



# Xero Affiliate Agreement

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Thank you for applying to join Xero's Affiliate Program! To be eligible to participate as a Xero Affiliate, you must review and accept this Xero Affiliate Agreement ("**Agreement**").

**Please review these terms carefully. By submitting an application for Xero's Affiliate Program through the PartnerStack Platform and by clicking on the "Confirm" button, you agree to be bound by and comply with the terms of this Agreement, as updated from time to time in accordance with Section 2.**

This Agreement is between you ("**you**", "**your**") and the Xero entity you contract with based on your location ("**Xero**", "**our**", "**we**"). Section 21 sets out which Xero entity you contract with. Each of you and Xero may be referred to in this Agreement as a "**Party**", and may be collectively referred to in this Agreement as the "**Parties**".

- Xero Affiliate Program.** Xero is a cloud-based accounting software platform, accessible at [www.xero.com](http://www.xero.com). Xero maintains a website page at [xero.com/signup](http://xero.com/signup) through which US and Canada-based non-accounting or bookkeeping small businesses can sign up for Xero's services ("**Xero Sign-Up Page**"). The Xero Affiliate Program is facilitated on the PartnerStack partner management platform ("**PartnerStack Platform**"). Both Parties acknowledge that they may be party to separate agreements with PartnerStack and may be participants in other PartnerStack programs. You acknowledge that Xero is not an agent or representative of PartnerStack, and is not party to any agreement you have with PartnerStack, nor in any way responsible for the performance of PartnerStack.
- Modification.** At any time, and in our sole discretion, we may modify any of the terms and conditions of this Agreement by posting a revised or new agreement through the PartnerStack Platform. Modifications may include, without limitation, changes in the scope of available referral fees, fee schedules, and payment procedures. If any of the modifications are unacceptable to you, your only recourse is to terminate this Agreement pursuant to Section 15 (Term and Termination). Your continued participation in Xero's Affiliate Program following Xero's posting of a revised or new agreement will constitute your acceptance of the modifications.
- Approval to Participate.** Participation in the Xero Affiliate Program is subject to Xero's approval, which may be withheld in Xero's sole discretion (including refusing entry to the program based on website content). To apply to participate in the Xero Affiliate Program, you will be required to complete an application questionnaire and submit the URL for the website(s) that you seek approval for (if you are operating more than one website, you must submit the URL for each website that you seek approval). You must be located in either Canada or the United States in order to be eligible to participate in the Xero Affiliate Program. Xero will notify each applicant through PartnerStack by e-mail as to whether or not you have been approved to participate as a Xero affiliate ("**Affiliate**") with your submitted website(s) (each website as long as it is approved by Xero to participate in the Xero Affiliate Program, a "**Site**"). Our approval process is solely for our own assurance, and you are not entitled to rely on it for any purpose.
- Affiliate Link.** As an Affiliate, you will be provided with a unique URL string enabling you to create a link on your Site(s) which will direct visitors to the Xero Sign-Up Page ("**Affiliate Link**").

## 5. **Commissions.**

- a. For each small, non-accounting or bookkeeping business located in the United States (for US-based Affiliates) or Canada (for Canada-based Affiliates) that:
  - i. is confirmed by Xero to not be an existing subscriber to Xero's services or subscribed to Xero's services in the past 12 months;
  - ii. signs up to purchase a paying US or CA (as applicable) Business Edition subscription to Xero services ("**Subscription**") via your Affiliate Link;
  - iii. meets the eligibility requirements set out in Xero's Affiliate Program profile on the PartnerStack Platform; and
  - vi. maintains a paying Subscription for no less than three (3) consecutive monthly billing cycles(each small business that meets criteria (i) through (iv) above, a "**Referred Subscriber**")

Affiliate may be eligible to receive a one-time payment ("**Commission**") consistent with this Section 5 and Section 6 (Payments). Each small, non-accounting or bookkeeping business may only be counted as a Referred Subscriber one time and you may only receive up to one Commission per Referred Subscriber. For clarity, US-based Affiliates will only be eligible to receive Commissions for Referred Subscribers located in the United States, and Canada-based Affiliates will only be eligible to receive Commissions for Referred Subscribers located in Canada.

