

**AMENDED TRUST AGREEMENT  
for  
THE DENTISTS PROFESSIONAL LIABILITY TRUST**

THIS TRUST AGREEMENT (hereinafter referred to as the "Agreement") is made by and between the Grantors who have signed or will sign the Participation Agreement for The Dentists Professional Liability Trust (hereinafter collectively referred to as "Participants") and The Dentists Professional Liability Benefit Plan, Inc., a Colorado corporation (hereinafter referred to as the "Trustee").

**RECITALS**

A. The Participants have established and will maintain The Dentists Professional Liability Benefit Plan, Inc. under the provisions of Section 11-70-101, *et seq.*, Colorado Revised Statutes, as amended in 1986 by Senate Bill 42, for the purpose of insuring against loss by the payment of compensation in the event of general public liability claims based upon the performance of professional services rendered or which should have been rendered by dentists, including, without limitation, claims based upon malpractice.

B. The Trustee named herein is willing to act as Trustee of funds deposited by Participants pursuant to the terms, conditions, and provisions set forth herein.

NOW, THEREFORE, in consideration of the mutual undertakings of the Participants and the Trustee, it is agreed as follows:

**ARTICLE I  
Name of Trust**

This Trust shall be known as THE DENTISTS PROFESSIONAL LIABILITY TRUST (hereinafter referred to as the "Trust").

**ARTICLE II  
Composition and Control of Trust Assets**

The Trustee shall receive contributions from the Participants in such amounts and on or before such due dates as shall be determined from time to time by the Trustee, and shall hold and utilize the contributions, and any income and earnings therefrom, as provided in this Agreement. The Trustee shall, in addition, hold any and all property of every type and description which they heretofore have acquired or hereafter may acquire, as Trustee, together with the proceeds thereof, in trust, to manage and dispose of the same from time to time for the benefit of the Participants and subject to the provisions of this Agreement. All such contributions and all such property and proceeds received by the Trustee from whatever source shall constitute the Trust Assets. The Trustee has, and shall exercise, exclusive management and control of the Trust Assets subject to the terms and provisions of this Agreement.

**ARTICLE III  
Trustee**

A. Appointment and Tenure. The business and affairs of the Trust shall be directed by the Trustee.

B. Resignation and Removal. The Trustee may resign at any time by written notice given to the

Participants, the resignation to be effective thirty (30) days after the mailing, by first class mail, postage prepaid, of such notice, or at such other time as the Trustee and the Participants may jointly agree. Trustee may be removed by a simple voting majority of the Participants.

C. Successor Trustee.

1. The Participants shall appoint a successor Trustee as soon as is convenient after the resignation or removal of a Trustee, pursuant to Paragraph B, above;
2. If no successor Trustee is elected within thirty (30) days of the occurrence of a vacancy, any Participant may petition any Court of competent jurisdiction, without notice, to name a successor Trustee. By making such appointment, such Court shall not acquire jurisdiction over the Trust;

D. Rights of Successor. Any successor Trustee shall have all the title, rights, powers, privileges and duties conferred or imposed upon the original Trustee, without any act of conveyance or transfer. No Trustee need examine the accounts, records, and acts of any previous Trustee or any allocation of the Trust nor be responsible for any act or omission to act on the part of any previous Trustee.

## ARTICLE IV Powers and Duties of Trustee

A. Duties. The Trustee shall be responsible for directing the business and affairs of the Trust, including the investment, administration and management of the Trust Assets.

