



# MODEL MARKS CLAUSE

A Mandatory Reference for  
ADS Chapter 318

Issuance Date: 03/16/2010  
Responsible Office: GC  
File Name: 318maa\_031610

## MODEL MARKS CLAUSE

In accordance with section 318.3.3.3, Contracting Officers and Agreement Officers may use the following model clause, revised as needed in coordination with legal counsel, to address mark rights involved in products or services funded by the U.S. government.

### **Marks**

(a) Definitions. As used in this subpart--

(1) "Mark" includes, but is not limited to trademarks, service marks, logos, trade names, and trade dress (all of the foregoing, whether registered or arising under federal, state, statutory, or common law of the applicable jurisdiction), and all registrations and applications therefore, and all rights derived therefrom, used, developed, registered, marketed, or manufactured in the course of or in connection with the performance of this Agreement or any other Government acquisition or assistance instrument applicable to the Recipient. Mark means any sign that identifies and distinguishes Products first developed in the course of or in connection with the performance of an acquisition or assistance instrument or that identifies and distinguishes Services first rendered in performance of an acquisition or assistance instrument.

(2) "Recipient" includes, but is not limited to, contractors, implementing parties under a USAID grant or cooperative agreement, and any other persons or entities receiving assistance under a Government acquisition or assistance instrument, as well as their assignees, licensees, subawardees, and successors.

(3) "Product" refers to [insert generic description of product] and any other goods, products and materials that are part of or used in connection with USAID's social marketing or public health programs.

(4) "Territory" refers to the country or countries that are the subject of [a][this] USAID activity. For this particular Agreement, Territory refers to [insert country or countries].

(5) "Agreement" refers to a grant, cooperative agreement, contract, or other instrument with which USAID is a party and finances the activity entirely under that instrument.

(6) "Services" refers to [insert generic description of services] and any other associated activities affiliated with the Services provided.

(b) Except as expressly provided herein, [Name of Recipient] may assert title to the Mark, in and throughout the Territory, provided, however, that the Government shall have a worldwide, royalty-free, non-exclusive, irrevocable, fully paid-up license and right to practice and use such Mark or have the Mark practiced or used by others on behalf of the Government. The Government makes no representations or warranties as to title, right of use or license, or any other legal rights or obligations relating to the Mark. If the Recipient asserts title to and ownership of the Mark, the Recipient acknowledges and agrees that it is solely responsible for the use or license of the Mark by it and other persons, including without limitation, other USAID recipients or contractors.

(c) Without the express written consent of USAID, the Recipient may not seek any rights to, protection for or otherwise acquire the Mark arising from or related to this Agreement outside the Territory. Any failure by the Recipient to comply with this clause shall be deemed a material breach of this Agreement. In the event of such a material breach, the Recipient agrees that, upon request by USAID, it must promptly assign all Marks acquired in violation of this clause to the Government or its designated assignee.

(d) In the event the Recipient encumbers the Mark or no longer uses the Mark for the originally authorized purpose under this Agreement, disposition of title to the Mark shall occur in accordance with instructions from the Contracting/Agreement Officer and as consistent with applicable laws and regulations.