solely intended for implementation into a contract.
- H. By signing and submitting your Proposal, Proposer affirms that it has read this RFP, including but not limited to the Contract, accepts its terms and is able and willing to sign the Contract if Proposer's proposal is accepted, subject only to any changes negotiated and agreed to by both parties. The issuance of a letter of intent to award or similar document does not require or commit FIT to enter into a contract until all terms and conditions are negotiated and acceptable to FIT. In the event of any inconsistencies between the Proposal and the RFP, the language of the RFP will prevail unless there is a written agreement to accept the Proposal's terms.

IV. COMPANY PROFILE

Proposer must indicate if proposal is for a.) brick and mortar Bookstore or b.) hybrid college Bookstore. Note: For hybrid Bookstore Services proposals, proposer must include information for any subcontractor used to operate virtual Bookstore and/or on campus retail Bookstore.

- A. Evidence of doing business for a minimum of five (5) years and provide a narrative statement and general history of its operations during that time, including the Company's revenue levels, number of current accounts, years in business and number and make-up of staff;
- B. Company shall submit documentation of financial viability, including balance sheet and loss statement for the prior three (3) years and audited financial statement for the past two (2) fiscal years by an independent certified public accountant are preferred;
- C. Brief history of Company's experience with providing Bookstore Services to colleges/universities especially on the same size and scope of FIT;
- D. List of current references which shall include the names of the college and contact person and phone number. References shall be for work of this size and scope of College performed within the last three years in the NY/NJ/CT metro area;
- E. List of places where your Company's services have been terminated (either by your Company or by the client) within the past three (3) years, including the name of the college or other organization's contact person and phone number;
- F. Location of Company's office(s) in the New York metropolitan area;
- G. Performance and Payment Bonds are required for this Contract.

V. TECHNICAL PROPOSAL

Proposer must indicate if proposal is for a.) brick and mortar Bookstore or b.) hybrid college Bookstore. Note: For hybrid Bookstore Services proposals, proposer must include information for any subcontractor used to operate virtual Bookstore and/or on campus retail Bookstore.

A. Operations

1. Describe your company's operations/management plan for Bookstore Services.
2. Describe your company's plan to accommodate operating under COVID-19 restrictions (if applicable).

B. Customer Service

1. Describe in detail your company's strategy to provide excellent customer service.

C. Staffing / Personnel

1. Provide your company organization chart.
2. Provide your company's proposed organization chart, staffing plan, and reporting structure. Please indicate full-time positions and part-time positions.
3. Resumes of the proposed on-site manager and regional support team.
4. Describe your company's:
 - Personnel policies
 - Hiring policies, including your company's required qualifications for the Bookstore Services Manager
 - Background check program and policies
 - Compensation program, including incentive programs, etc.
 - Benefit programs (e.g., health insurance, disability insurance, vacation plan, paid holidays, retirement, etc.)
 - Commitment and plan to hire student employees
5. Describe your company's educational and training programs.
6. Describe your company's corporate support services and regional management support.

D. Current Bookstore Facility/Bookstore Relocation

1. FIT's present Bookstore facility is located in the lower level of the David Dubinsky Student Center, at West 27th Street, between 7th and 8th Avenues. The 7,271 square foot facility includes retail, office, and storage spaces. Hours of Operation can be found online at: <https://fashion.bncollege.com/>
2. During the contract term, the hours of operation may be subject to change as mutually agreed upon between Contractor and the College in order to meet student demands and special events. Extended store hours shall be required during

registration periods for both the Fall and Spring semesters.

3. The College Bookstore is an integral part of the FIT campus community. FIT is currently exploring an opportunity to relocate the bookstore operation to a street level location on the ground floor of 244 West 27 Street just across from the main campus. The proposed space is approximately 6,900 square feet. The relocation is expected to take place during the first term the contract. With the relocation, FIT's goal is to service the campus community and also visitors to the campus, Chelsea residents and the general public. Contractor is expected to partner with FIT in this endeavor.
4. Appended to this RFP are the floor plans for the proposed relocation of 244 West 27 Street.

E. Course Materials Program

1. Describe your company's plan to develop and implement an active strategic plan to protect the Bookstore Services course materials market share. Include your plans to develop strong relationships with faculty, market and promote course materials to College students, and provide comprehensive course materials services to College students and faculty, including, but not limited to, the following:
 - Registration integration
 - Custom publishing
 - OER
 - Digital delivery
 - Inclusive Access
 - Textbook rental
 - Used textbooks

F. Inclusive Access Program

1. Describe your company's Inclusive Access program
2. Pricing:
 - a. How long will the Cost to Student for course materials be guaranteed for.
 - b. How and when is the Cost to Student adjusted.
 - c. When the Cost to Student increases, what is the percentage.
3. Revenue sharing
4. Opt-in and opt-out policies
5. Description of software and hardware
6. Data and reporting capabilities
7. Billing and refund processes
8. Provide example of semester billing invoice

G. Course Materials and Supplies Adoption Tool

1. Describe your company's Course Materials and Supplies Adoption Tool, including the following:
 - Adoption tool overview
 - Database search
 - Adoption reporting

H. Course Materials Affordability / Pricing Policies

1. Course Materials Pricing Strategies. Describe your company's plan to address the pricing concerns of students at FIT. Include a detailed description of your company's Inclusive/Equitable Access program, Price Match Guarantee Program, Price Comparison Software, dynamic pricing, or similar programs that your company will implement to provide value, compete with online booksellers, and increase market share.
2. Describe your company's Shipping Policies including, but not limited to, the following:
 - Standard Shipping Charges
 - Standard Shipping Delivery Times
 - Expedited Shipping Charges
 - Expedited Shipping Delivery Times
 - Free Shipping Program(s)
 - Free Shipping Delivery Times

Describe any additional promotional programs your company has implemented to reduce course materials shipping costs.

I. Required Course Supplies and General Art Supplies Pricing Policies

1. Describe your company's plan to sell required course supplies and general art supplies at multiple price points.

J. General Merchandise Pricing Policies

1. Describe your company's plan to sell emblematic/logo merchandise at multiple price points.

K. General Merchandise and Marketing

1. Provide a detailed description of your company's plan to increase the sales of emblematic/logo merchandise, clothing, and gifts to students, faculty, staff and alumni. Describe your company's plan to market emblematic/logo merchandise, including selling and promoting emblematic/logo merchandise on the Bookstore Services Website.
2. Describe your company's marketing and advertising plan for the Bookstore.
3. Describe your company's social media plan for the Bookstore.

L. Technology Program

1. Describe your company's plan for computerization, automation, technology, point-of-sale systems (POS), Bookstore Services security systems, etc., and explain how implementation of these plans will benefit FIT and Bookstore Services.
2. Website/E-Commerce Plans. Include a detailed description of your company's plan to offer the following:
 - Course materials reservation program

- Online course materials ordering program
- Online textbook adoption program
- Online buyback program
- Registration integration program
- Compliance with HEOA (i.e., textbook ISBN number availability)
- Online ordering program for general merchandise (i.e., emblematic clothing and gifts)

3. Include your company's estimated capital investment for technology/automation in Bookstore Services (excluding website and social media development costs) and a timeline for your automation plans. Include your company's plan for integration with the SIS and LMS.

M. Tender Types/Campus Card

1. Provide evidence of experience with other campus operations utilizing the Blackboard Transaction System and interfacing the card system.

N. Management Usage Reports

1. Provide description of management usage reports. Include samples of all reports and forms to be used in Bookstore Services, payment of commissions and billing.

O. Pricing, Refund and Discounting Policies

1. Mark-up policy for course materials (new, used, rental and digital).
2. Mark-up for Inclusive/Equitable Access.
3. Buy-back policy for used textbooks.
4. Mark-up policy for re-sale of used textbooks.
5. Refund policy for course materials and Inclusive/Equitable Access.
6. Policy for replacing defective textbooks and other materials.
7. Guidelines for accepting delayed payment for required course materials from students with guaranteed financial aid.
8. Proposed discount programs to be offered on a regular basis for College Departments, staff, faculty, students, alumni and campus admission tour groups, if any.

P. Transition Plan

Describe your company's Transition Plan, including the following:

1. Provide a detailed transition plan and timeline that includes information on how your company will meet the college's expectation for a contract start date on or about August 1, 2022. Include a detailed timeline of key dates for the transition.
2. Describe the required or assumed college resources necessary for a smooth transition.

3. Describe your company's Technology Implementation Plan, including, but not limited to, the following:
 - Equipment installation
 - Online Adoption Tool implementation
 - Staff training
 - Systems integration/collaboration with the college's SIS and LMS
 - Website implementation
4. Describe your company's corporate support during the first ninety (90) days of the transition including, but not limited to, the following:
 - Regional Manager Coverage/Site Visits - Provide the schedule for Regional Manager site visits during the first ninety (90) days.
 - Vice President Level Support (i.e., operations, marketing, etc.) - Provide the schedule for site visits by the Vice Presidents during the first ninety (90) days.
 - Bookstore Operations and Customer Service Staff Training
5. Miscellaneous/Other. Provide any additional information relevant to the transition.

Q. Exceptions to the Bookstore Operations RFP

1. Identify any exceptions to the RFP that are included in your company's Proposal.

VI. FINANCIAL PROPOSAL

A. Financial Projections

1. Provide financial projections for each of the five (5) years of operation of Bookstore Services. Projections must include the following:
 - Sales by Category/Department
 - Total Sales
 - Cost of Goods Sold
 - Gross Margin
 - Personnel Expenses
 - Direct Operating Expenses (itemized by type of expense)
 - Indirect Expenses (itemized by type of expense)
 - Commission to the College
 - Profit/Loss
 - Website/E-Commerce Sales

B. Financial Proposal

1. Submit your company's Financial Return for Bookstore Services:

- Minimum Annual Guarantee
- Commissions:
 - Commission Schedule Expressed as a Percentage of New, Used, Rental and Buyback Sales
 - Commission Schedule Expressed as a Percentage of Pure Digital Course Materials Commissionable Sales
 - Commission Schedule Expressed as a Percentage of Inclusive Access Sales
 - Commission Schedule Expressed as a Percentage of Equitable Access Sales
 - Commission Schedule Expressed as a Percentage of Online Marketplace Sales, if applicable
 - Commission Schedule Expressed as a Percentage of Supplies, Apparel, Technology and Merchandise Sales
- Any royalty percentage for sales of clothing, notebooks and other accessories that use FIT's logo or trademark.
- Additional Financial Support and Incentives

C. Facility Investment

1. Proposer shall provide a capital investment plan for the design and furnishing of the current Bookstore location, "The Refresh", along with a proposal and investment plan for relocation to 244 West 27 Street. Such capital investment plan shall include a detailed description of the plan for each location, the dollar amount of the proposed investment (including an estimated budget for space renovations/improvements and furnishings) and the basis for the cost estimates. The capital investment plan must be approved by the College prior to any work being done.
2. Renovations/improvements and furnishings shall be collaborative effort between Contractor and the College. The extent, nature and scheduling of capital investment plan shall be mutually agreed upon with the College. All renovations/improvements and furnishings shall be in conformance with any and all construction restrictions and exigencies imposed by City, State and Local laws, the Statue University of New York, and the Dormitory Authority of the State of New York.

All renovations/improvements and furnishings proposed shall be in strict compliance with New York City and New York State Building Codes and Restrictions and shall meet ADA requirements. Photographs and mock-up boards of similar installations at other institutions shall be included with proposal.

D. Added Value:

Proposers are encouraged to present additional added value incentives in their proposal, if any. Specific details and added value financial incentive models are left to the imagination and innovation of the responding Proposer, or any other services/solutions not listed or specified in this RFP.

VII. SCOPE OF SERVICES

- A. Proposer shall have the exclusive right and responsibility to operate and maintain

Bookstore Services at FIT. The Bookstore shall be College's exclusive "on campus" and e-commerce buyer and seller of all required, recommended or suggested books, course materials and tools which shall include textbooks, book rentals, Inclusive/Equitable Access programs, course packs, materials published or distributed electronically, and materials specific to online learning coursework.

- B. The Bookstore shall be College's exclusive "on-campus" and e-commerce seller of other items typically sold in college Bookstores, such as educational supplies, novels, magazines, newspapers, stationery, DVDs, gifts, games and music.
- C. Proposer shall also be College's exclusive seller of clothing and any and all such items bearing a FIT emblem, logo, mascot, insignia, team spirit brand or other identifying mark.
- D. Proposer's internal systems are to be fully compatible with College's SIS and LMS software systems.
- E. Proposer must install and provide course materials and required supplies adoption tool software for faculty and administrators.
- F. Proposer must access college's Campus Card as a form of tender in the Bookstore and website.
- G. Proposer point-of-sale systems (POS), whether on-campus or website, must be PCI compliant.
- H. Proposer must comply with college's data security policies and procedures pertaining to student education records provided by the college to Proposer to support certain services provided to College by Bookstore Services.
- I. Proposer shall provide and/or offer used book inventories and resale services, as well as other reduced cost alternatives to the fullest extent possible.
- J. At the College's request, Proposer shall provide cap and gown services, including rental distribution and collection, for College commencement exercises.
- K. College shall have the right of prior approval for any and all signs, posters or other Bookstore Services advertisement placed on the College's premises and website.
- L. Proposer shall make all arrangements for delivery, unloading, receiving and storing merchandise. College will not assume responsibility for receiving or handling these shipments.
- M. Proposer shall ensure a timely acquisition of all required and recommended texts in addition to other academic and/or curriculum requirements (art and design materials, etc.). Proposer shall maintain a sufficient range and depth of inventory to satisfy reasonable student sales demand. College shall not

assume any liability whatsoever to Proposer for loss or damage sustained by Proposer in the event estimates furnished differ from actual demand.

