



7807 E Peakview Ave., Suite 350  
Centennial, Colorado 80111

Board of Directors  
J. Gregory Mann, DDS, DDS  
President  
San Juan Basin

Date

**Re: Professional Liability Coverage Application – New Applicant**

Gerald A. Branes, DDS  
Vice President  
Arkansas Valley

Address

Ryan Cable, DDS  
Secretary  
Metropolitan Denver

Dear

James B. Monk, DDS  
Treasurer  
Boulder-Broomfield

Thank you for your interest in the Dentists Professional Liability Trust of Colorado (“The Trust”). Enclosed please find:

- Professional Liability Coverage Application – New Applicant
- Dental Implant Surgical Phase Supplement
- Injectable Neurotoxins and Dermal Fillers Supplement
- Anesthesia/Sedation Supplement
- A Participation Agreement, Business Associate Agreement, and Amended Trust Agreement are attached for your information and records as well.

Harold R. Christiansen, DDS  
Metropolitan Denver

Nicole M. Ferrara, DDS  
Larimer County

Richard A. Hurd, DDS  
Western Colorado

Kami Marr, DDS  
Weld County

Your policy provides \$2 million dollars of dental professional liability coverage, with a \$6 million dollar annual aggregate. This coverage is **exclusive** to dentists who are (or become) a member of the Colorado Dental Association.

Sarah Parsons, DDS  
Metropolitan Denver

Brian Todd Pickle, DDS, MS  
Colorado Springs

Retroactive coverage is available for dentists who have had claims-made policies in the past, if the dental practice was within the State of Colorado.

Ben Ricketts, DDS, MSD  
Metropolitan Denver

The premium for this policy will be determined upon completion of underwriting. The Trust does offer two different payment plans for your premiums:

- Payment in full
- Monthly draft from your checking account

Neil Schoemaker, DDS  
Northeastern Colorado

R.J. Schultz, DDS  
South East

This policy does not insure your office equipment, premises liability, etc. These policies may be purchased separately. Please contact our office for more information. We will be happy to work with you for all your insurance needs.

Lonnie R. Johnson, DDS, PhD  
Ex officio member  
University of Colorado  
School of Dental Medicine

If you have any further questions, please contact Janice Raemer at 303.357.2613 or 877.502.0133.

Greg Hill, J.D.  
Ex officio member  
Colorado Dental Association  
Executive Director

Administered by  
Berkley Risk

Sincerely,

email  
[denver@berkleyrisk.com](mailto:denver@berkleyrisk.com)  
Internet  
<http://www.tdplt.com>  
Metro Denver  
(303) 357-2600  
Toll Free  
(877) 502-0100  
Fax  
(866) 699-1559

Randy L. Kluender, DDS, MS  
Executive Director  
Dentists Professional Liability Trust of Colorado  
Berkley Risk

Enclosures



## Professional Information

7. Colorado Dental License # \_\_\_\_\_ DEA# \_\_\_\_\_ Expiration Date \_\_\_\_/\_\_\_\_
8. Have you ever been licensed in another state? List all. State \_\_\_\_\_  
License # \_\_\_\_\_ Current? Yes \_\_\_\_\_ No \_\_\_\_\_
9. Dental School Attended: \_\_\_\_\_
10. Month/Year of Graduation \_\_\_\_/\_\_\_\_
11. If you are a Foreign Dental School Graduate, are you certified by the Educational Council for Dental School  
Graduates: Yes No If yes, year of certification \_\_\_\_\_
12. Have you completed a specialty program? Yes \_\_\_\_\_ No \_\_\_\_\_  
Please list \_\_\_\_\_ Date Completed \_\_\_\_/\_\_\_\_
13. Please list any other Professional Licenses: \_\_\_\_\_
14. In consideration of the issuance of this coverage, the applicant agrees to become a member of the Colorado  
Dental Association and maintain membership. \_\_\_\_\_(initials)
15. What professional organizations are you a member of? ADA  CDA (required)  ADA # \_\_\_\_\_
16. Other: \_\_\_\_\_

## About Your Practice:

Employee Dentist  Individual  Partnership  Professional Corporation  Contract Dentist

