

RAILS LTS SERVICES AGREEMENT

Last Revision: May 31st, 2017

This is a legal agreement between you, a person or entity ("User") who registers and purchases a Rails LTS Service Plan ("Paid User") or who registers to use the free version of the Rails LTS Service ("Free User") and makandra GmbH ("makandra", together "The Parties") regarding your use of the Rails LTS Service.

1. DEFINED TERMS

1.1 **Agreement** means this Rails LTS Services Agreement together with any rules and restrictions that apply to the Plan that the User selects, as displayed during the Registration Process.

1.2 **Rails LTS Service** means makandra's Security Update Service for Rails 2.3 and Rails 3.2 as described in (2).

1.3 **Effective Date** means the day the User accepts this Agreement.

1.4 **Plan** means the plan that the User selects during the Registration Process.

1.5 **Rails LTS Site** means the website located at <https://railslts.com>

1.6 **Registration Process** means a series of screens on the Rails LTS Site that appears when the User selects a Plan. The Registration Wizard lets the User a) confirm the selected Plan, b) fill in invoicing details, b) choose a payment interval and payment method c) review and place their order.

1.7 **Subscription Fees** means the fees paid by Paid User to makandra in consideration of Paid User's use of the Rails LTS Service.

1.8 **Rails Security Mailing List** means the mailing list that, as of March 27th 2017, is published to <https://groups.google.com/group/rubyonrails-security>.

1.9 **Rails 2.3 or the official Rails 2.3 gems** means the Ruby on Rails framework, version 2.3.x and the dependencies listed in (2.1), as it was created and maintained by the open-source community.

1.10 **Rails 3.2 or the official Rails 3.2 gems** means the Ruby on Rails framework, version 3.2.x and the dependencies listed in (2.1), as it was created and maintained by the open-source community.

1.11 **Rails 2.3 LTS gems** means the fork of the official Rails 2.3 gems, provided by makandra.

1.12 **Rails 3.2 LTS gems** means the fork of the official Rails 3.2 gems, provided by makandra.

2. DESCRIPTION OF THE PROVIDED SERVICES

2.1 Services. makandra will provide security patches for the Ruby on Rails web application framework, version 2.3.x (all Users) and 3.2.x (Paid Users only). Security patches will be provided for the following dependencies that together comprise the Ruby on Rails web application framework:

- rails
- railties
- actionmailer
- actionpack
- activerecord
- activeresource
- activesupport
- activemodel (Rails 3.2 LTS only)

2.2 Provided Form. Security patches will be provided in form of the Rails 2.3 LTS gems and the Rails 3.2 LTS gems (together "Rails LTS gems"), forks, respectively, of the official Rails 2.3 gems and the official Rails 3.2 gems (together "official Rails gems"). The Rails LTS gems can be used in place of the official Rails gems. The Rails LTS gems will be published to a source that can be consumed by the Bundler dependency manager.

2.3 Minimization of Integration Cost. In order to minimize the cost of keeping the User's applications updated, makandra will always try to address security issues with patches that require little to no changes to the User's application. Makandra will also try to change the API of Ruby on Rails as little as possible while still properly addressing the security issue at hand. The User understands that there are occasions when these approaches are not possible, for example:

- Occasionally a security issue cannot be fixed in the Ruby on Rails framework, but must be addressed with a change in the User's application. In such a case makandra will provide the User with a description of required changes.
- Occasionally a security issue requires the change or removal of unsafe functionality from the Ruby on Rails framework. In such a case makandra will describe the altered functionality to the User and, if possible, suggest an alternative implementation.

2.4 Exclusion. makandra is not obligated to:

- (a) add new features to Rails 2.3 or 3.2
- (b) fix bugs in Rails 2.3 or 3.2 that are not security-related, in makandra's judgement
- (c) make a security audit of the existing Rails 2.3 or 3.2 code
- (d) fix bugs in the Ruby programming language

2.5 Compatibility. Rails 2.3 LTS is tested against the following technology stack:

- Ruby 1.8.7 (the official Ruby distribution or "MRI")
- Ruby on Rails applications running the latest version of the official Rails 2.3 release
- Databases: MySQL (version 5.6), PostgreSQL, SQLite3

Rails 3.2 LTS is tested against the following technology stack:

- Ruby 1.8.7, Ruby 1.9.3 and Ruby 2.3 (the official Ruby distribution or "MRI")
- Ruby on Rails applications running the latest version of the official Rails 3.2 release
- Databases: MySQL (version 5.6), PostgreSQL, SQLite3

While Rails LTS might work with a different technology stack, we only support and test against the technologies listed above.