- N. Proposer shall sell College-developed course materials required for College courses. Proposer shall be responsible for reimbursing the College for all costs associated with the duplication of these course materials and shall sell them to students at cost plus a reasonable profit not to exceed a 30% gross margin.
- O. Proposer shall become fully involved in the academic, cultural and social environment of the College. Proposer shall endeavor to take every opportunity to offer special merchandising programs based upon the College's ongoing and unique student success activities.
- P. Proposer shall support The Museum at FIT, including in the following ways:
 - 1. Stocking Museum publications, as well as books by authors associated with the Museum;
 - 2. Supporting Museum events by providing books and sales staff at:
 - a. Book signings in the Museum associated with exhibitions;
 - b. Lectures for the Fashion Culture series as needed and
 - c. The annual Fashion Symposium held each November.
- Q. Proposer shall be solely responsible for the disposition of any and all damaged or surplus books, supplies, tools, materials, and other damaged or surplus merchandise, regardless of the cause thereof.
- R. College reserves the right to prohibit the sale of products that it considers inappropriate to FIT's educational mission or to any contractual obligations.

VIII. ADDITIONAL SERVICES

- A. Provide any other information you believe will be helpful to the Selection Committee in evaluating your Proposal. Proposer shall describe any additional services or support that it can provide that are not in the Statement of Work and which the College may consider when evaluating proposals.

IX. EVALUATION CRITERIA

- A. This is a request for proposals and not a bid process. A selection committee will use the following criteria to evaluate the Proposals, which meet the requirements of these specifications.

1. Qualifications and References	20%
2. Technical Proposal	30%
3. Financial Proposal	40%

- B. FIT reserves the right to award the contract to the Proposer with the highest score on criteria one (1) through three (3) or to interview a number of Proposers with the highest scores on criteria one (1) through three (3). In the latter case, FIT will award the Contract to the Proposer with the highest score on criteria one (1) through four (4);
- C. FIT reserves the right to interview each or shortlist of Proposers;
- D. FIT reserves the right to negotiate with Proposers as necessary in its best interests. We may negotiate with Proposers concurrently or sequentially. If we invite you to negotiate with us, this does not give you any property rights regarding the RFP or the Contract;
- E. FIT reserves the right to rescore proposals after interviews, site visits, and/or negotiations;
- F. FIT reserves the right to award the Contract to other than the Proposer or Proposers offering the lowest overall cost or greatest financial return to us; and
- G. To decide tie proposals in our best interest.

X. CONTRACT TERM

- A. The term of Contract shall be for five (5) years commencing upon award of Contract;
- B. FIT shall have the option to renew Contract in its best interest for one (1) additional five (5) year renewal option. If FIT elects to renew Contract, the Purchasing Office shall provide notice to Contractor a minimum of ninety (90) days prior to the expiration date of Contract or such renewal year. Failure to notify Contractor within this time period shall not operate as a waiver of FIT's right to renew Contract. Within ten (10) days of receiving such notice, Contractor shall submit a sworn renewal to FIT; and
- C. Unless mutually agreed to between the parties, each renewal shall be on the same terms and conditions as specified in the Contract.

XI. MISCELLANEOUS

- A. FIT reserves the right to request clarifications from bidders for purposes of assuring a full understanding of responsiveness and further reserves the right to permit revisions from all bidders who might be, in FIT's sole discretion determined to be viable bidders for contract award, prior to the award.
- B. FIT reserves the right to reject separable portions of any offer, to negotiate terms and conditions consistent with the bid, and to make an award for any or all remaining portions.

- C. FIT reserves the right to eliminate mandatory requirements unmet by all bidders.
- D. Any additional vendor terms which are attached or referenced with a submission shall not be considered part of the bid or proposal, but shall be deemed included for informational purposes only.
- E. Unless otherwise specifically stated in the Bid Terms and Conditions, all specifications and requirements constitute minimum requirements. All bids must meet or exceed stated specifications and requirements.
- F. FIT reserves the right to reject any bid or all bids, to waive any informalities or irregularities or omissions in any bid received.
- G. During the term of the Contract, the Contractor shall promptly notify FIT of any change in the ownership of the Contractor. Failure to notify FIT may result in termination of the Contract.
- H. FIT reserves the right, exercisable in its sole discretion, to cancel and withdraw from the Project at any time in advance of the award.
- I. Prior to the opening of the bids, Bidder shall promptly notify FIT of Change in ownership of the Bidder. Failure to notify with this bid shall be grounds for rejection of the Bid.

**PROPOSAL ANALYSIS SHEET
FASHION INSTITUTE OF TECHNOLOGY
BOOKSTORE OPERATIONS
RFP# C1559**

DESCRIPTION

1. Guaranteed Minimum \$ _____
2. Commission Percentage See next page
3. Capital Investment \$ _____
4. Additional services and other support _____

Proposer: _____
(Print or Type Company/Partnership/Individual Name)

By: _____
(Signature of Authorized Representative)

Name: _____
(Print or Type Name of Representative)

Title: _____
(Print or Type Title of Representative)

Address: _____

Telephone: _____

Facsimile: _____

Federal ID #: _____

E-mail: _____

Date: _____

IMPORTANT:

This proposal analysis page is the only pricing format acceptable. Firms must submit pricing using this form. FIT will not accept proposal responses on any other form.

NOTE:

FIT will not sign any bidder generated contract, agreement, or scope of work. FIT Bid and Terms and Conditions apply. Bidder requirement for FIT to sign any document will be grounds for rejection. Bidder inclusion of any clarifications, exceptions or changes which are not in compliance with FIT Bid and Terms and Conditions will be grounds for rejection.

**PROPOSAL ANALYSIS SHEET
FASHION INSTITUTE OF TECHNOLOGY
BOOKSTORE OPERATIONS
RFP# C1559**

COMISSIONS BREAKDOWN

Commissions	Percentage Amount
New, Used, Rental & Buyback	
Digital Course Materials	
Inclusive Access	
Equitable Access	
Online Marketplace	
Emblematic/Logo Merchandise	
Supplies	
Other	

SECTION TWO -- RFP GENERAL TERMS AND CONDITIONS

A. **Proposal Requirements:**

Proposers shall meet the following requirements and submit necessary information with their proposal. Failure to comply with these requirements shall be grounds for rejection of your proposal. FIT reserves the right to determine whether a Proposer has substantially met all the RFP requirements and to ask for additional information prior to making such a determination.

1. Sealed proposals must be received before the time and at the location stated on the cover page of the RFP and must include the entire proposal document (consisting of Section One - Proposal Terms and Conditions and this Section Two - RFP General Terms and Conditions), the Contract Terms and Conditions, and the Proposal Analysis Sheet, as issued by FIT, including required signatures and attachments. Proposers are not permitted to change or modify Proposal Terms and Conditions, RFP General Terms and Conditions, Contract Terms and Conditions and/ or the Proposal Analysis Sheet. All Proposers propose on the same terms and conditions.
2. Each proposal must be sent **in digital and hard copy** and identified, on the outside of the envelope, by the name and address of the firm and designated as a proposal for the project. Hard copies of proposals shall be submitted in **ink only**; proposals submitted in pencil shall be subject to rejection. When a sealed proposal is placed inside another delivery jacket, the proposal delivery jacket must be clearly marked on the outside with the notation stated on the cover page of the RFP.
3. Proposers are responsible to make certain that sealed proposals are received at the FIT Purchasing Department before the time of the proposal opening. FIT will not be responsible for improper delivery of proposals that do not comply with these instructions.
4. Proposals received after the time of the proposal opening will be returned unopened.

B. **No Oral Statements:**

FIT will not be bound by any oral statement or representation in connection with the RFP or resulting Contract(s).

Any changes to the proposal document required by FIT shall be in writing and shall be issued by the FIT Purchasing Department to every known entity that has been invited to submit an RFP and will also be posted on the Purchasing Department website. It shall be the responsibility of each proposer to check the website regularly for updates during the time period prior to the due date.

C. **Proposer Affirmation:**

By signing the proposal, Proposer certifies that:

1. No public officer or employee whose salary is payable in whole or in part by FIT, the City or the State is directly or indirectly interested in the proposal, or in the goods, services, supplies, equipment or labor which may be related to the proposal; and
2. Proposer is not in arrears to FIT, the City or the State upon a debt, contract or taxes, and is not in default as surety or otherwise upon any obligation to any of them.

D. **Non-Collusive Proposal Certification:**

1. By submission of its proposal, Proposer, and each person signing on behalf of Proposer certifies, and in the case of a joint proposal each party thereto certifies, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:
 - a. The prices in the proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by Proposer and will not knowingly be disclosed by Proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
 - c. No attempt has been made or will be made by Proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
2. A proposal shall not be considered for award nor shall any award be made where (1)(a), (b) and (c) above have not be complied with; provided, however, that if in any case Proposer cannot make the foregoing certification, Proposer shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefore.

E. **Confidentiality:**

1. If Proposer believes that any information in its proposal or proposal constitutes a

trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested pursuant to the New York State Freedom of Information Law (Article 6 of the Public Officers Law), Proposer shall submit with its proposal or proposal a separate letter specifically identifying page number(s), line(s) or other appropriate designation(s) containing such information; explain in detail why such information is a trade secret; and formally request that such information be kept confidential. Such information must be easily separable from the rest of the proposal or proposal. A request that an entire proposal or proposal be kept confidential will not be considered. Failure by Proposer to submit such a letter with its proposal or proposal identifying trade secrets shall constitute a waiver by Proposer of any rights it may have under FOIL.

2. In some instances, FIT may, in its sole discretion, share certain confidential, sensitive, and/or proprietary information with Proposers in connection with the RFP (particularly in connection with preparation for any presentation(s)). All such information, whether printed, written or oral, which is requested from or voluntarily furnished by FIT shall be held by Proposer in strictest confidence and used only for the purpose of the RFP.

F. **Prices:**

Proposal prices shall be held firm for ninety (90) days from the proposal due date.

G. **No Sales Tax:**

FIT is exempt from the payment of State and City sales tax; therefore, all prices quoted shall not include such tax. Sales tax exemption forms may be obtained from the FIT Purchasing Department.

H. **Proposal Withdrawal:**

1. Proposers may withdraw proposals at any time before the proposal opening.
2. After the proposal opening, Proposers may withdraw proposals only after the expiration of ninety (90) days and before any actual award.
3. Proposal withdrawals must be in writing.
4. In the event of a proposal mistake, a Proposer may withdraw its proposal before the award of the Contract or within three (3) days after the opening of the proposal, whichever period is shorter. Proposer shall furnish credible evidence that its proposal mistake was a clerical error as opposed to a judgment error. FIT will determine, upon objective evidence and pursuant to law, whether Proposer shall be permitted to withdraw its proposal.

I. **Tie Proposals:**

Tie proposals will be awarded in FIT's absolute discretion based on its determination of FIT's best interest.

J. **Proposer's Responsibility:**

In determining whether a Proposer is responsible, FIT may consider experience, business references, integrity of the organization and its management, past performance, business and/or financial capabilities and/or capacity and technical skills.

K. **Proposal Rejection:**

1. FIT may reject a proposal if:
 - a. The proposal is not responsive to the requirements of the Request for Proposals;
 - b. Proposer does not provide information or documents required;
 - c. Proposer does not submit the proposal security as required (if applicable);
 - d. Proposer misstates or conceals any material fact in the proposal;
 - e. The proposal is conditional;
 - f. The proposal prices are not in ink;
 - g. The proposal contains prices that are unbalanced; and/or
 - h. FIT determines that Proposer is not responsible in accordance with law and FIT regulations.
2. FIT reserves the right to reject any or all proposals if it is in the best interest of FIT to do so.

L. **Award of Contract:**

1. Subject to the provisions Paragraph K immediately above, the Award shall be made to the highest score of Evaluation Criteria Proposer pursuant to law and FIT regulations.
2. FIT reserves the right to waive technicalities in a proposal if it is in the best interest of FIT to do so.
3. By submission of its Proposal, Proposer represents that it is willing and able to enter into an agreement with FIT (the "Contract") upon the terms and conditions substantially in conformance with those contained in the agreement attached to this RFP ("Exhibit E").
4. The Contract shall be signed by the successful Proposer after the award is made. The successful Proposer shall execute the Contract within ten (10) business days of the award. FIT will retain the proposal security (if applicable) as liquidated damages in the event the successful Proposer fails to execute the Contract within this time period.
5. All contracts awarded by FIT shall be executory only to the extent of funds available.

M. **Governing Law:**

1. This RFP shall be construed in accordance with the laws of the State of New York without regard to conflict of law provisions.
2. Any action arising from this RFP shall be brought in the federal or state courts located in the State of New York and in the County of New York.
3. Proposer consents to the exercise by the courts of the State of New York of personal jurisdiction over it concerning any matter arising out of or in connection with this RFP.

N. **M/WBE and SDVOB:**

FIT encourages minority and women business enterprise participation in this project by contractors, subcontractors and suppliers, and all bidders are expected to cooperate with that commitment. Also, bidders are encouraged to use Service-Disabled Veteran-Owned Businesses (SDVOB). A directory of New York State Certified Minority and Women's Business Enterprises is available from: Empire State Development Corporation, Minority and Women's Business Development Division at: <http://www.esd.ny.gov/mwbe.html> to assist potential bidders in locating sources of M/WBE subcontractors and reaching these goals. SDVOBs can be readily identified on the directory of certified businesses at: <https://online.ogs.ny.gov/SDVOB/search>."

O. **Sexual Harassment Prevention:**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S07507&term=2017&Text=Y

P. **EXECUTIVE ORDERS/COVID-19:**

Contractors and Subcontractor shall comply with Governor Cuomo's Executive Order 202 & 202.16, the COVID-19 Contractor Guidance for Construction Jobsites, FIT's No Damages for Delay Clause, and the Interim Guidance Letter to Contractors. In addition to the foregoing requirements you are responsible for compliance with any additional safety directives that may be forthcoming by Executive Order between the date of issuance of this addendum the date of award.

