

Academy of Visual and Performing Arts



**CONTRACT  
FOR  
SUBCHAPTER D  
OPEN-ENROLLMENT CHARTER**

**THIS AGREEMENT** is executed between the Texas Education Agency (“Agency”) and Illumination Education, Inc. (“Charter Holder”) to operate Academy of Visual and Performing Arts, a Generation Twenty-Seven (27) Open-Enrollment Charter School.

**THE PURPOSE** of this agreement is to establish terms and conditions between the Agency and the Charter Holder. The following terms shall enable the Commissioner of Education (the “Commissioner”), as vested agent, to maintain an active commitment to the award and regulation of high-quality charter schools within the state of Texas.

To such end, the Agency and Charter Holder agree as follows:

**GENERAL**

**Article I. Definitions**, as used in this contract:

“Authorizing Entity” shall mean the State Board of Education or the Commissioner of Education, as applicable to the Charter School.

“Charter” shall mean the Open-Enrollment Charter as originally granted by the Commissioner of Education or State Board of Education and renewed by this contract under the authority of the Commissioner.

“Charter Application” shall mean all information proposed by the Charter Holder in response to the Generation Twenty-Seven Request for Application.

“Charter Holder” shall refer to the sponsoring entity identified in the Charter Application and any entity for which a charter is renewed by this contract.

“Charter School” shall mean the Open-Enrollment Charter School governed by Charter Holder. The Charter School is part of the public school system of Texas and shall operate as a “Charter School” within the meaning of 20 U.S.C. §8066.

“Request for Application” shall refer to all documents approved and published as the Request for Application (RFA) 701-22-100.

“Term” shall refer to the number of years granted by the Commissioner to the Charter Holder to operate under the Charter.

## Academy of Visual and Performing Arts

**Article II. The Charter.** This contract shall govern the operation of the Academy of Visual and Performing Arts under Subchapter D, Chapter 12, of the Texas Education Code (TEC). The terms of the Charter shall include: (a) this contract; (b) applicable law or Administrative rule in effect, amended, enacted or adopted during the term of the contract; (c) Request for Application; (d) any contingency, condition, amendment, or other change to the Charter adopted or ratified by the authorizing entity, including any prior renewal documents with revisions based on contingency responses; (e) if applicable, any renewal application(s) received, including any revisions required by the Agency to the Charter made during the renewal process; and (f) all statements, assurances, commitments and representations made by Charter Holder in the original Charter Application and all subsequent Renewal Application(s), attachments or related documents, to the extent consistent with the aforementioned (a) through (f).

**Article III. Material Violation(s).** Upon any and all determinations of material violation, the contract for the charter shall be subject to revocation under TEC §12.115(a). Actions that may constitute a material violation include, but are not limited to, failure to procure valid certificates of occupancy, fingerprinting, or criminal background checks.

**Article IV. Term of Charter.** The initial Term for the Charter shall be for a period of five (5) years, and for a period of ten (10) years upon each renewal thereafter. The initial Term shall begin on the date this Charter is signed and shall automatically expire on July 31, 2027, unless it is renewed. The Charter is subject to forfeiture for failure to meet criteria under TEC §12.101 or due to revocation.

**Article V. Renewal(s) of Term.** This Agreement does not vest Charter Holder with a right of automatic renewal. All requests for renewal shall require a timely application and subsequent determination by the Commissioner.

**Article VI. Alienation of Charter.** The Charter may not be assigned, encumbered, pledged or in any way alienated for the benefit of creditors or otherwise. Charter Holder may not delegate, assign, subcontract, or otherwise alienate any of its rights or responsibilities under the Charter. Any attempt to do so shall be null and void and hold no force or effect. Breach under this section shall constitute a material violation.

**Article VII. Revision by Agreement.** The terms of the Charter may be revised with the consent of Charter Holder by written amendment approved by the Commissioner.

