

RULE NUMBER 91**CREATING A LEGAL FRAMEWORK WITHIN WHICH SERVICE
CONTRACTS ARE DEFINED, SOLD AND REGULATED****Table of Contents**

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Section 1. Authority

This rule is promulgated by the Arkansas Commissioner of Insurance pursuant to Ark. Code Ann. § 23-61-108, Ark. Code Ann. §§ 25-15-201, *et seq.*, and the Service Contracts Act, codified at Ark. Code Ann. §§ 4-114-101, *et seq.*

Section 2. Purpose and Scope

The purposes of this rule are to create a legal framework within which service contracts are defined, may be sold, and are regulated in this state, to add significant consumer protections, and to eliminate unnecessary administration.

A service contract, as defined in the Service Contracts Act and this rule, is not insurance and is not subject to the Arkansas Insurance Code. The Service Contracts Act and this rule do not apply to the agreements and transactions set forth in Ark. Code Ann. § 4-114-102(c).

Section 3. Definitions

- A. “Administrator” means the person who is responsible for the administration of a service contract;
- B. “Commissioner” means the Insurance Commissioner of the State of Arkansas;
- C. “Consumer” means an individual who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes, and not for business or resale purposes;

- D. “Person” means an individual, a partnership, a corporation, an incorporated or unincorporated association, a joint stock company, a reciprocal, a syndicate, or any similar entity or combination of entities acting in concert;
- E. “Premium” means the consideration paid to an insurer for a reimbursement insurance policy;
- F. “Provider” means a person who is contractually obligated to the service contract holder under the terms of the service contract;
- G. “Provider fee” means the consideration paid for a service contract;
- H. “Reimbursement insurance policy” means a policy of insurance issued to a provider to either:
 - (i) Provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider; or
 - (ii) In the event of the provider’s nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider;
- I. “Service contract” means a contract or an agreement for a separately stated consideration and for a specific duration to perform the service, repair, replacement, or maintenance of property or indemnification for service, repair, replacement, or maintenance, for the operational or structural failure of property due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including without limitation, unavailability of parts, obsolescence, food spoilage, rental, or shipping.
 - (i) “Service contract” does not include mechanical breakdown insurance or maintenance agreements.
 - (ii) A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.
 - (iii) A service contract is not insurance in this state or otherwise regulated under the Arkansas Insurance Code; and
- J. “Service contract holder” means a person who is the purchaser or holder of a service contract.

Section 4. Requirements for Doing Business

Service contracts shall not be issued, sold, or offered for sale in this state unless the provider or its designee has complied with the requirements of Ark. Code Ann. § 4-114-104(b). Each provider of service contracts sold in this state shall file a registration with the Insurance Commissioner annually, on or before October 1st of each year, using the form attached to this rule or a substantially similar form. Each provider shall pay to the commissioner a fee in the amount of two hundred dollars (\$200) upon initial registration and every year thereafter. The registration shall be updated by written notification to the commissioner if material changes occur in the registration. In addition to the registration, each provider of service contracts sold in this state must also submit a Certificate of Compliance, using the form attached to this rule or a substantially similar form.

In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall comply with the financial requirements of Ark. Code Ann. § 4-114-104(d).

Section 5. Required Disclosures and Prohibited Acts

A service contract issued, sold, or offered for sale in this state shall be written in clear, understandable language that is easy to read and must conspicuously disclose the requirements of Ark. Code Ann. § 4-114-106.

It is a violation of this rule and the Service Contracts Act for a provider to engaged in any act prohibited by Ark. Code Ann. § 4-114-107.

Section 6. Recordkeeping Requirements

A provider shall keep accurate accounts, books, and records concerning transactions regulated under the Service Contracts Act. Providers must comply with all recordkeeping requirements set forth in Ark. Code Ann. § 4-114-108.

Section 7. Enforcement

The commissioner may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of the Service Contracts Act and this rule and to protect service contract holders in this state. The commissioner may take any action that is necessary and appropriate to enforce the provisions of the Service Contracts Act and this rule, including but not limited to, the actions authorized by Ark. Code Ann. § 4-114-111.

Upon request by the commissioner, a provider shall submit to the commissioner any requested documents or other evidence of compliance with the Service Contracts Act and this rule.

Section 8. Separability

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

Section 9. Effective Date

The effective date of this Rule is October 1, 2007.

(signed by Julie Benafield Bowman)

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS
(September 14, 2007)

DATE



Arkansas Insurance Department

1200 West Third Street, Little Rock, AR 72201-1904

SERVICE CONTRACT PROVIDER REGISTRATION FORM

Unless exempt, a provider of a service contract in Arkansas issued on or after October 1, 2007 is required to register with the Arkansas Insurance Department. For information on service contracts, see Arkansas Code Annotated §§ 4-114-101, *et seq.* and Arkansas Insurance Department Rule 91.