Name of Current Practice: \_\_\_\_\_ How long? \_\_\_\_\_

Additional Locations: \_\_\_\_\_  
\_\_\_\_\_

Name of Partners or Members of Corporation/Employer: \_\_\_\_\_

Are other dentists or contract providers employed by you? Yes No Number Employed \_\_\_\_\_

Are they Trust Dentists? Yes \_\_\_\_\_ No \_\_\_\_\_

Name of Previous Practice: \_\_\_\_\_ How long? \_\_\_\_\_

## License and Claims History

17. Do you have hospital privileges? Yes \_\_\_\_\_ No \_\_\_\_\_

*Please provide details:* \_\_\_\_\_

List Dental Assistants: \_\_\_\_\_

18. Has any dental school or governmental agency, including a state licensing board, ever taken action against either your dental and/or narcotics license including suspension, revocation, probation, restriction, voluntarily surrendered, denial or other sanctions? Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, provide a copy of the board transcript or other documentation, including resolution.*

19. Have you ever been denied a dental license or been denied certification by a specialty board?

Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, provide details:* \_\_\_\_\_

20. Have you been under investigation or currently under investigation by any governmental agency including a state licensing board or other regulatory agency including Peer Review?

Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, provide a copy of the board transcript or other documentation, including resolution*

21. Have you been convicted of any criminal charges? Yes \_\_\_\_\_ No \_\_\_\_\_

*Please provide details:* \_\_\_\_\_

22. Have you ever been or are you currently being treated for:

Alcohol abuse Yes \_\_\_\_\_ No \_\_\_\_\_

Drug Addiction Yes \_\_\_\_\_ No \_\_\_\_\_

Mental Illness Yes \_\_\_\_\_ No \_\_\_\_\_

Physical Disablement Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, provide a letter from treating physician with complete details*

23. Has any claim or suit for alleged malpractice ever been brought against you? Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, please complete a Supplemental Report Form for each incident*

24. Are you currently aware of any situation that could lead to a malpractice suit against you?

Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, please complete a Supplemental Report Form for each incident*

25. Have you had prior Coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Carrier and dates covered: \_\_\_\_\_

# Procedures Performed

26. Indicate which of the following areas you plan to practice:

- |   |  |
|---|--|
| <input type="checkbox"/> Examination, diagnosis, treatment planning   | <input type="checkbox"/> Preventive Dentistry            |
| <input type="checkbox"/> Prosthodontics, Fixed  | <input type="checkbox"/> Sleep Apnea Therapy             |
| <input type="checkbox"/> Pediatric Dentistry  | <input type="checkbox"/> Prosthodontics, Removable       |
| <input type="checkbox"/> Operative Dentistry  | <input type="checkbox"/> Oral Surgery                    |
| <input type="checkbox"/> Orthodontics   | <input type="checkbox"/> Cosmetic Dentistry              |
| <input type="checkbox"/> Endodontics  | <input type="checkbox"/> TMJ/TMD                         |
| <input type="checkbox"/> Periodontics   | <input type="checkbox"/> Hospital Dentistry              |
| <input type="checkbox"/> Neurotoxins and Dermal Fillers   | <input type="checkbox"/> Deep Sedation                   |
| <input type="checkbox"/> Lasers – used in dental treatment  | <input type="checkbox"/> Molar Endodontics               |
| <input type="checkbox"/> Extraction of Impacted Teeth   | <input type="checkbox"/> Physical Therapy                |
| <input type="checkbox"/> Implant Dentistry (If yes, provide copies of training and certificates)                                  |  |
| <input type="checkbox"/> Surgical Placement (please complete Implant Application)   |  |
| <input type="checkbox"/> Restorative  |  |
| <input type="checkbox"/> Sedation (If yes, provide the required State documentation and complete Anesthesia/Sedation Application) |  |
| <input type="checkbox"/> General Anesthesia   | <input type="checkbox"/> Nitrous Oxide/Oxygen Inhalation |
| <input type="checkbox"/> Moderate Sedation  | <input type="checkbox"/> Minimal Sedation                |
| <input type="checkbox"/> Oral Premedication for anxiety & apprehension  |  |

Who administers the anesthesia?