Referred Subscriber eligibility requirements and Commission amounts available to be earned by Affiliates are published on Xero's Affiliate Program profile on the PartnerStack Platform, and may be changed from time to time in Xero's sole discretion by publishing new Referred Subscriber eligibility requirements and/or Commission amounts.

- b. Although PartnerStack may track and calculate lead submissions in accordance with the PartnerStack program, determination of whether the lead submission has resulted in a Referred Subscriber for which the Affiliate is eligible to receive a Commission payment will be made by Xero in its sole discretion.
- ## 6. **Payments.**
- Commissions will be paid by Xero to PartnerStack, and PartnerStack will process and distribute the payments to you. Xero is not a party to your agreement(s) with PartnerStack, and will have no liability, responsibility or obligation for the passage of any Commission payments to you. Xero may, and Affiliate consents for Xero to, chargeback to Affiliate (for example, debit or offset from any amounts payable) any Commissions paid or credited to Affiliate with respect to Referred Subscribers that were procured fraudulently or as a result of any violation of this Agreement or applicable law or were paid in error. For clarity, Xero's only payment obligation is the payment of validly owing Commissions to PartnerStack. Affiliate will have no claims against Xero for any additional compensation, Commissions or business derived by or through Referred Subscribers.
- ## 7. **License.**
- (a) Xero grants to Affiliate a limited, revocable, non-transferable, non-exclusive, non-sublicensable, royalty-free license during the term of this Agreement to use and display the Affiliate Link and Xero's Brand Elements (defined below) in accordance with Xero's branding guidelines (accessible on Xero's Affiliate Profile on the PartnerStack Platform and updated from time to time in Xero's sole discretion), solely in connection with the marketing and promotional activities set out in this Agreement.
  - (b) Affiliate grants to Xero and its affiliates a limited, revocable, non-transferable, non-exclusive, non-sublicensable, royalty-free license during the term of this Agreement to use Affiliate's Brand Elements in connection with this Agreement and in accordance with Affiliate's then-current written branding guidelines as provided to Xero from time to time. Affiliate warrants that use of its licensed Brand Elements in accordance with this Agreement does not infringe any third party rights (including privacy, publicity, intellectual property and moral rights).

- (c) “**Brand Elements**” means any trademarks, service marks, names, logos, images, collateral or similar materials, including but not limited to, marketing materials, that, in the case of Xero’s Brand Elements, are accessible via the asset library in Xero’s Affiliate Program profile on the PartnerStack Platform. For clarity, neither Party’s Brand Elements includes its products or services themselves.
- (d) All goodwill arising out of the use of Xero’s Brand Elements will inure to the benefit of Xero. Except as expressly licensed under this Agreement, the Xero retains all right, title and interest in and to its Brand Elements, including, without limitation, all intellectual property rights.
8. **Site Compliance.** Xero may monitor, review and otherwise investigate your Site(s) to assess your compliance with this Agreement. Where Xero determines in its sole discretion that a Site is not compliant with this Agreement, it may withdraw its approval for the Site, following which you will immediately cease all marketing activities on the applicable Site(s), including use and display of Affiliate Links and Xero Brand Elements in connection with this Agreement.
9. **Usage Guidelines.** Xero may require that any use or display of the Affiliate Link and/or Brand Elements be modified or removed to comply with this Agreement and Xero’s then-current branding guidelines. If Affiliate does not make the requested changes within five (5) business days, Xero reserves the right to immediately terminate your participation in the Xero Affiliate Program.
10. **Affiliate Reporting.** From time to time Xero may request Affiliate to provide to Xero a report on one or more of the following: (a) Affiliate’s compliance with this Agreement; (b) each use and display (past and current) of the Affiliate Link and/or Brand Elements; and/or (c) number of aggregate clicks on Site pages where the Affiliate Link is displayed (“Affiliate Report”). Affiliate will provide the Affiliate Report to Xero within seven (7) calendar days from the date of the request.
11. **Subscriber Relationship.** Use of Xero’s services is governed by the Xero Terms of Use and Xero’s Privacy Notice. Xero’s Terms of Use are entered into between the subscriber and applicable Xero entity, as set out in Xero’s Terms of Use, currently available at <https://www.xero.com/us/legal/> and each as may be updated from time to time in Xero’s sole discretion.
12. **Marketing Activities.** Throughout the Term you may conduct marketing activities for Xero on your Site(s), each subject to the terms of this Agreement, including without limitation, Section 7 (License) and Section 14 (Prohibited Activities). Affiliate represents and warrants that it will perform any marketing activities (including the publishing and distributing of advertisements) in strict compliance with all applicable laws, regulations and guidelines, including without limitation, laws prohibiting deceptive and misleading advertising and marketing, email marketing laws (including without limitation, the CAN-SPAM Act of 2003 or Canada’s Anti-Spam Legislation (CASL), as applicable). In connection with the marketing activities, you are solely responsible for (a) obtaining all necessary consents; and (b) ensuring your compliance with all laws. At any time, Xero may, in its sole discretion, withdraw its consent for any or all of the marketing activities, following which Affiliate will cease the relevant marketing activity(ies) within three (3) business days.
13. **Relationship with Xero.** It is the sole responsibility of Affiliate to disclose the nature of your relationship with Xero to any actual or potential customers in connection with the marketing activities. Affiliate will indemnify and hold harmless Xero against any liability arising from Affiliate’s lack of proper disclosure to an actual or potential customer.
14. **Prohibited Activities.** You will not:
- a. Display the Affiliate Link or Xero Brand Elements on any sites that have not been approved for the Affiliate Program, or alongside any content that includes objectionable material (including but not limited to content that promotes sexually explicit material; violence; any form of discrimination; illegal activities; lists coupon codes or discounts that were not officially provided to you by Xero; or infringes or violates any copyright, trademark or other intellectual property rights of Xero or any third party);
  - b. Directly or indirectly make (or knowingly facilitate, encourage, or enable any third parties to make) any alterations to the Xero Brand Elements;
  - c. Misrepresent your relationship with Xero, including any implication that Xero sponsors, supports or endorses Affiliate (which includes without limitation, any use of the term “Partner” “Ambassador” or “Certified” in connection with Xero);