3. SECURITY EVENTS, TIMEFRAME, NOTIFICATION AND AVAILABILITY

3.1 Security Events. makandra will act when a new security vulnerability is posted to the Rails Security Mailing List. makandra will then investigate the issue and test if it affects Rails 2.3 or 3.2 applications. If Rails 2.3 or 3.2 applications are affected, makandra will prepare and release new versions of the corresponding Rails LTS gems in order to address the vulnerability.

3.2 Update Timeframe. The timeframe in which a new version of the Rails LTS gem is released depends on the nature of the security issue at hand:

- a) For low-priority issues, in makandra's judgement: Patches will be backported beginning on the first business day (in Germany) after announcement to the Rails Security Mailing List.
- b) For highest-priority issues, in makandra's judgement: makandra begin investigating the issue within 24 hours and shall produce a new release of the Rails LTS gems as soon as commercially feasible.

3.3 Release Notification. The User may choose to subscribe to the Rails LTS Notification List during the Registration Process. When a new version of the Rails LTS gems is released, makandra will send an e-mail to all subscribers of the Rails LTS Notification List.

3.4 Release Availability. Paid Users will get immediate access to new versions of the Rails LTS 2.3 and 3.2 gems. Free Users will get access to new versions of the Rails LTS 2.3 gems 10 days after its initial release. Rails LTS 3.2 is not available to Free Users.

4. INTEGRATION, LIMITED NUMBER OF APPLICATIONS AND SUPPORT

4.1 Installation. For initial installation, the User will take care of replacing the official Rails 2.3 or 3.2 gems with the Rails LTS gem in the User's applications. The User will take care of updating the Rails LTS gems in the User's applications.

4.2 Assistance for integration. During the Registration Process the User may choose a Plan that includes assistance for integration. In case a User on such a Plan runs into an issue while the User is integrating Rails LTS with their applications, a makandra engineer will assist the User in resolving the issue. Assistance for integration includes up to 3 hours of remote support per month, during German business days.

4.3 Limited Number Of Applications. The number of applications in which the User integrates the Rails LTS gems must, in total, not exceed the number of allowed applications, according to User's selected Plan. Coherent User services that are comprised of multiple Rails applications count as a single application for Rails LTS. E.g. if different Rails applications are used for the frontend and backend of the same site, this counts as a single application. Also if the User operates multiple staging and production instances for the same site, this counts as a single application. Applications that are used to service distinct sites or clients are counted as separate applications.

4.4 Requirements for support. makandra's obligations, if any, to provide support is subject to the following: (a) User shall provide makandra with access to its employees to duplicate and resolve errors; (b) User shall document and promptly report all errors or malfunctions in the Rails LTS Service to makandra, and (c) User shall take all steps necessary to carry out

procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from makandra.

5. SUBSCRIPTION FEES AND PAYMENT

5.1 Subscription Fees. The amount of Subscription Fees, if any, are determined by the Plan selected during the Registration Process. The Paid User is responsible for all taxes, other than taxes levied on makandra's income. Subscription Fees are net prices and do not include any applicable taxes. If makandra is required to pay any sales, use, goods and services, value added, or other taxes in relation to Paid User's purchase, those taxes will be billed to and paid by the Paid User.

5.2 Payment. During the Registration Process the Paid Users shall select either annual or monthly billing for the applicable Subscription Fees. The Paid User shall pay the Subscription Fees to makandra on the date the Paid User first orders a paid Plan (the "First Order Date") and on every monthly anniversary thereof (if the Paid User has selected monthly billing) during the term of the Agreement, or on every yearly anniversary of the First Order Date (if the Paid User has selected annual billing) during the term of the Agreement.