- You
- Another Dentist or MD Anesthesiologist or CRNA
- Comprehensive Radiographic Survey (FMX)? Yes \_\_\_\_\_ No \_\_\_\_\_
- How frequently? \_\_\_\_\_
- CBCT Imaging
- Is the equipment used on patients other than your own? Yes \_\_\_\_\_ No \_\_\_\_\_
- Are the results read by a radiologist? Yes \_\_\_\_\_ No \_\_\_\_\_
- Cosmetic Dentistry/Rehabilitation/TMJ/TMD (If yes, please provide copies of any training)

27. Do you obtain a dental/medical history for all patients? Yes \_\_\_\_\_ No \_\_\_\_\_

28. Do you personally review it? Yes \_\_\_\_\_ No \_\_\_\_\_

Is that history updated? Yes \_\_\_\_\_ No \_\_\_\_\_

How frequently? \_\_\_\_\_

29. Do you complete patient charts? Yes \_\_\_\_\_ No \_\_\_\_\_

Immediately after treatment

End of each day

End of each week

30. Do you have written informed consent documents in your office? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, list for what procedures: \_\_\_\_\_

31. Do you record a comprehensive/detailed treatment plan in the patient's chart? Yes \_\_\_\_\_ No \_\_\_\_\_

*Do you conduct a patient consultation of your treatment plan*

*that is approved and signed by the patient?*

Yes \_\_\_\_\_ No \_\_\_\_\_

32. Do you have established emergency procedures, personnel trained in BLS and equipment for patient emergencies such as cardiac arrest, etc.? Yes \_\_\_\_\_ No \_\_\_\_\_

Please provide details: \_\_\_\_\_

CPR Certification Date \_\_\_\_\_

\_\_\_\_\_ AED

\_\_\_\_\_ Emergency Kit

Concealment or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

- Intentionally concealed or misrepresented any material fact or circumstances;
- Engaged in fraudulent conduct; or
- Made false statements; relating to this insurance, including but not limited to, statements in the Application and/or Supplemental Application(s) for this insurance.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

## SUPPLEMENTAL REPORT FORM

As indicated in Questions 23, 24 of the Professional Liability Coverage Application, the following information is required. Complete a separate form for each incident/claim or suit regardless of the disposition of the complaint, claim or incident.

(Make copies of this form if you need to report multiple incidents/claims or complaints)

1. Name, age and sex of patient: \_\_\_\_\_
2. Date of first examination: \_\_\_\_\_
3. Dental condition and diagnosis at first examination: \_\_\_\_\_
4. Dates of treatment and nature of treatment: \_\_\_\_\_
5. Date of incident/claim, and allegations made: \_\_\_\_\_
6. Disposition of the incident/claim and amount of judgment or settlement: \_\_\_\_\_
7. What insurance company, if any, was involved: \_\_\_\_\_
8. Subsequent condition/health of the patient: \_\_\_\_\_
9. Name of other doctors, if any, involved in the incident/claim or suit: \_\_\_\_\_
10. To whom may we refer for further information about the claim/suit: \_\_\_\_\_

### Concealment or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

- Intentionally concealed or misrepresented any material fact or circumstances;
- Engaged in fraudulent conduct; or
- Made false statements; relating to this insurance, including but not limited to, statements in the Application and/or Supplemental Application(s) for this insurance.

\_\_\_\_\_

Signed

\_\_\_\_\_

Dated



## **Additional Coverages- Supplemental Applications Required**

- Do you need coverage for Surgical Placement of Dental Implants?

*If yes, please complete Dental Implant Surgical Phase Supplement*

Yes \_\_\_\_\_ No \_\_\_\_\_

- Do you need coverage for administering Injectable Neurotoxins and Dermal Fillers?

*If yes, please complete Injectable Neurotoxins and Dermal Fillers Supplement*

Yes \_\_\_\_\_ No \_\_\_\_\_

- Do you need coverage for the administration and inducement of Minimal Sedation (other than N20/O2 alone) or Moderate Sedation?

