

**REQUEST FOR PROPOSAL
NOTICE TO AGENCIES
FASHION INSTITUTE OF TECHNOLOGY
MARKET RESEARCH CONSULTANT FIRM
RFP#C1646**

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, 16th Floor, New York, NY 10001-5992 (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 agency and designated as a 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 MARKET RESEARCH CONSULTANT FIRM:
TO BE OPENED ONLY BY AUTHORIZED OFFICIAL” and
"ATTENTION: CANDIDA POINSETTE, 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 January 17, 2025, will be considered.

SECTION ONE -- PROPOSAL TERMS AND CONDITIONS

I. SCHEDULE

RFP Release Date: November 15, 2024

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

Last Day for Receipt of Written Questions November 29, 2024

Response to Questions: By December 13, 2024

Proposal Due Date: On or before January 17, 2025

*Presentations/Interviews: TBD if necessary

Selection of Consultant: On or before January 31, 2025

Commencement of Work: Latest February 28, 2025

*The College reserves the option to select a vendor based on proposals. Presentations may, or may not, be scheduled.

II. INTRODUCTION

- A. Founded by a group of industry members to promote education for the fashion and apparel profession, the Fashion Institute of Technology (“FIT”) opened its doors to 100 students in New York City in 1944. Today FIT serves some 8,000 students annually, offering nearly 50 majors in a wide range of programs beyond fashion, including advertising, marketing communications, cosmetics and fragrance marketing, film and media, fine arts and illustration, interior design, and toy design leading to the AAS, BFA, BS, MA, MFA, and MPS degrees. It has expanded internationally with locations in Florence and Milan, Italy, and Songdo, South Korea, and four of our degree programs are offered entirely online. Through the Center for Continuing and Professional Studies (CCPS), the college offers an extensive array of courses and non-credit certificate programs, serving adult learners and high school students. Additionally, The Museum at FIT (MFIT), founded in 1969, attracts more than 100,000 visitors annually to the college’s Manhattan campus to view its world-renowned special exhibitions and displays of its extensive collections.
- B. The mission of the [Center of Continuing and Professional Studies \(CCPS\)](#) is to provide accessible non-degree and degree-related programming for lifelong learners. The efforts of CCPS are to also contribute to the financial strength and mission of the college by offering access to degrees, advanced learning programs, and creative exploration opportunities for adult learners in the Greater New York areas and abroad while also contributing to FIT’s commitment to innovation, academic excellence, and diversity. Through the department’s ongoing programming of Adult Learners, Credit Courses (non-degree), and Industry and International Contract Programs, CCPS delivers on this mission and strives to pursue new opportunities to expand the base of the department’s students.

By running approximately 300 courses a year, CCPS offers in-person, remote, and online classes and certificate programs targeting adult learners seeking career and life enhancement knowledge and skills. Industry and academic experts teach courses spanning a range of topics, including art, business, design, styling, image consulting, digital technology, entrepreneurship, fashion, marketing, and retailing.

III. THE ASSIGNMENT

As FIT's Center for Continuing Professional Studies looks to further position itself as a leader in the continuing education (adult learner) and industry training markets, there is a need to gain insight about these areas with the goal of supporting the short- and long-term planning needs of the department. CCPS is looking to engage a market research consultant firm to help develop this market insight.

PROPOSED ENGAGEMENT SCOPE:

- A. Continuing Education and Company Training Market Analysis: US & International
 - a. Identify Key Creative Industry, Academia, and Workforce Trends Post-Covid
 - b. Areas of Key Growth
 - c. Opportunities/Weaknesses
 - d. Best Practices
 - e. Market Size by Areas of Focus
 - f. FIT Community Insight
- B. Competitor Analysis
 - a. US and international institution matrix relative to the FIT continuing education offerings
 - i. Industry internal training programs
 - b. Competitor pricing
 - c. Market positioning
 - d. Organizational structure
 - e. Competitor matrix by market focus and areas of specialization relative to FIT
 - f. Market presence
 - i. Social media focus
 - ii. Website assessment
 - g. Identification of market innovators
 - i. Private sector companies dominating the market
- C. FIT Situation Analysis
 - a. Host constituent focus groups
 - i. Gain a better understanding of what our current students and industry partners think about FIT's continuing education offerings.
 - b. Gain an understanding of what prospective students and industry partners think about FIT's continuing education offerings.
- D. Workforce Alignment
 - a. What are key creative industry trends and how will they impact our course offerings in the next 12-months, 3-years, and 10-years
 - b. What are the big ideas that are on the horizon
 - i. How long will this digital transformation last? What's the next big workforce transformation?