5.3 Changing Plans. The Paid User may upgrade from a paid Plan to another paid Plan at any point during the then-current term of the Agreement, upon payment of additional license fees as listed on the then-current Rails LTS Site. Paid User will be immediately charged, on a pro-rated basis, for the remainder of the then-current billing cycle.

6. TERM, TERMINATION AND SURVIVAL

6.1 Term. This Agreement shall begin on the Effective Date and continue for at least 12 months, subject to earlier termination by either party in accordance to (6.2). Thereafter, the Agreement will automatically renew for successive one-year terms unless and until canceled or terminated by either party in accordance with this Agreement.

6.2 Cancellation. After the minimum term of 12 months ("minimum term"), either party may cancel this Agreement by providing written notice to the other party, at least 14 days prior to the expiration, of its intention not to renew the Agreement. After the minimum term either party can cancel this Agreement at the end of each month, in which case unused months of the then-current one-year-term will be refunded.

6.3 Termination. Either party may immediately terminate this Agreement as follows: (a) if either party materially breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after it has been notified in writing of such breach; or (b) if either party has instituted against it any proceedings seeking relief, reorganization or arrangement under any laws relating to insolvency and such proceeding is not resolved within sixty (60) days. In the event of termination of this Agreement, no refunds will be made.

6.4 Survival. The provisions of Sections 1, 5, 7-15 shall survive the cancellation or termination of this Agreement. All other provisions of this Agreement, which by their terms or import are intended to survive such cancellation or termination, shall survive.

7. USER CONDUCT/ACCEPTABLE USE POLICY

You may not use the Rails LTS Service in any way that violates applicable federal, state, or international law, or for any unlawful purpose.

When you use the Rails LTS Service, you represent and warrant that you:

- (a) will not attempt to interfere with any other person's use of the Rails LTS Service;
- (b) will not make a new Rails LTS release accessible to the public for the first 10 days after its release date;
- (c) will not misrepresent your identity or impersonate any person or entity, or provide false or misleading identification or address information;
- (d) will not sell or let others use your account or password;
- (e) will not attempt to gain access to any account, computers or networks related to the Rails LTS Service without authorization.

8. CONFIDENTIALITY

8.1 Definition. "Confidential Information" shall mean all non-public information, whether in oral, written or other tangible form that either party ("Discloser") discloses to the other party ("Recipient") as being confidential, including without limitation the terms and conditions of this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes generally available to the public other than (i) as a result of a disclosure by Recipient or its employees or any other person who directly or indirectly receives such information from Discloser or its employees or (ii)

in violation of a confidentiality obligation to Discloser that is known to Recipient, (b) is or becomes available to Recipient on a non confidential basis from a source which is entitled to disclose it to the Recipient, (c) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Discloser, or (d) is disclosed pursuant to an order of a court or other governmental body; provided that Recipient shall provide prompt notice thereof to Discloser so as to afford Discloser an opportunity to intervene and prevent or limit any such disclosure.

8.2 Non-Disclosure and Non-Use Obligation. Recipient shall not make use of (except for purposes of this Agreement), or disseminate or in any way disclose Discloser's Confidential Information. Recipient shall treat Discloser's Confidential Information with the same degree (but not less than a reasonable degree) of care as it accords its own confidential information. Recipient may disclose Confidential Information only to its employees who need to know such information and certifies that its employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. Recipient will immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information and will use all commercially reasonable efforts to assist Discloser in remedying any such unauthorized use or disclosure.

9. LIMITATION OF WARRANTY

9.1. makandra warrants solely that the Rails LTS gems have the security-related changes described in this Agreement. The Parties agree that makandra by contrast does not guarantee the freedom of defects that are not related to the security patches which were provided as part of the Rails LTS Service.

9.3. The limitation period for rights relating to defects pursuant to section (9.1) is one year. It begins upon acceptance.

9.4. Any notification of defect according to section (9.1) must take place immediately. If the communicated defects constitute material defects within the meaning of section 633 (2) of the German Civil Code, they are to be rectified by makandra. If the rectification proves to be impossible and makandra is required to rectify the material defect, makandra will develop a workaround in cooperation with the User.

9.5. To the extent that the User makes changes to the Rails LTS gems or has third parties make such changes without the written consent of makandra, makandra will be exempt from the obligation to rectify any defects.