*If yes, please complete the Anesthesia/Sedation Supplement*

Yes \_\_\_\_\_ No \_\_\_\_\_





## **Dental Implant Surgical Phase Supplement**

1. In accordance with the requirements governing the surgical placement of dental implants, the following 48 hours of Continuing Education must be completed (within the last five years). Please attach copies of all certificates and/or letter of completion.
  - 32 hours of General Implantology (anatomy, diagnostic evaluation, pharmacology, wound healing, biomaterials and periodontics)
  - 16 hours Clinical and hands on experience including training in the system utilized.
2. Continuing Surgical Phase Coverage requires 12 hours CE every 24 months. Online, DVD or CD sources used to meet these requirements must be certified courses under:
  - American Dental Association Continuing education Recognition Program (CERP)
  - Academy of General Dentistry Program Approval for Continuing Education (PACE)
  - American Medical Association Category One
3. Only Federal Drug Administration approved implants will be accepted.
4. Although a specific informed consent document is not required, the use of one is strongly advised for all phase of implant treatment.
5. I certify that I am in compliance with all requirements.

### Concealment or Fraud

We provide coverage to no “insureds” under this policy if, whether before or after a loss, an “insured” has:

- Intentionally concealed or misrepresented any material facts or circumstances;
- Engaged in fraudulent conducts ; or
- Made false statements; relating to this insurance, including but not limited to, statements in the Application and/or Supplemental Application(s) for this insurance.

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Signed

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Dated



## **Injectable Neurotoxins and Dermal Fillers Supplement**

### A. Coverage

Subject expressly to the terms and conditions of the Coverage Agreement, we will pay for the damages as provided for by, and as limited by, the Trust's Coverage Agreement for a claim arising out of or related to professional services which involve the use or administration of Injectable Neurotoxins or Dermal Fillers for purposes authorized under the Dental Practice Law of Colorado.

### B. Exclusions

This Endorsement and the extension of coverage do not apply to any damages or allocated loss adjustment expenses with respect to a claim which involves the use or administration of Injectable Neurotoxins or Dermal Fillers:

1. Arising from any claim where the Named Insured has not used and cannot provide to the Plan's Administrator a signed informed consent form.
2. Arising out of the use or administration to anyone under 18 years old.
3. Arising out of the use on any person with a neuromuscular disease.
4. Arising out of the use of products not approved by the FDA.

### C. Conditions

1. As noted in the Exclusion, the Participant must have a signed consent form for the procedure provided to any patient.
2. The Participant must have completed a CERP or PACE approved training course(s) of two days (14 hours) which includes hands-on training utilizing Injectable Neurotoxins and Dermal Fillers.
3. The Participant must report any dental incident or claim as soon as it is practicable to the Plan's Administrator.
4. The use of Dermal Fillers is limited to the face, from the tip of the nose to the chin.

In accordance with the requirements governing the administration of Injectable Neurotoxins and Dermal Fillers, submit the following:

1. Verification of completion of CERP or PACE approved two-day course (14 hours).
2. Informed consent document to be used.

I certify that that I am in compliance with all requirements listed herein.

#### Concealment or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

- Intentionally concealed or misrepresented any material fact or circumstances;
- Engaged in fraudulent conduct; or
- Made false statements; relating to this insurance, including but not limited to, statements in the Application and/or Supplemental Application(s) for this insurance.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated



## Anesthesia/Sedation Supplement

In accordance with the requirements governing the administration and inducement of Minimal/Moderate Sedation:

1. I am applying for (Check one):

\_\_\_\_\_ Minimal Sedation Coverage (other than N2O/O2 alone)

Or

\_\_\_\_\_ Moderate Sedation Coverage

2. In accordance with the requirements governing the administration and inducement of Minimal/Moderate Sedation, submit the following:

\_\_\_\_\_ Copy of your Sedation Certificate from the Colorado State Board of Dental Examiners

\_\_\_\_\_ Copies of Courses/ Training completed for State Certificate

3. Please attach if you have:

\_\_\_\_\_ ACLS Certification of PALS Certification (Minimal or Moderate Sedation)

\_\_\_\_\_ Office Inspection – Moderate Sedation

4. Continuing education requirements (approved courses)

\_\_\_\_\_ 7 hours every 24 months for Minimal and Moderate Sedation  
(all or part may be taken on line)

5. I certify that I am in compliance with all equipment and monitoring requirements of the Colorado Dental Practice Act.

### Concealment or Fraud

We provide coverage to no “insureds” under this policy if, whether before or after a loss, an “insured” has:

