PERFORMANCE & ACCOUNTABILITY AGREEMENT
Georgia Incentive Programs

REBA FUND AWARD NO. ____________________

This Performance & Accountability Agreement (this "Agreement") made and entered into as of 04/22/2020 by and among The Atlanta Development Authority d/b/a/ Invest Atlanta, a public body corporate and politic created pursuant to the laws of the State of Georgia (the "Development Authority"), and the Georgia Department of Community Affairs, an agency within the executive branch of the State of Georgia ("DCA") and the administering agency for the OneGeorgia Authority, an instrumentality of the state and a public corporation ("OneGeorgia") (hereinafter referred to as the "Administering Agency"), and Macy's Systems and Technology, Inc. and its affiliates (collectively, the "Company").

RECITALS

1. The purpose of the State of Georgia's incentive programs, administered through DCA, is to provide financial assistance to eligible applicants to assist the applicant to induce and assist companies to relocate, expand or construct projects in Georgia rather than a competing state; and

2. The incentive programs include, but are not limited to, the Department of Community Affair's Regional Economic Business Assistance ("REBA") program and the OneGeorgia Authority's EDGE Fund program ("EDGE"); and

3. The Development Authority has been awarded either REBA or EDGE funding ("Financial Assistance") and, in accordance with the Development Authority's statutory purposes, will utilize the Financial Assistance to participate in a project to assist the Company; and

4. In consideration for the benefit of such Financial Assistance the Development Authority and Company must, in addition to other requirements: i) complete a project that creates and/or maintains a defined number of jobs; **and** ii) invest a defined amount of new private capital into the Company. (The defined job and private capital investment requirements shall hereinafter be collectively referred to as the "Performance Standards".); and

5. The Development Authority and Company's relocation or expansion project for which the Financial Assistance was awarded is more particularly described in the EDGE Fund Award or REBA Fund Award, and that description is incorporated herein by reference, (hereinafter the "Project"); and

Now, therefore, in consideration of the covenants and agreements herein contained, the parties agree as follows:

1. <u>Award.</u> The Development Authority and the Company's obligations under this Agreement are contingent upon the Administering Agency awarding Financial Assistance in the form of a REBA grant in the amount of $1,000,000 ("Award Amount") to the Development Authority to offset the cost of capital expenditures, including the purchase of furniture, fixtures, and equipment. Any assets funded with the Award Amount shall be publicly titled during the term of this grant (the "Grant-Funded Assets"). To the extent that the Award Amount is used to fund equipment, then during the term of this Grant, the Company shall not be permitted to use the equipment as collateral for financing or to grant a security interest in the equipment to anyone other than the public entity holding title. Furthermore, disbursement of the Award Amount is contingent upon the Company participating in a joint press release with the State and the Development Authority announcing the Project.

   Should the Award include or consist of a loan, the terms of such loan will be set forth in a separate agreement, promissory note and other appropriate documents.

2. <u>Project Description.</u> Pursuant to the Award, the Development Authority shall use the Award Amount to implement the Project to assist the Company, which is more particularly described in the application and summarized as:

   > Company will establish a new technology center to focus on website design and engineering, and other retail technology projects, in an approximately 70,000 square feet (the "Facility"). The Facility will be located in the City of Atlanta, T3 West Midtown, 383 17th Street NW, Atlanta, Georgia, 30363. The Company will invest or cause to be invested, jointly or through the Company's landlord, an aggregate of $14,000,000 in tenant improvements and furniture, fixtures, and equipment. Company will create or cause to be created 630 net new jobs at the Facility with average annual wages for the net new full-time jobs of $100,000 over 2 years.

3. <u>Performance Standards.</u> In consideration for the Development Authority's assistance, the Company shall meet the following Performance Standards:

   A. The Company shall create 630 net-new full-time jobs[1] located at the Facility (the "Committed Jobs")

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[1] Net new full time job is defined as a new job that did not previously exist within the State of Georgia which has a minimum of 35 hours per week, with the opportunity for access to, but not necessarily paid or subsidized, medical benefits. A net new full time job may include the use of leased employees (the "Leased Jobs"), subject to the following conditions:

