# CONFLICT OF INTEREST POLICY OF

**TEXAS FENCING INSTITUTE, INC.**

**ARTICLE I PURPOSE**

The purpose of this conflict of interest policy (the “***Policy***”) is to protect the interest of TEXAS FENCING INSTITUTE, INC. (the “***Corporation***”) when the Corporation is contemplating entering into a transaction or arrangement that might benefit the Financial Interests of a Subject Person, involve an External Loyalty of a Subject Person, or result in an Excess Benefit Transaction (as those terms are defined below). This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

# ARTICLE II DEFINITIONS

* 1. Subject Person. Any person in a position to exercise substantial influence over the affairs of the Corporation is a subject person (a “***Subject Person***”). Persons who hold certain powers, responsibilities, or titles are among those who are in a position to exercise substantial influence over the affairs of the Corporation, including, but not limited to, the Board of Directors, officers, or any member of a committee with powers delegated by the Board of Directors.
  2. Interested Person. Any Subject Person who has a Financial Interest, as defined in Section 2.03, or an External Loyalty, as defined in Section 2.04, is an interested person (an “***Interested Person***”).
  3. Financial Interest. A Subject Person has a financial interest (a “***Financial Interest***”) if:
     1. The Subject Person or a family member1 (a “***Family Member***”) of the Subject Person has, directly or indirectly, individually or through business, investment, or family:
        1. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement;

1 For purposes of this Policy, “Family Member” includes the following, whether by whole or half blood or adoption: an individual’s spouse, domestic partner (defined below), descendants, ancestors, descendants of the individual’s parents or grandparents, and the spouses of any individual described in this paragraph. A “domestic partner” is defined as two individuals who: (a) are both eighteen (18) years or older and mentally competent; (b) are not related by blood in a manner that would otherwise prohibit legal marriage in the state of residence; (c) have a committed personal relationship and are each other’s sole domestic partner not married to or partnered with any other spouse, spouse equivalent, or domestic partner; and (d) have resided together continuously for at least one (1) year in a committed relationship and intend to do so indefinitely.

1

* + - 1. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
      2. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement;2
    1. A Family Member of the Subject Person (i) has a transaction or arrangement with the Corporation, or (ii) is negotiating a transaction or arrangement with the Corporation; or
    2. As a result of any transaction or arrangement involving the Corporation, property or any other financial benefit would be transferred to the Subject Person or a Disqualified Person (as defined in Section 2.07).

**2.04** External Loyalty. A Subject Person has an External Loyalty (“***External Loyalty***”) if the Subject Person has a substantial active personal interest in or duty to another organization or person with interests that are or are likely to be adverse to the Corporation’s interests. An External Loyalty to another organization is deemed to exist when a person: (i) is a member of the governing board, an officer, or holds a similar role with respect to such organization; (ii) has or attains a direct or financial interest in such organization; (iii) receives remuneration directly or indirectly from such organization; (iv) is personally active in such organization’s affairs; or (v) provides more than nominal financial support to such organization.

* 1. Conflict of Interest. A conflict of interest (a “***Conflict of Interest***”) is defined as an interest of a Subject Person:
     1. in any transaction or arrangement involving the Corporation that could result in, or has the appearance of resulting in, an inappropriate personal, business, or professional gain for the Subject Person or a Family Member of the Subject Person; or
     2. in any transaction or arrangement involving the Corporation that could result in an Excess Benefit Transaction (defined below) in favor of a Disqualified Person (as defined in Section 2.07).

Whether a Conflict of Interest exists is to be determined by the appropriate governing board or committee, as set forth in Article III below, consistent with the principles established in this Policy.

* 1. Excess Benefit Transaction. An excess benefit transaction (an “***Excess Benefit Transaction***”), as defined in Section 4958(c) of the Internal Revenue Code of 1986, as amended

2 For purposes of Section 2.03(a), compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Further, for purposes of Section 2.03(a), an ownership or investment interest in an entity shall not be deemed a Financial Interest if the ownership or investment interest is less than one percent of an outstanding class of publicly-owned equity securities of an entity that derives less than 10% of its gross revenues from sales or services to the Corporation.