### STUDENTS

**Article VIII. Open-Enrollment.** Admission and enrollment shall be open to any person who resides within the approved geographic boundary stated in the Charter Application and who is eligible for admission based on lawful criteria as identified in the Charter Application and all applicable approved amendments to the Charter. Total enrollment shall not exceed the maximum number of students approved in the Charter Application and all applicable approved amendments to the Charter.

Charter Holder affirms its understanding that the Charter School must enroll and serve students in at least one state-tested grade level by the beginning of the third (3) year of operations, so that the Charter School receives an accountability rating in its third year. Charter Holder affirms that the Charter School must enroll and serve at least fifty (50) percent of its student population in a state-tested grade level by the

## Academy of Visual and Performing Arts

beginning of the fifth (5) year of operations and continuously throughout any Renewal term thereafter unless Charter Holder submits and subsequently receives Commissioner approval to waive this threshold. Additionally, Charter Holder agrees, to ensure financial viability, the entity must commit to serving a minimum of 100 students at all times. Failure to do so could result in termination of this contract.

**Article IX. Non-Discrimination.** The Charter School's educational program shall comply with TEC §12.111(a)(5).

**Article X. Children with Disabilities.** A charter school is a "local educational agency" as defined by federal law. Charter Holder must comply with the Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1401, et seq., and implementing regulations; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and implementing regulations; Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§12131-12165, and implementing regulations; Chapter 29, Texas Education Code, and implementing rules; and court cases applying these laws.

**Article XI. Non-Religious Instruction and Affiliation.** Charter School shall not conduct religious instruction or religious activities. Charter Holder and Charter School shall be nonsectarian in their programs, policies, employment practices, and all other operations.

**Article XII. Educational Program.** Any and all changes to the proposed educational programs without approval of the Commissioner shall constitute a material violation. Continued authority to operate under the Charter during the Term is contingent upon all approved campuses actively providing the educational programs as proposed in the Charter Application.

**Article XIII. Student Performance and Accountability.** Charter Holder shall satisfy (a) Subchapters A, B, C, D, F, G, and J, Chapter 39, and Chapter 39A of the Texas Education Code; (b) Chapter 12, Subchapter D, §12.104 of the Texas Education Code; and (c) related administrative rules, as well as the student performance accountability criteria stated in the Charter Application and all applicable and approved amendments to the Charter.

### FINANCIAL MANAGEMENT

**Article XIV. Financial Management and Accountability.** Charter Holder shall satisfy (a) Chapter 39 Subchapter D of the Texas Education Code; and (b) Chapter 12, §§12.104, 12.106, 12.107, 12.111, 12.1163, 12.1166, and 12.1168 of the Texas Education Code, and (c) related administrative rules regarding financial management accountability.

**Article XV. Annual Audit.** Charter Holder shall at its own expense have the financial and programmatic operations of the Charter School independently audited annually by a certified public accountant holding a valid permit that is void of a limited scope sanction from the Texas State Board of Public Accountancy with membership in the American Institute of Certified Public Accounting's Governmental Audit Quality Center. Charter Holder shall file a copy of the annual audit report, approved by Charter Holder, with the Agency not later than the 150<sup>th</sup> day after the end of the fiscal year for which the audit was made (TEC §44.008 and related administrative rules). The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the Charter School through PEIMS. Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133.

## Academy of Visual and Performing Arts

**Article XVI. Return of Property and Funds.** It is understood that in accordance with TEC §§12.128 and 12.107, a charter holder that ceases to operate for any reason, including revocation or expiration/non-renewal, shall return to the state all public property and public funds upon cessation of operation. This includes any and all property purchased or leased with state funds under TEC §12.106 and all unspent funds held in trust for the benefit of the students pursuant to TEC §§12.106, 12.107, 12.1281, 12.1282, and 12.1284.

**Article XVII. Indebtedness of Charter.** Charter Holder shall not incur a debt, secure an obligation, extend credit, or otherwise make use of the credit or assets of the Charter School for any purpose other than operations as approved in the Charter.

