**INSTRUCTIONS FOR PURCHASERS:**

This Mandatory Contract Language must be included in all procurements of Information Technology Solutions. You may include this document in the Requirements section of the RFP or as an addendum.

For more information about ensuring accessibility compliance in procurements of Information Technology Solutions, see [Best Practices for Ensuring Accessibility in IT Resources](https://www.mass.gov/info-details/best-practices-for-ensuring-accessibility-in-it-resources).

**A note about Accessibility Advisory Committees** (paragraph 4 of the accessibility Obligations Section below): The Commonwealth may convene an [Accessibility Advisory Committee](https://www.mass.gov/service-details/accessibility-advisory-committees) (AAC) as part of its procurement. Agencies are advised to convene an AAC for large projects, as measured by cost, time, scope and/or audience.

**Agencies who choose not to convene an AAC should delete paragraph 4 of the Accessibility Obligations Section below.**

**Agencies who choose to convene an AAC should leave the contract language as written.** Agencies convening an AAC will need to identify the members after bid award but prior to executing the contract. More information on AACs is available on the EOTSS website.

# Commonwealth Executive Department - Accessibility Contract Language for Information Technology Solutions

## Overview

The Commonwealth is legally obligated under multiple federal laws, its own Constitution, state statute and Governor-issued Executive Orders to ensure non-discrimination and equal access to state services on the part of people with disabilities and to provide reasonable accommodations to state employees with disabilities. To effectively meet its responsibilities, the Commonwealth must contract with its IT providers to achieve accessibility in the acquisition, deployment and utilization of information technology.

The Commonwealth defines accessibility to include compliance with its Enterprise Information Technology Accessibility Policy. This policy sets technical standards based on the principles of Section 508 of the Federal Rehabilitation Act, the World Wide Web Consortium’s Web Content Accessibility Guidelines (WCAG), version 2.1, level AA, and the concept of usability for people with disabilities.

Bidders and Vendors[[1]](#footnote-2) must meet each of the obligations detailed in this document. As a brief summary, Bidders and the Vendor must:

Prior to contract execution:

* Provide an Accessibility Conformance Report (ACR), such as a VPAT®, for any pre-existing software, including Third Party Software, that Vendor is delivering to the Commonwealth.
* If Vendor is delivering a SaaS offering, provide access to the offering for accessibility testing.
* Cooperate with the Commonwealth on addressing accessibility issues, including identifying commitments in an agreed mitigation plan if necessary.

After contract execution:

* Address accessibility in every phase of the project.
* Collaborate with the Commonwealth on addressing accessibility issues.
* Test for accessibility before delivery and include testing results with all End User Deliverables.
* Cooperate with the Commonwealth’s accessibility testing after delivery.
* Work to resolve any issues identified in testing and in the mitigation plan.

## Definitions

“**Accessibility Conformance Report**” (“**ACR**”) is a document that reports on the conformance of an IT product as measured against named accessibility standards.

“**Accessibility Audit Testing**” is accessibility testing conducted on the Commonwealth’s behalf by a third-party testing vendor engaged and paid for by the Commonwealth (an “**Accessibility Testing Vendor**”), as opposed to accessibility testing conducted by Vendor.

The “**AT/IT List**” is the Generic Assistive Technology (“AT”)/Information Technology (“IT”) Environment List, which may be attached to the Solicitation or available at <https://www.mass.gov/guides/generic-assistive-technology-and-information-technology-atit-environment-list>.

“**End User Deliverables**” are any software, documentation, and other interfaces or materials, and any configuration, implementation, or customization thereof, used by end users (which may include internal end users, such as Commonwealth employees and contractors, and external end users, such as Commonwealth residents) and delivered by Vendor. End User Deliverables include, without limitation: any configuration, implementation, or customization of Third Party Software or Vendor software; and any updates, new releases, versions, upgrades, improvements, bug fixes, patches or other modifications to software.

“**Enterprise Information Technology Accessibility Policy** ” includes the technical standards for IT accessibility (“**IT Accessibility Standards**”), and is available at <https://www.mass.gov/policy-advisory/enterprise-information-technology-accessibility-policy>.

“**Solicitation**” refers to a Request for Response (RFR), Request for Quotes (RFQ), or other request for goods and/or services to which these terms apply.

