



## CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT (this “**Agreement**”) is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”), by and between **SUPERFAN, INC** a Delaware corporation (the “**Consultant**”), and \_\_\_Larry A. Ryle High School, a \_ (“**Client**”) (hereinafter, collectively, the “**Parties**”).

WHEREAS, Consultant is in the business of developing smart phone and mobile site applications for High School Administrators (the “**Product**”). Client wishes to engage Consultant to provide certain Services (as defined below); and

WHEREAS, Consultant has accepted the engagement on the terms set forth herein.

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

1. Consulting Services. Consultant is being engaged hereunder to provide the services for the development and customization of the Products as further set forth on Exhibit A, attached hereto and made a part hereof (the “**Services**”), in order to create the loyal rewards Product for Client (the “**Project**”). The Services shall be completed according to the schedule set forth on Exhibit A.

2. Term of Engagement. The term of this Agreement shall be a three-year period from the Effective Date (“**Initial Term**”). The Initial Term may be renewed by the Parties based on mutual written agreement. Either Party may terminate this Agreement for any *material breach* by the other Party of the obligations hereunder upon sixty (60) days written notice; provided, however, that the breaching Party shall have

the right to cure such breach within that time, in which event such termination shall be deemed ineffective. Notwithstanding any other provision of this Agreement, in the event of such termination, Consultant shall be paid for any Services that have been performed prior to such termination.

If you terminate your service for any reason other than a material breach of contract Client agrees to pay Consultant an “Early Termination Fee” in the following amount specified: If Client terminates the contract prior to June 30, 2022, the Early Termination Fee will be \$291.67 for each full month of your Contract Commitment that Client has not completed. The Early Termination Fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the Contract Commitment.

3. Independent Contractor Status. Consultant will act only as an independent contractor to Client. Consultant will be responsible, and will hold Client harmless from, any and all employment, self-employment, income, unemployment, and workers’ compensation taxes and fees, assessed at the federal, state, city, and/or local level on compensation paid to the Consultant under the terms hereof. To the extent sales taxes may be applicable to Consultant’s compensation hereunder, such sales taxes shall be deemed included. Consultant further acknowledges and agrees that Consultant has no authority to enter into contracts that bind Client, create obligations on the part of Client, or incur any expenses on behalf of Client without Client’s prior written authorization.

4. Consultant Fees. The Parties agree that Client shall pay the Consultant certain fees for the Services (“**Consultant Fee**”) as set forth on Exhibit B, attached hereto and made a part hereof.

5. Rights in Intellectual Property.

(a) Consultant, upon full payment by Client for the Services as set forth on Exhibit B, hereby assigns the right to use and access the Products.

(b) Client agrees and consents to (i) not copy, replicate or reverse engineer any of the source codes for the Products; (ii) not copy such Products for the purpose of moving the Products to another hosting service; and (iii) expressly agrees that all intellectual property rights relating to the source code of the Products shall remain at all times owned by Consultant.

(c) Consultant hereby acknowledges and agrees that all names, brands and trademarks of the Client shall at all times remain the sole and exclusive property of the Client.

6. Confidentiality. The Parties agree that the existence and terms of this Agreement and amounts paid hereunder shall be held in strict confidence and shall not be employed for any purpose or communicated to anyone, except pursuant to valid subpoena, or as required by law. If disclosure is required due to a valid subpoena or court order, the party receiving the subpoena or court order shall, to the extent practicable, provide prior written notice to the other party to this Agreement and request a confidentiality order from the applicable court in order to fully protect the confidentiality of this Agreement. Notwithstanding the foregoing, the Parties may communicate information regarding this Agreement to those within their respective organizations who have a business need to know, and with counsel and those providing tax advice or assistance, in which case each such person shall be advised of the requirement that the terms and provisions in this Agreement be kept confidential.

7. Data Protection.

(a) Consultant collects from the users of the Product various personal data (“Personal Data”) that is captured by Consultant upon registration by the users. Such users consent to the privacy policy utilized by Consultant upon registration. All Personal Data procured by Consultant is maintained in a secured, password-protected environment. Consultant does not sell the Personal Data of its users.

(b) The Products generate certain user data contained in reports created by Consultant (“Performance Reports”). Consultant shall provide to Client access to the Performance Reports throughout the term of this Agreement; provided, however, that Client acknowledges and consents that the Performance Reports are proprietary information of Consultant. Consultant’s use of the Performance Reports shall at all times be in compliance with its privacy policy as well as all state and Federal laws and regulations governing the use thereof.