B. Powers. The Trustee shall have such powers and may perform such acts as may be reasonably necessary or desirable to administer the Trust and to promote or advance the purposes and interests of the Trust. By way of illustration, and not by limitation, the Trustee shall have the power to:

1. Acquire, hold, retain, invest, reinvest, and manage any kind of realty or personalty, without diversification as to kind, amount, or risk of non-productivity and without limitation by statute or rule of law; partition, sell, exchange, assign, lease, option, abandon or otherwise dispose of property, publicly or privately, and without appraisal; borrow and lend money, without security, and mortgage, pledge or otherwise encumber property; distribute in cash or kind, or partly in each and without requiring *pro rata* distribution of specific assets; hold property in nominee form; establish reserves; deal with itself, other fiduciaries and business organizations in which the fiduciaries may have an interest; release powers and abandon, settle or contest claims;
2. Make, execute, acknowledge, and deliver any and all documents required to be made in connection with the settlement and defense of any claim; deliver documents required by any insurer or reinsurer in connection with the issuance of any insurance policy, or in connection with the issuance of any insurance policy, or in connection with the exercise of the rights of ownership of such policies, any and all forms, returns, notices, transfers, conveyances and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
3. Settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from this Trust or arising in connection with any right, duty or obligation hereunder;

4. Commence and defend against legal or administrative proceedings; and represent the Trust and its Administrator and Participants, including selection of legal counsel, in legal or administrative proceedings;
5. Provide legal, actuarial, risk management, and loss control services to Participants;
6. Employ suitable agents, employees, attorneys, and such other professionals as may be necessary or advisable, and pay their reasonable expenses and compensation;
7. Incur and pay any administrative, legal, actuarial, risk management and loss prevention expenses or like fees and costs; pay all claims of third parties made, assessed, or decreed against the Participants allowed to be paid under coverage provided by the Trust; and exercise all rights of the Trustees contained in any agreements between the Trustees and the Participants and any professional liability policy issued by the Trust;
8. Adopt, amend, or repeal rules and regulations as may not be inconsistent with the Trust Agreement and the laws of Colorado and as are deemed necessary for the conduct of the affairs of the Trust;
9. Rely conclusively upon, and be fully protected in any action taken in good faith (individually or collectively) in reliance upon any opinion or reports furnished to the Trustee by any agent, counsel, specialist or adviser;
10. Acquire or cause to be organized any entity under the laws of any jurisdiction to hold the Trust Assets, or any part thereof, or to carry on any business in which the Trust shall have any interest, and cause the Trust to merge or consolidate with such entity or to transfer the Trust Assets or any part thereof to such entity in exchange for the securities thereof or otherwise, and to lend money to, subscribe for the securities of, and enter into any contracts with, any such entity in which the Trust holds or is about to acquire securities or any other interest;
11. Enter into joint ventures, general or limited partnerships and any other combinations or associations;
12. Purchase and pay for out of Trust Assets insurance policies insuring the Trustee, officers, employees, agents, investment advisers, including the Administrator, or independent contractors of the Trust individually against all claims and liabilities of every nature arising by reason of holding, or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such person as trustee, officer, employee, agent, investment adviser, or independent contractor, including any action taken or omitted that may be determined to constitute negligence, whether or not the Trust would have the power to indemnify such person against such liability.

The Trustee shall, in addition, have all powers set forth in the Colorado Fiduciaries' Powers Act, together with any amendments to such Act subsequent to the date hereof; or if such Act is not in effect at any time, said Act, as it exists on the effective date of this Agreement, is incorporated herein by this reference to the Colorado Fiduciaries' Powers Act, as amended from time to time.

Any determination as to what is in the interests of the Trust made by the Trustee in good

faith shall be conclusive. Any construction of this Trust or any determination of the purposes of the Trust or the existence of any power or authority hereunder, made in good faith by the Trustee shall be conclusive to the extent consistent with law. In construing the provisions of this declaration of Trust, the presumption shall be in favor of a grant of power to the Trustee.

C. Employment of Agents and Advisers. The Trustee is responsible for the general policies of the Trust, including investment policies, and for the general supervision of the business of the Trust conducted by all officers, agents, employees, advisers, managers or independent contractors of the Trust. However, the Trustee is not and shall not be required to personally conduct the business of the Trust. Consistent with its ultimate responsibility as stated above, the Trustee may appoint, employ, or contract with any persons as the Trustee may deem necessary or desirable for the transaction of the business of the Trust, including insurance and investment advisers and consultants. The Trustee shall have the power to determine the employment conditions, and the terms of compensation of any person or entity it may employ or with whom it may contract.