The term “**software**,” as used in these accessibility requirements, includes without limitation commercial off-the-shelf software (“**COTS**”) and software as a service or other cloud-based software (“**SaaS**”).

“**Third Party Software**” is software not licensed or provided by Vendor.

A “**VPAT®**” is a Voluntary Product Accessibility Template®, a standardized form developed by the Information Technology Industry Council. The template can be used to produce an Accessibility Conformance Report that shows how a software product meets various international accessibility standards. Template areas for WCAG2.1 A and AA and for Section 508 Chapters 3 and 4 are needed to show compliance with the IT Accessibility Standards.

## Accessibility Obligations

### 1. Compliance with Commonwealth Standards

Vendor is responsible for addressing accessibility problems in any implementation, configuration, or documentation delivered or performed by Vendor, and in any software provided or licensed by Vendor and delivered to the Commonwealth.

Vendor shall ensure that all End User Deliverables adhere to the IT Accessibility Standards set in the current version (as of the date of this Solicitation) of the Enterprise Information Technology Accessibility Policy and interoperate with the environments listed on the AT/IT List. At a minimum, Vendor is expected to remain compliant with the latest version of the [Commonwealth Enterprise Information Technology Accessibility Policy](https://www.mass.gov/policy-advisory/enterprise-information-technology-accessibility-policy), or the standard set forth by the purchasing agency, and must be able to update any software/systems in the event of updates to either. .

Vendor must ensure that accessibility and usability are addressed at every stage of the project. At the commencement of any project, prior to beginning any significant design or implementation work, Vendor’s project manager shall meet with the Commonwealth’s project manager and appropriate resources to review the Enterprise Information Technology Accessibility Policy, the AT/IT List, and any accessibility guidance provided by Vendor, in order to discuss their impact on the project.

### 2. ACRs and Mitigation Plan

Prior to Contract execution, Vendor must provide Accessibility Conformance Reports (ACRs) for any existing Vendor and third-party software with which end users will interact.

Upon request, Vendor must provide the Commonwealth with accessibility-related content in the technical reference manual or program documentation proposed products.

If the Commonwealth determines that accessibility issues exist but can be resolved or mitigated after Contract execution, the Vendor will, at the Commonwealth’s option, enter into a mitigation plan, pursuant to Section 4 of the Enterprise Information Technology Accessibility Policy. A mitigation plan is not a waiver of accessibility obligations, but rather a roadmap that contains a list of accessibility issues and the Vendor’s commitment to cooperate with the Commonwealth in resolving or mitigating the issues within a reasonable time following contract execution. Any mitigation plan shall become part of the Contract.

### 3. Testing

#### Prior to Contract execution

For SaaS offerings, the Commonwealth reserves the right to test for accessibility or to engage a third party Accessibility Testing Vendor to conduct Accessibility Audit Testing at the Commonwealth’s expense prior to scoring and selecting a Bidder. Bidders must cooperate with the Commonwealth and the Accessibility Testing Vendor, including providing appropriate access to the applicable cloud products for such testing. The results of any such accessibility testing, the ACR or other accessibility documentation provided by the Bidder, and the cooperation of the Bidder, will be taken into account in scoring and selecting a Bidder.

In connection with its accessibility testing as permitted above, the Commonwealth shall have the right to configure the applicable cloud product in accordance with the technical reference manual or program documentation for the Commonwealth’s accessibility needs.

#### Vendor Testing

Accessibility testing must be incorporated as part of Vendor’s overall quality assurance process. Vendor shall test end user software for accessibility during any or all of unit testing, integration testing, final acceptance testing and system testing. All activities performed by Vendor to ensure compliance with the IT Accessibility Standards will be done at Vendor’s cost and expense.

Vendor shall test every End User Deliverable against the IT Accessibility Standards, and for interoperability with the AT and IT environments listed in the AT/IT List. Vendor shall resolve any problems identified in such testing prior to delivering the End User Deliverable to the Commonwealth. Vendor shall deliver to the Commonwealth the results of the final testing, with all accessibility problems resolved, at the same time it delivers the End User Deliverable. Vendor may use its internal resources, hire an outside vendor, or both to conduct testing.

#### Testing of Third Party Software

While Vendor is obligated to test any configuration, customization, or other modification it makes to Third Party Software, Vendor is not responsible for testing out-of-the-box, non-configured Third Party Software for which accessibility testing has already been conducted and test results have already been provided to the Commonwealth in the form of a satisfactory ACR.