(the “***Code***”), or any successor or substitute provisions, means any transaction in which an economic benefit is provided by the Corporation, directly or indirectly, to or for the use of any Disqualified Person, where the value of such economic benefit provided by the Corporation exceeds the value of the consideration received (including the performance of services) for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless the Corporation clearly indicated its intent to so treat such benefit in writing and contemporaneously.

* 1. Disqualified Person. For purposes of this Policy, a disqualified person (a “***Disqualified Person***”) is:
     1. Any person who meets the definition of a Subject Person under Section 2.01 at any time during the five-year period ending on the date of such transaction or arrangement;
     2. A Family Member (excluding a domestic partner) of an individual described in Section 2.07(a);
     3. A 35-Percent Controlled Entity;3 or
     4. Any person who is described in Section 2.07(a)–(c) above with respect to a Supporting Organization4 that is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Corporation.

# ARTICLE III PROCEDURES

* 1. Duty to Disclose. In connection with any actual or possible transaction or arrangement involving the Corporation in which a Subject Person becomes or may become an Interested Person, that Subject Person must disclose the existence of the Financial Interest or External Loyalty and be given the opportunity to disclose all material facts to the directors and members of committees

3 For purposes of this Policy, a “35-Percent Controlled Entity,” as defined in Section 4958(f)(3) of the Code, or any successor or substitute provisions, is a corporation, partnership, trust, or estate, in which persons described in Section 2.07(a) or 2.07(b) own more than 35% of the combined voting power, profits interest, or beneficial interest, as applicable. Ownership of stock, profits, and beneficial interests is determined with constructive ownership rules, under which stock or an interest owned by a corporation, partnership, trust, or estate is deemed owned proportionately by its shareholders, partners, or beneficiaries, shareholders are deemed to own stock owned by their partners, and individuals are constructive owners of stock and interests of a Family Member.

4 For purposes of this Policy, a “Supporting Organization,” as defined in Section 509(a)(3) of the Code, or any successor or substitute provisions, is an organization which is (a) organized, and at all times thereafter is operated, exclusively for the benefit or, to perform the functions of, or to carry out the purposes of one or more specified organizations described in Sections 509(a)(1) or (a)(2) of the Code, including the Corporation, (b) (i) operated, supervised, or controlled by one or more organizations described in Sections 509(a)(1) or (a)(2) of the Code, (ii) supervised or controlled in connection with one or more such organizations, or (iii) operated in connection with one or more such organizations, and (c) not controlled directly or indirectly by one or more disqualified persons (as defined in Section 4946 of the Code) other than foundation managers and other than one or more organizations described in Sections 509(a)(1) or (a)(2) of the Code.

with powers delegated by the governing board considering the proposed transaction or arrangement.

* 1. Determining Whether a Conflict of Interest Exists. After disclosure of the Financial Interest or External Loyalty and all material facts and any discussion, the Interested Person shall leave the governing board or committee meeting while the determination of a Conflict of Interest is discussed and voted upon. The remaining board or committee members shall decide if a Conflict of Interest exists.
  2. Procedures for Addressing the Conflict of Interest. If the governing board or committee determines that a Conflict of Interest exists, as described in Section 3.02 above, the following procedures shall be followed:
     1. An Interested Person may make a presentation at the governing board or committee meeting, but after the presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible Conflict of Interest.
     2. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
     3. After exercising due diligence, the governing board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a Conflict of Interest.
     4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a Conflict of Interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation’s best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.
  3. Additional Procedures for Addressing Potential Excess Benefit Transaction. Where the governing board or committee has determined that any transaction or arrangement involving the Corporation could give rise to an Excess Benefit Transaction, they shall consider consulting with legal counsel or an expert with respect to Excess Benefit Transactions regarding the appropriate action to take, and shall consider taking the following actions to create a rebuttable presumption that (i) any payments under the compensation arrangement are reasonable, and (ii) a transfer of property, or the right to use property, is at fair market value:5
     1. The compensation arrangement or the terms of the property transfer shall be approved in advance by an authorized body of the Corporation composed entirely of

5 These procedures are further described in Treasury Regulation Section 53.4958-6.

individuals who do not have a conflict of interest6 with respect to the compensation arrangement or property transfer;