- d. In connection with your activities as set out in this Agreement, (i) violate any law, rule or regulation; or (ii) use any false or deceptive material, or otherwise engage in any consumer or other fraud.
15. **Term and Termination.** The effective date of this Agreement will be the date on which the Affiliate submits its application and clicks “Confirm” and continues until either party terminates this Agreement on fourteen (14) days notice to the other party. You acknowledge that the Xero Affiliate Program is a pilot program, and if Xero wishes to terminate the pilot, we may post a notice of termination through the PartnerStack Platform, which will be deemed as notice of termination to you in accordance with this provision. Xero may in its sole discretion terminate this Agreement or suspend your participation in the Xero Affiliate Program immediately, without penalty, in the event that (a) you are in material breach of this Agreement (which includes without limitation, your breach of Section 12 or Section 14); (b) Xero believes it may be subject to potential claims or liability related to your participation in the Xero Affiliate Program; (c) Xero believes its brand or reputation may be harmed by your participation in the Xero Affiliate Program; or (d) fraud is detected or reasonably suspected in connection with your account. Where Xero terminates this Agreement other than for convenience, Xero will be released from all obligations and liabilities owed to Affiliate, including rights regarding referrals and the forfeiture of any accrued, but unpaid Commissions. Upon termination of this Agreement, all rights granted to you hereunder will immediately cease (except as otherwise expressly set forth in this Agreement) and you will immediately cease all marketing activities under this Agreement, including use and display of Affiliate Links and Xero Brand Elements in connection with this Agreement. The provisions of Section 17 (Limitation of Liability), Section 18 (Indemnity), and Section 19 (Confidentiality) will survive any termination or expiration of this Agreement.
16. **Representations and Warranties.**
- a. You represent and warrant that: (i) you have the full power and authority to enter into and perform under this Agreement; and (ii) you will perform your obligations and exercise your rights in compliance with all applicable laws, regulations, and rules.
- b. Services or deliverables provided by Xero under this Agreement, if any, are provided “as is”. To the full extent permissible by applicable law, Xero disclaims all warranties, express, implied, statutory or otherwise, including but not limited to, implied warranties of merchantability, non-infringement, and fitness for a particular purpose in connection with this Agreement, including the Xero Services, the Affiliate Program and the Affiliate’s potential to earn an income from the Affiliate Program. Xero makes no warranty or representation that the Affiliate Links or Xero Sign-Up Page will be uninterrupted, secure or error free or that any such outages, interruptions or defects in the Affiliate Links or Xero Sign-Up Page will be corrected.
- c. Xero will make reasonable efforts to track Referred Subscribers and Commissions, however Xero is not responsible for any technical problems, acts by third parties (including PartnerStack) or other inaccuracies or events outside Xero’s reasonable control.
17. **Limitation of Liability.** To the extent not prohibited by applicable law: (a) under no circumstances will Xero be liable under this Agreement for indirect, punitive, incidental, consequential, special or exemplary damages (or any loss of revenue or profits), even if we have been advised of the possibility of such damages; and (b) in no event will Xero’s aggregate cumulative liability for any claims arising out of or related to this Agreement exceed \$1,500.
18. **Indemnity.** You will indemnify, hold harmless, and to the extent requested by Xero defend, Xero, its affiliates, and its and their officers, directors, employees, shareholders, sublicensees, agents, representatives, successors and assigns from and against any and all claims (including third-party claims), losses, liabilities, damages, expenses and costs (including reasonable attorneys’ fees and court costs) (“**Claims**”) arising out of or from your (a) violation of this Agreement; (b) infringement of any intellectual property or other proprietary right; or (c) violation of any applicable law in connection with your performance under this Agreement. In no event will you settle any Claim without Xero’s prior written consent (not be unreasonably withheld).
19. **Confidential Information.**
- a. During the Term of this Agreement you may receive non-public business, technical or financial information from Xero, that is identified (in writing or orally) as confidential, or should be reasonably known by you to be confidential due to the nature of the information and circumstances surrounding disclosure (“Confidential Information”).