D. Trust Administrator. Consistent with its ultimate responsibility as set forth in Section A of this Article, the Trustee may employ or contract with a person or entity to serve as the Trust Administrator and supervise the day to day administration of the Trust. The Trustee may grant or delegate such authority to the Administrator, or to any other person the services of whom are obtained by the Administrator, as the Trustee may in its sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by a trustee. The Trustee may exercise broad discretion in allowing the Administrator to administer and regulate the operations of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trustee, and to make executive decisions which conform to general policies and general principles previously established by the Trustee.

E. Additional Delegation of Authority. The Trustee may also delegate to other persons responsibility for establishment, assessment, and collection of the Participants' contributions, loss control, claims processing, risk management, litigation, recommendations regarding expulsion or termination of any Participant and such other duties as the Trustee may deem desirable. In addition, the Trustee may authorize one or more of its directors to sign, execute, acknowledge and deliver any document or instrument in the name and on behalf of the Trustee.

F. Trust Records. The Trustee shall maintain accurate and detailed records of all receipts, disbursements, investments and other transactions under this Agreement. All records and books of the Trust shall be open to inspection or audit at any reasonable time by any Participant in person, or by the Participant's agent designated in writing.

G. Protection of Trustee. Trustee shall not be liable to any Participant for any matter arising out of the responsible exercise of fiduciary judgment, discretion, and responsibility by Trustee. Such matters may include, but are not limited to, allocations of assets in kind to Participants on distribution, even if income tax bases of assets differ or such shares are composed differently or such distributions are made at differing times.

H. Court Supervision and Bond. This Trust shall be administered free from the active supervision of any court and in any jurisdiction deemed advisable by the Trustee. No Trustee acting under this Trust shall furnish bond unless required to do so by law, order of court, or procedural rule, in which event no surety shall be required on any such bond.

I. Compensation. The Trustee shall be entitled to receive reasonable compensation commensurate with the services actually performed by Trustee. The Trust shall reimburse the Trustee upon request for all reasonable and necessary expenses incurred by it in the performance of its duties under this Trust Agreement.

## ARTICLE V Participant Status

A. Eligibility. Any dentist who is an active member of the Colorado Dental Association is eligible to apply to be a Participant.

B. Application. Any eligible dentist desiring to become a Participant shall execute an Application form prescribed by the Trustee. Such Application shall be processed by a Participation Committee (the composition of which shall be determined by the Trustee) in accordance with eligibility requirements adopted by the Trustee; provided, however, that due process shall be observed in the consideration of and action upon any such application for membership. In addition to proof of reputable character, of adequate education and training, of adherence to proper ethical standards, and of acceptable physical, mental and emotional condition, and freedom from conditions which impair the capability to provide an acceptable standard of dental care, the applicant for participation may be required to furnish proof that his or her practice of dentistry is consistent with generally accepted standards of dental care and does not present an unacceptable risk, as determined by the Trustee, of professional liability.

C. Participation Agreement. Upon acceptance by the Participation Committee of an application for professional liability coverage through the Trust, the applicant shall be required to agree to be bound by the provisions of this Agreement and any rules, regulations, eligibility requirements and policies adopted by the Trustee. The form and contents of the Participation Agreement and the professional liability policy shall be determined by the Trustee, and may be revised or amended by the Trustee from time to time; provided, however, that no amendment of the professional liability policy will be effective until thirty (30) days after notice of the Amendment is given to all Participants then participating in the Trust.

D. Appeal From Rejection of Application for Participation. If an application for participation shall be rejected by the Participation Committee, the applicant shall have the right to appeal that decision to the Trustee, in accordance with rules and regulations adopted by the Trustee.