(c) Upon termination of this Agreement, the Performance Reports shall be provided by Consultant to Client in an industry standard format (such as encrypted and appropriately authenticated downloadable file in a format such as XML with all schema, definitions and associated text files documented and detailed) within a commercially reasonable time following the termination of this Agreement but in no event later than

thirty (30) days thereafter. Client acknowledges the Performance Reports are trade secrets of Consultant and that Client shall not, unless otherwise approved in writing by Consultant, provide directly or indirectly the Performance Reports to any third party provider who performs similar services or products as those offered by Consultant hereunder. Any authorized disclosure of the Performance Reports would result in liquidated damages to the Consultant in the amount of four times the Annual Fee set forth on Exhibit A attached hereto and made a part hereof. Client acknowledges and agrees that the amount of the Liquidated Damages is a reasonable assessment of the damages Consultant would otherwise occur and not a penalty

8. Entire Agreement. This Agreement sets forth the entire agreement between Consultant and Client and supersedes any and all prior and contemporaneous oral or written agreements or understandings between the Parties. No representation, promise, inducement, or statement of intention has been made by Consultant and Client that is not embodied in this Agreement. Except as provided in this Agreement, no party shall be bound by or liable for any alleged representation, promise, inducement, statement, or intention not contained in this Agreement or the Exhibits.

9. Limitation of Liability. Notwithstanding any other provision of this Agreement, under no circumstances shall Consultant be liable to Client for any special, incidental, or consequential damages of any nature whatsoever, or any indirect damages, including without limitation any damages resulting from interruption of business or loss of profits, revenues, data or use, or any exemplary or punitive damages arising out of, or in connection with, any obligation of Consultant hereunder, even if Consultant has been advised of the possibility of such damages and regardless of the form of the action (e.g., contract, breach of warranty, tort, or otherwise). Notwithstanding the foregoing, under no circumstances shall Consultant's liability hereunder exceed amounts paid pursuant to this Agreement in the twelve (12) months immediately preceding the claim, liability, or cause of action for which indemnity is sought pursuant to this section 9. The Parties agree that, in any litigation, arbitration, mediation, or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded its reasonable attorney fees, and costs and expenses incurred.

10. Modification. This Agreement may not be altered, amended, or otherwise changed or modified, except in writing and signed by the Parties. No provision of this Agreement may be waived unless in writing and signed by the Parties.

11. Waiver. The Parties agree that no release, waiver, or other promise set forth in this Agreement shall be construed to prohibit any party from enforcing the terms of this Agreement in a court of competent jurisdiction.

12. Assignment. This Agreement may be assigned by either Party upon the written consent of the other Party.

13. Governing Law. This Agreement shall in all cases be interpreted, enforced, and governed by the laws of the Commonwealth of Kentucky, without regard to its choice of law provisions.

14. Severability. Each term and provision of this Agreement shall be construed and interpreted so as to render it enforceable. This Agreement shall be deemed to have been drafted jointly by the Parties; accordingly, any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement or of any modification of or amendment to this Agreement. If any part of this Agreement is void or otherwise invalid, such invalid or void portion will be deemed to be separate and severable from the balance of this Agreement, and the remaining provisions will be given full force and effect as though the void or invalid provisions had never been a part of the Agreement.

15. Counterparts. This Agreement may be executed in counterparts and all counterparts collectively will constitute one agreement binding on all Parties.

16. Authority to Sign. Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted legal authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a legally binding agreement on behalf of such Party with respect to the matters concerned herein and as stated herein.

IN WITNESS THEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

**“CONSULTANT”**

**SUPERFAN, INC.**

By: \_\_\_\_\_  
Kayla Mount, COO

**“CLIENT”**

**Larry A. Ryle High School**

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

## EXHIBIT A

### Larry A. Ryle High School Fan Rewards Program

SuperFan, Inc. (“Consultant”) shall create a fan loyalty rewards program using the SuperFanHigh platform, which will consist of: a web application to administrate the program, an iPhone application, an Android application, and a mobile website for other smart phone users to participate in Larry A. Ryle High School Fan Rewards Program.