- b. You will: (i) hold in confidence and not disclose any Confidential Information to third parties and (ii) use the Confidential Information solely for the purpose of fulfilling your obligations under this Agreement. In the event of any unauthorized disclosure of the Confidential Information, you will promptly notify Xero in writing, and promptly and reasonably cooperate with Xero to mitigate the effects of the unauthorized disclosure. To the extent required by law, you may disclose the Confidential Information, provided that to the extent permitted by law, you notify Xero in advance and cooperate in any effort to obtain confidential treatment. You acknowledge that disclosure of Confidential Information may cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by you, Xero will be entitled to seek appropriate equitable relief in addition to any remedies it might have at law.
- c. All information or data contained in or transferred via the Affiliate Link between the Affiliate's Site and the Xero Sign-Up Page will be deemed Xero's Confidential Information. All visitors that sign up for Xero's services via the Xero-Sign Up Page will be subject to additional terms and conditions available on Xero's website, including Xero's privacy policy.

20. Miscellaneous.

- a. **Privacy Policy.** To learn how Xero processes personal information, please see Xero's Privacy Notice, currently available at <https://www.xero.com/privacy/> and as may be updated by Xero from time to time in its sole discretion.
- b. **Relationship of Parties.** The Parties are independent contractors. No agency, partnership, joint venture or employment is created between the parties as a result of this Agreement. You are not authorized to create any obligation, express or implied, on behalf of Xero.
- c. **Assignment.** You will not transfer, assign or delegate your obligations under this Agreement without the prior written consent of Xero. All rights, benefits and protections granted to Xero under this Agreement extend to its affiliates. Xero may enter into similar or any other arrangements with any other parties.
- d. **Entire Agreement.** This Agreement is the Parties' entire agreement and supercedes any prior or contemporaneous agreements related to the subject matter.
- e. **Severability.** If any provision of the Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision (and related provisions) will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.
- f. **Notices. Notices must be sent to Xero by email:** to Xero at [legalnotices@xero.com](mailto:legalnotices@xero.com) and to you at the email provided in your application and will be deemed delivered at the time of transmission unless a delivery error is received by the sender.

21. **Xero contracting entity; law and venue.** Our contracting entities are listed below along with what law and venue apply in any dispute between you and Xero:

**Canada based Affiliates**

Xero entity: Xero Software (Canada) Ltd.

Address: 595 Burrard Street, PO Box 49314, Suite 2600, Three Bentall Centre, Vancouver, British Columbia, V7X 1L3

Registration: 1408742-9

Law: Ontario, Canada

Venue: Ontario, Canada

**United States based Affiliates**

Xero entity: Xero, Inc.

Address: Address: 1615 Platte Street, Floor 4, Denver, CO 80202

Registration: Not applicable

Law: California, USA

Venue: California, USA