

## MERCHANT AGREEMENT

This Merchant Agreement (“Agreement”) is entered into by and between The Council of Smaller enterprises (COSE) a nonprofit corporation (“Company”), and the undersigned, \_\_\_\_\_ (“Merchant”).

**RECITALS: A.** Company has developed a community reward program called the I Buy NEO Community Card Program (“Program”).

**B.** Merchant is in the business of selling, goods and/or services at the locations or geographical areas described in Exhibit A and desires to attract the business of participants in the Program (“Cardholders”) who receive benefits from the Program.

**C.** Company and Merchant want Merchant to participate in the Program by remitting to COSE a cash rebate (“Merchant Rebate”), which can only result from the proceeds of goods and/or services purchased with a participating payment or nonpayment Program card by Cardholders. A percentage of the Merchant Rebate will fund both cash contributions to a Cardholder’s designated nonprofit organization(s) and personal rewards that will benefit the Cardholder. NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Company and Merchant agree as follows:

**1. Right to Participate.** Company hereby grants Merchant the right to participate in the Program, subject to Merchant complying with the terms and conditions set forth in this Agreement.

**2. Duties of Company:** Company shall (a) provide Merchant with a Display Kit (“Kit”) containing door and POS stickers, Program brochures and other material, as may become available, to promote the Program; (b) provide Merchant with a letter for advising Merchant’s merchant services provider or acquiring processor (“Processor”) about the additional data to be transferred to Company (“Processor Letter”); (c) collect Merchant Rebates; (d) distribute charitable donations on a quarterly basis and facilitate the Cardholder’s personal rewards; (e) provide Merchant with complete Program purchase, Merchant Rebate and charitable contribution reports on a monthly basis; and (f) record and provide accrued participating Cardholder benefit information through Company’s site.

**3. Authorized Transaction.** An “Authorized Transaction” means any transaction where Merchant accepts at the time of sale an I Buy NEO Program Community Card, and Merchant records this transaction through its point of sale (“POS”) system.

**4. Transaction Accounting.** Merchant shall record all Authorized Transactions, by swiping the I Buy NEO community card through an authorized Visa or MC terminal thus immediately and electronically transmitting information pertaining to each Authorized Transaction to Company or its processor(s). The data transmission shall contain all information necessary to initiate the Program and Rebate procedures, including Cardholder identification number, Merchant number and total amount of the transaction, including sales tax.

**5. Merchant Rebate and Processor Payments.** Merchant shall pay to Company, or its designee, the Merchant Rebate amount as set forth in Exhibit A for each Program Eligible Purchase through and ACH Transaction”. An ACH Transaction means the ability of Company to debit a bank or financial institution account of Merchant, as designated in Exhibit A (“Account”), through an Automated Clearing House. Company shall electronically bill Merchant for all Program related charges on a monthly basis, no later than the seventh business day of the following month. Company shall collect all such charges through an ACH Transaction on the sixth business day of the following month.

**6. Duties of Merchant:** Merchant shall (a) honor all Program cards on Program eligible purchases; (b) provide the Merchant Rebate on the same terms and conditions to all Cardholders; (c) sign the Processor Letter to its Processor; (d) ensure that Merchant’s POS equipment is programmed and ready to send transaction information automatically to Company or its designated processor(s); (e) swipe the I Buy NEO Card on Merchant’s POS equipment at the time that each purchase by a Cardholder is recorded and ensure that all required information is transmitted to Merchant’s and Company’s processors; (f) pay all Merchant Rebates and fees via ACH Transactions as set forth in Exhibit A; (g) support the active promotion of the I Buy NEO Program through ongoing advertising and prominent public display of the Kit materials; (h) agree not to issue any Merchant Rebate in violation of any federal, state, or local law; (i) take all steps necessary to authorize and effect within five days of the date of this Agreement, the ACH Transactions described in this Agreement, and not change the Account without giving Company ten days prior written notice; (j) at all times maintain a sufficient balance in the Account to cover all Merchant Rebates and fees payable under this Agreement. (k) accept the nonpayment Program Card for purposes of recordation only, making sure to collect payment from another source; (l) return to Company upon notification any payments erroneously collected via the payment system and charged to the nonpayment card issuer.