Consultant shall deliver to the Client for the Project Services the following deliverables (“Deliverables”):

1. **iPhone Application:** 1 SuperFanHigh iPhone application that has been customized with name, colors, logos, and additional features (minimum iOS version and other restrictions may apply). This iPhone application will serve as the method for fans and students who have an iOS device to participate in the program.
2. **Android Application:** 1 SuperFanHigh Android application, that has been customized with name, colors, logos, and additional features (minimum Android version and other restrictions may apply). This Android application will serve as the method for fans and students who have an Android device to participate in the program.
3. **Mobile Web Site:** 1 SuperFanHigh mobile website application, that has been customized with name, colors, logos, and additional features (minimum browser version, geo-location, and other restrictions may apply.) The mobile web site will reside on SuperFan, Inc. servers, and the Client will need to point a domain or subdomain to Consultant’s servers (i.e. superfanhigh.yourdomain.com or yourdomain.com/superfanhigh), or the Consultant will purchase a new domain for use. This mobile web site will serve as the method for fans and students who have a smart phone or other device to participate in the program.
4. **Web Application Administrative Back-End:** Access to the back-end system, which controls SuperFanHigh applications. The Client will be able to add/edit administrators, venues, events, awards, prizes, coupons, merchandise, tickets, as well as run real-time reports and contact users (i.e. send targeted push notifications during game-time events, email blasts, special offers, etc.)

5. **Training and Support:** A WebEx (or similar) walk-through of the program's administrative back-end web application will be provided once the iPhone, Android, and mobile web site applications have been approved for their respective app stores.

Client and Consultant agree to the following estimated schedule for the completion of the Services and the Deliverables:

Larry A. Ryle High School Fan Rewards Program will take 4-6 weeks from the receipt of all support materials. Consultant requires the following before beginning the design/development of the program:

- a. Hi-Quality images for use on logos, icons, and loading screens.
- b. Colors for use in the application, in either HEX or PMS codes.
- c. A name for the program/applications, as well as shortened icon name.
- d. Additional information that will be taken from users (i.e. First/Last Name, Group Names like Faculty/Staff, Student ID, Email, etc.)
- e. Other relevant information based on any extras (URLs Mobile Website versions, Social Media Feeds, Game-Tracker Feeds, etc.)
- f. Letter of approval to use the university's marks (need this to submit to app stores.)

The steps to build the program are outlined as follows:

- a. **Site Map (if needed):** A graphical representation of the architecture of a mobile application defines how many pages/tabs are involved and how a user would navigate them.
- b. **Design Mock-ups:** After terms, features, and a site map (optional) are agreed to, actual mock-ups representing the Graphical User Interface (GUI) would be created that visually represents the look and feel of the new customized SuperFanHigh Mobile Application(s).
- c. **Testing:** Every application needs to be thoroughly tested to ensure that it's error-free, user-friendly, and accessible to ensure that it performs properly for the client's specifications. Development bundles will be provided for client testing before submitting to the App Store(s).



- d. **Final Edits/Proofing:** Any issues found in the Test step will be addressed and final proofing will be done to ensure accuracy from a technical, functional, and grammatical standpoint before submitting to the App Store(s).
- e. **Deployment:** Once submitted to the App Store(s), Consultant **cannot** guarantee time-tables or approvals, however, once approved by the App Store(s) it will be immediately accessible to those with the approved mobile devices. While we do our best to ensure that all apps go through their respective App Stores in a timely fashion, once they have been submitted, we cannot influence how quickly they are approved for distribution. Therefore, Consultant considers timelines and deadlines to be met if they have been submitted to the App Stores within five days of target launch date.

## **EXHIBIT B**

### **Consultant Fee**

#### **1. Annual Fee:**

- a. Years 1 through 3: Ultimate High School Package Cost (Beginning Effective Date through June 30, 2022): 3 Annual Payments of \$3,500 per year. Payments due 30 days upon receipt of invoice; interest is accrued at 1.5% per month thereafter.
  - i. Development deposit of \$600 due on Effective Date. Client will be invoiced on July 1, 2019 for remaining Year 1 balance of \$2,900
  - ii. Client will receive up to 12 module choices
  - iii. Client will be subject to a \$99 per year developer account fee owed directly to Apple by Client

#### **2. In-App Purchases:**

- a. Not applicable

#### **3. Sponsorships:**

- a. Not applicable

Client recognizes that certain changes in the scope of Services and the Deliverables in this Agreement shall be deemed a change order. Client and Consultant agree to take reasonable measures to set forth the change in scope in writing, and the corresponding change in the Consultant's Fee and the Completion Date schedule arising there from. Failure of the Parties to reduce any change order to writing signed between the Parties shall not (i) preclude the Consultant from receiving additional compensation for added changes in the scope of Services, or (ii) preclude the extension of the Completion Date to a reasonable time reflecting industry standards for such requested change.

Client hereby acknowledges and agrees that certain additional services may be performed by Consultant upon the request of the Client ("Additional Services"). The

Additional Services shall be charged pursuant to the hourly consultant rate schedule set forth below:

Consultant	Rates Per Hour
Lead	\$125

Client shall also reimburse Consultant for all ordinary and necessary expenses incurred in the performance of the Services hereunder, provided timely notice of such expenses is sent to and approved by Client.