IV. PROPOSAL REQUIREMENTS

All Proposers shall meet the following requirements and furnish all necessary information with the Proposal. *Submit ten (10) complete hard copies of your Proposal and a digital copy on a flash drive.* 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 to ask for additional information. Those items for which Proposers have or assert proprietary rights, or which must, under prior contract, remain confidential, 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.

Proposals shall be submitted on or before **January 17, 2025, by 1:00 PM** to:

**Candida Poinsette, Purchasing Office
FASHION INSTITUTE OF TECHNOLOGY
PURCHASING DEPARTMENT
333 SEVENTH AVE., 16 FLOOR
NEW YORK, NY 10001**

Envelopes should clearly be marked:

**Marketing Research Consultant Firm
Request for Proposal No. C1646
Due on or before January 17, 2025, by 1:00 PM**

- A. At no time shall the Proposer, its agents, representatives or contracted personnel contact or otherwise communicate with FIT personnel without prior arrangement with the FIT Purchasing Office, for the purposes of negotiating, modifying, changing, or interpreting the Proposal or specifications.
- B. **Questions** shall be submitted in writing to the attention of the FIT Purchasing Office via email to purchasingbids@fitnyc.edu by *November 29, 2024*, no later than 1:00 PM. Answers will be provided in a timely manner.
- C. If it becomes necessary to revise any part of this RFP, addenda will be supplied to all Proposers receiving this RFP.
- D. All Proposals submitted in response to this RFP will become the property of FIT and a matter of public record. The Proposer must identify, in writing, all copyrighted materials, trade secrets, or other proprietary information that it claims is exempt from disclosure. Any Proposer claiming such an exemption must also state in its Proposal that the Proposer agrees to hold harmless, indemnify and defend FIT and its agents, officials and employees in any action or claim is brought against FIT for its refusal to disclose such materials, trade secrets or other proprietary information to any party making a request thereof. Any Proposer failing to include such a statement shall be deemed to have waived its right to exemption from disclosure.
- E. Proposer shall have been in business no less than five (5) years.
- F. Proposer shall include, with the Proposal, a listing of senior staff, with their names and titles, qualifications, experience and a brief biography, and indicate the engagement-in-charge partners(s) to be used if Proposer is awarded this contract. The proposer shall also

include the qualifications and experience of any other professional agency or freelance staff that would be assigned to the account.

- G. Proposer shall demonstrate an understanding of this engagement, including a process for understanding and staying current with advertising platforms and outlets specifically in support of higher education and shall include any description(s) and example(s) of any experience your agency has had in developing image campaigns.
- H. Proposer shall include, with the Proposal, detailed information regarding Proposer's qualifications providing the services outlined in the scope of work section to which they are responding. This information shall include:
 - a. Samples of work that reflect the ability of the agency to fulfill the needs as stated in the RFP.
 - b. A list of all clients grouped by size of account, such as large, medium, and small, based on billing ranges, within the last five years.
 - c. A list of higher education clients, if any, from the past three (3) years (agencies that do not have higher education clients will be given fair consideration).
 - d. A list of market research engagements completed.
 - e. Indicators of client results as a consequence of services provided including any quantitative data.
 - f. Samples of market research deliverable engagements.
 - g. List with the name, address, telephone, email, and contact person for no fewer than three (3) current clients.
- I. Documents evidencing financial viability, including income and expenditure statements and balance sheets for the past two (2) fiscal years. Audited financial statements for the past two (2) fiscal years are preferred. If audited statements are not available, provide copies of Proposer's two most recent tax returns or financial statements prepared by an independent certified public accountant.
- J. List of any recognized industry awards received by the agency in the past five (5) years.
- K. Proposer may include any further information concerning the company or its abilities that would add to FIT's assessment of the agency, including relevant experience in marketing educational and/or institutional products or services such as (but not limited to) a description of value-added arrangements, unique business features, special services, or proprietary market research technologies; and a description of any specialized work performed for higher education, non-profit organizations, creative or cultural institutions, and/or fashion, design or related businesses.
- L. Proposer shall include a fee proposal for the work outlined in this RFP.
- M. The Proposer should include a detailed proposal for line-item fees for all services such as retainers, out-of-pocket, and any other regularized work, providing a detailed breakdown of the total cost of services of the types required by this assignment. Fee proposals should include but not be limited to the following:
 - a. Consultancy fees, including monthly retainer and services that are provided by that fee, and an estimate of any costs that would fall outside those covered by the retainer.
 - b. A breakdown of the staff, job title, and brief bio of those that will be assigned to these projects and their billable rate, and the amount of time assigned.
 - c. A statement for reimbursement of expenses
 - d. A specific definition and meaning of the terms related to the proposed method of payment
 - e. A proposed billing schedule