**7. Limitation of Company’s Liability.** With the sole exception of its obligations to Cardholders, Company shall incur no liability for the underlying purchase. Company shall not be liable or responsible in any manner for the merchandise, goods or services provided by Merchant, including any shipping, handling or warranties. Merchant acknowledges and understands that Company has no liability to any Cardholder for any donations or benefits until the Company receives the Merchant Rebate. After any purchase, and prior to the transfer of the Merchant Rebate to Company, Merchant will be liable to the Cardholder for the Merchant Rebate associated with each Program eligible purchase. Merchant shall defend, indemnify and hold harmless Company, to the fullest extent possible, including all attorneys’ fees, for any liabilities, actual or threatened, arising from a Program eligible purchase, or a Merchant Rebate not yet transferred to Company.

**8. Limitation on MasterCard’s Liability.** Merchant hereby waives all right to receive any payment from MasterCard under MasterCard’s settlement guarantee in connection with Interra Community Card transactions.

**9. Use of Trademarks and Names.** "I Buy NEO" means the trademark for the I Buy NEO Program; this trademark is and shall remain the exclusive property of Company. Company hereby grants a non-exclusive right to Merchant to use Company's logo and trademarks in advertisements, descriptions, narrative statements, promotional campaigns or presentations relating to the Program. Merchant grants Company a non-exclusive right to use Merchant's trademark and name in Company promotional materials.

**10. Term and Termination.** (a) Term. This Agreement shall commence on the first day of the month after receipt and approval by Company of an original of this Agreement executed by Merchant ("Commencement Date") and shall continue through the last day of the twenty-fourth (24th) month ("Initial Termination Date"), both as set forth in Exhibit A. Unless written notification of termination is provided by either Company or Merchant at least Thirty (30) days prior to a scheduled termination date, Merchant may withdraw from program at anytime by simply removing relative rebate and with proper notification (in writing) and acceptance by company. This Agreement shall renew automatically on a year-to-year basis after the first (one year) term. (b) Termination by Company. Company may terminate this Agreement at any time (i) for any violation of its terms or conditions, (ii) upon the insolvency or bankruptcy of Merchant, (iii) if Company no longer has the ability to process Merchant Rebates, or (iv) if Company elects to take such action for any other reason, based on mutual consent of the Merchant, in which case Merchant's obligations under this Agreement will continue for a period of not less than ninety (90) days.. (c) Effect of Termination. Unless otherwise agreed to by the Company, the termination of this Agreement shall not relieve Merchant of the obligation to pay Merchant Rebates earned from Purchases prior to the termination date or to provide Company with information related to those Purchases. Merchant shall not use and shall return to Company any equipment, sales and promotional materials, computer software or programs (including any additions, alterations or enhancements) and supplies provided by Company in Merchant's possession at the termination.

**11. Notice.** All notices, requests, demands and any other communications permitted or required under this Agreement ("Notices") must be in writing and will be effective (a) immediately upon delivery in person, (b) on the first business day after deposit with a commercial courier or delivery service providing receipted overnight delivery service, or (c) three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid. All Notices must be properly addressed and delivered to the parties at the addresses set forth in this Merchant Agreement, or at such other addresses as either party may subsequently designate by written notice given in the manner provided in this section. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities, or overnight delivery service.

**12. Miscellaneous Provisions.** (a) Time of the Essence. Time is of the essence in this Agreement. (b) Waiver. No waiver or any breach of a covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. (c) Assignment. Any assignment of this Agreement shall be made with the consent of the other party, and such consent shall not be withheld unreasonably. (d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and permitted successors and assigns. (e) Exhibits. All exhibits constitute a part of this Agreement and are incorporated into it by this reference. (f) Entire Agreement. This document and the exhibits referred to in it represents the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all other prior agreements, either oral or written. This Agreement may only be supplemented, modified or amended by a written document signed by both Parties. (g) Construction. The captions, headings and subheadings in this Merchant Agreement are included for convenience only. Except as provided otherwise, "days" as used in this Agreement shall mean calendar days. The singular form shall include the plural, and vice versa. The masculine, feminine, and neuter genders will each be considered to include the others. "Shall," "will," "must," "agree," and "covenants" are each mandatory; "may" is permissive; "or" is not exclusive; and "includes" and "including" are not limiting. (h) Interpretation. This Merchant Agreement shall be construed according to the fair meaning of its language. (i) Partial Invalidity. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provisions to other persons or circumstances shall not be affected. (j) Attorney Fees. If any legal action, arbitration or other proceeding is brought for the enforcement of this Agreement, or, whether or not suit is filed, because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover, in addition to any other relief to which it may be entitled, reasonable attorney fees as well as all other expenses, costs and damages costs incurred in that action or proceeding. (k) Governing Law and Venue. This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Ohio. This Agreement has been accepted in Cleveland, Ohio, and venue for any dispute herein shall lie in the federal or state court having jurisdiction over Cleveland, Ohio. (l) Counterparts. This Agreement and any supplement, addendum or modification may be executed in two or more counterparts.