Company represents and warrants that its contract with each third-party leasing company will require that: (i) The Leased Jobs at the Facility will be assigned exclusively to Company and no other clients of the third-party leasing company; and, (ii) The Leased Jobs are new full-time jobs that, but for the contractual arrangement between Company and the third-party leasing company, would not otherwise exist within Georgia. Company also represents that the Leased Jobs will substantially satisfy the definition of "Leased Employee" outlined in (6)(t) of the rules published by the Georgia Department of Community Affairs in Chapter 110-9.1 and will require in its contract with each third-party leasing company that the third-party leasing company will substantially satisfy the definition of an "Employee Leasing Company" as provided in O.C.G.A. § 34-8-32. To the extent that the

B. The Company shall make or cause to be made a private capital investment in the Project of at least $14,000,000 in the form of expenditures as noted in the Award ("Committed New Investment");

C. The start date for the Committed Jobs and Committed New Investment to be counted will be January 6, 2020.

D. The Company shall be in full compliance with the Performance Standards within twenty-four (24) months from the earlier of (i) the date of the issuance of the Certificate of Occupancy for the Facility, or (ii) the date in paragraph 3E of this Agreement (the "Performance Period"), and failure to do so shall be an immediate event of default under this Agreement. In the event the Performance Standards are met prior to the expiration of the Performance Period, then the Company must maintain such jobs and investment until the expiration of the Performance Period and failure to do so shall be an immediate event of default under this Agreement. At the request of the Development Authority and for good cause shown, the expiration of the Performance Period may be extended, at the sole discretion of the Administering Agency; provided, however, that any such request shall be accompanied by supporting documentation from the Development Authority and Company deemed satisfactory to the Administering Agency;

E. The start-date for the Performance Period shall be no later than January 6, 2020, which is the date that the Company reasonably expects the facility or the incentive-funded asset to be operational; and

F. The Company shall maintain documentation to evidence the number of full-time permanent jobs created and maintained and the amount of private investment in the Project until such time as the Performance Standards have been met and the Administering Agency has certified compliance pursuant to Section 5 of this Agreement. The Company shall also provide payroll information to DCA sufficient to establish that 630 net new full-time permanent jobs were created at the Facility on or

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aforementioned conditions are satisfied, and so long as the Company retains control over the Leased Jobs at the facility, the Company's use of leased employees through an agreement with a third-party leasing company shall constitute Leased Jobs for purposes of qualifying as net new jobs.

Nothing herein is intended to affect the employer-employee relationship between the third-party leasing company and the employees it hires to work at the Project Site nor to affect the contractual relationship between Company and the third-party leasing company. This MOU does not give any employee, including the Leased Jobs of the third-party leasing company, any rights or claims against the Company or its affiliates, and no such employee shall be, or is intended to be, a third party beneficiary of this Agreement. Company represents that through the agreement with the third-party leasing company, it is inducing the employment of the Leased Jobs in Georgia. Company also agrees that if the Leased Jobs are claimed by the third-party leasing company as "New Full-Time Employee Jobs" for purposes of claiming the Georgia Job Tax Credit, Company will not separately claim such jobs.

after the date in paragraph 3C of this Agreement and that such net-new full-time permanent jobs were not relocated from an existing Georgia location.

4. Compliance Threshold and Repayment Amount. In the event the Company fails to i) meet the Performance Standards; ii) maintain operations for the entirety of the Performance Period; or iii) locate in or operate the business forming a part of the Project funded with the Award, the Company shall repay directly to the Administering Agency all (in the case of the happening of the event of default identified in Section 4(iii) above) or a portion of the Award Amount in all other cases (in each case, the "Repayment Amount"). For purposes of events of default under Section 4(i) – (ii) above, the Repayment Amount shall be determined as follows:

   A. Compliance Threshold. The Company will be determined to have complied with the Performance Standards if the results of the threshold calculation conducted in accordance with the formula on **Exhibit "A"** ("Average Actual Performance") are equal to or greater than eighty percent (80%) ("Compliance Threshold"). The threshold calculation formula is the average of the percentage of created jobs to Committed Jobs over the Performance Period and the percentage of actual capital investment to Committed New Investment as of the expiration of the Performance Period. In terms of the threshold calculation, the Company may receive up to 110% credit for its Committed Jobs and 100% credit for its Committed New Investment at the end of the Performance Period. In no event shall the Company be entitled to receive more than 100% credit for its investment commitment or 110% credit for its job commitment in the event that the Company exceeds either of these commitments.

