<u>Via E-Mail & First Class Mail</u>
Acting Director Emily W. Newman
Deputy Commissioner Brittny Saunders
Mayor's Office of Operations
235 Broadway - 10th Floor
New York, NY 10007

Re: New York City's Automated Decision Systems Task Force

Dear Task Force Chairs Newman and Saunders:

The undersigned organizations and individuals write to offer recommendations to the Automated Decision Systems Task Force, which is mandated by Local Law 49 of 2018. The Task Force is required to present the Mayor and ultimately the public with recommendations on identifying automated decision systems in New York City government, developing procedures for identifying and remedying harms, developing a process for public review, and assessing the feasibility of archiving automated decision systems and relevant data. This is an important opportunity to ensure that emerging technologies, like automated decisions systems, are adopted and implemented fairly and equitably to serve all New Yorkers.

Though we hope the Task Force will engage experts, advocates, and community members over the next year, we are offering the following recommendations in hopes that they can assist the Task Force in answering the varied and complicated questions mandated by Local Law 49 of 2018. We also anticipate that the Task Force's prospective findings and recommendations can serve as a national or international model for other jurisdictions grappling with the opportunities and challenges presented by the use of automated decision systems, so we hope this letter can assist other advocates in their local efforts. This letter includes general recommendations for the Task Force as well as specific recommendations related to the provisions of Local Law 49 of 2018.

<u>General Recommendations for the Task Force</u>
- The effects of an automated decision system will vary by agency, as will the intended goals of the system and the public policy issues the agency seeks to address through use of the automated decision system. As the Task Force evaluates the myriad of issues presented by automated decision systems, we recommend Task Force members consult domain experts and advocates, including but not limited to those listed in the attached appendix, while developing recommendations that relate to or may significantly impact specific issue areas.

- The Task Force should recommend the creation of a permanent independent governmental body whose mission is to (1) help implement subsequent laws, policies, or procedures that are created based on Task Force recommendations, (2) handle enforcement against agencies that fail to comply with aforementioned laws, policies or procedures, and (3) assess when laws, policies or procedures need to be amended to reflect advancements in technology.
- While most of the provisions of Local Law 49 of 2018 seek recommendations regarding government use of automated decision systems within the civil law context, the Task Force should recognize that criminal suspects enjoy the protections of the Fourth, Fifth, Sixth, and Fourteenth Amendments. These protections must be satisfied in addition to any others the Task Force might recommend.

Recommendations on the criteria for identifying which agency automated decision systems should be subject to one or more of the procedures recommended by the Task Force

- The Task Force should adopt the following definition of "automated decision system" to determine which systems should be subject to its recommendations on procedures, rules, policies and actions regarding government use of automated decision systems.
  - An "automated decision system" is any software, system, or process that aims to aid or replace human decision making. Automated decision systems can include analyzing complex datasets to generate scores, predictions, classifications, or some recommended action(s), which are used by agencies to make decisions that impact human welfare.
- Agencies should maintain a public archive identifying automated decision systems that are subject to procedures, rules, policies or actions recommended by the Task Force as well as systems and categories of systems (e.g. short-lived Microsoft Excel formulae) excluded from the recommended procedures, rules, policies or actions, and explanations of their exclusion. The City should also implement a procedure for the public to challenge an agency's exclusion of an automated decision system.

Recommendations on procedures, rules, policies or actions for how a person may request and receive an explanation of how an agency automated decision system determination was reached

- The City Council and the Mayor should provide agencies annual budgetary support to ensure accessibility of public documents and communications related to the agency's use of automated decision systems. Agencies should ensure that public documents and communications account for language, socioeconomic, cultural, geographic, education, and digital access differences. This budgetary support should also be used to hire and consult group facilitation experts to design, lead and implement public meetings that are centered on soliciting community concerns regarding existing procedures.

- The City should require procurement contracts to include provisions requiring the vendor to provide <u>information</u>[1] for all datasets used to develop and implement the systems; plain language explanations of how the system makes determinations; any records of bias, fairness or any validation testing performed on the system; design documentation and information about the technical architecture; records of the vendor marketing materials; plans for ongoing maintenance and system updates; response plans for any system changes that result from updates; and any other relevant information that will assist agencies in developing explanations of how an automated decision system determination was reached and compliance with any other Task Force recommended procedures, rules, policies or actions.
- Agency explanations of an automated decision system determination should include general, plain-language descriptions of the automated decision systems' overall function, the degree of human intervention in the system, and an explanation of the specific determination in question.
- Agencies should adopt procedures that guarantee an agency response to a request for an explanation of an automated decision system determination within a 20-day time period. Requests for explanations of automated decision system determinations pertaining to critical issues (e.g. public benefits eligibility or allocation) should have a limited response timeline of five business days. Explanations should include a description of the process and timeline to appeal an automated decision system determination.
- The City should require agencies using automated decision systems to maintain and publish metrics regarding how many requests for explanation it received, whether the explanation resulted in a challenge, and the outcome of that challenge. This information can be published in a privacy-preserving manner but it should allow the public and public officials to assess the efficacy and impact of procedures and practices as well as the utility of automated decision systems.