E. Termination of Participation - By Trustee. The Trustee shall have the power to terminate a Participant's rights and privileges in the Trust. Grounds for termination shall include the following:

1. Failure to comply with the provisions of this Agreement, or any other agreement between the Trust and the Participant, including the terms of any professional liability policy issued by the Trust to such Participant, and the terms of the Participation Agreement;
2. Failure to follow the loss control or risk management rules and regulations established by the Trustee;
3. Breach of any of those qualifications for membership set forth in Section B of this Article;
4. Loss or suspension of license to practice dentistry;
5. Nonpayment of any contribution required to be made by the Participant, including, but not limited to, any contingent liability payment assessed by the Trustee in accordance with the Participation Agreement.

In the event of termination of a Participant for nonpayment of contributions, such termination shall be as of the date such contribution was required to be paid. In the event of

termination for any other cause, the Participant shall be entitled to a hearing for reinstatement in accordance with rules of due process as established by the Trustee, and such termination shall be effective as of the date and upon the terms and conditions specified by the Trustee.

F. Termination of Participation - By A Participant. Any Participant shall have the right at any time, by notice delivered to the principal office of the Trust as established by the Trustee from time to time, to terminate his or her participation therein. In the event of such cancellation, the amount of the Participant's contribution to be retained by the Trust shall be computed in accordance with a short-rate table and procedure to be adopted by the Trustee.

G. Effect of Termination Upon Interest In Trust Assets. Upon termination of participation in the Trust, whether by the Trustee or the Participant, the terminated Participant shall forfeit any interest in the Trust Assets to which the Participant would otherwise be entitled.

H. Guarantees. Should any terminated Participant have made any endorsements or guarantees for and on behalf of the Trust to any third persons, including commercial lenders, such guarantees shall not be released by such termination of participation.

## ARTICLE VI Trust Contributions And other Requirements of Membership

A. Trust Contributions. Each Participant shall make a contribution for each coverage year provided by the policy to be issued to such Participant by the Trust, the amount and due date of such contribution and the period of participation and benefits thereof to be determined by the Trustee from time to time. The Trustee shall have the power to require the payment of prorated portions of contributions and to adopt policies, including the applicability of short rate tables, regarding the calculation of refunds in the event of termination of participation. The prompt payment of such contributions to the Trust by each Participant shall be a condition precedent to the continuation of the Participant's participation in this Trust.

B. Loss Control and Risk Management. The Participants agree to follow the loss prevention and risk management requirements adopted by the Trustee from time to time.

C. Agents. Each Participant shall appoint the Trustee and its designee, to be his agent, to execute all contracts, reports, waivers, agreements, service contracts, and to make and arrange for the payment of claims, and to take all other actions required for the proper and orderly operation of the Trust.

D. Questionnaires. Participants shall provide such information as may be requested from time-to-time by the Trustee relating to the operation and administration of the Trust and any coverage provided by the Trust.

## ARTICLE VII Trust Assets

A. Assets Held As Single Fund. All of the contributions paid into the Trust by the Participants and all income and earnings therefrom shall be maintained in such accounts as shall be determined by the Trustee. There shall be no individual Participant accounts.

B. Depositories. The Trustee shall establish such accounts in such banks, trust companies, savings and loan associations and other depositories as they deem appropriate for deposit of the Trust Assets or any portion thereof and shall make such deposits or withdrawals therefrom in such manner and upon such conditions as the Trustee shall determine to be necessary or proper.

## ARTICLE VIII Claims Administration And Payment Of Losses

A. General Purpose. The principal purpose for the establishment of this Trust is to provide for the orderly receipt, examination, investigation, and defense or settlement of claims of professional liability made by third parties against Participants. The Trustee shall use the Trust Assets to pay losses and claims as set forth in the coverage agreements issued by the Trust from time to time, subject to compliance by the Participant with the provisions thereof.