- Intentionally concealed or misrepresented any material fact or circumstances;
- Engaged in fraudulent conduct; or
- Made false statements; relating to this insurance, including but not limited to, statements in the Application and/or Supplemental Application(s) for this insurance.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated



## **BUSINESS ASSOCIATE AGREEMENT**

This **BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is entered into effective as of September 23, 2013 or any date thereafter under which “Protected Health Information” is involved (the “Effective Date”) by and between \_\_\_\_\_ the Participant’s dental practice, collectively referred to herein as “**Participant**”, and the **Dentists Professional Liability Trust of Colorado** acting through its governing Board (“**Trust**”) and its Program Administrator, **Berkley Risk Administrators Company, LLC** (“**BRS**”). The Trust and BRS shall be referred to herein as “Business Associate” and all entities shall collectively be referred to as the “Parties.”

### **RECITALS**

**WHEREAS**, Participant is a “health care provider” and is or may become a “covered entity” as those terms are used and defined in the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), and its implementing regulations;

**WHEREAS**, Business Associate performs or may perform services for or on behalf of Participant (the “Services”) pursuant to the Coverage Agreement and the related Trust Agreement (the “Underlying Agreements”), which Services involve or may involve the access, use and/or disclosure of Protected Health Information (as defined below); and

**WHEREAS**, the Parties desire to enter into this Agreement in order to comply with the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), the HIPAA amendments issued pursuant to the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, and the implementing regulations.

**NOW THEREFORE**, in consideration of the obligations set forth herein and other good and valuable consideration the Parties agree as follows:

**1. Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Enforcement & Breach Notification Final Omnibus Rules as they exist or as they may be amended from time to time (the “HIPAA Rules”).

- (a) “Breach” shall have the meaning set forth in 45 CFR § 164.402 (including all of its subsections).
- (b) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (c) “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to information that Business Associate creates, accesses, receives or maintains for or on behalf of Participant.
- (d) “Protected Health Information” or “PHI” shall have the meaning set forth in in 45 CFR § 160.103, limited to information that Business Associate creates, accesses, receives or maintains for or on behalf of Participant. PHI includes EPHI.
- (e) “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information, codified at 45 CFR parts 160 and 164, Subparts A, D and E, as currently in effect.
- (f) “Security Rule” means the Standards for Security for the Protection of Electronic Protected Health Information, codified at 45 CFR parts 160 and 164, Subparts A and C, as currently in effect.
- (g) “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 CFR § 164.402, limited to such information accessed, created, received or maintained by Business Associate.

## 2. Scope of Use and Disclosure of PHI.

(a) Business Associate Status. Business Associate acknowledges that it is or may become the Participant's "Business Associate" as defined by HIPAA or the HIPAA Rules. Business Associate agrees to comply with HIPAA, HITECH and the HIPAA Rules as they directly apply to business associates.

(b) Performance of Service. Business Associate shall not access, use or further disclose PHI, other than as permitted or required by this Agreement, to perform the Services pursuant to the Underlying Agreements or as required by law. Business Associate shall not access, use or disclose PHI in any manner that would violate HIPAA or the HIPAA Rules if such access, use or disclosure was done by Participant.

(c) Permitted Uses and Disclosures. Business Associate is authorized and entitled to use the PHI for the necessary and proper management and administration of the Trust and the Coverage Agreement including, expressly, but not necessarily limited to:

1. Any and all risk management functions;
2. The defense of, handling of, and any other activities related to, any incident or claim submitted by any patient or patient representative against the Participant for which the Coverage Agreement provides or may provide coverage to the Participant in any judicial or administrative proceeding initiated against the Participant;
3. The handling of responses to administration of or other activities related to any dental incident or other incident or wrongful act alleged against the Participant and which is covered and as provided for by the Coverage Agreement;
4. Cooperation with the Trust and any and all of the Trust's representatives and subcontractors, including defense counsel and expert witnesses, related to the defense or settlement of any notice of a claim or dental incident or wrongful act;
5. The enforcement of any right of contribution of the Trust against any other person or entity who may be liable to the Participant or the Trust because of any damages to which the Coverage Agreement applies;
6. Assistance in securing and giving evidence and obtaining of witnesses in defense of any proceeding against the Participant;
7. The investigation, settlement or defense of any claim; or
8. The assistance and cooperation with the Trust in the event any need exists in the judgment of the Trust to assist in or investigate any regulatory proceedings including, but not limited to, any such proceedings brought by the Colorado Board of Dental Examiners

Business Associate may also use any such PHI related to the functions and activities set out in the prior paragraphs in association with information they have and in their capacities as a Business Associate and/or as a subcontractor with or to defense counsel, coverage counsel, or expert witnesses as required by the the circumstances or such activities as set forth in the prior paragraphs.

