

# Licensing Terms and Conditions

for the Use of Music in Apps

effective 1 January 2023

## 1. Definitions

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<b>SUISA Direct Repertoire</b>	All non-theatrical works of music, or parts of such works, in respect of which SUISA is or will be entitled to manage the right to store on a server and to make available worldwide pursuant to agreements concluded with its principals and members.
<b>SUISA Local Repertoire</b>	SUISA's Direct Repertoire on the one hand and, on the other hand, all non-theatrical works of music, or parts of such works, in respect of which SUISA is or will be entitled to manage the right to store on a server and to make available in Switzerland and Liechtenstein pursuant to agreements concluded with its sister societies.
<b>SUISA Repertoire</b>	SUISA Direct Repertoire & SUISA Local Repertoire
<b>Customer</b>	Companies domiciled in Switzerland or Liechtenstein and natural persons residing in Switzerland or Liechtenstein.
<b>App</b>	Application software or programs for mobile devices like smartphones or tablets.
<b>Total Revenues</b>	All revenues in connection with the App, notably in-app sales, advertising revenues, bartering and sponsoring income, regardless of the duration of the music.
<b>Download</b>	Data transfers; multiple app contents (e.g. films, games, etc.) count as multiple downloads.
<b>Production Music</b>	Certain catalogues containing a combination of sound recordings (neighbouring rights) and non-theatrical music works (copyrights) in respect of which SUISA is or will be entitled to grant synchronisation and reproduction rights, as well as the right to make available from a single source, pursuant to agreements with publishers of Production Music.

## **2. Scope of Licence**

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2.1 The Licence regulates the use of SUIA Repertoire in Apps.

2.2 The Licence covers the following uses in Apps:

- The storing of SUIA Repertoire
- The making available of SUIA Repertoires in Apps.

2.3 The Licence does not cover:

- Use of SUIA Repertoire in combination with pictures and text in videos (synchronisation right)
- Online advertising campaigns (<https://www.suisa.ch/en/Kunden/Audio-und-Videoproduktion/Online-Werbekampagnen.html>)
- Use of SUIA Repertoire outside Apps within the meaning of these Licensing Terms and Conditions.

2.4 SUIA only manages authors' musical copyrights. Any other affected rights (e.g. neighbouring rights or synchronisation rights) must be settled directly with the corresponding rightholders.

Production Music is an exception to this rule:

If you use Production Music, SUIA can grant you both the neighbouring rights and the synchronisation rights in addition to the copyrights. For a list of available catalogues, see the following link: [www.suisa.ch/en/Kunden/Audio-und-Videoproduktion/Production-Music](http://www.suisa.ch/en/Kunden/Audio-und-Videoproduktion/Production-Music).

## **3. Territory**

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The permission to use, within the meaning of these Licensing Terms and Conditions, applies to the use of SUIA Repertoires in Apps worldwide subject to point 5.3.

## **4. Information and reporting**

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For the first application for the use of SUIA Repertoire in Apps, Customer must use the ad hoc form made available by SUIA.

## **5. Exclusions and waivers**

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5.1 Certain rightholders (principals, members, sister societies) may have excluded or may exclude their rights or repertoire from licensing by SUIA. Until SUIA notifies Customer of such an exclusion, however, the Licence remains valid.

SUIA shall hold Customer harmless against any claims from rightholders for the period prior to the exclusion, but shall not be liable for any damages incurred by Customer thereafter.

After such an exclusion, Customer may either choose another work or waive the corresponding use.

- 5.2 The waiver does not apply to any claims brought by a rightholder against Customer for infringement of moral rights arising from the use of the music. Customer must ensure that the moral rights of authors are respected and obtain the requisite permissions directly from the rightholders.
- 5.3 With regard to the granting of worldwide rights to SUISA's Local Repertoire, SUISA can only give warranties for the territories of Switzerland and Liechtenstein. The Licence is only valid for the rest of the world if and insofar as no other Society approaches Customer. Notwithstanding, SUISA undertakes to coordinate licensing with the Society.

## 6. Licence fees and payment terms

### 6.1 Recording music on end devices (download to own)

Category	Fees	Minimum fee per app
<b>1. General apps</b> (e.g. films, etc.)	2% of total revenues	CHF 0.045 per download
<b>2. Commercial apps for sales or image promotion</b>	4% of total revenues <sup>1</sup>	CHF 0.09 per download
<b>3. Music video apps</b>	3.5% of total revenues	Per download, for: 1 to 2 works: CHF 0.085 per work 3 to 7 works: CHF 0.06 per work 8 to 13 works: CHF 0.05 per work 14 to 19 works: CHF 0.045 per work 20 works or more: CHF 0.04 per work
<b>4. Music apps (audio only)</b>	8% of total revenues	Per download, for: 1 to 2 works: CHF 0.11 per work 3 to 7 works: CHF 0.09 per work 8 to 13 works: CHF 0.07 per work 14 to 19 works: CHF 0.065 per work 20 works or more: CHF 0.06 per work

## 6.2 Streaming music from the server (streaming on demand)

Category	Fees	Minimum fee per month
<b>1. General apps</b> (e.g. films, etc.)	2% of total revenues	Average number of visits per month:
<b>2. Commercial apps for sales or image promotion</b>	4% of total revenues	Up to 5,000 visits CHF 12.50 5,001 to 10,000 visits CHF 30.00 10,001 to 50,000 visits CHF 50.00 50,001 to 100,000 visits CHF 100.00
<b>3. Music video apps</b>	3.5% of total revenues	100,001 to 500,000 visits CHF 200.00 500,001 to 1 million visits CHF 400.00
<b>4. Music apps (audio only)</b>	12% of total revenues	1 to 2 million visits CHF 600.00 over 2 million visits CHF 900.00

6.3 The minimum invoice amount is CHF 50.00. All fees are exclusive of VAT.

6.4 A surcharge of 200% for synchronisation rights and neighbouring rights will be charged for the use of Production Music.

6.5 SUISA invoices are due and payable by Customer, without any deduction, thirty days after receipt. Once this time limit has lapsed, Customer is automatically in default without further reminder.

## 7. Validity and termination

The Licence Agreement based on these Licensing Terms and Conditions comes into force from the date of execution by both Parties and is valid indefinitely subject to the following termination clause.

The Licence Agreement can be terminated in writing for the end of any month if:

- Customer ceases using SUISA Repertoires;
- either Party breaches these Licensing Terms and Conditions and fails to remedy such breach promptly after a receiving a notice of breach from the injured party setting a time limit.

Any and all rights of use of Customer cease upon termination of the Licence Agreement.



## **8. Severability Clause**

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If any provision of the Licence Agreement is or becomes invalid, or in case of an omission, the other provisions remain valid and unaffected. The invalid provision shall be deemed to have been replaced by a valid provision which comes as close as possible to the economic intent of the parties. The same applies in the event of an omission.

## **9. Other provisions**

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This Licence Agreement is governed by Swiss Law. Place of jurisdiction is Zurich.