In the event the Contractor's performance under this agreement is delayed or interfered with arising out of or connected to the COVID19 pandemic, including but not limited to worker availability, government-mandated suspension of work or any other emergency action associated with protecting the health and safety of the workforce, which leads to a site closure, delay or suspension of the work, Contractor or any subcontractors hereby acknowledge their only remedy under this agreement is to request an extension of time for

the performance of the unfinished work as herein provided; under no circumstances will Contractor or any subcontractors or vendors be entitled to any increase in the subcontract price or additional compensation for any alleged costs, expenses or damages as a consequence of such delays or interference, including but not limited to: i) General Condition Costs (e.g.: site clean-up, home and field office expenses, telecommunications equipment or use , and/or supervisory costs including but not limited to Project Manager, Project Engineer, Superintendent and Foremen, etc.), ii) escalation (increases in material costs, transportation charges or any alleged wage or salary increases) or iii) any alleged inefficiencies or loss of productivity. NOTE: The above examples are not intended to be an exhaustive list of all the alleged costs, expenses or damages excluded by this clause. It is offered only as an example of some costs within each category.

Owner shall review the Contractors request for delay and, if acceptable, shall extend the time of performance by Change Order for such reasonable time as the Owner, in its sole discretion, may determine.

FTE ENROLLMENT & HEADCOUNT

Enrollment figures for the past five (5) years are as follows:

FTE Enrollment

FTE'S	2017	2018	2019	2020	2021
Fall FTE'S	8,249	8,209	8,322	7,936	7,712
Total Annual FTE'S	8,383	8,300	8,428	8,002	7,814

Headcount

	2017	2018	2019	2020	2021
Fall Headcount	8,846	8,767	8,726	8,191	8,150
Total Annual Headcount	10,316	10,064	9,873	9,130	9,039

ACADEMIC CALENDAR**REGISTRAR'S OFFICE FALL 2022 CALENDAR - ACADEMIC YEAR 2022-2023**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
8/22 Fall Convocation New Student Orientation	8/23 -----	8/24 -----	8/25 -----	8/26 -----	8/27 -----	8/28 -----
8/29 First day of Fall semester	8/30	8/31	9/1	9/2	9/3	9/4
9/5 Labor Day- College Closed	9/6	9/7	9/8	9/9	9/10	9/11
9/12	9/13	9/14	9/15	9/16	9/17	9/18
9/19	9/20	9/21	9/22	9/23	9/24	9/25 Rosh Hashanah Classes suspend at 4pm
9/26 Rosh Hashanah- College Closed	9/27 Rosh Hashanah- College Closed	9/28	9/29	9/30	10/1	10/2
10/3	10/4 Yom Kippur – Classes suspend at 4pm	10/5 Yom Kippur- College closed	10/6	10/7	10/8	10/9
10/10	10/11	10/12	10/13	10/14	10/15	10/16
10/17	10/18	10/19	10/20	10/21	10/22	10/23
10/24	10/25	10/26	10/27	10/28	10/29	10/30
10/31	11/1	11/2	11/3	11/4	11/5	11/6
11/7	11/8	11/9	11/10	11/11	11/12	11/13
11/14	11/15	11/16	11/17	11/18	11/19	11/20
11/21	11/22	11/23	11/24 Thanksgiving Break- College Closed	11/25 Thanksgiving Break- College Closed	11/26 Thanksgiving Break- College Closed	11/27 Thanksgiving Break- College Closed
11/28	11/29	11/30	12/1	12/2	12/3	12/4
12/5	12/6	12/7	12/8	12/9	12/10	12/11
12/12	12/13 Last day for Tuesday Day Classes	12/14 Last Day for ALL Wednesday Classes	12/15 Last day for ALL Thursday Classes	12/16 Last day for ALL Friday classes	12/17 Last day for ALL Saturday classes	12/18 Last day for ALL Sunday Classes
12/19 Last Day for ALL Monday Classes	12/20 Last day for Tuesday Evening Classes	12/21 Emergency Make Up Day- Scheduled by the Registrar	12/22 Emergency Make Up Day- Scheduled by the Registrar Last day of semester	12/23 College Closed	12/24 -----	12/25 -----
12/26 -----	12/27 -----	12/28 -----	12/29 -----	12/30 -----	12/31	1/1

REGISTRAR'S OFFICE WINTER 2023 CALENDAR
ACADEMIC YEAR 2022 - 2023

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1/2 New Year's Day observed- College Closed	1/3 First day of Winter Session	1/4	1/5	1/6	1/7	1/8
1/9	1/10	1/11	1/12	1/13	1/14	1/15
1/16 MLK Jr Day- College Closed	1/17	1/18	1/19 Last Day of Winter Session	1/20 -----	1/21	1/22
1/23 -----	1/24 -----	1/25 -----	1/26 -----	1/27 -----	1/28 -	1/29

REGISTRAR'S OFFICE **SPRING 2023** CALENDAR

ACADEMIC YEAR **2022 – 2023**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1/23	1/24	1/25	1/26 SPRING CONVOCATION	1/27	1/28	1/29
1/30 First day of semester	1/31	2/1	2/2	2/3	2/4	2/5
2/6	2/7	2/8	2/9	2/10	2/11	2/12
2/13	2/14	2/15	2/16	2/17	2/18	2/19
2/20 President's Day - College Closed	2/21	2/22	2/23	2/24	2/25	2/26
2/27	2/28	3/1	3/2	3/3	3/4	3/5
3/6	3/7	3/8	3/9	3/10	3/11	3/12
3/13	3/14	3/15	3/16	3/17	3/18	3/19
3/20	3/21	3/22	3/23	3/24	3/25	3/26
3/27	3/28	3/29	3/30	3/31	4/1	4/2
4/3 Spring Recess No Classes	4/4 Spring Recess - No Classes	4/5 Spring Recess - No Classes	4/6 Spring Recess - No Classes	4/7 Good Friday College Closed	4/8 Spring Recess- No Classes	4/9 Easter - No Classes
4/10	4/11	4/12	4/13	4/14	4/15	4/16
4/17	4/18	4/19	4/20	4/21	4/22	4/23
4/24	4/25	4/26	4/27	4/28	4/29	4/30
5/1	5/2	5/3	5/4	5/5	5/6	5/7
5/8	5/9	5/10	5/11	5/12	5/13	5/14
5/15	5/16 Last Day for ALL Tuesday Classes	5/17 Last Day for ALL Wednesday Classes	5/18 Last Day for ALL Thursday Classes	5/19 Last Day for ALL Friday Classes	5/20 Last Day for ALL Saturday Classes	5/21 Last Day for ALL Sunday Classes
5/22 Last Day for ALL Monday Classes	5/23 <i>Emergency Make Up Day- Scheduled by the Registrar</i>	5/24 <i>Emergency Make Up Day- Scheduled by the Registrar</i> Last Day of Spring Semester	5/25 COMMENCEMENT	5/26 -----	5/27 -----	5/28 -----
5/29 Memorial Day- College Closed	5/30 -----	5/31 -----	-----	-----	-----	-----

REGISTRAR'S OFFICE SUMMER 2023 CALENDAR
ACADEMIC YEAR 2022 - 2023

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
5/22 -----	5/23 -----	5/24 -----	5/25 -----	5/26 -----	5/27 -----	5/28
5/29 Memorial Day- College Closed	5/30 First day of Summer 1	5/31	6/1	6/2	6/3	6/4
6/5	6/6	6/7	6/8	6/9	6/10	6/11
6/12	6/13	6/14	6/15	6/16	6/17	6/18
6/19 Juneteenth - College closed	6/20	6/21	6/22	6/23	6/24	6/25
6/26	6/27	6/28	6/29	6/30	7/1	7/2
7/3	7/4 Independence Day - College Closed	7/5 Last day of Summer 1	7/6	7/7	7/8	7/9
7/10 First day of Summer 2	7/11	7/12	7/13	7/14	7/15	7/16
7/17	7/18	7/19	7/20	7/21	7/22	7/23
7/24	7/25	7/26	7/27	7/28	7/29	7/30
7/31	8/1	8/2	8/3 Last day of Summer 2	8/4 -----	8/5 -----	8/6 -----

Revised 6/23/20

EXHIBIT C**PAST SALES STATISTICS**

Year	Gross Sales
Academic Year 2017-18	\$1,794,278
Academic Year 2018-19	\$1,629,134
Academic Year 2019-20	\$1,244,900*
Academic Year 2020-21	\$625,543**
Academic Year 2021-22	\$1,101,376

These numbers are given as a guide only, and are not a guarantee of future sales.

Pre-pandemic sales were heaviest during FIT's two, 12-week semesters when the majority of FIT students are attending classes and decline during FIT's winter session and two summer sessions when less students are on campus.

*FIT closed its Residence Halls in March 2020 due to the Coronavirus pandemic.

**FIT was remote for the entire Academic Year 2020-21 due to the Coronavirus pandemic.

Bookstore sales figures by category for the past five (5) fiscal years are as follows:

CATEGORIES	FY '18	FY '19	FY '20	FY '21	FY '22
New Textbooks	\$431,114	\$386,365	\$347,987	\$222,087	\$172,731
Textbooks Rentals	\$259,747	\$243,438	\$201,227	\$63,038	\$81,381
Used Textbooks	\$161,975	\$96,943	\$73,687	\$55,726	\$36,037
Trade Books	\$19,471	\$27,816	\$23,808	\$8,032	\$6,629
Digital Textbooks	\$14,498	\$14,306	\$16,233	\$25,787	\$58,428
School Supplies	\$435,415	\$396,556	\$306,715	\$34,756	\$223,433
Emblematic Clothing & Gifts	\$301,865	\$299,642	\$243,199	\$145,787	\$321,464
Other	\$146,876	\$133,431	\$15,788	\$40,111	\$129,267

Bookstore bestselling course-related supplies are as follows:

RANK	COURSE-RELATED SUPPLIES
1	3 Grades of Muslin, draping, tailoring and toile
2	Dotted pattern paper
3	Oak tag paper
4	Sewing machine parts: bobbins, bobbins case, thumb screw, needle screw, machine needles size 12 & 14, presser foot, zipper feet
5	100% cotton thread
6	Pick needle
7	Style tap
8	Bienfang maker pad 11"x14"
9	Double sided scotch tape

EXHIBIT D**INCLUSIVE ACCESS PROGRAM PILOT**

FIT is considering piloting an Inclusive Access program for the following courses and sections for the Spring 2024 semester. Provide the Cost to Student.

Course	Sections	Course Materials	ISBN	Cost to Student
AC 161	OL1, OL2, 201,202,25A, 25B	MindTap for the Illustrated Collection	9780357026243	
AC 361	OL1, OL2, 701,702, 703	MindTap for the Illustrated Collection	9780357026243	

Note: Proposer must indicate how long they will guarantee the Cost to Student for the course materials listed above.

EXHIBIT E

CURRENT FACILITY/BOOKSTORE RELOCATION

1. FIT's campus Bookstore is located in the lower level of David Dubinsky Student Center, at 27 Street, between 7th and 8th Avenue.
2. FIT Bookstore website.
3. Hours of Operation can be found online at: <https://fashion.bncollege.com/>

The Bookstore's approximate square footage breakdown is as follows:

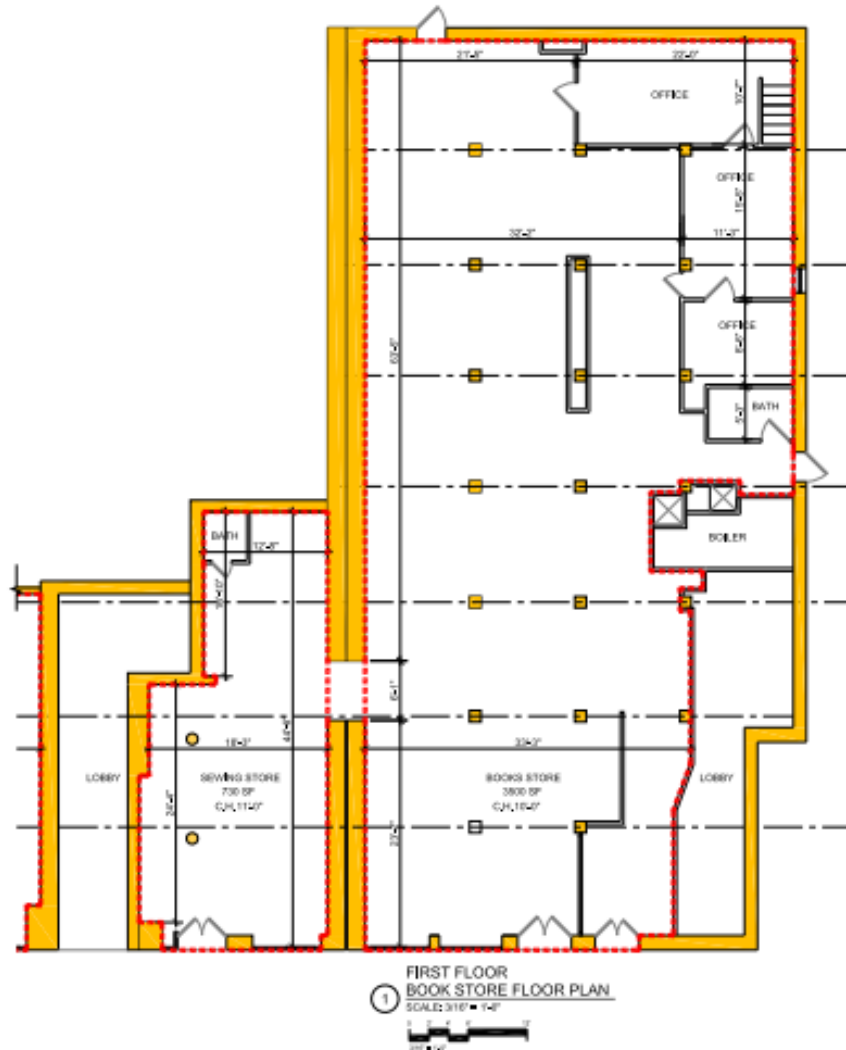
FIT Bookstore	SQUARE FOOTAGE
Selling Space	5,680
Shipping/Receiving/Storage Space	1,314
Office Space	98
Office Space	93
Corridor	86
Total Space	7,271

The Bookstore of the Future, located at 244 West 27 Street approximate square footage breakdown is as follows:

FIT Bookstore	SQUARE FOOTAGE
Main Level Space	5,360
Basement Space	1,576
Total Space	6,936

See 244 West 27 Street floor plans attached:

PROPOSED BOOKSTORE RELOCATION 244 West 27 Street floor plans





CONTRACT

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BOOKSTORE OPERATIONS CONTRACT

THIS CONTRACT is made effective on _____ by and between the Fashion Institute of Technology (the "College"), a community college in the program of the State University of New York, located at Seventh Avenue at 27th Street, New York, New York 10001 and _____ (the "Contractor").