Return Completed Form with Registration Fee to:
Arkansas Insurance Department, Finance Division
1200 West Third Street, Little Rock, Arkansas 72201-1904
501-371-2665, Fax 501-371-2747
<http://www.insurance.arkansas.gov/finance/divpage.htm>

Registration Information

_____ Original Registration or _____ Annual Renewal Registration

_____ \$200 Registration Fee Enclosed. Check made payable to: State Insurance Department Trust Fund.

Provider Identification Information

1. Legal Name of Provider: _____
Trade Name (if different) _____
Principal Business Street Address: _____
City: _____ State: _____ Zip Code: _____
Contact Person: _____ E-mail Address: _____
Telephone Number: _____ Facsimile Number: _____

2. Domicile of Provider: _____

3. Name and Contact Information for Provider's Representative to handle inquiries in Service Contracts Sold in Arkansas (if different than the contact person listed in item number one):

Name: _____ E-mail Address: _____
Principal Business Street Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Facsimile Number: _____

4. List the States in which the Provider is engaged in the business of providing Service Contracts:

5. Are there any administrative or regulatory actions that have been taken or are pending against the Provider by any governmental agency within the last ten (10) years?

_____ Yes _____ No If yes, attach a detailed explanation of any such actions.

Renewal Information

If this is a renewal registration, please note any material changes that have occurred subsequent to the filing of your most recent registration:

Compliance with Financial Requirements

_____ (Provider’s Name) has chosen to comply with the obligations imposed by Ark. Code Ann. § 4-114-104(d), under **one** of the options checked below:

1. _____ All service contracts are insured under a reimbursement insurance policy that meets the requirements of Ark. Code Ann. § 4-114-104(d)(1). *(Submit a copy of the active policy)*

2. _____ A funded reserve account is maintained that meets the requirements of Ark. Code Ann. § 4-114-104(d)(2). *(Provide documentation of the funded reserve account showing that it meets the requirements of Ark. Code Ann. § 4-114-104(d)(2))*

3. _____ A financial security deposit that meets the requirements of Ark. Code Ann. § 4-114-104(d)(3) of not less than 5% of gross considerations received less claims paid, but not less than \$25,000, consisting of a surety bond issued by an authorized surety. *(Provide proof that your security deposit meets the minimum requirements and complete the attached Service Contract Provider Bond Form)*

4. _____ Maintain a net worth of \$100,000,000 pursuant to the requirements of Ark. Code Ann. § 4-114-104(d)(4). Submit the Provider’s or Providers Parent’s most recent 10K or Form 20F filed with the SEC or audited financial statement. If the financial responsibility requirement under this paragraph is to be maintained by the Provider’s parent company, the parent company shall

guarantee the Provider's obligations under service contracts sold by the Provider in this State. Submit a written guarantee agreement signed and notarized by an officer of the parent company to this effect.

Provider Certification

STATE OF _____)
)
COUNTY OF _____)

I, the undersigned, state under oath that I have duly executed this registration, for and on behalf of _____ (Provider Name), and that I hold the executive position of _____ (Title) of such Provider, and that I am authorized to execute and file this registration. I, the undersigned, further state that I am familiar with this instrument, including all documents related to this registration and the contents thereof, and that the facts herein set forth are true to the best of my knowledge, information and belief. I hereby certify that the Provider named herein is in compliance with all requirements of the Service Contracts Act, Ark. Code Ann. §§ 4-114-101, *et seq.* I further certify that the service contracts issued by the Provider named herein comply with the disclosure requirements of Ark. Code Ann. § 4-114-106.

Signature _____

Print Name _____

Date _____

Notary Information

The foregoing instrument was signed and acknowledged before me on this _____ day of _____ by _____, personally known or made known to me.

(Notary Public)

My Commission Expires _____



**ARKANSAS INSURANCE DEPARTMENT
SERVICE CONTRACT PROVIDER BOND FORM**

BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, a corporation organized under the laws of the State of _____, and _____, a corporation as Surety, organized and existing under the laws of the State of _____ and duly authorized to transact the business of surety in the State of Arkansas, are held and firmly bound unto the Commissioner of Insurance of the State of Arkansas in the sum of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than Twenty-Five Thousand Dollars (\$25,000), for the benefit of any person referred to in the conditions of this bond for which payment, well and truly made, we hereby bind ourselves, our successors and assigns, jointly, severally and firmly by these presents.

The conditions of the above obligation are such that:

WHEREAS: The said Principal has applied to the Commissioner of Insurance of the State of Arkansas for authority as a service contract provider, and in accordance with the provisions of Arkansas Code Title 4 Chapter 114, as amended, is required to give a corporate surety bond for the benefit of any contract holder who may suffer loss resulting from fraud or dishonesty or insolvency or impairment or unwillingness to perform on the part of said Principal.

NOW THEREFORE, if the said Principal shall promptly pay, when due, all claims and obligations arising or occurring in this state by virtue of any bond or contract made by said Principal, and all amounts due the State of Arkansas, by virtue of any statute, and in all respects comply with Arkansas Code Title 4 Chapter 114 of the laws of said State, then this obligation shall become void, otherwise to remain in full force and effect.

The total aggregate liability under this bond is limited to the sum of \$ _____.

This bond shall be deemed continuous in form and shall remain in full force and effect unless terminated or cancelled in a manner hereinafter provided.

1. By order of said Commissioner of Insurance; or
2. By the Surety delivering thirty (30) day written notice to the Arkansas Insurance Department that the bond will be canceled.

Such cancellation or termination shall not affect any liability incurred or accrued hereunder prior to the termination or cancellation of said bond by said Department of Insurance or prior to the termination of the thirty (30) day period for notice if terminated by Surety.

WITNESS our hands and seal this _____ day of _____, _____.

By: _____
(Principal)

By: _____
(Surety)