All of the foregoing are subject to the express conditions and terms of the Trust Agreement and the Coverage Agreement and any applicable endorsements.

(d) Minimum Necessary. Business Associate shall not access, use or disclose more than the minimum necessary PHI to perform or fulfill the intended permissible purpose, in accordance with this Agreement.

(e) Privacy Rule. To the extent Business Associate carries out one or more of the Participant's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of HIPAA that apply to the Participant in the performance of such obligation(s).

(f) Security Rule and Safeguards. Business Associate shall use safeguards that are appropriate and sufficient to prevent access, use or disclosure of PHI other than as permitted or required by this Agreement. Business Associate shall comply with the Security Rule with respect to EPHI, including implementing Administrative Safeguards, Physical Safeguards, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of EPHI.

(g) Notification. Without unreasonable delay, and in no event in less than ten (10) days from discovery of a Breach, Business Associate shall notify the Participant, in writing, of any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. Without unreasonable delay, Business Associate shall report to Participant in writing of any Security Incident of which it becomes aware in accordance with the Security Rule and Business Associate's obligations under the same. Upon Participant's or the Participant's request, Business Associate shall provide a report of any and all impermissible uses, disclosures and/or Security Incidents.

(h) Subcontractors. Business Associate shall ensure that any and all subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree, in writing, to the same restrictions and conditions that apply to Business Associate. Each subcontract agreement must include, without limitation, the provisions of this Agreement. Business Associate shall make such agreements with its subcontractors available to the Participant upon request.

(i) Audit. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Participant available to the Secretary of Health and Human Services and/or the Participant, upon request, for purposes of determining and facilitating Participant's compliance with HIPAA.

(j) Patient Rights.

1. Patient Right to Review. It is understood that the PHI and EPHI is expected to be exempt from access or accounting to the patient under the HIPAA Rules, §§ 164.524 and 164.528 of 45 C.F.R. In the event that any such PHI or EPHI records are not exempt, Business Associate shall make PHI or EPHI maintained in a Designated Record Set available to Participant in accordance with §164.524 of the Privacy Rule.

2. Patient Right to Amend. Business Associate shall make PHI available for amendment and incorporate any amendments to PHI maintained in a Designated Record Set at the direction of Participant and in accordance with §164.526 of the Privacy Rule. Participant shall be involved in any decision of Business Associate to amend the PHI of an Individual.

3. Patient Right to Request Accounting. Business Associate shall document and make available to Participant information relating to such Individual as is necessary for Participant to respond to a request for an accounting of disclosures in accordance with §164.528 of the Privacy Rule.

A. Business Associate agrees to implement an appropriate record-keeping process to ensure compliance with the requirements of this Section.

B. Business Associate, if the access or accounting is not exempt under the HIPAA Rules, agrees to provide PHI it maintains electronically in a Designated Record Set in an electronic form at the request of Participant and, when applicable, the Dental Practice or an Individual.

4. Notice to Participant. Business Associate shall notify the Participant immediately in writing upon receiving a request from an Individual to review copy or amend his or her medical record information or to receive an accounting of disclosures. Business Associate shall also provide Participant with a prompt written report of the details of its handling of such requests.

(k) Breach. Business Associate shall notify Participant of breaches of Unsecured PHI in accordance with the requirements of 45 CFR § 164.410 and in no event later than ten (10) days following discovery of any Breach. Such notification shall include, to the extent possible, the identification of each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, used or disclosed during the Breach, along with any other information that Participant will be required to include in its notification to an affected Individual, the media and/or the Secretary, as applicable, including, without limitation, a description of the Breach, the date of the Breach and its discovery, the types of Unsecured Protected Health Information involved and a description of Business Associate's investigation, mitigation and prevention efforts.