WITNESSETH:

WHEREAS, College issued a Request for Proposals ("RFP") for management and operation of bookstore service on the College campus and related activities, as further described in Section 5 of this Contract ("Bookstore Operations");

WHEREAS, Contractor submitted a Proposal in response to the RFP and College selected Contractor's Proposal; and

WHEREAS, the parties desire to enter into an agreement with respect to the performance of the Bookstore Operations;

NOW THEREFORE, this Contract is entered into upon the following terms and conditions:

Section 1 - DEFINITIONS

When used in this Contract, the following words have the meanings set forth in this Section:

- 1.1 **"City"** means New York City.
- 1.2 **"Days"** means calendar days unless otherwise specified.
- 1.3 **"Insignia Goods"** means merchandise bearing the College's name, logo, mascot, seal and other College trademarks and/or trade names
- 1.4 **"Bookstore Location"** means Bookstore Operations location listed on Appendix B.
- 1.5 **"Law"** means any law, statute, rule, regulation, ordinance, and other pronouncement (including common law).
- 1.6 **"Person"** means any natural person, College, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust or association.
- 1.7 **"Proposal"** means information, documents and samples provided by Contractor pursuant to the RFP.
- 1.8 **"Proposed Future Bookstore"** means the relocation of Bookstore Operations to the ground floor at 244 West 27 Street listed on Appendix E.
- 1.9 **"Staff"** means a Person or Persons furnished by Contractor to perform the work of this Contract. Staff include Contractor's employees, partners, agents and representatives, as

well as Persons engaged by Contractor as consultants, coordinators, independent contractors, subcontractors, franchisees or in any other capacity.

1.10 “State” means New York State.

Section 2 - GRANT OF LICENSE

2.1 Rights. Subject to the terms and conditions herein, College hereby grants to Contractor, and Contractor accepts from College, a license to manage and provide Bookstore Operations at the College during the term of this Contract for the sole purpose of providing including, but not limited to, course materials, supplies and emblematic clothing and gifts to the College community and visitors to the College campus. The license is limited to the following:

- 2.1.1 the exclusive right and responsibility to operate an academic bookstore on the College campus and to carry Bookstore Operations in connection with same, subject to 2.2 below;
- 2.1.2 the non-exclusive right to sell in and through the campus bookstore merchandise bearing the College’s name, logo, mascot, seal and other College trademarks and/or trade names (“Insignia Goods”), so long as such merchandise is purchased from companies licensed by the College or its agent to produce Insignia Goods;
- 2.1.3 the non-exclusive right and responsibility to provide course materials publishing (course pack) services (see Section 5.7.2); and
- 2.1.4 the obligation to provide cap and gown service, including rental, distribution and collection, for College commencement exercises, at College’s request (see Section 5.7.3).

2.2 Exclusions and Exceptions. Notwithstanding anything to the contrary in Section 2.1:

- 2.2.1 The sale and electronic delivery of on-line courses, including access to on-line libraries and other electronic course materials in conjunction with such on-line courses, is specifically excluded from this Contract.
- 2.2.2 The FIT Student Government, the FIT Student Association, recognized FIT student run clubs and organizations shall have the right to hold sales and/or exchanges of used textbooks for the benefit of such student groups(s).
- 2.2.3 FIT shall have the right to conduct activities intended to assist its students’ access to affordable textbooks and other course materials, including but not limited to electronic textbooks and Open Educational Resources (OER).

2.3 Exclusive Pouring Rights Contract. The College is a party to an agreement with Liberty Coca-Cola Beverages LLC that governs the brands of non-alcoholic beverages sold at the College. The terms of this “pouring rights” contract take precedence over any conflicting terms in this Contract. Contractor must use only those products permitted by the pouring rights contract, or any successor to it, when providing Bookstore Operations.

Section 3- TERM

- 3.1 The term of this Contract is five years beginning on **August 1, 2023**, and ending on **July 30, 2028**, unless terminated in accordance with the provisions of Section 16.
- 3.2 College has one (1) successive five-year renewal options. College will exercise option if it is in its best interest. If College elects to renew this Contract, it will send written notice to Contractor not less than 90 Days prior to the expiration date of this Contract or such renewal term. The renewal will be on the same terms and conditions as stated in this Contract unless the parties enter into a written agreement specifically stating otherwise.
- 3.3 If Contractor provides performance security in the form of a performance bond (see Section 4.2.2), Contractor shall provide a new bond for renewal term, if any, no later than 30 Days before commencement of the renewal term.
- 3.4 At College's written request, Contractor shall continue to provide Bookstore Operations for a period of no more than six months beyond the termination of this Contract or any renewal term thereof on the same terms and conditions as stated in this Contract. Notwithstanding the foregoing, Contractor shall continue to provide Bookstore Operations no less than 90 Days before the end of the semester.

Section 4 – PERFORMANCE SECURITY

- 4.1 At the time of signing this Contract, Contractor must deposit with College a certified check in the sum of **{ \$ equal to 1/6 of guaranteed minimum proposed }** to be held by College, without liability for College to pay interest on it, as security for the full, faithful and prompt performance of the terms and conditions of this Contract.
- 4.2 In lieu of delivering cash as a security, Contractor may deliver one of the following to College:
 - 4.2.1 an unconditional, irrevocable, and transferable performance letter of credit issued for the account of College by a New York Clearing House Association member bank with a branch office in Manhattan for presentment and payment of the instrument and otherwise acceptable to College, in form and content satisfactory to College. The term of the letter of credit, as it may be extended, must not expire prior to the date that is 60 Days after the expiration of this Contract or renewal of it.
 - 4.2.2 a Performance Bond in the form of Appendix A issued by a New York admitted carrier in the sum of **{ \$ equal to 1/2 of the guaranteed minimum proposed }** which bond will guarantee faithful performance of the terms and conditions of this Contract, including any renewal of it.
- 4.3 In the event that Contractor defaults in respect to a material term or condition of this Contract, College reserves the right to use, apply or retain the whole or any part of the security described in Section 4.1 to the extent required for any sum to which Contractor is in default or for any sum which College may expend or may be required to expend by reason of Contractor's default. In the event that Contractor fully and faithfully complies with the terms and conditions of this Contract, any security deposit will be returned to Contractor after the expiration or termination of this Contract.

Section 5- SCOPE OF SERVICES - GENERAL

5.1 Schedule. Contractor must provide Bookstore Operations at no cost to College on a year-round basis on such days and times as are set forth in Appendix B, or as otherwise required by College. Contractor may not vary from the operational schedule set forth on Appendix B without the express written permission of College. The Bookstore Operations hours must be extended during the first three weeks of the fall and spring semesters, and during days of the week designated by the College for evening student extended service. College reserves the right to require Contractor to operate additional hours during exam periods, and on weekdays, weekends and holidays to accommodate special campus events.

5.2 Staff. Contractor must maintain at all times an experienced and qualified Staff in numbers sufficient to ensure efficient and orderly performance of the Bookstore Operations. Contractor's Staff must maintain proper standards of courtesy, service, and professionalism in dealings with the College community.

5.2.1 Contractor must promptly remove and replace any Staff member that College, in its sole judgment, deems to be unsatisfactory, subject to compliance with applicable legal or College policy requirements and any collective bargaining agreements to which Contractor may be a party.

5.2.2 Contractor must designate an experienced and capable individual to be on-site manager of Bookstore Operations ("Manager").

- (A) The Manager will be responsible at all times for implementation of this Contract and must have the authority to resolve problems with regard to inventory, staff/customer relations, administrative issues and the like.
- (B) The Manager serves subject to approval by College, and College reserves the right to interview any person whom Contractor proposes as Manager. In the absence of the Manager, Contractor must designate an alternate Manager under the same terms and conditions. The intent of this provision is to give College access at all times to an individual with full authority to make decisions on behalf of Contractor. Nothing in this Section is intended to preclude College from discussing matters relating to this Contract with any other of Contractor's Staff.
- (C) The Manager must be available to the College during all Bookstore Operations hours. Contractor must provide College with the Manager's office telephone, cell-phone numbers, and e-mail address. Contractor must keep this information current at all times. The Manager must be accessible by telephone to the College's Bookstore Operations liaison or designee within 30 minutes of attempted contact during Bookstore Operations hours.
- (D) The Manager must be available, at College's request, biweekly for a meeting discussing Bookstore Operations with members of the College and representatives of student groups on campus.

- 5.2.3 College reserves the right to designate certain time periods as “peak hours.” Contractor must provide additional serving Staff as may be required during such peak hours.
- 5.2.4 Contractor shall comply with its own pre-employment background check policy, including ensuring that pre-employment screening and/or employment background checks are conducted on all Contractor’s staff who are expected to come onto the College’s campus. Contractor will comply with their policy in determining whether an individual may be placed on the College’s campus. Contractor must inform College should it obtain adverse information from its own pre-employment background check policy regarding a member of Contractor’s Staff. Contractor agrees that to the extent permitted by Law, Contractor will defend, indemnify and hold harmless College, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all claims, demands, liabilities, expenses, losses of every nature and kind, including but not limited to reasonable outside attorney’s fees and costs, as a result of a hiring by Contractor during the term of this Contract.
- 5.2.5 Contractor’s Staff must observe College rules, regulations, and policies, as well as all applicable provisions of this Contract. Failure to do so is grounds for College to require temporary or permanent removal of a Staff member from the College campus. Nothing in this Contract will be deemed to relieve Contractor from liability for any deficiencies in performance by Contractor’s Staff.
- 5.2.6 Contractor must immediately notify the College and College upon learning that a Staff member is carrying or has contracted an infectious disease including Covid-19.
- 5.2.7 Contracted employees shall leave the College campus promptly following conclusion of the employees work shift.
- 5.2.8 Contractor agrees that no supervisory employees of College shall be hired by Contractor for the term of this Contract and six (6) months thereafter. College acknowledges that Contractor has invested considerable amounts of time and money in training its supervisory employees in the systems, procedures, methods, forms, reports, formulas, computer programs, plans, techniques, and other valuable information which is proprietary and unique to Contractor’s manner of conducting its business and that such information is available, on a confidential basis, to Contractor’s supervisory employees. Therefore, College agrees that supervisory employees of Contractor will neither be hired by College for the term of this Contract and six (6) months thereafter, nor will College permit supervisory employees of Contractor to be employed on College’s premises for a period of six (6) months subsequent to the termination of this Contract (unless such employees were formerly employees of College). For the purpose of this prohibition, “supervisory employees” shall be defined as those persons who have directly or indirectly performed management or professional services on College’s premises at any time during the twelve (12) month period immediately preceding termination of this Contract.

5.3 Location.

- 5.3.1 Unless otherwise agreed by College, Bookstore Operations and other related services must be carried out in the Bookstore Location. Contractor may not close any portion of the campus bookstore without the express written permission of College.
- 5.3.2 Contractor acknowledges FIT is exploring an opportunity to relocate the Bookstore Operations to a street level location on the ground floor of 244 West 27 Street just across from the main campus ("The Proposed Future Bookstore"). The relocation and build out of the Proposed Future Bookstore is expected to take place during the first term the contract.

5.4 Inventory.

- 5.4.1 Contractor must stock, display and offer for sale in the campus bookstore, in sufficient quantities:
 - (A) all required and recommended College course materials as specified by the College faculty, and all other required and recommended College course-related materials and supplies. If textbooks are published in hard cover, soft cover and electronic editions, Contractor must provide soft cover and electronic editions;
 - (B) Merchandise compatible with the educational mission of the College and including, but not limited to, general paperback, technical and reference books; educational materials and supplies; magazines; soft goods; computer software; stationary; licensed Insignia Goods; jewelry and desk accessories; and other goods of quality and character consistent with a first-class college bookstore; and
 - (C) Stock The Museum at FIT merchandise and publications, as well as books by authors associated with the Museum.
- 5.4.2 Contractor may not sell or offer items such as cigarettes, smoking paraphernalia, pornographic magazines, and any other materials that may be deemed inappropriate to the College. Contractor shall withdraw promptly from display and sale any such item at the College's request. College reserves the right to confiscate such materials in its best interest upon Contractor's failure to so withdraw them.
- 5.4.3 Contractor represents and warrants that to the best of its knowledge, based on written certifications from the manufactures, all apparel and sports equipment sold in the campus bookstore will be manufactured in compliance with all applicable labor and occupational safety Laws, including, but not limited to, child labor Laws, wage and hours Laws and workplace safety Laws.
- 5.4.4 Contractor may not sell any food or beverages which conflict with the terms of the College's contract with food service and other vendors.

- 5.4.5 Contractor must purchase from the previous Bookstore Operations vendor, if other than Contractor, the remaining stock of Insignia Goods.