   B. Adjusted Award Amount. Should the Company's Average Actual Performance be less than eighty percent (80%) of the Performance Standards, the Company's Award will be adjusted proportionately by multiplying the Award Amount by the Average Actual Performance. The resulting number will then be subtracted from the Award Amount to determine to what amount the Award will be adjusted, after taking into account under performance ("Adjusted Award Amount"). On the request of the Administering Agency, the Company shall repay to the Administering Agency the difference between the Award Amount and the Adjusted Award Amount. See illustrations in **Exhibit "B"**: Repayment Calculation. The Award Amount will only be adjusted in the event Company does not meet the Compliance Threshold.

5. Reporting Requirements. The Company and the Development Authority shall provide semi-annual reports to the Administering Agency concerning the progress of the creation of jobs and investments. The Company shall file with the Development Authority, no later than thirty (30) days upon completion of the Project as described in Section 2 of this Agreement or after the expiration of the Performance Period, documentation to evidence the actual number of full-time jobs created and total amount of private capital invested in the Project. No later than sixty (60) days after the expiration of Performance Period, the Development Authority shall file with the Administering Agency, a report documenting the Company's performance. Within a reasonable time after receipt of the report from the Development Authority, the Administering Agency will notify the Development Authority of the Company's compliance or noncompliance with the Performance Standards. The

Development Authority shall then provide the Company with such notification. The Company and the Development Authority agree to keep an updated point of contact for the person(s) responsible for providing any reports owed to the Administering Agency. In the event that the person(s) responsible for providing reports changes, the Company and/or the Development Authority agree to notify the Administering Agency as soon as possible.

6. Notification and Repayment. In the event the Company has failed to meet the Compliance Threshold, the Administering Agency will notify the Development Authority and Company of the Adjusted Award Amount and the Repayment Amount. The Company shall submit the Repayment Amount to the Administering Agency no later than forty-five (45) days after the date of the notification letter from the Administering Agency indicating that the Company has failed to meet the Compliance Threshold. Should the Company fail to remit the Repayment Amount to the Administering Agency in a timely matter, the Administering Agency shall have the right, in its sole discretion, to impose any and all remedies available to it through its administrative processes or to seek remedies available at law or equity.

7. Adjustment in the Performance Standards. In the event a force majeure or other extraordinary circumstance, as will be determined in the sole discretion of Administering Agency, prevents the Company from meeting the Compliance Threshold, the Company may request that Administering Agency adjust the Company's Compliance Threshold. In the sole discretion of Administering Agency, the Compliance Threshold may be adjusted provided that the adjustment will have a direct relationship to the impact that the extraordinary circumstance had on the Company's ability to meet the Performance Standards.

8. Sale or Change of Ownership of Company. If, during the Performance Period, the Company makes a change in its ownership by sale, merger, or other method of ownership transfer, then the Company must notify the Development Authority and Administering Agency of such a change in ownership. Additionally, the new owner ("the Acquiring Company") must assume the obligations contained in this Agreement by executing an Assumption Agreement. The Administering Agency shall approve and be a party to the Assumption Agreement, along with the Company, the Development Authority and the Acquiring Company. In lieu of executing an Assumption Agreement, the Company or Acquiring Company may elect to make the Repayment Amount to the Administering Agency.

9. Transfer and Assignment of Repayment. The Development Authority hereby transfers and assigns to Administering Agency all of the Development Authority's rights, title and interest to the Repayment Amount. The Development Authority acknowledges that, pursuant to the terms of the Agreement, the Company shall remit all Repayment Amounts to the Administering Agency. In the event the Development Authority receives such Repayment Amounts, the Development Authority shall hold such payments in trust for the benefit of the Administering Agency provided that no later than five (5) days after receipt thereof, the Development Authority will deliver, by courier or regular U. S. Mail, such Repayment Amounts to the Administering Agency. Provided the Development Authority

requires the Company to meet the Performance Standards, uses its best effort to assist the Company in meeting the Performance Standards, and assists the Administering Agency in collecting Repayment Amount when due, the Administering Agency shall have no recourse against the Development Authority for the Company's failure to meet the Performance Standards unless the Development Authority explicitly accepts such recourse.

10. Acceptance and Assumption by Administering Agency. The Administering Agency hereby accepts the transfer and assignment of the Development Authority's rights, title and interest in, to the Repayment Amount; provided, however, that Administering Agency has not, and shall not have, accepted or assumed any obligations or liabilities of Development Authority that the Development Authority may have with regards to the Project or the Company.