- N. FIT is exempt from payment of any federal, state, and local sales and use taxes. Do not include these taxes when proposing prices for goods or Services (as defined below).
- O. Proposals must be signed. Proposals must be completed in the Proposer's legal name and must be signed by a personal authorized to do so.
- P. Proposals shall offer best and final terms. All prices shall be firm and not subject to increase during the period of the contract.
- Q. FIT reserves the right to award a contract on the basis of the Proposer's submitted proposal without further discussion. Proposer's ideas or concepts included in the Proposal are solely intended for implementation into a contract.
- R. By signing and submitting your Proposal, Proposer affirms that it has read this RFP, 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 upon 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.
- S. Bid Security, Performance, and Payment Bonds are NOT required for this Contract

V. SCOPE OF SERVICES

- A. Specifically, the assignment includes three components ("Services") for the Proposer(s) to which FIT awards the RFP ("Consultant"). Proposers must provide a response to all Services. The consultant shall disclose the name of all outside partners and/or sub-contractors that if it collaborates with for Services. FIT shall retain all ownership and possession of any reports or similar materials created by its consultant, its partners, and/or its sub-contractors used in fulfilling its Services to FIT.
 - a. Continuing Education and Company Training Market Analysis: US & International
 - b. Identify key creative industry, academia, and workforce trends post-Covid
 - c. Areas of key growth
 - d. Opportunities/weaknesses
 - e. Best practices
 - f. Market size by areas of focus
 - g. FIT community insight
- B. Competitor Analysis
 - a. US and international institution matrix relative to the FIT continuing education offerings
 - i. Industry internal training programs
 - b. Competitor pricing
 - c. Market positioning
 - d. Organizational structure
 - e. Competitor matrix by market focus and areas of specialization relative to FIT
 - f. Market presence
 - i. Social media focus
 - ii. Website assessment
 - g. Identification of market innovators
 - i. Private sector companies dominating the market
- C. FIT Situation Analysis
 - a. Host constituent focus groups

- i. Gain a better understanding of what our current students and industry partners think about FIT’s continuing education offerings.
 - ii. Gain an understanding of what prospective students and industry partners think about FIT’s continuing education offerings.
- b. Workforce Alignment
 - i. What are key creative industry trends and how will they impact our course offerings in the next 12-months, 3-years, and 10-years
 - ii. What are the big ideas that are on the horizon
 - 1. How long will this digital transformation last? What’s the next big workforce transformation?

VI. FEE PROPOSAL

Proposers shall provide a fee proposal in accordance with the attached Proposal Analysis Sheet (“Exhibit B”).

VII. EVALUATION CRITERIA

A duly selected committee will use the following criteria to evaluate those proposals that meet the requirements of these specifications:

- A. The Proposer’s experience in direct response to the scope, including demonstrated positive track record in all aspects of market research engagements. **25%**
- B. The Proposer’s understanding and demonstration of proposed engagement outcomes and ability to show innovation in primary and secondary research related to the requested service. **30%**
- C. Evaluation of company’s financial stability and reputation, and client references. **10%**
- D. Price, including value added. **15%**
- E. Interview and presentation. **20%**

FIT reserves the right to select finalists based on the highest total scores from criteria one (1) through four (4). If an interview/presentation is required for finalists, FIT will then award the Contract to the Proposer(s) with the highest total scores from criteria one (1) through five (5).

VIII. TERM

- A. The term of the contract shall be for a *nine-month period* commencing with the effective date as specified in the notice to commence performance.
- B. In addition to any other termination or cancellation rights reserved by FIT elsewhere in this RFP, FIT shall have the right to suspend, abandon, or terminate contract for any reason, and such action shall in no event be deemed a breach of contract.

SECTION TWO -- RFP GENERAL TERMS AND CONDITIONS

I. Proposal Requirements

- A. 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, Contract Terms and Conditions and/ or Proposal Analysis Sheet. All Proposers propose on the same terms and conditions.

- B. Each proposal must be sent **in digital and hard copy**. Submit ten (10) complete hard copies of your Proposal and a digital copy on a flash drive and identified, on the outside of the envelope, by the name and address of the agency 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.
- C. 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.
- D. Proposals received after the time of the proposal opening will be returned unopened.

II. No Oral Statements

- A. FIT will not be bound by any oral statement or representation in connection with the RFP or resulting Contract(s).
- B. Any changes to the proposal document required by FIT shall be in writing and shall be issued by the FIT Purchasing Department to every entity that requested a copy of the RFP.