(l) Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or a subcontractor or agent of Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule or other applicable federal or state law.

**3. Participant Obligations.**

- (a) Notice of Privacy Practices. Participant shall notify Business Associate of limitation(s) in its notice of privacy practices to the extent such limitation affects Business Associate’s permitted uses or disclosures under this Agreement.
- (b) Individual Authorization. Participant shall notify Business Associate of changes in, or revocation of, authorization by an Individual to use or disclose PHI, to the extent such changes affect Business Associate’s permitted uses or disclosures under this Agreement.
- (c) Restrictions. Participant shall notify Business Associate of restriction(s) in the use or disclosure of PHI that Participant has agreed to, to the extent such restriction affects Business Associate’s permitted uses or disclosures under this Agreement.

**4. Term and Termination.**

- (a) Term. The Term of this Agreement shall become effective as of the Effective Date, and remain in effect until all PHI or EPHI is returned or destroyed in accordance with this Section.
- (b) Termination for Cause. Participant may terminate this Agreement immediately if Participant, in its sole discretion, determines that Business Associate has violated a material term of this Agreement. Participant, at its option and within its sole discretion, may (1) permit Business Associate take steps to cure the breach; and (2) in the event Participant determines such cure is sufficient, elect to keep this Agreement in force.
- (c) Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate shall promptly return to Participant or destroy all PHI received from Participant, or created or received by Business Associate on behalf of Participant, that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI in any form. Upon request by Participant, Business Associate shall promptly supply a certification executed by an authorized representative of the Business Associate confirming that Business Associate has returned or destroyed all PHI and all copies thereof.
- (d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

**5. Miscellaneous Provisions.**

- (a) Notices. Any notice required or permitted under this Agreement will be given in writing and will be sent via email or facsimile with hard copy to follow via Certified Mail, Return Receipt Requested:

To Participant at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Business Associate at:

Dentists Professional Liability Trust of Colorado \_\_\_\_\_ c/o  
Berkley Risk Administrators Company, LLC.  
Attn: Dr. Randy Kluender  
7807 East Peakview Avenue, Suite 350 \_\_\_\_\_ Centennial,  
CO 80111

- (b) Waiver. No delay or omission by any party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future. Failure of a party to insist upon strict adherence to any term

or condition of this Agreement shall not be considered a waiver by that party of its right thereafter to insist upon strict adherence to that, or any other, term or condition of this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(c) Severability. All provisions of this Agreement are separate and divisible, and if any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in full force and effect.

(d) Amendments. The Parties shall confer and may amend this Agreement from time to time by mutual written agreement as may be necessary in order to keep this Agreement consistent with any changes made to the HIPAA or HITECH laws or HIPAA Rules. Participant may terminate this Agreement if the Parties are unable to agree to such changes by the compliance date for such new or revised HIPAA or HITECH laws or HIPAA Rules.

(e) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA and HITECH and the HIPAA Rules.

(f) Independent contractor. The Parties acknowledge and agree that Business Associate is an independent contractor. Nothing in this agreement shall be construed to create any partnership, joint venture, agency, or employment relationship of any kind between the Parties. Notwithstanding the foregoing, to the extent that Business Associate is ever determined for any purpose to be an agent of the Participant (under the Federal common law of agency or otherwise), Business Associate shall be acting outside of the scope of agency if Business Associate fails to notify the Participant immediately if Business Associate violates or breaches any provision of this Agreement or violates the HIPAA Rules.

(g) Integration. In the event the Business Associate and Participant were parties to a prior Business Associate Agreement, such prior Agreement is superseded and replaced by this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Business Associate Agreement as of the Effective Date.

**DENTISTS PROFESSIONAL LIABILITY TRUST OF  
COLORADO AND BERKLEY RISK ADMINISTRATORS  
COMPANY, LLC**

Sign Here

By: **X** \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:  \_\_\_\_\_  
Name: Randy L. Kluender, DDS, MS  
Title: Executive Director



## PARTICIPATION AGREEMENT

for

### DENTISTS PROFESSIONAL LIABILITY TRUST OF COLORADO

THIS AGREEMENT, is entered by the undersigned "Participant" and The Dentists Professional Liability Benefit Plan, Inc., a Colorado corporation ("Trustee") as Trustee of The Dentists Professional Liability Trust dba Dentists Professional Liability Trust of Colorado ("Trust").