5.5 Pricing and Refund Policies.

Contractor must maintain the following pricing policies:

- 5.5.1 New textbooks will be sold at no greater than (1) the verifiable publisher's list price or suggested retail price, or (2) a ____ (x%) percent gross profit margin on net price books (i.e., Contractor's net cost divided by ____). "Net price books" are defined as books that do not have a publisher's suggested list price or books for which the publisher's discount to Contract is less than ____% of the list price.
- 5.5.2 Course packs and textbooks purchased from publishers with restrictive or non-returnable text policies will be priced at up to a ____% gross margin.
- 5.5.3 Used textbooks in good condition, either hard or soft cover, will be sold at prices that do not exceed 75% of the current new book price, as determined by 5.5.1.
- 5.5.4 Other bookstore merchandise will be sold at no more than markups standard to the college bookstore industry or at the suggested retail price, whichever is lower.
- 5.5.5 Contractor must purchase used textbooks, academic books, and trade books back from students, faculty and staff on a time schedule convenient to the College Community and based on the following policies:
- (A) Contractor must purchase used textbooks adopted for the next academic term in quantities sufficient to meet course requirements at not less than fifty (50%) percent of the student's purchase price. Contractor shall purchase used books not adopted for the next academic term to an announcement of the publisher, at the highest national wholesale price.
 - (B) In all other cases, Contractor must pay no less than the highest national wholesale price.
- Contractor, must offer buy-back either in-store, online or via a table and/or tent on campus during the finals each semester, for the purpose of purchasing used textbooks from students.
- 5.5.6 Contractor must offer for sale digital versions of the fullest possible range of required and recommended textbooks and other course materials. The pricing of these items must be consistent with industry practice and must be lower than the costs for the new printed versions of these items.
- 5.5.7 Contractor must offer for rent the fullest possible range of required and recommended textbooks and other course materials. The pricing of these items must be consistent with industry practice and must be lower than the costs for the new printed versions of these items.

5.5.8 All school supplies will be priced at the lower amount of Contractor's manufacturer's suggested retail price or locally competitive prices.

5.5.9 Contractor return policy shall be as follows:

(A) Textbooks. The bookstore will issue refunds in the original form of payment for textbooks purchased at the campus bookstore if returned in the original condition, with an original receipt and within the two weeks of classes. Within 30 days of the first day of classes, textbooks will be refunded with an original receipt and with a valid proof of add/drop.

(B) General Merchandise. Contractor will issue refunds in the original form of payment any time during the semester for other merchandise purchased at the campus bookstore if returned in the original condition and with the original receipt. If without a receipt, a store credit will be issued at the current selling price.

5.5.10 Contractor may not change bookstore pricing, refund, or sales policies without College's prior approval.

5.5.11 Contractor must throughout the academic year, in accordance with sound business practices, special sales prices on books, supplies and other bookstore merchandise.

5.5.12 Contractor must conspicuously display bookstore pricing, refund and sales policies.

5.5.13 At College's request, Contractor must provide documentation of its compliance with the policies described in this Section 5.

5.6 Textbook Ordering Procedures.

- 5.6.1 Contractor must integrate its _____ internal system(s) and College's Student Information System (SIS) and Single-Sign-On (SSO) for faculty to access Contractor's online textbook and course-related supply adoption portal. Contractor shall be responsible, at its cost and expense, for, including but not limited to, developing, installing, and maintaining adoption portal.
- 5.6.2 Contractor shall provide informational items during training sessions, either online or in-person, for faculty on use of Contractor's adoption portal at start of the Contract and at the beginning of each semester in coordination with various academic departments, faculty coordinators and faculty.
- 5.6.3 Contractor shall fill orders for books, and make best efforts to fill orders for supplies required for art, accessories and/or design courses from term to term in accordance with textbook and supply adoptions by the faculty. The Bookstore Operations manager shall be given notice by the faculty or authorized department designees of the textbook and supply adoptions for all courses offered as follows:
 - (A) On or before October 1 for the spring semester.
 - (B) On or before March 1 for the summer sessions.
 - (C) On or before April 1 for the fall semester.
- 5.6.4 Contractor must use its best efforts to obtain advance notice of textbook commitments from faculty in order to facilitate use of, including but not limited to, used textbooks, digital and rental textbooks. FIT shall not be responsible for compiling, nor shall it maintain, a list of such adoptions.
- 5.6.5 Contractor must use its best efforts to ensure prompt and timely ordering and delivery of textbooks and course-related materials and supplies. "Best efforts" includes purchasing out-of-stock texts from other stores and providers at no additional cost to students.
- 5.6.6 Contractor must provide timely reports to faculty concerning problems that may affect orders, such as unavailability, new editions, or delays in delivery, and explain contingency plans the Contractor will make in the event that demand exceeds available supply.
- 5.6.7 Contractor must notify faculty if and when textbook and course-related supply order requests are reduced.

- 5.6.8 Contractor will not be responsible for the unavailability of textbooks or course-related materials and/or supplies on the first day of classes due to faculty failure to complete and submit course materials and course-related supplies adoptions, as the case may be, the College's failure to provide course materials list to Contractor, in a timely manner.

5.7 Special Services

- 5.7.1 Contractor must provide special order book services at no cost for faculty, students and staff. Contractor may establish appropriate deposit requirements.
- 5.7.2 Contractor must provide course materials publishing (course pack) services. These services must be consistent with the highest professional standards, and Contractor must maintain documentation of all copyright permissions, and consistently follow all copyright Laws. Absolutely no duplicated material may be sold in the campus bookstore without copyright permission or proof that all texts are in public domain on file with Contractor. Contractor must provide such services at competitive prices.
- 5.7.3 At College's request, Contractor must provide cap and gown services, including rental, distribution and collection, for College commencement exercises. Contractor must provide such services at competitive prices.
- 5.7.4 At College's request, Contractor must set up table(s) or pop-up store during the College's commencement ceremony(s) to sell Insignia Goods, graduation apparel and gifts.
- 5.7.5 At College's request, Contractor will participate and set up table(s) during student, alumni, and college events, including, but not limited to, new student orientation, college open house, student move-in weekend and family weekend. Contractor must use its best efforts to offer student discounts during such events.
- 5.7.6 Contractor shall support The Museum at FIT events by including, but not limited to, providing books and sales staff at books signings in the Museum associated with exhibitions and lectures for the Fashion Culture series (monthly during the Fall and Spring semesters) and the annual Fashion Symposium held each November.

5.8 Methods of Payment.

Contractor must accept payment for bookstore merchandise in cash or by major credit card, debit, FIT campus card, financial aid charges, scholarship program charges or college purchase order or check. Contractor must also provide for credit/charge sales to College departments and offices using College accounts. Contractor may accept other forms of payment in its own discretion.

5.9 Bookstore Website.

- 5.9.1 Contractor must provide a website for the bookstore that is accessible to College students, faculty, staff, alumni, and the general public (The “Bookstore website”). Unless otherwise specified in this contract, all references to the “Bookstore Operations,” and to services to be provided by the Contractor apply to both the Bookstore website and the bookstore on the College campus. College will ensure that an electronic link to the Bookstore website is placed on the student section of the College website.
- 5.9.2 All required and recommended textbooks and other required and recommended course-related materials and supplies as well as a selection of other bookstore merchandise, must be available for purchase on the Bookstore website. Merchandise purchased through the Bookstore website must be priced the same as at the campus bookstore.
- 5.9.3 The look and feel of the Bookstore website, including all texts, photos, graphics, and College and SUNY logos, trademarks and trade names, is subject to the written approval of College.
- 5.9.4 The Bookstore website must include:
 - (A) prominent link to pages showing the location and hours of the campus bookstore, contact information, rental, buyback and refund policies, and accepted forms of payment;
 - (B) a method for easy on-line ordering of textbooks, course materials, supplies and Insignia Goods;
 - (C) online buyback and rental return options;
 - (D) a secure method of accepting credit, debit and FIT campus card payments;
 - (E) link to or information on faculty course materials and course-related supplies adoption portal;
 - (F) customer service; and
 - (G) a link to the College website.
- 5.9.5 Contractor must not include links to chat rooms or list serves on the Bookstore website.
- 5.9.6 All commercial advertising and links to non-College and non-SUNY websites appearing on the Bookstore website are subject to College’s approval.

- 5.9.7 College will periodically review the content of the Bookstore website for objectionable or inappropriate material. Upon written request by College, Contractor must immediately remove any text or other material that College finds deleterious to College and SUNY's good name.
- 5.9.8 Contractor may not register a domain name for the Bookstore website that includes the College name or initials, "SUNY" or "The State University of New York" without the express written permission of the College. In the event that the College grants such permission, Contractor must assign such domain name to College or SUNY, at no cost, upon any termination of the Contract.
- 5.9.10 All required and recommended textbooks and other required and recommended course-related materials and supplies ordered through the Bookstore website must be available within 48 hours at the campus bookstore, and no charges for shipping or handling may be assessed. Bookstore website customers must also have the option of requesting home delivery of any bookstore merchandise ordered through the Bookstore website by UPS or comparable carrier at general market rates.
- 5.9.11 Contractor represents and warrants that the Bookstore website is and will be an original work of authorship or is delivered from pre-existing works as to which it owns or has licensed the rights, and to the best of Contractor's knowledge does not infringe the rights of any third party.

5.10 POS and Other Equipment.

- 5.10.1 Contractor must provide and install, at no cost, to the College a point-of-sale system (POS), as described in Contractor's proposal, as well as all other equipment not provided by College and necessary to efficient Bookstore Operations ("Contractor Property"). The POS must be in compliance with PCI guidelines.
- 5.10.2 With the exception of those items of Contractor Property that are included in the Capital Improvements and Furnishing Plan, Contractor Property will not become the property of the College and may be removed, at any time and from time to time during the term of this Contract and any renewals. An initial inventory of Contractor Property (except that included in the Capital Improvements and Furnishing Plan) is attached as Appendix C. Contractor must update this list at least annually.
- 5.10.3 College shall be provided access, with sufficient notice, to the Bookstore Operations accounting records. This must include sales information captured in Contractor's POS.

5.11 Housekeeping and Maintenance.

5.11.1 Contractor must keep the Bookstore Location as well as all furnishings, fixtures and equipment therein in a clean, neat, safe condition. Without limitation, Contractor must:

- (A) daily clean floors, tables, chairs, and equipment;
- (B) promptly replace burnt out light bulbs; and
- (C) clean interior windows six (6) times a year.

5.11.2 Contractor must:

- (A) provide sufficient liners for rubbish and recycling receptacles; and
- (B) collect, separate for recycling and deposit rubbish and recyclables in the appropriate receptacles.

5.11.3 Contractor must coordinate time and routing of deliveries with College.

5.11.4 Contractor must maintain and repair and protect College Property and Contractor Property, including but not limited to obtaining and paying the cost of preventative maintenance and repairs. Contractor must obtain prior written approval from College before servicing or repairing College Property. College agrees that it will be responsible for all repairs and maintenance to the infrastructure of the College building in which the campus bookstore is located, subject to the provisions in Section 8.5.

5.11.5 College will provide extermination services to the campus bookstore.

5.12 Improper Use.

Contractor may not use Bookstore Operations in connection with operations unrelated to the College.

5.13 Meetings.

Contractor and representatives of College will meet from time to time to discuss administration of this Contract, evaluation of Bookstore Operations and such other matters as may arise. See also Section 6.9.

5.14 Capital Improvement and Furnishing Plan.

In consideration of the College's agreement to award the management and operation rights for Bookstore Operations on the College's campus to

Contractor under the terms set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor shall make a financial commitment to College in an amount of \$_____ (the "Financial Commitment"). \$_____ of the Financial Commitment will go towards the Bookstore Location and \$_____ will go towards the Proposed Future Bookstore.

- 5.14.2 Contractor may not begin the work of the Capital Improvement and Furnishings Plan prior to its written approval by College. Following approval by College, Contractor must complete the Plan pursuant to the approved schedule.
- 5.14.3 Upon or before conclusion of the work of the Capital Improvement and Furnishing Plan, Contractor must submit to College detailed and readily verifiable invoices showing Contractor's expenditure of the minimum Plan amount set forth above for both the Bookstore Location and Proposed Future Bookstore. In the event that the submitted cost of the Plan work is less than the agreed amount, or there are funds left from the \$_____ capital commitment at the completion of the Plan, the remaining funds will be turned over to the College and used at its discretion.
- 5.14.4 Any equipment purchased by Contractor on College's behalf shall be purchased as a "sale-for-resale" to College. Upon such resale, title to all equipment and improvements made to the Bookstore Operations pursuant to the Capital Improvement and Furnishing Plan, including furnishings and fixtures, will transfer to College, free of liens with exception of those items that bear Contractor's logo, service marks or trademarks.
- 5.14.3 College acknowledges that it is a tax-exempt entity and will provide Contractor with a copy of the appropriate tax-exempt certification. Contractor shall amortize the Financial Commitment on a straight-line basis over a period of five years from August 1, 2023, to July 30, 2028. Upon expiration or termination of this Contract by either party for any reason whatsoever prior to the complete amortization of the Financial Commitment, College shall reimburse Contractor for the unamortized balance of the Financial Commitment within thirty (30) Days of expiration or termination of this Contract.
- 5.14.4 Contractor must obtain College's prior written approval to make any changes to Bookstore Location or Proposed Future Bookstore not described in the Capital Improvement and Furnishing Plan, including attaching Contractor Property to Bookstore Operations or other College property.

5.15 Sustainability.

Contractor acknowledges that FIT is committed to incorporating sustainability into the fabric of the College. Contractor further acknowledges that on April 24, 2008, Governor Paterson issued Executive Order Four that requires College to develop and implement a Sustainability and Environmental Stewardship

Program that is designed to reduce the environmental impact of the activities and operations of the College. Contractor agrees to assist College in achieving its sustainability goals as well as through such other activities and programs that the Contractor may implement.

5.16 HEOA Compliance.

Contractor shall assist College to comply with the textbook provisions of the Higher Education Opportunity Act, including by disclosing to College, at its request and in electronic format, the ISBN and retail price information of required and recommended textbooks and supplemental materials for each course listed in the College's course schedule. The parties acknowledge that any list of textbooks compiled by Contractor is proprietary information of Contractor and protected from disclosure under public records Laws. The parties further acknowledge that the College and SUNY intend to comply with HEOA through a platform developed at the College. Such college-generated textbook lists are College records and may be subject to disclosure pursuant to the New York State Freedom of Information Law.

5.17 First Day/Equitable Access Programs.

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Section 6 - COMMISSIONS, PAYMENT, AND ACCOUNTING MATTERS

6.1 Commissions and Other Support.

In consideration of the rights granted to Contractor by College under this Contract, Contractor agrees to pay College the greater of (i) the commission percentages and (ii) the guaranteed minimum annual payment, set forth below:

Commission Percentages

Or

a guaranteed minimum annual payment to College, regardless of Gross Sales, in the amount of \$_____ whichever is greater.