III. Proposer Affirmation

By signing the proposal, Proposer certifies that:

- A. 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
- B. 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.

IV. Non-Collusive Proposal Certification

- A. 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:
 - 1. 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.

2. 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
 3. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
- B. A proposal shall not be considered for award, nor shall any award be made where (l)(a), (b) and (c) above have not been 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.

V. Confidentiality

- A. 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.
- B. 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.

VI. Prices

Proposal prices shall be held firm for one hundred and twenty (120) days from the proposal due date.

VII. 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.

VIII. Proposal Withdrawal

- A. Proposers may withdraw proposals at any time before the proposal opening.
- B. After the proposal opening, Proposers may withdraw proposals only after the expiration of ninety (90) days and before any actual award.

- C. Proposal withdrawals must be in writing.
- D. 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. The 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.

IX. Tie Proposals

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

X. 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.

XI. Proposal Rejection

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.

FIT reserves the right to reject any or all proposals if it is in the best interest of FIT to do so.

XII. Award of Contract

- A. The Award shall be made to the highest score of Evaluation Criteria Proposer pursuant to law and FIT regulations.
- B. FIT reserves the right to waive technicalities in a proposal if it is in the best interest of FIT to do so.
- C. 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 C").
- D. 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.
- E. All contracts awarded by FIT shall be executory only to the extent of funds available.

XIII. Governing Law

- A. This RFP shall be construed in accordance with the laws of the State of New York without regard to conflict of law provisions.

- B. 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.
- C. 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.

**“Exhibit B”
PROPOSAL ANALYSIS SHEET
MARKET RESEARCH CONSULTANT FIRM
RFP#C1646**

CONSULTANCY FEE \$ _____

Consulting Services inclusive of travel and other expenses

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: _____

Federal ID#: _____

E-mail: _____

Date: _____

IMPORTANT: This proposal analysis sheet is the only pricing format acceptable. Agency must submit pricing using this form. FIT will not accept proposal responses on any other form.

“Exhibit C”
CONTRACT
TO BE SIGNED UPON AWARD
C1646 – Market Research Consultant Firm

THIS CONTRACT (the “Agreement”) is made and entered into as of the ___ day of _____ by _____ and between the Fashion Institute of Technology (hereinafter “FIT”) and (hereinafter “Consultant”).

WHEREAS, it is the desire of FIT to retain the services of a Market Research Consult firm to develop market insight about continuing education opportunities within the markets that the department services as outlined in the RFP.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, FIT hereby retains Consultant upon the terms and conditions contained herein, and Consultant hereby accepts said retention.

- I. **Term:** The effective date of this Agreement shall be TBD (the “Effective Date”) and shall expire on the date that is nine (9) months following the Effective Date (the “Expiration Date”) . The Agreement may, however, be terminated at any time by either party giving thirty (30) days' notice in writing to the other party.
- II. **Services by Consultant:** Specifically, the assignment includes four components (“Services”) for the Proposer(s) to provide:
 - A. Specifically, the assignment includes three components (“Services”) for the Proposer(s) to which FIT awards the RFP (“Consultant”). Proposers must provide a response to all Services. Consultant shall disclose the name of all outside partners and/or sub-contractors that if it collaborates with for Services. FIT shall retain all ownership and possession of any reports or similar materials created by Consultant, its partners, and/or its sub-contractors used in fulfilling its Services to FIT.
 1. Continuing Education and Company Training Market Analysis: US & International
 2. Identify key creative industry, academia, and workforce trends post-Covid
 3. Areas of key growth
 4. Opportunities/weaknesses
 5. Best practices
 6. Market size by areas of focus
 7. FIT community insight
 - B. Competitor Analysis
 1. US and international institution matrix relative to the FIT continuing education offerings
 - a) Industry internal training programs
 2. Competitor pricing
 3. Market positioning
 4. Organizational structure
 5. Competitor matrix by market focus and areas of specialization relative to FIT
 6. Market presence

- a) Social media focus
 - b) Website assessment
 - 7. Identification of market innovators
 - a) Private sector companies dominating the market
- C. FIT Situation Analysis
 - 1. Host constituent focus groups
 - a) Gain a better understanding of what our current students and industry partners think about FIT's continuing education offerings.
 - b) Gain an understanding of what prospective students and industry partners think about FIT's continuing education offerings.
 - 2. Workforce Alignment
 - a) What are key creative industry trends and how will they impact our course offerings in the next 12-months, 3-years, and 10-years
 - b) What are the big ideas that are on the horizon
 - (1) How long will this digital transformation last? What's the next big workforce transformation?