11. Exhibits. The exhibits hereto will be construed to be a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

12. Severability. If any one or more of the provisions contained herein will for any reason be held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. Authorized Signatures. Each of the individuals executing this Agreement represents that they are authorized to execute this Agreement on behalf of their respective entities.

[SIGNATURES ON FOLLOWING PAGE]

Signature Page
Performance & Accountability Agreement
Macy's Systems and Technology, Inc. Project in City of Atlanta, Georgia

IN WITNESS WHEREOF, the parties have hereunto set their signatures and affixed their seals the day and year first written above.

The Atlanta Development Authority d/b/a/ Invest Atlanta

By: Eloisa Klementich

Title: President & CEO

Date: 04/22/2020

Seal

Georgia Department of Community Affairs

By:

Title: Commissioner

Date: 04/22/2020

Macy's Systems and Technology, Inc.

By: Naveen Krishna

Title: EVP & CTO

Date: 3/12/2020

Seal

PERFORMANCE & ACCOUNTABILITY AGREEMENT

EXHIBIT "A" - Average Actual Performance for Projects

The Average Actual Performance for projects shall be determined by the following formula:

STEP 1

$$\frac{\text{(Total Jobs at end of Perfor. Period – Baseline\^{})}}{\text{Committed Jobs}} = \text{Percentage of Committed Jobs Created}$$

$$\frac{\text{Actual Capital Investment}}{\text{Committed New Investment}} = \text{Percentage of Committed New Investment\^{}\^{}}$$

STEP 2

	Percentage of Committed Jobs Created*
+	Percentage of Committed New Investment^^
=	Percentage of Commitments Met

STEP 3

$$\frac{\text{Percentage of Commitment Met}}{2} = \text{Average Actual Performance}$$

* *This percentage shall in no event exceed 110%, even if the Company exceeds 110% of its Job Commitment.*

^*The baseline applies only to expansion projects. The baseline for new projects is zero.*

^^ *This percentage shall in no event exceed 100%, even if the Company exceeds 100% of its Committed Investment.*

PERFORMANCE & ACCOUNTABILITY AGREEMENT

EXHIBIT "B" - Repayment Amount Calculation

(Required only if Average Actual Performance is less than 80%)

STEP 1

Award Amount
X Average Actual Performance
Adjusted Award Amount

STEP 2

Award Amount
\- Adjusted Award Amount
Repayment Amount

Example A – Repayment Required

A $500,000 Award to assist with site development was part of Company A's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company A committed to create 600 jobs and make a $5,000,000 new investment to construct and operate a new production facility in Georgia. At the end of the Performance Period, Company A has actually created 400 jobs and invested $3,500,000 into a smaller facility.

- Award Amount $500,000
- Commitment – 600 jobs and $5,000,000 new investment
- Actual jobs delivered – 400 (66% of Commitment)
- Actual investment delivered -- $3,500,000 (70% of Commitment)
- 66%+70% = 136/2 = 68% [Average Actual Performance]
- $340,000 (68%) Adjusted Award Amount
- $160,000 (32%) Repayment Amount

Example B – No Repayment Necessary

A $500,000 Award to assist with the purchase of production equipment was part of Company B's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company B committed to create 600 jobs and make a $5,000,000 capital investment to construct and operate a new manufacturing facility in Georgia. At the end of the Performance Period, Company B has actually created 600 jobs and invested $4,250,000 into a redesigned facility that saved $750,000 in capital investment.

- Award Amount $500,000
- Commitment – 600 jobs & $5,000,000 investment
- Actual jobs delivered – 600 (100%)
- Actual investment delivered -- $4,250,000 (85%)
- 100%+85% = 185/2 = 92.5% Benefit
- No repayment required

Example C – No Repayment Necessary

A $500,000 Award to assist with the purchase of production equipment was part of Company C's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company C committed to create 600 jobs and make a $5,000,000 capital investment to construct and operate a new manufacturing facility in Georgia. At the end of the Performance Period, Company C has actually created 700 jobs and invested $3,500,000 into a redesigned facility that saved $1,500,000 in capital investment.

- Award Amount $500,000
- Commitment – 600 jobs & $5,000,000 investment
- Actual jobs delivered – 700 (117% but limited to 110% credit)
- Actual investment delivered -- $3,500,000 (70%)
- 110%+70% = 180/2 = 90.0% Benefit
- No repayment required