Recommendations on procedures and standards to determine whether an agency automated decision system disproportionately impacts persons based on protected status
- The City should require agencies to develop a pre-acquisition or development procedure to ensure experts and representatives from directly affected communities are consulted during the development of an automated decision system. Agencies should maintain a public record of external participation. Agencies must ensure that non-agency experts are consulted early in the acquisition or development process, since important policy determinations that can result in disproportionate outcomes occur early in system development.
- The explicit expectation is that automated decision systems should not result in a disproportionately negative effect on members of a protected status, and measures should

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[1] Timnit Gebru, et al., Datasheets for Datasets (March 2018), https://arxiv.org/pdf/1803.09010.pdf.

be affirmatively undertaken to eliminate disparities. In furtherance of this goal, the City should require all agencies using automated decision systems to adopt a standard for assessing disproportionate impact based on protected status that is tailored to the specific use of the automated decision system. The following is an example of a general standard agencies can consider and modify for its use cases: if an automated decision system selects or affects members of a protected status at a rate that varies by four-fifths or more, then that decision system should not be used unless the agency provides a public explanation of why its use of the system and the specific decision is necessary to achieve an important agency interest, and that there is no less-discriminatory alternative to achieving this interest available.

Recommendations on procedures and standards for addressing instances in which a person is harmed by an agency automated decision system if any such system is found to disproportionately impact persons based on protected status
- When an agency's automated decision system is found to be discriminatory or produces discriminatory outcomes, the agency's policy or system redesign process must include individuals and advocates from the communities or protected class whom the system is found to disproportionately impact. Inclusion of affected individuals and advocates should occur at the beginning of the redesign process and the agency should specifically design pre-meeting preparation sessions for affected individuals and advocates to ensure that they can comfortably and meaningfully participate in the redesign process.
- The City Council should pass a law providing a private right of action for individuals or groups of individuals that are injured by automated decision system determinations that are found to be discriminatory or produce discriminatory results.
- Agencies should define and publicly post a procedure allowing outside researchers or experts access to relevant information to assess whether an automated decision system produces disparities between similarly situated individuals based on protected status.

Recommendations on a process for making information publicly available that, for each agency automated decision system, will allow the public to meaningfully assess how such system functions and is used by the city, including making technical information about such system publicly available where appropriate
- The City should make publicly available online a list of automated decision systems used by agencies, disaggregated by agency. This list should also include:
  - A description of the purpose of the automated decision system, including any decisions that such system is used to make or assist in making and any specific types or groups of persons likely to be affected by those decisions.
  - A description of the procedure for individuals to determine whether and how an automated decision system was used to make a decision that affects them, the

procedure for how a person may challenge a decision where an automated decision system was involved, timelines for each procedure, and expected response time from the agency.

- The degree of human intervention in the automated decision system (e.g. whether a decision-making process is fully automated or if the automated decision system is used for decision-support).
- Relevant technical information of the system including but not limited to:
  - source code; models; documentation on the algorithms used; design documentation and information about the technical architecture; training data; data provenance information; some justification for the validity of using a model trained on data from a potentially different context than the agency's; the system's intended use as-implemented (e.g. the automated decision system's actual objective function); any records of bias, fairness or any validation testing performed on the system; materials relating to how a user interacts with a system (including wireframes or documentation on how determinations from the system are displayed and communicated).
- Any marketing materials and training instructions or materials for public servants using the tool.
- If a contract with a third party would prevent the agency from releasing such technical information, (i) the name of such third party, (ii) an electronic link to a copy of such contract, (iii) the date that the current term of such contract will expire and (iv) a statement explaining why the contract prevents the agency from releasing such technical information. If no such obstacles exist, a plan for publicly releasing such technical information, including the anticipated date of such release.
- Policies and procedures relating to access, use of the system or input data, and any safeguards to protect system or input data from unauthorized access or use.
- Documentation of any other agencies or third parties that have access to the automated decision system or input data.
- Information regarding audits of such systems, including frequency, scope, and public availability of such audits.
- A statement on who made policy decisions related to the development of the automated decision system model (e.g. score thresholds, system objectives) and a description of how policy decisions were made.
- There should be no exceptions to making the aforementioned list of automated decision systems information public. If an agency attempts to raise agency-specific concerns that would prevent releasing of all or some technical information, the City should require the agency to provide a detailed statement regarding the need for the limitations and review

