

Semtech Corporation

Terms of Service for Trials (AWS Marketplace)

Last updated: September 27, 2023

BY SIGNING UP FOR A USER ACCOUNT (AS DEFINED BELOW) OR OTHERWISE ACCESSING OR USING THE AIRVANTAGE® PLATFORM (AS DEFINED BELOW), YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS AS OF THE DATE OF SUCH ACCESS OR USE OF THE AIRVANTAGE® PLATFORM (THE “**EFFECTIVE DATE**”). AS USED IN THESE TERMS OF SERVICE (AS DEFINED BELOW), “**WE**”, “**US**”, “**OUR**”, OR “**SEMTECH**” MEANS SEMTECH CORPORATION AND ITS AFFILIATES, AND “**YOU**”, “**YOUR**”, OR “**CUSTOMER**” MEANS THE ENTITY YOU REPRESENT AND REGISTERED ON THE AMAZON WEB SERVICES (“**AWS**”) ONLINE MARKETPLACE ([HTTPS://AWS.AMAZON.COM/MARKETPLACE](https://aws.amazon.com/marketplace)). CERTAIN TERMS ARE DEFINED IN SECTION 8.

1. Trials

- 1.1. Scope. These Terms of Service for Trials (AWS Marketplace) (the “**Terms of Service**”) apply to Semtech Solutions (defined below) that are provided to you for internal testing and evaluation (“**Trials**”). These Terms of Service govern your access to and use of (a) our online AirVantage® software-as-a-service platform (the “**AirVantage® Platform**”), and (b) Services and SIMs that are ordered or administered using, or received through, the AirVantage® Platform or the AWS Platform. The AirVantage® Platform, Services, and SIMs are referred to collectively as the “**Semtech Solutions**”. The Semtech Solutions’ offering details are set out on the AWS Platform.
- 1.2. No Fees. No fees will be charged for Trials.
- 1.3. Use Restrictions. In addition to the restrictions contained elsewhere in the Terms of Service, the Semtech Solutions may be used solely for testing and evaluation in a test environment and may not be used for commercial or revenue generating purposes or for any production use (the “**Permitted Purpose**”).
- 1.4. No Obligation to Provide Trials. It is in our discretion to decide which Semtech Solutions to make available to you under a Trial. Your acceptance of these Terms of Service or submission of any order for any Semtech Solutions does not obligate us to provide any Semtech Solutions to you under a Trial or otherwise. We may suspend or terminate a Trial at any time without notice.
- 1.5. Access and Use. Subject to your compliance with the Terms of Service, Semtech grants you and your Authorized Users (as defined below) the right to access and use only those Semtech Solutions that we make available to you, solely for the Permitted Purpose and solely in accordance with the Terms of Service.

2. Your Obligations

- 2.1. Authorized Users. You are responsible for designating individuals who are authorized to use the AirVantage® Platform and Semtech Solutions (“**Authorized Users**”) and for managing the rights and permissions of Authorized Users. Each Authorized User will be provided with a distinct account to access the AirVantage® Platform (a “**User Account**”).
- 2.2. Your Responsibilities. You are responsible for any activities by Authorized Users, or by anyone else who accesses the Platform using User Accounts. You are also responsible for revoking access for Authorized Users if you no longer wish them to have access. You should therefore ensure that you implement appropriate procedures to maintain the security and confidentiality of the access credentials used by Authorized Users to access the AirVantage® Platform, and to revoke User Accounts when the Authorized User no longer requires access.