Contractor will also provide the following additional support to College:

6.2 Gross Sales.

6.2.1 “Gross Sales” means aggregate revenues from Bookstore Operations, excluding the following: (A) sales, use or excise taxes imposed and collected by Contractor directly from customers and paid over to any governmental agency; (B) sales, if any, to the College community by Contractor at cost, as may be made with the prior written approval of College; and (C) refunds.

6.2.2 In the event the Contractor extends credit/charge sales to College departments, offices and organizations, these credits/charge sales must be included in Gross Sales figures at the time the sale was made, regardless of when Contractor receives payment.

6.3 Monthly Payments and Reports. Contractor must submit commissions and other payments due to College on a monthly basis within thirty (30) days of the month’s end. Payments must be made by check payable to College or electronic funds transfer to: Sterling National Bank ABA#221970443, Fashion Institute of Technology A/C#3803026401.

6.3.1 **Management Report.** Payments must be sent to the Fashion Institute of Technology 227 West 27 Street, NY, NY 10001 attention: Director of Contracted Services and accompanied by a management report signed by the controller or comparable officer of the Contractor and showing:

- (A) Gross Sales and permitted deductions by store (campus bookstore and Bookstore website) and category (new textbooks, used textbooks, rental textbooks, digital textbooks, course materials, school supplies, merchandise, apparel and gifts) by month and YTD;
- (B) commissions paid to College by month and YTD, and
- (C) such other information as may be reasonably requested by College.

6.3.2 **Monthly Profit and Loss Statement.** Contractor must also submit to College a monthly profit and loss statement within 30 Days of the month’s end.

6.4 Year-End Reconciliation. One year from the effective date of this Contract, and each full year thereafter during the life of this Contract, Contractor must pay College that portion of commissions as may as yet be due so as to equal the commission percentages required by this Contract. Payment must be made by the 30th Day of the first month of the following Contract year and recorded as commissions paid in the year due. On expiration or termination of this Contract, commissions due, if any, must be calculated and paid based on that portion of a full year for which Bookstore Operations were provided.

6.5 Late Payments. Delinquent payments are subject to a late payment fee of one-and-one-half percent (1-1/2%) per month, or portion thereof, of any balance due.

6.6 Records. Contractor must maintain complete, accurate and separate books of account together with appropriate, detailed, supporting data and documents (including daily cash register tapes), in accordance with generally accepted accounting principles, for all transactions relating to the Bookstore Operations (the "Records"). Such Records must be held in compliance with Section 6 of the Standard Contract Clauses attached to this Contract as Appendix F.

6.7 Renegotiation. The financial terms set forth in this Contract and obligations assumed by Contractor are based on conditions in existence on the date Contractor commences operations, including by way of example, College's student population. In addition, Contractor has relied on representations regarding existing and future conditions made by College in connection with this Contract.

In the event of a change in the conditions or the inaccuracy or breach of, or the failure to fulfill, any representations by College, the financial terms and other obligations assumed by Contractor shall be renegotiated on a mutually agreeable basis to reflect such change, inaccuracy or breach.

6.8 Inspection. College or its auditors may inspect and review Records and may require Contractor to furnish such other financial information related to Bookstore Operations, as College deems appropriate. In the event of any question as to the dollar amounts due College or Contractor, the decision of College's auditors will be final and binding upon both parties to this Contract.

6.9 Meetings. College and Contractor will meet at least quarterly to review monthly reports, explain deficiencies, discuss problems, and mutually agree on courses of action to improve the results of Bookstore Operations. Any adjustments to a monthly report required as a result of review and/or audit will be identified and reflected on the next monthly statement.

6.10 Annual Audit. Contractor must furnish to College as soon as available, and in any event within ninety (90) days after the end of each fiscal year of Contractor, financial and/or operating statements of Contractor as of the end of such fiscal year prepared by Contractor's Chief Financial Officer in accordance with GAAP. These financial and/or operating statements must include a record of all sales and commissions from Bookstore Operations.

6.11 No Liability for Credit. College assumes no liability for credit extended by Contractor to College, faculty, staff, students, alumni, or any other person or entity. Contractor must bill credit/charge sales (the "Receivables") to College departments, offices, organizations and individuals directly to those customers. Contractor is solely responsible for the collection of Receivables. Contractor may not offset Receivables against commissions or other amounts due to College by

Contractor, or condition payment of such commissions or other amounts to payment of Receivables.

Section 7 - UTILITIES

- 7.1** College will furnish at no cost to Contractor all necessary heat, water, gas, electricity, and air conditioning (the “Utilities”) for the efficient performance of Bookstore Operations, except as follows:
 - 7.1.1** Contractor will be responsible for any costs that result from changes in existing electrical service, plumbing service, ventilation, lighting, etc. required by Contractor to perform this Contract.
 - 7.1.2** College does not guarantee an uninterrupted supply of the Utilities and will not be liable for any damages or compensation should the provision of Utilities be interrupted.
- 7.2** Contractor must use best efforts to comply with energy conservation measures by turning off or down (including low-power mode) lights, fans, vending machines, and other energy consuming items, when the bookstore is not in use or when business volume dictates a reduction in the use of Utilities.
- 7.3** Contractor must obtain, maintain and pay for off-campus telephone lines, DSL line for credit cards, and facsimile services. College will provide an on-campus telephone extension line for Contractor’s convenience.

Section 8- SECURITY AND RISK OF LOSS

- 8.1** College will supply Contractor with two complete sets of keys to the bookstore. Contractor will be responsible for these keys and for the cost of replacement of lost keys. If College determines that keys lost by Contractor or its Staff could compromise campus security, Contractor will be responsible for all costs associated with re-keying the affected Bookstore Location.
- 8.2** Contractor must immediately report to College all fires, thefts, break-ins and other law enforcement and security matters, as well as accidents involving its Staff or customers.
- 8.3** Contractor bears the risk of loss or damage to Bookstore Operations inventory, whether in transit, on display or in storage. Contractor also bears the risk of loss for monies collected pursuant to Bookstore Operations. Losses or shortages of cash will not diminish monthly payment of commissions.
- 8.4** Contractor bears the risk of loss or damage to Contractor Property. College is not responsible for any losses Contractor may incur due to damage to Contractor Property arising from any cause. College assumes no responsibility for the

protection of Contractor Property against loss arising from vandalism, theft, fire, water or other causes.

- 8.5** Contractor bears the risk of loss or damage to College Property and Bookstore Location except if College makes a determination that the loss or damage was due to causes beyond Contractor's control or to robbery, fire, bombs, or similar causes or acts of third persons not employees or invitees of Contractor and provided that Contractor properly secured Bookstore Location and provided also that the foregoing causes or acts were not directed at Contractor. Except in the case of such excused loss or damage, Contractor must reimburse College at College's cost for the repair or replacement of such College Property and/or Bookstore Location. College will give Contractor written notice of amounts to be reimbursed. Contractor must reimburse College within 60 Days of the date of said written notice.

Section 9 - FORCE MAJEURE

- 9.1** Notwithstanding anything to the contrary contained in this Agreement, neither party shall be liable, nor shall any credit or other remedy be extended, for such party's failure, in whole or in part, to fulfill its obligations under this Agreement where such failure arises from or in connection with causes reasonably beyond such party's control, including, but not limited to, acts of God, war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject Party (each a "Force Majeure Event").
- 9.2** This provision shall become effective only if the Party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Event and takes all reasonable steps to minimize damages and resume performance.

Section 10 – INFORMATION SECURITY.

10.1 With regards to information security, Contractor agrees to the following:

- (A) Contractor shall comply with all relevant data governance standards including, but not limited to, PCI, HIPAA and The Family Educational Rights and Privacy Act as discussed in Section 21.
- (B) Contractor shall protect College data consistent with prevailing industry standards, but no less rigorously than protect its own data.
- (C) Contractor shall allow College to review its third-party information technology security policies.
- (D) Contractor shall allow College to review public security assertions such as SOC, if applicable.
- (E) Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all data to College, or if return is not feasible, destroy any and all data. If the Contractor destroys the information, the Contractor shall provide College with a certificate confirmation the date of destruction of the data.
- (F) Contractors shall limit its staff's access to the College's data on a need-to-know basis.
- (G) Contractor shall require background checks for all Contractor's staff who have access to College's data.
- (H) Contractor shall quickly remove access to College's systems any staff who leaves Contractor's employment.
- (I) Contractor shall keep the server that is attached to the College network patched and current with Anti-virus software.
- (J) Contractor must log its access to College data.
- (K) Contractor shall reimburse College for any hardware or software that College needs to purchase in order to make Contractor's product or service work with College's system.
- (L) Contractor shall hold its subcontractors to requirements of this Section 10.1.

- 10.2** If Contractor provides third parties with access to the College's systems:
- (A) Contractor shall require a unique ID for each third party who accesses the College's data.
 - (B) Contractor shall require that the third party use unique and strong passwords.
 - (C) Contractor shall require that third party have a two-factor authentication process.
- 10.3** Contractor agrees to defend, indemnify and hold harmless College, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all claims, demands, liabilities, expenses, losses of every nature and kind, including but not limited to reasonable outside attorney's fees and costs, as a result of any and all claims related to unauthorized access or use of the College's systems or data due to Contractor's negligence or failure to meet its obligations under this Section 10.
- 10.4** In connection with the services being provided hereunder, Contractor may need to operate certain information technology systems not owned by College ("Contractor Systems"), which the parties expressly agree will not connect to or interface with College's internet access, networks, software, or information technology systems ("College Systems"). Contractor will be solely responsible for all Contractor Systems, and College will be solely responsible for College Systems, including taking the necessary security and privacy protections that are reasonable under the circumstances. If Contractor serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Contractor will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data ("Data Protection Rules"). If the parties subsequently agree to connect or interface Contractor Systems with College Systems, then the parties expressly agree hereby that (1) they will mutually agree on an amendment to this section appropriately allocating responsibility for compliance with data protection laws, regulations, and standards; (2) such connection or interface will not be implemented until the parties mutually agree on such amendment; and (3) in any event, Contractor will not owe a duty of indemnity arising under this section unless the parties have properly agreed on appropriate amendments to this section and College has performed its obligations related thereto.

Section 11 - INSURANCE

- 11.1** Contractor must procure and maintain at its own cost throughout the term of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with performance of the Bookstore

Operations by Contractor or its Staff. Contractor must provide minimum insurance coverage as follows (the "Required Insurance"):

Workers' Compensation and Employers Liability	As required by New York State Law.
Commercial General Liability (ISO Form CG0001, ed. 2001)	\$3,000,000 combined single limit for bodily injury and property damage, with an aggregate minimum for this Contract of \$6,000,000.
Professional Liability Insurance	\$3,000,000 combined single limit per incident and \$6,000,000 aggregate. Each professional person providing services to implement this Contract for or through the parties with limits of no less than \$3,000,000 per incident and \$6,000,000 per aggregate.
Business Automobile Liability Insurance (ISO Form CA0001, ed. 10/01)	\$1,000,000 combined single limit per accident for bodily injury and property damage, and covering all owned, non-owned or hired vehicles used by Contractor in connection with the Bookstore Operations.
Umbrella Excess Liability	\$5,000,000 combined single limit over the primary employers' liability, commercial general liability and automobile liability coverage.
Cyber Liability Insurance	\$10,000,000 per incident. Specifically, Technology, Errors, and Omissions (Network Security and Privacy Liability Insurance) insurance in amounts not less than \$10,000,000 per claim and in the annual aggregate.

11.2 Each Required Insurance policy must specifically include liability assumed by Contractor under this Contract.

11.3 Each Required Insurance policy must be underwritten by a licensed insurance company authorized to do business in the State of New York and with a minimum of an "A-VII" rating in the current edition of A.M. Best's Insurance Guide.

11.4 Required Insurance coverage may not be suspended, voided, canceled, reduced

in coverage or limits except after no less than 30 Days prior written notice has been given to College, nor may any Required Insurance policy be suspended, voided, canceled, reduced in coverage or limits by Contractor without the prior consent of College. Notice pursuant to this Section must be sent by certified mail or overnight courier and addressed to College at the address listed at the beginning of this Contract. No cancellation provision in any Required Insurance policy may be construed in derogation of the continuous duty of Contractor to furnish insurance during the term of this Contract.

- 11.5** Each Required Insurance policy (except Workers' Compensation and Employers Liability) must be endorsed (which may be by means of a blanket endorsement) to include Fashion Institute of Technology, its auxiliary corporations, The State University of New York, the New York City Department of Education and the City and State of New York (the "Additional Insureds"). Such policies must stipulate that the insurance provided is primary insurance in respect of the Additional Insureds, and that any other insurance or self-insurance maintained by the Additional Insureds is excess and not contributory insurance. The Required Insurance must apply separately to each Additional Insured against whom a claim is made, or suit is brought, subject to each policy's limit of liability. Additional Insureds must be covered as respects: (i) liability arising out of activities performed by or on behalf of Contractor, (ii) products and completed operations of Contractor, (iii) premises owned, leased, or used by Contractor, and (iv) automobiles owned, leased, hired or borrowed by Contractor. Any insurance coverage that Contractor provides for College and their respective directors, officers and employees shall only cover liability assumed by Contractor in this Contract; such insurance coverage shall not cover liability in connection with or arising out of the sole wrongful or sole negligent acts or omissions of College and their respective directors, officers and employees.
- 11.6** The Commercial General Liability policy must not contain any exclusions or endorsements that are not acceptable to College.
- 11.7** Contractor must ensure that each Required Insurance policy (except Workers' Compensation and Employers Liability) includes a waiver of all rights of subrogation against the Additional Insureds for losses arising from Bookstore Operations.
- 11.8** Contractor must furnish certificates to College evidencing all Required Insurance and endorsements naming the Additional Insureds, before commencing Bookstore Operations.
- 11.9** Contractor is solely responsible for payment of all premiums for the Required Insurance and is solely responsible for payment of any deductibles to which such policies are subject.
- 11.10** Contractor must promptly notify College of any accidents arising in the course of performance of Bookstore Operations causing bodily injury or property damage.