10. LIMITATION OF LIABILITY

10.1. makandra – regardless of the legal basis – will be liable only to the extent that the damage incurred has been caused by culpable breach of a material contractual duty or is due to gross negligence or intent on the part of makandra.

10.2. A contractual duty is material whose fulfillment is first made possible by the proper execution of the agreement and the performance of which the User may generally rely on.

10.3. If makandra according to (10.1) is liable for the breach of a material contractual duty without any gross negligence or intent, then the liability is limited to that damage the existence of which makandra typically had to expect upon contractual formation on the basis of the circumstances known to makandra at this time.

10.4. makandra is likewise liable for the loss of data and programs and their restoration only to the extent evident from 10.1 to 10.3 and only to the extent that this loss would not have been avoidable by reasonable precautions of the User, including but not limited to the routine creation of backup copies of all data and source code.

10.5. The liability restrictions according to sections (10.1) to (10.4) apply analogously also in favor of employees and agents of makandra.

10.6. The Parties agree for the aforementioned cases on a maximum liability amount that is four times the value paid for the use of the Rails LTS service during the 12-month period prior to the date a claim is made, to the extent that the damage is not due to intent of makandra or its employees and agents.

10.7. Liability of makandra for the absence of promised or guaranteed properties, on the basis of the German Product Liability Act, or for injuries to life, limb, or health remain unaffected.

11. COPYRIGHT FOR RAILS 2.3 LTS

The code of Rails 2.3 LTS is based on Ruby on Rails 2.3 with additional changes by makandra GmbH. Additional changes Copyright (c) 2013-2017 makandra GmbH

Permission is hereby granted as a sublicense of the original MIT license of Ruby on Rails 2.3 (found below) to any person obtaining a copy of this software and associated documentation files (the "Software"), except the right to publish, distribute, and/or sell copies of the Software within the first ten days after each release.

The original code for Ruby on Rails 2.3 is licensed under the MIT license:

Copyright (c) 2004-2010 David Heinemeier Hansson

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

The original code for Ruby on Rails 2.3 can be obtained under the following URL: <https://github.com/rails/rails/tree/2-3-stable>

12. COPYRIGHT FOR RAILS 3.2 LTS

The code of Rails 3.2 LTS is based on Ruby on Rails 3.2 with additional changes by makandra GmbH. Additional changes Copyright (c) 2014-2017 makandra GmbH

Permission is hereby granted as a sublicense of the original MIT license of Ruby on Rails 3.2 (found below) to any person obtaining a copy of this software and associated documentation files (the "Software"), except the right to publish, distribute, and/or sell copies of the Software.

The original code for Ruby on Rails 3.2 is licensed under the MIT license:

Copyright (c) 2004-2011 David Heinemeier Hansson

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

The original code for Ruby on Rails 3.2 can be obtained under the following URL: <https://github.com/rails/rails/tree/3-2-stable>

13. SUCCESSION

In case of succession of law of the assets of any party (e.g. merger) on any legal successor, the legal successor will enter the proprietary position of the party and will with this be party of the present contract.

14. CLOSING PROVISIONS

14.1. This Agreement and its exhibits are subject solely to the laws of the Federal Republic of Germany.

14.2. This Agreement contains all agreements between the Parties; side agreements do not exist.

14.3. Any change or addition to this Agreement must be made in writing in order to be valid. This also applies to this clause.

14.4. Nonexclusive jurisdiction for all disputes arising from this contractual relationship is Augsburg. The Contractor is also entitled to sue the Principal at the headquarters of the Principal.

14.5. Place of performance for all claims arising from the contractual relationship is Augsburg.

14.6. If one or more provisions of this Agreement should be entirely or partially invalid or unenforceable, then this will not affect the validity of the remaining provisions of this Agreement. In place of this invalid or unenforceable provision, a provision will be deemed agreed which most approximates legally and factually the economic purpose of the invalid or unenforceable provision. In the event that there is a gap arising from the Agreement which cannot be inferred by interpreting the remaining provisions, the provision will be deemed agreed which, if the point had been considered, most approximates the economic interests of the Parties in order to close the gap.