of the information that can be released without revealing sensitive agency data or resulting in the described concern (e.g. historical input data, testing procedures, etc).
- The City should develop mechanisms to connect transparency requirements more strongly to enforcement. For example, the City can make some agency funding conditional upon meeting certain standards of algorithmic disclosure and interpretability through external, independent audits.
- Agencies that use or intend to use automated decision system should perform an Algorithmic Impact Assessment[2], preferably before acquiring or building a new automated decision system. Each agency should perform a self-assessment of existing and proposed automated decision systems, evaluating potential impacts on fairness, justice, bias, privacy, civil rights, and other concerns. Agencies should provide a public notice and comment period of the self-assessment and, mitigate and respond to comments or concerns raised by the public before publicly posting the final assessment.

Recommendations on procedures for archiving agency automated decision systems, data used to determine predictive relationships among data for such systems and input data for such systems
- The City should allow outside experts and researchers access to archived input data and other relevant agency data to identify systemic and structural problems that may derive from agency practices and procedures. The findings can be used to identify optimal policy solutions.[3]
- Agencies should document, archive and publicly post a retention schedule for changelogs of modifications made to the source code or models of an automated decision system, plain text describing changes, and agency-internal communication or communication between agency employees and vendors relating to any changes in the decision-making algorithms to understand how the changes affect decisions using an automated decision system over time.

We welcome the Task Force to use the undersigned as resources during this process and look forward to the Task Force's prospective findings and recommendations.

Sincerely,

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[2] AI Now Institute, Algorithmic Impact Assessment: A Practical Framework for Public Agency Accountability (April 2018), https://ainowinstitute.org/aiareport2018.pdf.

[3] For example, data demonstrating that NYPD's stop-and-frisk practice unlawfully targeted Black and Latino New Yorkers, and that an overwhelming majority of the stops did not lead to evidence of a crime, was only available to a group of legal organizations following racial profiling litigation. If such data were preemptively available for scrutiny then this unlawful practice and subsequent reform could have been identified without costly litigation.

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APPENDIX

Recommended list of experts and advocates that the Task Force should consult when developing recommendations that relate to or may significantly impact specific issue areas.

- **Children Welfare**
  - Individuals: Khiara M. Bridges (Boston University School of Law), Lauren Shapiro (Brooklyn Defender Services), Christine Gottlieb, Ashley Sawyer (Girls for Gender Equity), Lisa Freeman (The Legal Aid Society), Emma Ketteringham (Bronx Defenders), Michelle Burrell (Neighborhood Defender Services of Harlem), Michele Cortese (Center for Family Representation)
  - Organizations: Council of Family and Child Caring Agencies (COFFCA), Silberman School of Social Work, Youth Represent, Community Service Society of New York, CWOP (Child Welfare Organizing Project), RISE
- **Disability Rights**
  - Individuals: Beth Haroules (NYCLU), Chancey Fleet (Data & Society), Kathleen Kelleher (The Legal Aid Society)
  - Organizations: Bazelon Center for Mental Health, New York Association of Psychiatric Rehabilitation Services (NYAPRS)
- **Education/School Choice**
  - Individuals: Aaron Pallas (Columbia Teachers College), Genevieve Siegel-Hawley (Virginia Commonwealth University), Susan Eaton (Brandeis University), Claire Fontaine (Data & Society), Monica Bulger (Future of Privacy Forum), Cara Chambers (The Legal Aid Society)
  - Organizations: IntegrateNYC, Teens Take Charge, ASID, Alliance For Quality Education (AQE NY), NYSUT
- **Employment/Workers Rights**
  - Individuals: Peter Roman-Friedman (Outten & Golden), Annette Bernhardt (U.C. Berkeley Labor Center), Karen Levy (Cornell), Ruth Milkman (CUNY, Murphy Institute), Louis Hyman (Cornell ILR Worker Institute), Ifeoma Ajunwa (Cornell IRL), Julia Ticona (Data & Society), Aiha Nguyen (Data & Society), Alex Rosenblat (Data & Society), Alexandra Mateescu (Data & Society), Karen Cacace (The Legal Aid Society)
  - Organizations: National Employment Law Project (NELP), Make the Road NY
- **Healthcare**
  - Individuals: Valerie J. Bogart (NYLAG), Kadija Ferryman (Data & Society)
  - Organizations: Empire Justice, Medicaid Matters NY