**Article XVIII. Non-Charter Activities.** Charter Holder shall keep separate and distinct accounting, audits, budgeting, reporting, and record-keeping systems for the management and operation of the Charter School. Any business activities of Charter Holder not directly related to the management and operation of the Charter School shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and record-keeping systems from those reflecting activities under the Charter. Failure to perform under this article shall constitute a material violation.

### GOVERNANCE AND OPERATIONS

**Article XIX. Organizational Mission.** Charter Holder shall govern and operate in strict accordance with the proposed organizational mission as presented in the Charter Application and all applicable and approved amendments to the Charter.

**Article XX. Non-Profit Status.** Charter Holder shall take and refrain from all acts necessary to maintain good standing as an organization exempt from taxation under §501(c)(3), Internal Revenue Code. If Charter Holder is incorporated, it shall comply with all applicable laws governing its corporate status. Failure to perform under this article shall constitute a material violation.

**Article XXI. Records Retention and Management.** Charter Holder shall implement a records management system that conforms to the system required of school districts under the Local Government Records Act, §201.001 et seq., Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of the Charter.

Charter Holder shall maintain all student and staff records. If Charter Holder ceases to operate the Charter School for any reason, including revocation or expiration/non-renewal, it shall return to the state all student and staff records within 30 days of closure, per TEC §12.1052(d), to a custodian designated by the Commissioner in the manner specified by the Commissioner.

**Article XXII. Failure to Operate.** Charter Holder shall operate the Charter School for the full school term as proposed in the Charter Application and all applicable and approved amendments to the Charter for each year authorized by this Agreement. Charter Holder may not suspend operation for longer than twenty-one (21) days without a revision to the Charter, adopted by the Charter Holder board, and approved by the Commissioner prior to the temporary suspension of operations, stating that the Charter School is dormant and setting forth the date on which operations shall resume and any applicable conditions. Failure to comply under this article shall constitute a material violation.

## Academy of Visual and Performing Arts

**Article XXIII. Charter School Facility.** Charter Holder shall possess and maintain, for the entire Term of Charter: (a) lease agreement(s); or (b) lawful title; or (c) other legal instrument granting a lawful right of occupancy and use. All facilities or other real property procured by Charter Holder must be of suitable use as proposed in the Charter Application and all applicable and approved amendments to the Charter. The term 'facility' under this Article shall constitute any of the following as defined in Chapter 100, Texas Administrative Code: (a) campus; and (b) facility; and (c) site that is procured by state or federal funding.

Charter Holder affirms that it shall govern and maintain operations in all facilities throughout the entire Term. The term 'operations' under this article shall constitute an open facility that is currently serving lawfully enrolled students. Without prior approval by the Commissioner, failure to comply under this article shall constitute a material violation.

**Article XXIV. Indemnification.** Charter Holder shall hold the Agency harmless from and shall indemnify the Agency against any and all claims, demands, and causes of action of whatever kind asserted by any third party and occurring or in any way incident to, arising out of, or in connection with any acts of Charter Holder, its agents, employees, and subcontractors in performance of this Agreement.

### THIS AGREEMENT

**Article XXV. Entire Agreement.** This contract, including all referenced attachments and terms incorporated by reference, contains the entire agreement of the parties. All other prior representations, understandings, and discussions are superseded by this contract.

**Article XXVI. Severability.** If any provision of this contract is determined by a court or other tribunal to be unenforceable or invalid for any reason, the remainder of the contract shall remain in full force and effect, to give effect to the intent of the parties to the extent valid and enforceable.

**Article XXVII. Conditions of Contract.** Execution of this contract by the Commissioner is conditioned on full and timely compliance by Charter Holder with: (a) the terms, required assurances, and conditions of the RFA; (b) applicable law; and (c) all commitments and representations made in the original Charter Application, approved amendments, and Renewal Application, and any supporting documents (to the extent such commitments and representations are consistent with the terms of this contract).