- 2.3. Restrictions. You may not (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Semtech Solutions available to any third party, other than to Authorized Users or as otherwise contemplated by the Terms of Service; (b) use the Semtech Solutions to send or store any infringing or unlawful information; (c) send to or store malicious code in the AirVantage® Platform; (d) interfere with or disrupt the integrity or performance of the Semtech Solutions; (e) attempt to gain unauthorized access to the Semtech Solutions or any related systems or networks; (f) alter, modify or create derivative works of the Semtech Solutions; (g) frame or mirror any content forming part of the Semtech Solutions; (h) reverse engineer the Semtech Solutions for any purpose; (i) access the Semtech Solutions for purposes of building a competitive product or service, or copy any ideas, features, functions or graphics of the Semtech Solutions; or (j) directly or indirectly (including facilitating a third party), export or re-export the Semtech Solutions from the country in which you have indicated they will be used without obtaining all applicable governmental licences and complying with all applicable laws.
- 2.4. Permitted Applications. The Connectivity Services may be used only for IoT Applications. Any application must be compatible with the efficient operation of the Telecommunications Networks and not interfere with the services of other users of the Telecommunications Networks, result in inefficient or excessive use of the Telecommunications Networks, or be inconsistent with the applicable Carriers' policies and practices.
- 2.5. Prohibited Applications. You may not use the Semtech Solutions in any application (a) where the failure of the Semtech Solutions to function as intended could result in personal injury, death, or severe physical or environmental damage, (b) that is regulated by agencies with authority over licensing and approval of health and medical applications, including the U.S. Food and Drug Administration, or (c) that violates the acceptable use policy of any Carrier.
- 2.6. Device Requirements. It is your responsibility to ensure that the Devices comply with all applicable legal and regulatory requirements and telecommunications industry standards, and for obtaining any required approvals and certifications for the geographical markets in which they will be used, including but not limited to GCF (Europe), RED (Europe), PTCRB (US) and FCC (US). You are not permitted to connect Devices that are not approved by local authorities and applicable Carriers for connection to the Telecommunications Networks. You shall immediately disconnect any Devices that create disturbances to any Telecommunications Network.
- 2.7. Affiliates. If your Affiliates use a Semtech Solution in any way, they will be bound by the Terms of Service, but you agree to be jointly and severally liable for any actions of your Affiliates related to their use of a Semtech Solution.

3. Intellectual Property; Your Data; Confidentiality

- 3.1. Ownership of Semtech Solutions and Network Information. We and our licensors retain all right, title and interest in the Semtech Solutions and Network Information, including any technology and intellectual property rights developed or used in order to provide the Semtech Solutions to you.
- 3.2. Ownership of Your Data. We do not claim any ownership over Your Data. We may use Your Data for the following purposes: (a) to provide the Semtech Solutions to you and your Authorized Users, and (b) to comply with the Terms of Service and our legal obligations.
- 3.3. Retention of Your Data. The Semtech Solutions are not intended to serve as a repository of information or as a data archive, and accordingly we may delete Your Data without notice.
- 3.4. Feedback. We welcome feedback and suggestions relations to the Semtech Solutions. If you choose to provide us with any feedback or suggestions, we will be entitled to use them in any manner without restriction, and without any obligation of confidentiality, attribution or compensation.
- 3.5. Confidentiality. The Receiving Party (a) shall not use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Terms of Service, and (b) shall not disclose any Confidential Information of the Disclosing Party, except to its employees and representatives who have a need to know such information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so by any applicable law, by any rule or regulation of any court or

government agency of competent jurisdiction, or pursuant to legal process; provided that the Receiving Party provides the Disclosing Party with prompt written notice of the requirement to disclose (unless prohibited by law), and reasonable assistance in contesting such requirement. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief. For clarity, a data security breach or other compromise to the security of Your Data will not be a breach of this section 3.5.

- 3.6. Personal Data. If Your Data includes any personal data that is governed by applicable privacy or data protection laws, it is your responsibility to ensure compliance with such laws. If you require us to enter into a data processing agreement (or any similar agreement relating to our processing of this data) you may contact us in accordance with section 7.1. We will have no obligations with respect to the processing of personal data (other than the confidentiality obligations in section 3.5) unless we have signed a separate data processing agreement. If we decline to sign such an agreement, your sole remedy is to terminate the Terms of Service in accordance with section 4.3.

4. Term and Termination; Suspension

- 4.1. Term. These Terms of Service commence on the Effective Date and will remain in effect until the date that access to the AirVantage® Platform for all Authorized Users has been revoked (the “**Term**”), unless terminated earlier in accordance with section 4.3.
- 4.2. Suspension. We may cease providing or suspend your access to the AirVantage® Platform or any Service (in whole or in part) at any time without notice.
- 4.3. Termination. Either party may terminate the Terms of Service for convenience at any time by providing written notice to the other party.
- 4.4. Effect of Termination. Upon termination for any reason, we will have no further obligation to provide the Semtech Solutions to you, we may delete Your Data, and you will immediately cease using all Semtech Solutions. You shall either destroy all SIM Cards or return them to Semtech. Sections 2.3, article 3, this section 4.4, section 5.1, and articles 6, 7 and 8 will survive any expiration or termination of the Terms of Service.