III. Fee

Consultancy Fee: \$_____

IV. Indemnification

The Consultant shall indemnify FIT and its respective affiliates, officers, governing board members and employees, and hold them harmless against any and all liability, loss, damages, costs or expenses, including reasonable attorney's fees, which they may incur, suffer or be required to pay in connection with the defense and/or settlement of any action, suit or proceeding based upon general liability or any other claims brought by any person, entity or organization arising out of any negligent or other wrongful act or omission by the Consultant.

V. Confidentiality

All information, whether printed, written or oral, which is requested from or voluntarily furnished by FIT shall be held in strictest confidence and used only for the purpose of this Agreement. Consultant's submissions to FIT shall not be considered confidential.

VI. Arbitration

Any unforeseen disputes arising under this agreement which cannot be settled between the two parties will be submitted to the American Arbitration Association (AAA) for arbitration at a location in New York, New York in front of a single arbitrator appointed by the AAA. The two parties agree that arbitration by the AAA will be the final and binding resolution and the prevailing party shall be entitled to recover reasonable attorney fees in such suit or action, including any appeal.

VII. Entire Agreement

This Agreement is the entire agreement of the parties. It shall supersede any prior understandings or agreements of the parties, whether oral or written. Amendments to this agreement may be proposed in writing by either party hereto and shall be deemed rejected - unless the party to whom any amendment is proposed accepts said amendment in writing within ten days after receipt of the proposed amendment. No oral agreement shall be effective to alter the terms of this Agreement.

VIII. Effect of Waivers

The waiver by one party of a breach of any provision of this agreement by the other party shall not operate or be construed as a waiver of any subsequent breach. No waiver shall be valid unless in writing and signed by an authorized representative of the party agreeing to the waiver.

IX. Governing Law

All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provisions.

X. Non-Assignability

Neither party shall assign, transfer, or subcontract this Agreement or any of its rights or obligations hereunder without the express, prior written consent of the other Party.

XI. Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

XII. Execution

This Agreement may be executed in multiple counterparts, any of which may be a facsimile or "pdf", each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

XIII. Data Security for Student Records:

- A. **Protection of Confidential Data:** 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. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the College may use the information, but only for the purposes for which the disclosure was made.
- B. **Definition:** Covered data and information (CDI) includes paper and electronic student education record information supplied by the College, as well as any data provided by College's students to the Contractor, if any.
- C. **Acknowledgment of Access to CDI:** Contractor acknowledges that the Contract allows the Contractor access to CDI.
- D. **Prohibition on Unauthorized Use or Disclosure of CDI:** Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of the College (or its students) except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by the College. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
- E. **Return or Destruction of CDI:** Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all CDI to the College, or if return is not feasible, destroy any and all CDI. If the Contractor destroys the

information, the Contractor shall provide the College with a certificate confirming the date of destruction of the data.

- F. **Remedies:** If the College reasonably determines in good faith that the Contractor has materially breached any of its obligations under this Contract, the College, in its sole discretion, shall have the right to require the Contractor to submit to a plan of monitoring and reporting; provide the 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, the 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 the College's education records, the College may not allow the Contractor access to education records for at least five years.
- G. **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 the College or its students.
- H. **Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information:** Contractor shall, within one day of discovery, report to the College any use or disclosure of CDI not authorized by this Contract or in writing by the College. Contractor's report shall identify: (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 the College.
- I. **Indemnity:** Contractor shall defend and hold the College harmless from all claims, liabilities, damages, or judgments involving a third party, including the College's costs and attorney fees, which arise as a result of Contractor's failure to meet any of its obligations under this Contract.

TO BE SIGNED ONLY UPON AWARD OF CONTRACT

TITLE: RFP #C1646 – MARKET RESEARCH CONSULTANT/FIRM

In witness whereof, the parties have executed this Contract: The amount of this Contract is _____ Dollars.

(\$ _____)

FOR CONSULTANT:

Signature: _____

Print Name and Title: _____

ACKNOWLEDGEMENT OF PERSON EXECUTING FOR CONSULTANT

State of New York

County of _____) SS: _____

On this day of _____ 20__, before me personally came _____ to me known, who being by me duly sworn did depose and say that s/he resides at _____; that s/he is the _____ of _____, the corporation described in and which executed the above instrument; and that s/he signed her/his name thereto by order of the Board of Directors of said corporation.

Notary Public

FASHION INSTITUTE OF TECHNOLOGY:

Sherry F. Brabham, Treasurer

Date