- 11.11** Notwithstanding the limits of Required Insurance, Contractor is liable for any and all personal injury (including death) or property damage caused by the negligence of Contractor, its directors, officers or Staff. College agrees that Contractor's Required Insurance will not cover liability for any action where the College is proven solely negligent.
- 11.12** Contractor must ensure that its subcontractors and agents comply with this Section. Contractor must include all subcontractors and agents as insureds under the Required Insurance policies or furnish separate certificates for such subcontractors and agents indicating compliance with the Required Insurance.
- 11.13** Failure on the part of Contractor to procure or maintain Required Insurance constitutes a material breach of this Contract. Upon such breach, College may immediately terminate this Contract, or, in its sole discretion, procure or renew such insurance, and pay any and all premiums in connection therewith. College may charge the costs thereof to money due or that may become due to Contractor, or if there is no money due, Contractor agrees to promptly pay College such costs.

Section 12 - ASSUMPTION OF RISK AND INDEMNIFICATION; WAIVER

- 12.1** Contractor is solely responsible for any and all injuries to persons (including death), damage to property, and loss, expense, inconvenience and delay, arising out of or in connection with the performance of Bookstore Operations, or from any act, omission or neglect of Contractor, Contractor's directors, officers or Staff.
- 12.2** Contractor agrees to indemnify, defend and hold harmless College, its auxiliary corporations, the State University of New York, the New York City Department of Education and the City and State of New York, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, from any and all actions, claims, demands, damages, fines, losses, liabilities, judgments, liens, and expenses of any kind (including, without limitation, court costs, attorneys' fees and related disbursements), arising out of or in connection with (i) the breach by Contractor of any of its agreements or covenants under this Contract, (ii) the untruth of any of Contractor's representations and warranties under this Contract, (iii) the actual or alleged infringement or violation of any patent, copyright, trademark, service mark, trade secret, or proprietary right, (iv) bodily injury sustained by any employee of Contractor or of Contractor's subcontractor, franchisee or agent arising out of and in the course of employment by Contractor or by Contractor's subcontractor, franchisee or agent, (v) the performance of Bookstore Operations by Contractor and Contractor's Staff, or (vi) any claim by the Internal Revenue Service that monies, services or other support received by College pursuant to this Contract constitute taxable unrelated business income.

- 12.3** Contractor and College mutually agree to indemnify, defend, and hold the other harmless from third-party claims arising out of or in connection with the negligent acts or omissions in performing obligations under this Contract.
- 12.4** Contractor hereby releases College, its auxiliary corporations, the State University of New York, the New York City Department of Education and the City and State of New York, and each director, trustee, officer, employee, agent, successor and assign of any or all of them, from any and all liability hereunder.
- 12.4** The provisions of this Section will survive the expiration of this Contract.

Section 13 - CONTRACTOR'S INDEPENDENT STATUS

- 13.1** The status of Contractor is that of an independent entity. Nothing contained in this Contract, nor any act of the parties, will be construed as creating a partnership, joint venture, agency, or association of any kind, between College and Contractor, nor as making College in any way responsible for the debts or losses of Contractor.
- 13.2** All personnel furnished by Contractor as required under this Contract are Staff of Contractor, and not of College, City or State, nor of any affiliated entity, agency, department, board, authority, or instrumentality of any of them and Contractor alone is responsible for their work, their personal conduct while performing this Contract and their direction and compensation. Nothing included in this Contract imposes any liability or duty upon College, City or State to Contractor's Staff, nor makes College, City or State liable to any other Person or government for the acts, omissions, liabilities, debts, liens, obligations, or taxes of whatever nature, including but not limited to unemployment insurance and Social Security taxes, of Contractor or Contractor's Staff.
- 13.3** Contractor acknowledges that for the purposes of the Immigration Reform and Control Act of 1986 (the "Act"), Contractor is an "independent contractor" as defined in the Act and its regulations, and that College is not an "employer" under the terms of the Act and its regulations with regard to Bookstore Operations. As a result, the responsibility of complying with the provisions of the Act lie solely with Contractor.
- 13.4** Contractor expressly represents that it is aware of the requirements of the Act with regard to the employer's responsibility for ensuring compliance with the Act and its regulations, and for maintaining the proper forms showing that the verification process was completed.
- 13.5** Contractor expressly represents to College Contractor's intention to abide by the provisions of the Act.
- 13.6** At College's request, Contractor shall produce for inspection its records evidencing Contractor's compliance with the Act.

- 13.7** Contractor agrees that to the extent permitted by Law, Contractor will defend, indemnify and hold harmless College, City and the State, and each trustee, director, officer, employee, agent, successor and assign of any or all of them, for any penalty which may be applied to any one or all of them as the result of the hiring by Contractor of an unauthorized alien during the term of this Contract.
- 13.8** Contractor will permit no liens whatsoever to be placed against the property of College and, should such liens attach, Contractor will take all steps necessary to accomplish the prompt removal of them.

Section 14 - USE OF NAME; ADVERTISING

- 14.1** Contractor may not use the name, or any logo, mascot, seal, trademark, trade name or other proprietary mark of College for brand or product endorsement. Any other use is subject to College's prior written approval.
- 14.2** Contractor may not post any signs or posters on, or visible from, the exterior or in common areas of College buildings or grounds, or distribute any fliers or brochures outside the Bookstore Operations, without advance written approval of the College. The replacement, maintenance, safety, and removal of such materials are Contractor's responsibility.
- 14.3** In all purchase orders, and in commitments to vendors, suppliers, building contractors, in banking and in similar relations of Contractor in connection with the Bookstore Operations, Contractor must use its full corporate name and address, in prominent association with any College address, in order to make it clear that any undertaking is Contractor's and not that of College.
- 14.4** Contractor must make prompt and timely payments to its franchisors, suppliers, and subcontractors.
- 14.5** Contractor must obtain the prior written approval of College before Contractor or any of its officers, Staff, or agents makes any statement to the press or issues any communication or publication bearing on the Bookstore Operations.

Section 15 - COLLEGE'S ADDITIONAL RIGHTS

- 15.1** College has the right of access Bookstore Location at all times.
- 15.2** College has the right to establish rules, regulations, and policies regarding the use of Bookstore Location.
- 15.3** College and other organizations and groups affiliated with College have the right to use campus bookstore from time to time during Contractor's non-operational hours for College purposes as may be required. To the extent possible, College

will provide to Contractor advance notice of such use. Such users will be responsible for appropriate setup and cleanup. The Bookstore Location will be restored to conditions mutually satisfactory to Contractor and College before the next regularly scheduled meal service.

Section 16 - TERMINATION

16.1 Termination for Cause. This Contract may be terminated for cause by College on immediate notice to Contractor as follows:

16.1.1 if Contractor fails to make any payment due under this Contract, and this default remains unremedied for a period of ten (10) Days after notice or demand from College to Contractor and its surety (if there is a performance bond);

16.1.2 if Contractor defaults in the performance or observance of any material term or condition of this Contract (other than a default as described in subsection 16.1.1), or persistently or repeatedly defaults in the performance or observance of any other term or condition of this Contract, and in each case such default remains unremedied for a period of 15 Days after notice from College to Contractor and its surety (if there is a performance bond), or in the case of a default which cannot reasonably be remedied within such period, the Contractor fails to immediately and diligently carry out steps to remedy such default in accordance with instructions of College; or

16.1.3 if Contractor becomes insolvent or otherwise discontinues business.

Termination for cause under this Section 16.1 constitutes grounds for a finding of non-responsibility for other College-affiliated contracts. College's failure to exercise any remedy accruing upon the default of Contractor will not be deemed a waiver of or acquiescence in any future default.

16.2 Other Termination.

16.2.1 College may terminate this Contract in its best interests upon 90 Days' written notice to Contractor.

16.2.2 Contractor may terminate this Contract in its best interests upon 120 Days' written notice to College.

16.2.3 College may suspend or terminate this Contract upon immediate notice to Contractor should the Bookstore Location be destroyed or damaged, either in whole or in part, or rendered unusable. Contractor will not be relieved of any obligations hereunder which have accrued on or prior to the effective date of the suspension or termination. Should this Contract be so suspended or terminated, Contractor hereby expressly waives any

claim for damages or compensation, including but not limited to loss of use, lost profits or actual, special, incidental, indirect or consequential damages of any kind or nature.

16.3 Inventory and Removal of Equipment.

16.3.1 Upon expiration or termination of this Contract, College will conduct a physical inventory of all College Property. The inventory must be equal to the original inventory (see Appendix D), except for the deletion of items of College Property that the College agreed to retire and not replace, and the addition of any furniture, fixtures, equipment and other personal property, provided either by Contractor as part of the Capital Improvement and Furnishing Plan or by the College.

16.3.2 Upon expiration or termination of this Contract, Contractor must remove Contractor Property (except that provided pursuant to the Capital Improvements and Furnishing Plan) from the College premises within ten Days of the date of expiration or notice of termination, as the case may be. Contractor must restore the Bookstore Location to the condition prior to use thereof by Contractor, normal wear and tear and any changes to the Bookstore Location made pursuant to Section 5.14 excluded. Contractor must repair all damage caused by the installation or removal of such Contractor Property. Such Contractor Property not removed from College campus will be deemed abandoned.

16.4 College's Rights. On the effective date of any notice of termination received from College, Contractor must stop performance of Bookstore Operations. Upon termination, College has the right to contract with another party for performance of Bookstore Operations for the unexpired term of this Contract. In the event of a termination for cause, College has the right to charge to Contractor any and all expenses incurred by reason of such termination, including but not limited to the cost of reletting this Contract and any difference in guaranteed annual commissions between this Contract and any substituted agreement. Nothing in this Section will be deemed to limit or waive any other rights or remedies of the College under either Law or contract.

16.5 The rights of termination referred to in this Contract are not intended to be exclusive and are in addition to any other rights available to either party in Law or in equity.

Section 17 - COMPLIANCE WITH LAW

17.1 Contractor and Contractor's Staff must comply with all federal, state and local laws including, but not limited to, laws governing Bookstore Operations as well as all applicable College rules, regulations and policies, and must timely secure, maintain and pay for all federal, state and local licenses, permits, certificates or

other authorizations required for the proper and lawful conduct of Bookstore Operations.

- 17.2** Contractor is solely responsible for taxes, assessments and fees required or assessed in connection with Bookstore Operations, including, but not limited to, sales, use, excise and payroll taxes, and federal, state and local income taxes and must make timely applications, reports and returns required in connection therewith.

Section 18 - PERIOD OF LIMITATION

Contractor may not bring any action against College based upon any claim arising out of this Contract unless it commences the action within one year from the date when the cause of action accrued.

Section 19 - CONTRACT DOCUMENTS

Contractor's Proposal is attached to this Contract as Appendix G and made a part of the Contract. In the event of any inconsistency in, or conflict between, Contractor's Proposal and any other part of this Contract, such other part of the Contract shall control.

Section 20 - MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

College encourages the submission of bids or proposals by certified minority and women-owned business enterprises.

Section 21 – PROTECTION OF CONFIDENTIAL DATA

- 21.1** Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below, that it receives or accesses any such records in performing the services hereunder. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from College may use the information, but only for the purposes for which the disclosure was made.
- 21.2 Definition.** Covered data and information ("CDI") means paper and electronic student education record information supplied by College, as well as any personally identifiable information provided by College's students to the Contractor, if any.
- 21.3 Acknowledgment of Access to CDI.** Contractor does not intend to, nor require, access to CDI. However, Contractor acknowledges that, by virtue of its performance of services on College's premises, such may allow the Contractor access to CDI. Prohibition on Unauthorized Use or Disclosure of CDI: Contractor

agrees to hold CDI in confidence. Contractor shall not use or disclose CDI received from or on behalf of College (or its students) except as permitted or required by the contract, as required by law, or as otherwise authorized in writing by College. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

- 21.4 Return or Destruction of CDI.** Upon termination, cancellation, expiration or other conclusion of the contract, Contractor shall return all CDI to College, or if return is not feasible, destroy any and all CDI. If the Contractor destroys the information, the Contractor shall provide College with a certificate confirming the date of destruction of the data.
- 21.5 Remedies.** Any provision found elsewhere in this contract to the contrary notwithstanding, if the Contractor has materially breached any of its obligations under this Section 20 of this Contract, College, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide College with a fifteen (15) day period to cure the breach; or terminate the contract immediately if cure is not possible. Before exercising any of these options, College shall provide written notice to the Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from College's education records, College may not allow the Contractor access to its education records for at least five years.
- 21.6 Maintenance of the Security of Electronic Information.** Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of College or its students. These measures will be extended by contract to all subcontractors used by Contractor.
- 21.7 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information and Remedies.** Contractor shall, report to College immediately, but no later than 48 hours of its discovery, any use or disclosure of CDI not authorized by this contract or in writing by College. Contractor's report shall identify, to the extent known using reasonable diligence (as applicable): (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by College. If College is required by applicable law to provide notice to any individual or government agency as a result of a Security Breach attributable to Contractor's breach of the confidentiality terms of this

Section pertaining to CDI, Contractor shall reimburse College for its reasonable, out-of-pocket costs in notifying any such affected individual and/or government agency. A "Security Breach" is an unauthorized access to, or unauthorized use or disclosure of, computerized CDI under the control of Contractor that adversely affects the security, confidentiality or integrity of such CDI. In addition, any damages that College may incur as a result of such Security Breach shall not be subject to any limitation of liability set forth in this Contract.