5. No Warranties

- 5.1. Exclusions. THE SEMTECH SOLUTIONS ARE PROVIDED ON AN “AS-IS” BASIS. WE SPECIFICALLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, (B) THAT THE SEMTECH SOLUTIONS WILL BE PROVIDED ON AN UNINTERRUPTED OR ERROR-FREE BASIS; (C) THAT THE SEMTECH SOLUTIONS ARE SECURE; (D) THAT THE SEMTECH SOLUTIONS WILL OPERATE SATISFACTORILY IN CONJUNCTION WITH YOUR OR ANY THIRD PARTY’S HARDWARE, MEDIA, OR SOFTWARE; (E) THAT WE WILL CORRECT PROGRAM DEFECTS IN SOFTWARE; OR (F) THAT THE SEMTECH SOLUTIONS ARE SUITABLE FOR USE IN SAFETY CRITICAL ENVIRONMENTS. FOR CLARITY, NOTHING CONTAINED ON THE AIRVANTAGE® PLATFORM, THE AWS PLATFORM OR ON ANY SEMTECH CORPORATION WEBSITE, MARKETING MATERIALS OR TECHNICAL DOCUMENTATION CONSTITUTES A REPRESENTATION OR WARRANTY WITH RESPECT TO A SEMTECH SOLUTION.

6. Limitation of Liability

- 6.1. Limitation. OUR AGGREGATE LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE ARISING IN CONNECTION WITH THE SEMTECH SOLUTIONS OR THE PERFORMANCE OR NON-

PERFORMANCE OF THE TERMS OF SERVICE SHALL BE LIMITED TO DIRECT DAMAGES UP TO US\$1,000.

- 6.2. Disclaimer. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THESE TERMS OF SERVICE OR THE SEMTECH SOLUTIONS, NOR FOR ANY LOSS OF PROFITS OR REVENUES, LOST DATA, FAILURE TO REALIZE EXPECTED SAVINGS, INTERRUPTION OR LOSS OF USE OF SEMTECH SOLUTIONS, NOR FOR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND, IN EACH CASE WHETHER BASED IN CONTRACT, TORT (INCLUDING THEORIES OF NEGLIGENCE, RECKLESSNESS, STRICT LIABILITY, OR DEFECTIVE PRODUCT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY WERE REASONABLY FORESEEABLE.
- 6.3. Exceptions. The limitations in sections 6.1 and 6.2 apply to the fullest extent permitted by applicable law, but do not apply to (a) either party's obligations in section 3.5 (Confidentiality), or (b) violation of the other party's intellectual property rights.
- 6.4. Third Party Claims. You will at your expense defend us from, and pay any settlement amounts, losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out, of any third party claim, suit or proceeding that is asserted against us, our Affiliates or our respective officers, directors or employees that arises from or relates to any breach of section 2.5(a) (Prohibited Actions).

7. Miscellaneous

7.1. Notices.

- (a) *Notices to You*. We may send notices to you at the email address we have on record for you in the AirVantage® Platform. Any notices we send to you will be deemed given when we send them. You are responsible for ensuring that the email address in the AirVantage® Platform remains up-to-date. We may also from time-to-time post notices in the AirVantage® Platform or on the AWS Platform.
- (b) *Notices to Us*. If you need to send us any formal notices you must send them to the following address: Semtech Corporation, 200 Flynn Road, Camarillo, California, 93012, United States of America, Attention: Legal Department, with a copy to legal@semtech.com. You must send notices by first class mail or by courier, and notices will be deemed given when we receive them.

7.2. Assignment. You may not assign the Terms of Service or any of your rights or delegate any of your obligations without our written consent. We may assign the Terms of Service if we provide notice to you. We may also assign the Terms of Service or any of our rights or obligations to one of our Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets relating to the Semtech Solutions we are providing to you, without providing notice. Any purported assignment in contravention of the foregoing will be void.

7.3. Severability. Any provision of the Terms of Service which is, or deemed to be, unenforceable in any jurisdiction shall be severable from the Terms of Service in that jurisdiction without in any way invalidating the remaining provisions of the Terms of Service, and that unenforceability shall not make that provision unenforceable in any other jurisdiction.

7.4. Waiver. Failure to enforce any provision of the Terms of Service will not constitute a waiver.

7.5. Relationship. The relationship between the parties created by the Terms of Service is that of independent contractors and not partners, joint venturers or agents. There are no third-party beneficiaries to the Terms of Service.

7.6. Modification. We may revise the Terms of Service from time-to-time, and the most current version will always be posted in the AirVantage® Platform or the AWS Platform, which you should check regularly. If a revision is material (in our discretion) we will provide at least 30 days' notice to you in the manner contemplated by section 7.1 above. By continuing to use the Semtech Solutions after the revisions become

effective, you agree to be bound by the revised Terms of Service. If you do not agree to the revised Terms of Service, you may terminate the Terms of Service within 30 days of receiving notice of the change.

