

TERMS OF USE

These terms of use form part of the *smartmoves* agreement between you and Canada Post Corporation (“**Canada Post**”). All references to this agreement include the order form and then current rate card.

1. Canada Post agrees to feature your promotional material in the *smartmoves* program, as set out in the order form, and you agree to pay Canada Post the corresponding fees, as set out in the then current *smartmoves* rate card.
 2. You agree to adhere to the submission deadlines and promotional material specifications, submission deadlines and advertising requirements as set out at [<http://www.canadapost.ca/cpo/mc/business/productservices/smartmoves/smartmoves.jsf>] for all *smartmoves* promotional material you submit to Canada Post.
 3. You are responsible for honouring all advertisements placed using the *smartmoves* program.
 4. Canada Post has the right to review and require reasonable changes to all *smartmoves* promotional material you submit
 5. Neither you nor Canada Post will use, disclose or retain any information obtained from the other party in the course of this agreement for any purpose other than carrying out the respective obligations of this agreement or as required by law.
 6. Each party agrees to comply with the applicable federal and provincial laws governing privacy and the collection, use and disclosure of personal information.
 7. The term of the agreement begins as of the date of the order form and continues until the earlier of (a) the completion of the work set out in the order form, (b) termination for any reason or no reason by either party on 30 days written notice to the other, or (c) termination for cause by Canada Post if you are in uncured breach of this agreement for 15 days following written notice of the breach from Canada Post. You are not entitled to a refund of any fees previously paid, except for prepaid and unfilled *smartmoves* orders not already in production at the time Canada Post terminates this agreement under option (b) above.
 8. You grant Canada Post a non-exclusive, limited license to use the logos, trademarks, trade names, digital files, address suppression or trade area files and physical files you provide to Canada Post pursuant to this agreement to perform the obligations of Canada Post under this agreement and for no other purpose. You represent that you have all required authority to grant Canada Post such license.
 9. Canada Post shall at all times own all rights in the creative material produced by it pursuant to this agreement, including but not limited to any copyright therein. All copyright and other intellectual property rights in advertisements supplied by you shall remain your property.
 10. No license is granted to you to use any Canada Post intellectual property.
11. **NO WARRANTY.** Canada Post makes no representations or warranties, express or implied, with respect to the *smartmoves* program or any data provided to you there from, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.
 12. **LIMITATION OF LIABILITY.** Subject to applicable law, in no event will Canada Post be liable for any direct, indirect, consequential, incidental, special or exemplary damages of any kind arising out of or in connection with this agreement. In no event will Canada Post’s total liability under this agreement, whether in contract, tort (including negligence) strict liability or other legal theory, exceed the amount paid by you pursuant to this agreement in relation to the *smartmoves* program advertisement in relation to which the damage arose. This limitation applies even if Canada Post has been advised of the potential of such damages and notwithstanding the failure of the essential purpose of any limited remedy. You acknowledge that the pricing of the *smartmoves* Program has been set based on this limitation of liability.
13. You hereby agree to indemnify, defend and save harmless Canada Post Corporation, its officers, directors, shareholders, agents, employees, representatives and affiliates in respect of all losses, actions, claims, demands, damages, proceedings and liabilities (including legal fees and costs) whatsoever related to: your failure to comply with the terms of this agreement; your failure to honour the offers contained in any of your advertisements placed using the *smartmoves* Program; and/or the publication of the contents of any of your *smartmoves* advertisements, including without limitation claims or lawsuits for libel, violation of right to privacy, copyright infringement, plagiarism, defamation or unfair competition.
 14. This agreement is governed by and will be construed in accordance with the laws of the province of Ontario and the laws of Canada applicable therein, without regard to any choice or conflict of laws, rule or principle that will result in the application of the laws of any other jurisdiction.
 15. The relationship between you and Canada Post is that of independent contractors and nothing in this agreement will be construed as establishing an agency, partnership, joint venture or employment relationship between you and Canada Post.
 16. Any demand, notice, direction or other communication to be made or given hereunder shall be in writing and may be made or given by email or sent by Xpresspost™, addressed to you in accordance with the registration information you provided and addressed to Canada Post at nick.psychogios@canadapost.ca or **smartmoves Program, 1 Dundas Street West, Suite 400, Toronto, Ontario, M5G 2L5.**
 17. The payment provision of section 1 and sections 3, 5, 9, 11, 12, 13, 14, 16, 17 and 18 survive termination of this agreement.
 18. Except for your payment obligations, neither party is liable to the other for failure to perform due to causes beyond its reasonable control. No delay or failure to take action under this agreement will constitute a waiver unless expressly waived in writing, signed by a duly authorized representative of Canada Post, and no single waiver will constitute a continuing or subsequent waiver. This agreement will bind your successors but may not be assigned, in whole or part, by you without the written approval of an authorized representative of Canada Post. Any non-conforming assignment shall be null and void. If any provision is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect and enforceable. This agreement, which includes the order form and the price sheet, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings regarding such subject matter. No addition to or removal or modification of any of the provisions of this agreement will be binding upon Canada Post unless made in writing and signed by an authorized representative of Canada Post.