By executing this contract, the Charter Holder represents that it understands that the Charter Holder, including all members of any governing board, at whatever level whether appointed or elected, employees, agents, and volunteers shall fully cooperate with every Texas Education Agency investigation or sanction deemed necessary by the Commissioner based on authority and responsibility vested by state or federal law. Agency staff may conduct confidential interviews of Charter School personnel and contractors outside the presence of representatives of the Charter School's administration and board, and failure to timely comply with reasonable requests for access to site, personnel, documents, or other materials or items shall constitute a material violation.

**Article XXVIII. No Waiver of Breach.** No assent, express or implied, to any breach of any of the covenants or agreements herein shall waive any succeeding or other breach.

**Article XXIX. Governing Law.** In any suit arising under this contract, Texas law shall apply.

Academy of Visual and Performing Arts

**Article XXX. Laws and Rules Applicable.** By executing this contract, the undersigned representatives of Charter Holder represent that they have read and understand the rules adopted by the Commissioner pursuant to Texas Education Code Chapter 12, Subchapter D and that they have had full opportunity to consult with their own legal counsel concerning said rules prior to executing this Agreement. The undersigned representatives further understand and agree that: (a) this contract is contingent upon legislative authorization and the contract and the funding under it may be modified or even terminated by future legislative act; (b) the terms of this contract, and of the renewed Open-Enrollment Charter created by this contract, include all applicable state and federal laws and all applicable rules and regulations; (c) state and federal laws, rules, and regulations may be adopted, amended or repealed from time to time; (d) all such changes to state and federal laws, rules, and regulations applicable to Charter Holder or to its Charter School may modify this contract, as of the effective date provided in the law, rule, or regulation; and (e) a contract term that conflicts with any state or federal law, rule, or regulation is superseded by the law, rule, or regulation to the extent that the law, rule, or regulation conflicts with the contract term.

Notwithstanding a granting of renewal, it is understood by the parties that the Charter continues to be subject to future actions by the Commissioner including, but not limited to, possible revocation under TEC §12.115.

**Article XXXI. Eligibility and Authority.** By executing this contract, Charter Holder represents that it is an “eligible entity” within the meaning of §12.101(a) of the Texas Education Code, and it is understood by all parties that if the Charter Holder loses its 501(c)(3) tax exempt status at any time through action of the Internal Revenue Service for any reason or any other action which renders the Charter Holder no longer an “eligible entity” within the meaning of TEC §12.101(a), the charter contract shall be rendered null and void, and it shall automatically return without any further action having to be taken by the Commissioner. Subsequent reinstatement of the 501(c)(3) tax exempt status does not reinstate the Charter.

The Charter Holder shall immediately notify the Commissioner of any legal change in its status that would disqualify it from holding the Charter, of any violation of the terms and conditions of this contract, or of any change in the Chief Executive Officer of the Charter Holder. Charter Holder further represents that the person signing this contract has been properly delegated authority to do so.

Texas Education Agency:

DocuSigned by:  
*Mike Morath* 9/8/2022  
3E4780B07A8240C...  
Mike Morath Date  
Commissioner of Education

Sponsoring Entity:

DocuSigned by:  
*Scherron Richard* 9/9/2022  
D8CDECC6ED4104B2...  
Scherron Richard Date  
Board President

DocuSigned by:  
*Stephanie Love* 9/9/2022  
EC0FD990C23B4DC...  
Stephanie Love Date  
Superintendent

## Academy of Visual and Performing Arts

**APPENDIX A****Charter School Information**

<b>Charter/District name</b>	Academy of Visual and Performing Arts
<b>Charter holder</b>	Illumination Education, Inc.
<b>Approved campus(es)/site(s)</b>	One campus
<b>Generation</b>	Twenty-Seven
<b>Date charter was first approved</b>	June 16, 2022
<b>Contract start date</b>	September 9, 2022
<b>Contract end date</b>	July 31, 2027
<b>Approved grade levels</b>	6-12
<b>Maximum enrollment</b>	1,120
<b>Approved districts</b>	Arlington ISD Crowley ISD Everman ISD Fort Worth ISD