7.7. Governing Law and Dispute Resolution. All disputes arising out of or in connection with the Terms of Service, including the formation, interpretation, breach or termination thereof, or arising in connection with the Semtech Solutions, shall be governed by the laws of the State of New York, U.S.A. and submitted to arbitration conducted by JAMS in New York, New York in accordance with JAMS rules of arbitration, except as follows: (a) If you are incorporated or organized within the regions of Europe, Middle East or Africa, the laws of France shall govern and arbitration shall be conducted in Paris, France by the International Court of Arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce; and (b) if you are incorporated or organized within the Asia region, Australia or New Zealand, the laws of Singapore shall govern and arbitration shall be conducted in Singapore by the Singapore International Arbitration Centre (SIAC) in accordance with the Arbitration Rules of the SIAC; in each case without regard to the conflict of law provisions of such jurisdiction. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods (The Vienna Convention) shall not apply to the purchase of Semtech Solutions. The arbitration shall be binding and conducted in English before a single arbitrator appointed in accordance with the applicable rules. Judgment on the award may be entered in any court having jurisdiction. THE PARTIES EXPRESSLY WAIVE ANY RIGHTS TO HAVE DISPUTES ADJUDICATED IN COURT, AND WAIVE THEIR RIGHTS TO TRIAL BY JURY.

7.8. Interpretation. Headings have been inserted for convenience of reference only and will not affect the construction of the Terms of Service. Any reference to “including” means “including without limitation”. Any references to dollars or the use of the dollar sign (\$) is a reference to United States dollars, unless expressly indicated otherwise.

7.9. Entire Agreement. These Terms of Service state the entire understanding between us with respect to the Semtech Solutions, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of the Terms of Service. Notwithstanding any language to the contrary therein no terms or conditions that you include or reference on any purchase order or any of your other order documentation will be incorporated into or form any part of the Terms of Service, and all such terms or conditions will be null and void.

8. Definitions

“**Affiliate**” means any legal entity which is directly or indirectly Controlled by or under common Control with a Party, or which directly or indirectly Controls a Party to the Terms of Service, where “**Control, Controls or Controlled**” mean owning or controlling, directly or indirectly, more than 50% of shares, partnership interests, membership shares, ownership interests or voting rights of such controlling or controlled entity.

“**AWS Platform**” means the websites hosted by AWS where the Sierra Solutions are marketed.

“**Carrier**” means any third-party provider of products, services, or facilities that we utilize in connection with providing the Semtech Solutions including, without limitation, any third-party wireless, wireline, satellite, or hybrid telecommunications service provider or common carrier network operator, including such service provider’s or operator’s network and facilities.

“**Confidential Information**” means all confidential or proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of its disclosure. Our Confidential Information includes (a) the pricing and other terms included in Orders, (b) the specifications, technical details and software code relating to the Semtech Solutions, and (c) Network Information. Your Confidential Information includes Your Data. Confidential Information excludes information which (i) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party; (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party; (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party without reference to or use of the Disclosing Party’s Confidential Information.

“Connectivity Services” means (a) our provision of cellular, satellite or other wireless connectivity Services to you, and (b) any other Services we provide to you to support your use of such Services.

“Device” means a wireless device that incorporates a SIM and utilizes the Connectivity Services, whether the device is provided by Semtech or a third party.

“IoT Application” means an Internet of Things (IoT) or machine-to-machine (M2M) application whereby a Device communicates data to or from a server or another device on a regular or event-driven basis without any requirement for human intervention. For clarity, IoT Applications exclude applications such as cellular phones, tablets and laptops.

“Network Information” means any data or information that is created by, derived from, utilizes or is necessary for, the operation of our network or the networks of our third party providers, including any international mobile subscriber identity numbers (IMSI), IP addresses, PICs, telephone numbers, network access identifiers and cell site locations.

“Service” means any service that we provide under the Terms of Service, including (a) access to the AirVantage® Platform and to any other software application that is hosted by us or on our behalf, and (b) Connectivity Services.

“SIM” means a subscription identity module, which may be a SIM Card, an embedded SIM, or software that implements the functionality of an embedded SIM.

“SIM Card” means a physical subscription identity module card that can be removed from Customer's wireless device.

“Telecommunications Networks” means the telecommunications networks that are used for the delivery of the Connectivity Services, whether operated by Semtech or its Affiliates, or by Carriers.

“Your Data” means (a) any unprocessed data or information that is collected by your devices or systems and transmitted to or from the Semtech Solutions, and (b) any data or information that you or your Authorized Users submit to the AirVantage® Platform, including any account, contact and payment information that you or they submit. Your Data does not include Network Information.