Section 22- MISCELLANEOUS

- 22.1 Governing Law; Choice of Forum.** This Contract is governed by the laws of the State of New York, except where the Federal supremacy clause requires otherwise. All claims and actions brought under or arising from this Contract must be brought either in the courts of the United States or New York State located in New York City.
- 22.2 Assignment.** Neither College nor Contractor shall assign this Contract nor any right, title or interest therein, without the previous consent, in writing, of the non-assigning party (not to be unreasonably withheld); provided, however, that either party may assign the Agreement to an Affiliate without the consent of the other party. For purposes of this Contract, "Affiliate" shall mean a company which controls, is controlled by or is under common control with the assigning party or its ultimate parent company. Any attempt to assign this Contract in violation of Section 22.2 without the non-assignment party's written consent will be null and void.
- 22.3 Confidentiality.** Contractor's Request for Proposal (the "Proposal") is confidential. As such, Contractor retains all rights and respect to the use or implementation of any concepts in its Proposal. In addition, Contractor has stamped certain confidential and proprietary information with the words "CONFIDENTIAL/PROPRIETARY."
- 22.4 Severability.** The terms, clauses and provisions of this Contract are intended to be severable. Declaration of the unconstitutionality, illegality or unconscionability of any term, clause or provision will in no way defeat the effect or validity of any other term, clause or provision.
- 22.5 Headings and Language Interpretation.** The headings used herein have been inserted for reference only and are not substantive parts of this Contract. The use of the singular or plural form includes the other form.
- 22.6 Waiver.** Waiver by College of a breach of any provision of, or right under, this Contract will not operate nor be construed as a waiver of any other or subsequent breach of the same provision or right nor of any other provision or right of this Contract. All remedies, either under this Contract or by Law or otherwise afforded, will be cumulative and not alternative.

22.7 Merger; Amendment. This Contract supersedes any and all other agreements, written or oral, between the parties hereto, and constitutes the entire agreement between the parties with respect to the subject matter hereof. Accordingly, this Contract may not be altered, amended, modified, or otherwise changed, except by a document in writing signed by each party.

22.8 Notices. All notices or other communications which are required or permitted pursuant to the terms of this Contract must be in writing and must be delivered personally, by overnight courier, by email, or by fax machine or deposited in the United States mail, postage prepaid, registered or certified mail, to Contractor or College, as the case may be, at their respective addresses as set forth at the beginning of this Contract, or at such other addresses as may have been specified by written notice delivered in accordance with this Section. Such notices and other communications will be deemed to have been given or made when so delivered or deposited. Nothing in this Section may be deemed to be a waiver of any requirements for service as provided by Law.

22.9 All Lawful Provisions Deemed Included. It is the intent and understanding of the parties to this Contract that every provision of Law required to be inserted in this Contract be and is inserted in it. If through mistake or otherwise, any required provision is not included, or is not included in correct form, then this Contract will, upon the application of either party, promptly be amended so as to comply strictly with the Law and without prejudice to the rights of either party.

22.10 Set-off Rights. College has all of its common law, equitable and statutory rights of set-off. These rights include, but are not be limited to, College's option to withhold for the purposes of set-off any moneys due to Contractor under this Contract up to any amounts due and owing to College with regard to this Contract, any other contract with College, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to College from Contractor for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

22.11 Publicity. Neither Contractor nor College shall disclose the terms of this Contract to any other person or entity outside its organization other than as required or compelled by law, regulations or policy. Neither College nor Contractor and its Affiliates shall, without the other Party's consent, use the other Party's name, logo or trademark. Notwithstanding the foregoing, both Parties and their respective Affiliates may, without prior consent of the other Party, use that Party's name or logo and the existence of this Contract in connection with earnings calls or similar matters with their respective investors or analysts as well as communications to prospective clients (if applicable), for use in such Party's marketing materials and to the extent required or compelled by law.

IN WITNESS WHEREOF, the parties have signed this Contract:

CONTRACTOR:

COLLEGE:

Fashion Institute of Technology

By: _____

Name:

Title:

Date:

By: _____

Name: Sherry Brabham

Title: Treasurer & Vice President for Finance
and Administration

Date:

APPENDICES

- APPENDIX A – Performance Bond**
- APPENDIX B – Bookstore Location and Hours of Operation**
- APPENDIX C – Contractor's Equipment**
- APPENDIX D – College's Property**
- APPENDIX E – Proposed Future Bookstore**
- APPENDIX F – First Day/Equitable Access Program**
- APPENDIX G – Standard Contract Clauses**
- APPENDIX H – Contractor's Proposal**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, **[name of Contractor]** as Principal, and **[name of Surety]** as Surety, are held and firmly bound to The Fashion Institute of Technology (College) or to its successors and assigns in the penal sum of **[amount of bond in words] (\$ number)** Dollars, lawful money of the United States, for the payment of which sum of money well and truly to be made, the Principal and Surety do each bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with College for Bookstore Operations, which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, its executors, administrators, successors or assigns, well and faithfully performs the Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, and fully indemnifies and saves harmless College from all costs and damage which it may suffer by reason of failure so to do, and fully reimburses and repays College for all outlay and expense which College may incur in making good any such default, and protects College against, and pays any and all amounts, damages, costs and judgments which may or will be recovered against said College or its officers, agents or employees or which the said College may be called upon to pay to any person or College by reason of any damages arising or growing out of the performance of the Contract, or the manner of doing the same, or the neglect of the Principal, or its officers, agents or employees, or the improper performance of the Contract by the Principal, or its officers, agents or employees, then this obligation will be null and void, otherwise to remain in full force and effect and the Surety shall fulfill its obligations under the Bond upon notice pursuant to the following paragraph.

The Surety, for value received, hereby stipulates and agrees, if requested so to do by College, to fully perform and complete the Contract, pursuant to the terms, conditions, and covenants thereof (including without limitation the payment of any sums due College by Principal), if for any cause, the Principal fails or neglects to so fully perform and complete the Contract. The Surety further agrees to commence such performance within twenty (20) Days after written notice thereof from College and to complete such performance within such time as College may fix, provided however, that if Contract is a service contract then and until the Surety commences to perform or render the service, College may immediately employ others to perform such service without impairing or affecting the obligation of the Surety and the Bond and the Surety must fully reimburse and repay College for all outlay and expense incurred therefore. Any replacement Contractor engaged by Surety to complete the Contract is subject to approval of College.

The Surety for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its Bond will be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any moneys due or to become due thereunder; and the Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees will have the same effect as to the Surety as though done or omitted to be done by or in relation to the

Principal.

IN WITNESS WHEREOF, each of the Principal and the Surety have signed this Performance Bond, or caused it to be signed by its duly authorized officer this ____ day of _____ 20____.

PRINCIPAL

(Seal)

By:

Signature

Name

Title

SURETY

(Seal)

By:

Signature

Name

Title

BOOKSTORE LOCATION & HOURS OF OPERATION

FIT's present bookstore facility is located in the lower level of the David Dubinsky Student Center, at West 27th Street, between 7th and 8th Avenues.

Hours Intentionally left blank.

CONTRACTOR'S EQUIPMENT

Intentionally left blank.

COLLEGE'S PROPERTY

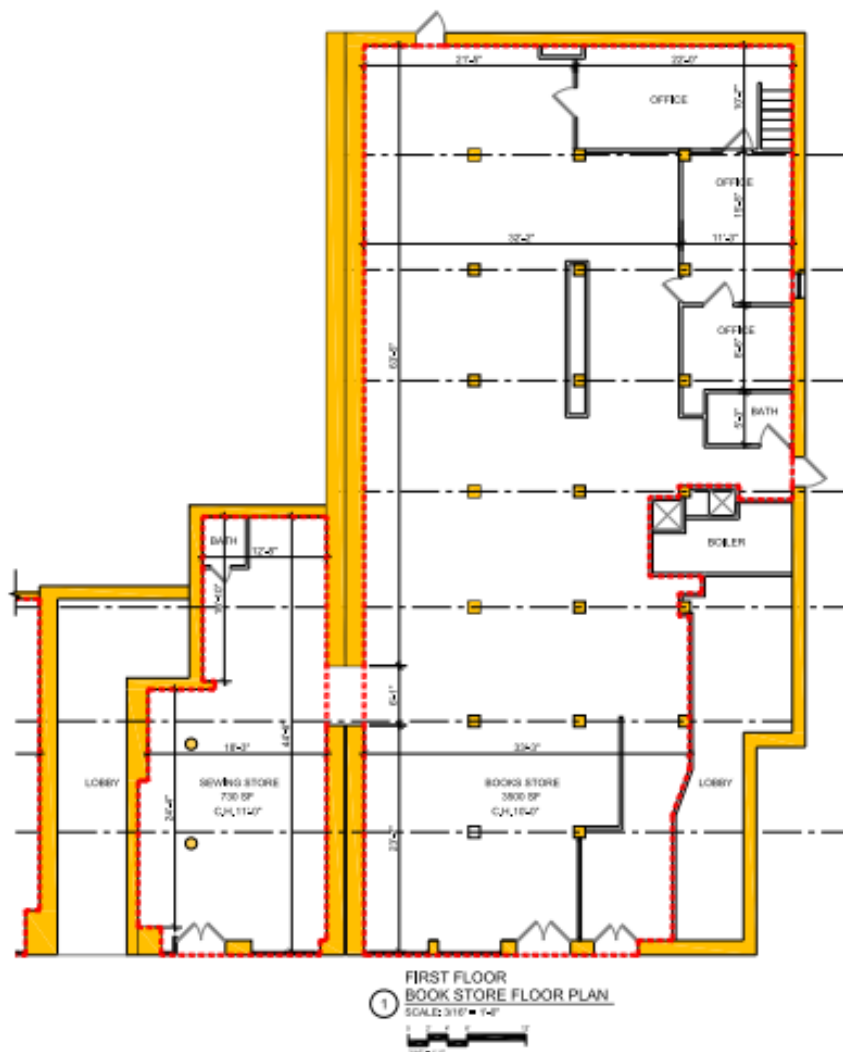
All existing furnishings and fixtures.

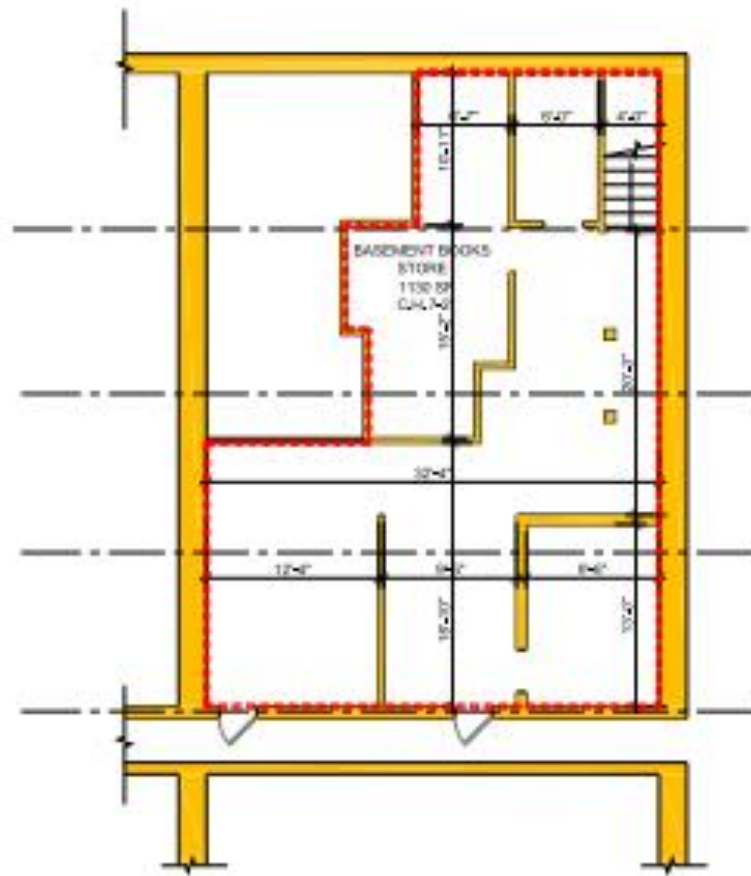
PROPOSED FUTURE BOOKSTORE


FIT plans to relocate the bookstore facility to a street level location on the ground floor of 244 West 27 Street just across from the main campus. The proposed space is approximately 6,900 square feet.

PROPOSED BOOKSTORE RELOCATION

244 West 27 Street floor plans





① BASEMENT BOOK STORE FLOOR PLAN
 SCALE: 3/16" = 1'-0"


FIRST DAY/EQUITABLE ACCESS PROGRAM

Intentionally left blank.

STANDARD CONTRACT CLAUSES

The parties to the attached Contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party other than College, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **WORKERS' COMPENSATION BENEFITS.** This Contract shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Article 9 of the Labor Law, then Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50.00 per person per day for any violation of the previous two sentences as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

3. **WAGE AND HOURS PROVISIONS.** If this is a contract for the construction, alteration, or repair of any public building or public work, or a building service contract as defined by Article 9 of the Labor Law, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days permitted by the Labor Law. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

4. **NON-COLLUSIVE BIDDING REQUIREMENT.** If this Contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid

was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to College a non-collusive bidding certification on Contractor's behalf.

5. INTERNATIONAL BOYCOTT PROHIBITION. If this Contract exceeds \$5,000, Contractor agrees, as a material condition of the Contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or College has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USCA Section 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify College within five (5) business days of such conviction, determination or disposition of appeal.

6. RECORDS. Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. College or its authorized representative shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect Colleges right to discovery in any pending or future litigation.

7. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. If this Contract is: a) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby College is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to College or b) a written agreement in excess of \$100,000.00 whereby College is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, then the following shall apply and by signing this Contract Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

i) Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading's, demotion, transfer, layoff or termination and rates of pay or other forms of compensation;

ii) at the request of College, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Contractor's obligations herein; and

iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the College contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "i," "ii," and "iii" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of Contractor. This obligation does not apply to: a) work, goods or services unrelated to this Contract; or b) employment outside New York State. College shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. College shall determine whether the imposition of the requirements of the provisions hereof duplicates or conflicts with any such federal law and if such duplication or conflict exists, College shall waive the applicability this section to the extent of such duplication or conflict.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix, the terms of this Appendix shall control.

9. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), Contractor hereby stipulates that Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law) and shall permit independent monitoring of compliance with such principles.

10. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

11. IRAN DIVESTMENT ACT. By entering into this Contract, Contractor certifies that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract

assignment will be approved. During the term of the Contract, should College receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, College will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the College shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. College reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

January 2014

CONTRACTOR'S PROPOSAL