* + 1. The authorized body shall obtain and rely upon appropriate data as to comparability prior to making its determination;7 and
    2. The authorized body shall adequately document the basis for its determination concurrently with making that determination.8
  1. Violations of the Conflicts of Interest Policy.
     1. If the governing board or committee has reasonable cause to believe a Subject Person has failed to disclose a Financial Interest or External Loyalty or an actual or possible Conflict of Interest, it shall inform the Subject Person of the basis for such belief and afford the Subject Person an opportunity to explain the alleged failure to disclose.
     2. If, after hearing the Subject Person’s response and after making further investigation as warranted by the circumstances, the governing board or committee

6 A member of the governing board or committee does not have such a conflict of interest if such a member: (i) is not a Disqualified Person (or a Family Member of a Disqualified Person) participating in or economically benefiting from the transaction or arrangement; (ii) is not in an employment relationship subject to the direction or control of any Disqualified Person participating in or economically benefiting from the transaction or arrangement; (iii) does not receive compensation or other payments subject to approval by any Disqualified Person participating in or economically benefiting from the transaction or arrangement; (iv) has no material financial interest affected by the transaction or arrangement; and (v) does not have a reciprocal arrangement to approve a transaction or arrangement of a person who, in turn, has approved or will approve such a transaction or arrangement that provides an economic benefit to the member.

7 The governing board or committee shall obtain and may rely on appropriate data as to comparability if, given the knowledge and expertise of the governing board or committee, it has information sufficient to determine whether a transaction or arrangement in its entirety is reasonable or the property transfer is at fair market value. In the case of compensation, relevant information includes, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the availability of similar services in the geographic area of the Corporation; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the Subject Person. In the case of property, relevant information includes, but is not limited to, current independent appraisals of the value of all property to be transferred, and offers received as part of an open and competitive bidding process.

8 For a decision to be adequately documented, the minutes of the governing board or committee must note the following: (i) the terms of the transaction or arrangement that was approved and the date it was approved; (ii) the members of the governing board or committee who were present during the discussion, including those who voted on it; (iii) the comparability data obtained and relied upon by the governing board or committee and how the data was obtained; and (iv) any actions taken with respect to consideration of the transaction or arrangement by anyone who is otherwise a member of the governing board or committee but who had a conflict of interest with respect to the transaction or arrangement. If the governing board or committee determines that reasonable compensation for a specific arrangement or fair market value in a specific property transfer is higher or lower than the range of comparability data obtained, the governing board or committee must record the basis for its determination in the minutes. Minutes must be prepared before the later of (i) the next meeting of the governing board or committee, or

1. 60 days after the final action(s) of the governing board or committee are taken, and the governing board or committee must review and approve such minutes within a reasonable time thereafter.

determines the Subject Person has failed to disclose an actual or possible Conflict of Interest, it shall take appropriate disciplinary and corrective action.

# ARTICLE IV RECORDS OF PROCEEDINGS

The minutes of the governing board and all committees with board delegated powers shall contain:

* 1. The names of the persons who disclosed or otherwise were found to have a Financial Interest or External Loyalty in connection with an actual or possible Conflict of Interest, the nature of the Financial Interest or External Loyalty, any action taken to determine whether a Conflict of Interest was present, and the governing board’s or committee’s decision as to whether a Conflict of Interest in fact existed.
  2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

# ARTICLE V COMPENSATION

* 1. A voting member of the governing board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member’s compensation.
  2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member’s compensation.
  3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

# ARTICLE VI ANNUAL STATEMENTS

Each Subject Person shall annually sign a statement that affirms such person:

* + 1. Has received a copy of the Conflict of Interest Policy;
    2. Has read and understands the Policy;
    3. Has agreed to comply with the Policy; and
    4. Understands that, in order to maintain the Corporation’s federal tax exemption, the Corporation must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

# ARTICLE VII PERIODIC REVIEWS

To ensure the Corporation operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable and the result of arm’s length bargaining. Such determination shall be made by the Board of Directors and, in making the determination the Board may, but is not required to, consider competent survey information.
2. Whether partnerships, joint ventures, and arrangements with any organization engaged to carry out a management function of the Corporation conform to the Corporation’s written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

# ARTICLE VIII

**USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

***Remainder of Page Intentionally Left Blank.***

***Signature Page Follows.***

The undersigned, as Secretary of the Corporation, does hereby certify that the foregoing Policy was approved and adopted by unanimous consent of the directors on the day of

, 2017.

LAURA B. MORALES, Secretary