B. Aggregate Losses and Reserves in Excess of Trust Fund. Should the aggregate of expenses paid, anticipated expenses, claims paid, and claims reserved against the Trust exceed the aggregate sum of the Trust Assets available, the Trustee shall have the authority, but not the duty, to borrow funds from such source as they shall deem appropriate.

C. Insurance and Reinsurance. The Trustee may obtain, but is not obligated to do so, such policies of insurance or reinsurance from a duly authorized insurer or reinsurer as the Trustee shall deem necessary.

D. Power to Control Claims. To assure an orderly administration and payment of claims, a nondiscriminatory and uniform method of handling suits and claims shall be established under policies determined by the Trustee.

## ARTICLE IX Indemnification

The Trust shall indemnify and hold harmless the Trustee, the Administrator, and the agents, servants, employees, and any of them, from any and all claims, damages, judgments, losses, costs and expenses (including reasonable attorneys fees), not otherwise paid or indemnified against by insurance coverage carried by the Trust or by such person, actually and necessarily incurred in connection with the defense of any action, suit or proceeding in which that person may be involved or to which the person may be made a party by reason of any act or omission in the course of his or her duties in behalf of the Trust, except in relation to matters as to which such person shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or misconduct in the performance of duty. The Trust shall, upon request, provide legal defense to any such person against any such claim. The obligation of the Trust hereunder, exclusive of attorneys fees and other costs of defense, shall not exceed the sum of Two Million Dollars (\$2,000,000.00) for any one claim nor more than Four Million Dollars (\$4,000,000.00) for all claims arising out of any one occurrence.

**ARTICLE X**  
**Amendment and Termination**

A. Amendment. This Agreement may be amended from time-to-time by a simple voting majority of the Participants of the Trust; provided, however, that no amendment shall be retroactive, or diminish any benefits to which the Participants of the Trust are otherwise entitled prior to the date on which the amendment is adopted.

B. Termination And Merger. Upon the determination of a simple voting majority of the Participants of the Trust that the best interests of the Trust and Participants will be served thereby, the Trust may be terminated (with or without a successor entity) or merged or consolidated with any other entity, upon such terms and conditions as shall be contained in a plan of termination, consolidation or merger (the "Plan") adopted by the Trustee. In the event of merger or consolidation, the Trust Assets may be transferred or disposed of in such manner as is provided in the Plan, subject to the making of adequate provisions for payment of the liabilities and obligations of the Trust, including the establishment of appropriate reserves for claims under policies or coverage certificates issued by the Trust or under other agreements to which the Trust is a party. A copy of the Plan shall be given to the Trustee and the Participants of the Trust at least one hundred twenty (120) days prior to the implementation thereof. The Trustee shall distribute the Trust Assets in accordance with the Plan; provided, however, that only those persons who at the time of such termination, merger or consolidation are Participants of the Trust shall be deemed to have any interest in the Trust Assets.

**ARTICLE XI**  
**Miscellaneous**

A. Governing Law. This Trust shall be interpreted and administered according to the laws of the State of Colorado.

B. Pronouns, Singular and Plural. Unless the context requires otherwise; words denoting the singular may be construed as denoting the plural; and words of the plural may be construed as denoting the singular, and words of one gender may be construed as denoting such other gender as is appropriate.

C. Binding Nature. This Trust Agreement shall be binding upon and inure to the benefit of the original parties hereto and any substitute or additional parties who are bound hereby in accordance with the provisions hereof.

D. Evidence of Acceptance by Participants. This Trust Agreement shall be deemed executed by each Participant upon his execution of a Participation Agreement for participation in Dentists Professional Liability Trust of Colorado.

E. Duration. The Trust shall continue, if not sooner terminated, for such time as may be necessary to accomplish the purposes for which it was created.

Executed and effective this 12<sup>th</sup> day of December, 1997.

THE DENTISTS PROFESSIONAL LIABILITY BENEFIT PLAN, INC.