If Vendor is recommending or providing Third Party Software, Vendor is responsible for working with the Commonwealth and the licensor of such Third Party Software to identify and resolve accessibility issues. However, Vendor is not responsible for accessibility issues relating to Third Party Software that are not related to Vendor’s software or configuration, customization, or other modification of such Third Party Software.

#### Commonwealth Audit Testing

The Commonwealth may hire a third party Accessibility Testing Vendor to conduct Accessibility Audit Testing for this project. The Accessibility Testing Vendor will test End User Deliverables against the IT Accessibility Standards and the AT/IT List. Vendor shall cooperate with the Accessibility Testing Vendor at no additional cost to the Commonwealth.

Audit testing will be in addition to and following Vendor’s own accessibility testing.

#### Failure to Comply; Repeat Testing

If any End User Deliverables fail the Commonwealth’s initial post-delivery Accessibility Audit Testing, Vendor shall provide a credit to the Commonwealth for any repeat Commonwealth Accessibility Audit Testing that is needed. Such credits shall not exceed 5% of either (1) the total fixed price due to the Vendor under the contract or (2) the total not-to-exceed amount of the contract if entered under a time and materials basis.

### 4. Accessibility Advisory Committee (AAC)

The Commonwealth and Vendor may create an Accessibility Advisory Committee. The purpose of the AAC shall be to prioritize the list of accessibility defects identified by the Vendor and/or the Commonwealth (through its Accessibility Testing Vendor), discuss any questions relating to accessibility testing and accessibility requirements, to ensure that any concerns raised by a member of the AAC or a third party regarding accessibility of the Services are discussed, identified and addressed, and to advise on maintenance of the Mitigation Plan. The AAC shall be comprised of at least one representative from each Vendor and the Commonwealth, and representatives of certain agencies designated by the Commonwealth such as the Massachusetts Office on Disability, Executive Department disability coordinators, Massachusetts Rehabilitation Commission, Massachusetts Commission for the Blind, and Massachusetts Commission on the Deaf and Hard of Hearing.

The AAC shall convene its first meeting no later than ten (10) calendar days after the Effective Date of any Contract. Following this initial meeting, the AAC shall meet as mutually agreed to by the Commonwealth and Vendor in consultation with the AAC, but at a minimum, once a quarter.

### 5. Prioritizing and Remediating Accessibility Issues

Vendor shall collaborate with the Commonwealth, the AAC, and the Accessibility Testing Vendor to prioritize accessibility defects based on severity.

Vendor shall be responsible for promptly curing each instance identified by the Commonwealth or by its own accessibility testing in which the End User Deliverables fail to comply with the IT Accessibility Standards or interoperate with the environments specified on the AT/IT List. Remediation of accessibility issues which pose a very minor inconvenience to disabled users but do not prevent them from using the software may be waived by the Commonwealth in the Commonwealth’s sole discretion. Correction of accessibility issues may require, among other things, writing new core code, shutting off inaccessible features, providing users with Third Party Software in addition to their assistive technology, or providing disabled users with an alternative pathway to the inaccessible feature or the business process that it automates.

### 6. Training and Documentation

Vendor shall coordinate with the Commonwealth and the AAC in the identification of all prospective attendees at Vendor training who require accommodation and shall cooperate with the Commonwealth in its provision of such accommodation.

All administrator and end user documentation and any training materials delivered by Vendor under this Solicitation (whether in a classroom or online) must be accessible to users with disabilities and in conformance with the IT Accessibility Standards. All such materials delivered under this Solicitation and wholly owned by the Commonwealth shall be in an agreed-upon editable format.

### 7. Ongoing Maintenance

If the Vendor has agreed to perform maintenance for the Commonwealth, Vendor’s obligations above apply to its performance of maintenance. During the maintenance period, unless otherwise agreed in writing by Vendor and the Commonwealth, Vendor must ensure that the system continues to interoperate with the environments specified on the AT/IT List, including any changes to the AT/IT List that occur during the maintenance period, and must collaborate with the Commonwealth and any pertinent Third Party Software vendor and Accessibility Testing Vendor to correct any problems identified regarding interoperability.

1. As referenced in this document, the term “Vendor” refers to bidders that were named as the apparent successful bidder(s) and/or awarded a contract by the Commonwealth. [↑](#footnote-ref-2)