**13. Address for Company.** The address for the purpose of giving notice to Company is The Higbee Building, 100 Public Square, Cleveland, OH 44113.

**IN WITNESS WHEREOF**, the Parties have each executed, entered into and delivered this Agreement on the date set forth below their respective signature lines.

**Merchant**

**I Buy NEO: (COSE)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 200\_\_\_\_\_

Dated: \_\_\_\_\_, 200\_\_\_\_\_

**EXHIBIT A**

[Please print clearly]

**GENERAL INFORMATION**

Business Name:

\_\_\_\_\_

DBA (if applicable):

\_\_\_\_\_

Federal Tax ID # (EIN):

\_\_\_\_\_

Address:

\_\_\_\_\_

Address2:

\_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\_\_\_\_\_

Telephone: (

) \_\_\_\_\_

Fax: (

) \_\_\_\_\_

E-mail Address:

\_\_\_\_\_

Web Address:

\_\_\_\_\_

Name and title of the person duly authorized to enter into this agreement (please print clearly):

Signed by: \_\_\_\_\_ Title: \_\_\_\_\_

**ADDITIONAL LOCATION INFORMATION (if applicable)**  
Addresses of additional locations covered by this agreement (attach a list if you need to name more locations):

Address: \_\_\_\_\_

—

Address2: \_\_\_\_\_

—

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\_\_\_\_\_

**BILLING INFORMATION**

Merchant's bank name, routing, and account numbers

Bank Name:

\_\_\_\_\_

Bank Routing Number:

\_\_\_\_\_

Merchant Bank Account Number:

\_\_\_\_\_

**IMPORTANT: Attach a voided check (or a copy) showing the line with the routing and account numbers**

**TEST SWIPE**

(Completed by Program Provider)

Enter a unique amount for each location of (\$ 0.99 or less) - Amount \$ 0.\_\_\_\_ Date Swiped: \_\_\_\_/\_\_\_\_/\_\_\_\_

**REBATE PLAN INFORMATION**

Define a **Program Eligible Purchase** by setting the **Minimum Purchase Amount** and **Rebate** offer. Merchants can adjust the rebate plan and make special offerings online.

**Minimum Charge for Program Eligible Purchases.** All Program Eligible Purchases are subject to a minimum processing fee of \$0.26. Choose a combination of Program Eligible Purchase amount and Merchant's rebate that covers the transaction cost of \$0.26.

Please fill in the blanks in rows 1 and 2. Merchant's initials confirm selection of Rebate Plan.

	<b>Initials</b>	<b>Example</b>
1. A <b>Program Eligible Purchase</b> is subject to a <b>Minimum Purchase Amount</b> of \$ _____ \$20.00	_____	
2. Merchant's <b>Rebate</b> shall be _____ % of each Program Eligible Purchase. 10%	_____	
3. <b>Maximum</b> Rebate per Transaction (optional) \$ _____	_____	\$15.00
Commencement date for the program shall be _____, 200____.		

There are more options online to create specials and other promotions.

**Exhibit B**

**ONLINE LISTING INFORMATION**

This information is entered online into your merchant listing.

This information is entered online into your merchant listing.

Please enter a merchant description of **Description** up to 100 words.

**Hours of Operation** Please enter the days of the week and hours of the day the merchant is open:

**Payment Types Accepted** Please indicate the payment instruments accepted by the merchant:

Checks                       American Express  
 Mastercard / Visa             Discover

**Keywords** Please list up to 30 keywords used for searching your listing