WHEREAS, the Participant, upon acceptance as a Participant in the Trust, is thereby entitled to purchase a professional liability policy upon such conditions as shall be determined from time to time by the Trustee.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, it is agreed as follows:

1. Participant acknowledges that he has received a copy of the Trust Agreement for Dentists Professional Liability Trust of Colorado (the "Trust Agreement") as revised (effective 4/13/99) and has reviewed its contents, including the provisions relating to termination of Participation. The Participant agrees to comply with all terms and conditions of the Trust Agreement, including any modifications thereof or supplements thereto, and any coverage agreement between the Trust and Participant, as well as any rules, regulations, eligibility requirements, and policies adopted by the Trustee from time to time; the provisions of all the foregoing, as amended from time to time are incorporated herein by this reference.

2. The Trustee agrees to provide Participant with professional liability coverage in such amounts and upon such conditions as Trustees shall prescribe from time to time, which coverage will be evidenced by a Coverage Agreement (Policy).

3. The Participant acknowledges that participation in the Trust and any professional liability coverage provided by the Trust are subject to termination as provided in the Trust Agreement, this Participation Agreement, or any professional liability Coverage Agreement provided by the Trustee.

4. Participant acknowledges that the purpose of participation in the Trust is to permit the Participant to purchase professional liability coverage, upon such terms and conditions as the Trustee shall establish. The Trust contributions paid by Participants for each policy year are intended to pay the cost of such professional liability coverage as may be issued by the Trust and to generate such reserves as the Trustee shall determine are advisable from time to time.

5. Participant agrees to pay all premiums when due for policies issued to him in accordance with rate schedules prepared by the Trustee from time to time.

6. Participant agrees to release to the Trustee all past and current information pertaining to underwriting, and claims by Participant's prior professional liability insurers, or their agents.

7. Participant agrees that termination or non-renewal of his participation in the Trust shall automatically terminate any coverage provided by the Trust to Participant; and that termination or non-renewal of any coverage provided by the Trust to Participant shall automatically terminate Participant's participation in the Trust. Upon termination or non-renewal of Participation in the Trust, any interest in the Trust assets to which Participant would otherwise be entitled will be forfeited; and the payment of such claims and other benefits as are provided in the Coverage Agreement or other agreement issued by the Trustee to Participant shall be the only continuing benefit to which Participant shall be entitled, the payment thereof to be subject to the provisions of such Coverage Agreement or other agreement.

PARTICIPATION AGREEMENT

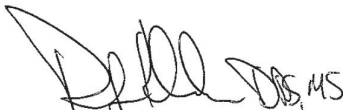
8. In the event of the termination, merger or consolidation of the Trust, the Trust Assets may be transferred or disposed of in such manner as shall be determined by the Trustee in accordance with the Trust Agreement, as amended from time to time, and in accordance with the provisions hereof; provided, 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. Participant understands and agrees that his interest in the Trust Assets shall be contingent in nature, and shall be subject to forfeiture as provided in paragraph 7 above.

9. Participant recognizes that the Trust Agreement grants broad authority to the Trustee in operation and management of the Trust; and specifically grants broad authority for election and removal of the Trustee, and for reorganization or termination of the Trust to a voting majority of Participants. Participant agrees that in the event of any such merger, consolidation or reorganization of the Trust resulting in the creation of any successor entity, such a merger, consolidation, or reorganization shall not constitute a termination or any other event or change of circumstances which would require any distribution of assets of the Trust to Participants.

10. In the event of any conflict or inconsistency between the provisions of this Participation Agreement and those of the Trust Agreement, as amended from time to time, the provisions of the Trust Agreement, as amended, shall govern and control the rights and obligations of the parties hereunder.

IN WITNESS WHEREOF, the parties have affixed their signatures:

THE DENTISTS PROFESSIONAL  
LIABILITY BENEFIT PLAN, INC.  
Trustee:



By : Randy L. Kluender, DDS, MS  
Executive Director  
Berkley Risk Administrators Company, LLC

PARTICIPANT:

X \_\_\_\_\_

\_\_\_\_\_  
Date

**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.