- **Housing**
  - <u>Individuals</u>: Jenny Laurie (Housing Court Answers), Magda Rosa-Rios (The Legal Aid Society)
  - <u>Organizations</u>: Picture the Homeless, YWCA Brooklyn, Manhattan Legal Services
- **Immigration/Refugee Rights**
  - <u>Individuals</u>: Hassan Shafiqullah (The Legal Aid Society), Sarah Deri Oshiro (Bronx Defenders)
  - <u>Organizations</u>: Immigrant Defense Project, International Refugee Assistance Project, ACLU Immigrant Rights Project, LatinoJustice
- **Law Enforcement**
  - <u>Individuals</u>: Brett Stoudt & K. Babe Howell (Public Science, CUNY), Andrew Guthrie Ferguson (University of the District of Columbia Law School), Cynthia Conti-Cook (Legal Aid); Desmond Patton (Columbia University School of Social Work), Lisa Freeman (The Legal Aid Society), Marne Lenox (NAACP LDF)
  - <u>Organizations</u>: Brennan Center for Justice (predictive policing), National Association of Criminal Defense Lawyers (NACDL), Center for Democracy & Technology
- **Other City Operations Systems (Sanitation, Parking, 311, SBS/EDC subsidy programs, etc.)**
  - <u>Individuals</u>: Anthony Townsend (Bits and Atoms)
- **Pretrial**
  - <u>Individuals</u>: Nicole Triplett (NYCLU), Vivian D. Nixon (Community College Fellowship), Marbre Stahly-Butts (Law for Black Lives), Dana M. Delger (Innocence Project), Blase Kearney (Public Defender Service), Molly Louise Kovel (ACLU), Joshua Norkin (Decarceration Project- Legal Aid Society), Lisa Freeman (The Legal Aid Society), Scott Levy (Bronx Defenders), Lisa Schreibersdorf (Brooklyn Defender Services)
  - <u>Organizations</u>: Bronx Defenders, Brooklyn Defender Services, Legal Aid Society, Data 4 Black Lives, LatinoJustice PRLDEF, New York Immigration Coalition: NYIC, Vocal New York, JustLeadershipUSA, New York Communities for Change (NYCC), Neighborhood Defender Service of Harlem, National Association of Criminal Defense Lawyers (NACDL)
- **Privacy/Security/Surveillance**
  - <u>Individuals</u>: Hannah Sassaman (MMP), Vincent Warren & Britney Wilson (Center for Constitutional Rights), David Robinson (Upturn), Kristian Lum (HRDAG), Michael Price (National Association of Criminal Defense Lawyers); Esha Bhandari (ACLU Speech Privacy and Technology Project), Alvaro Bedoya

(Georgetown Law Center on Privacy & Technology), Mary Madden (Data & Society)
- ○ <u>Organizations</u>: Harvard Law's Berkman Klein Center, CAIR-NY, Brennan Center for Justice, CLEAR Project at CUNY, National Association of Criminal Defense Lawyers, Center for Democracy & Technology
- **Public Benefits**
  - ○ <u>Individuals</u>: Richard Alan Eppink (ACLU Idaho), Elizabeth Edwards (National Health Law Program), Kevin De Liban (Legal Aid Arkansas), Susan Welber (The Legal Aid Society)
  - ○ <u>Organizations</u>: FPWA
- **Public Health**
  - ○ <u>Individuals</u>: Rodrick Wallace (New York State Psychiatric Institute), Elizabeth Edwards (National Health Law Program), George Annas (Boston University Law), Wendy Parmet (Northeastern University Law), Wendy Mariner (Boston University School of Public Health), Larry Gostin (Georgetown Law), Rebecca Novick (The Legal Aid Society)
  - ○ <u>Organizations</u>: Community Service Society of New York, Center for Democracy & Technology
- **Re-entry**
  - ○ <u>Individuals</u>: Wesley Caines (Bronx Defenders)
  - ○ <u>Organizations</u>: EXODUS, Fortune Society, Center for Court Innovation, National Association of Criminal Defense Lawyers (NACDL)
- **Sentencing/Parole/Probation**
  - ○ <u>Individuals</u>: Beth Haroules (NYCLU)
  - ○ <u>Organizations</u>: Legal Aid Society (Prisoners Rights), Urban Justice Center, Correctional Association of New York, Center for Court Innovation, National Association of Criminal Defense Lawyers (NACDL)
- **Transportation**
  - ○ <u>Individuals</u>: Noel Hidalgo (Beta NYC), Aaron Naparstek (Vision Zero), Mandu Sen (RPA), Sarah Kaufman (NYU Rudin Center)
  - ○ <u>Organizations</u>: Transportation Alternatives, Vision Zero, Regional Plan Association
- **Voting Rights/Political Participation**
  - ○ <u>Organizations</u>: Demos, Brennan Center for Justice, ACLU Voting Rights Project