

Ústav stavebníctva a architektúry Bratislava
11-04-2014
Číslo: 20/2014

## **PUBLISHING SERVICES AGREEMENT**

THIS AGREEMENT is made as of the 13<sup>th</sup> day of March 2014,

between

**Institute of Construction and Architecture, Slovak Academy of Sciences**, with offices at Dúbravská cesta 9, 845 03 Bratislava, Slovakia, holding tax (VAT) identification number 2020830350,  
Represented by Peter Matiašovský – Director of the Institute  
("Journal Owner")

and

**De Gruyter Open Sp. z o. o.**, with offices at ul. Bogumiła Zuga 32A, 01-811 Warsaw, Poland, entered into the National Court Register kept by the District Court of Warsaw under number KRS 0000055478, NIP (fiscal identification) number [REDACTED] having a share capital of PLN [REDACTED]  
Represented by Jacek Ciesielski – President of the Management Board  
("De Gruyter Open").

**IT IS NOW AGREED** by the parties to this Agreement ("the parties") as follows:

### **§ 1. RECITALS**

This Agreement sets forth the terms and conditions between the parties concerning the provision by De Gruyter Open of production, marketing, distribution and training services as more fully described herein, contracted by De Gruyter Open from providers of such services.

### **§ 2. OBLIGATIONS OF DE GRUYTER OPEN**

De Gruyter Open will provide production, marketing, distribution and training services as more fully described below (collectively, the "Services") in accordance with the terms and conditions of this Agreement, for the journal or journals ("Journal") set out in Schedule 1. De Gruyter Open will:

#### **1. production services**

- a. provide the software and hardware environment to support content maintenance and delivery,
- b. control quality of content files for each issue of the Journal, provided by the Journal Owner, and – if quality requirements are met – upload the files to the environment mentioned in point a above within 30 days from the receipt of the files from the Journal Owner, on condition that the Journal Owner has delivered the files in accordance with the production schedule set out in Schedule 3 to this Agreement,
- c. upload single articles between issues, in accordance with the rules set out in point b above,
- d. maintain the content at the environment mentioned in point a above for the duration of this Agreement and for six months following the termination or expiry of this Agreement,
- e. establish "metadata" information for the content and indexing requirements,
- f. electronically deliver the metadata to abstracting and indexing services,
- g. provide services for the content users, such as alerting, searching and browsing online,
- h. issue and register one DOI (Digital Object Identifier) for each article electronically published, make it available to the Journal Owner free of charge, to deposit article DOI at CrossRef, resulting in possible links from other citing articles,
- i. provide an online solution to support plagiarism detection,

[REDACTED]  
initial De Gruyter Open

[REDACTED]  
initial Journal Owner

**2. marketing services**

- a. assist the Journal Owner in making the longest possible list of abstracting services that may index the Journal, and then apply on behalf of the Journal Owner to those services for such indexation, or assist the Journal Owner in so applying,
- b. apply on behalf of the Journal Owner or assist the Journal Owner in applying to Thomson Scientific (formerly known as ISI, i.e. Institute for Scientific Information) to include the Journal to the ISI Master Journal List, unless the Journal is already listed (De Gruyter Open gives no guarantee that the application will be approved),
- c. advise the Journal Owner on how to grow citations and the impact factor (only if the Journal is indexed by Thomson Scientific),
- d. advise the Journal Owner on how to grow reference linking for the Journal,
- e. maintain the Journal homepage at the De Gruyter Open website,
- f. provide content usage statistics (at least once a year),

**3. distribution services**

- a. distribute the Journal to libraries as part of the De Gruyter Open collection (including integration with library systems, if possible),
- b. arrange for coverage of the Journal by full-text services as selected by De Gruyter Open, and electronically deliver the PDF full text version to such services,
- c. arrange for coverage of the Journal by open access directories as selected by De Gruyter Open, and electronically deliver the metadata to such services,
- d. support librarians by addressing librarians' questions and comments, by e-mail and through Frequently Asked Questions format,
- e. provide open access license agreement for users, set rules for permissions, and administer permissions to use the Journal's content,
- f. set terms for document delivery companies, and serve such companies with the Journal content,
- g. arrange for coverage by one or more long-term preservation services,

**4. training services**

- a. train a Journal Owner representative in the Services (one-time online training at an agreed time and date, done at the Journal Owner's request).

**§ 3. OBLIGATIONS OF JOURNAL OWNER**

The Journal Owner hereby undertakes and agrees with De Gruyter Open to:

1. supply to De Gruyter Open the Journal content in PDF format, meeting the quality requirements as specified by De Gruyter Open from time to time (the requirements valid at the date of this Agreement are specified in Schedule 4), in a timely manner in accordance with the timetable specified in Schedule 3 to this Agreement,
2. supply to De Gruyter Open information necessary – in the opinion of De Gruyter Open – to be placed on the Journal homepage at the De Gruyter Open website or to be delivered to libraries, full text repositories, open access directories and abstracting and indexing services,
3. pay to De Gruyter Open the charges in amounts and according to rules set out in Schedule 2 to this Agreement.

**§ 4. LICENCE**

1. The Journal Owner hereby grants to De Gruyter Open the right and license throughout the world, for the duration of this Agreement (subject to the provisions of 5.5. hereof), provided, however, that in respect of commercial use such right and license shall be exclusive, as follows:

  
initial De Gruyter Open

  
initial Journal Owner



- a. to prepare, reproduce, manufacture, publish, distribute, exhibit, advertise, promote, license and sub-license electronic copies of the Journal in digital form, through the Internet and other means of data transmission now known or later to be developed; the foregoing will include abstracts, bibliographic information, illustrations, pictures, indexes and subject headings and other proprietary materials contained in the Journal,
  - b. to exercise, license, and sub-license others to exercise subsidiary and other rights in the Journal, including the right to photocopy, scan or reproduce copies thereof, to reproduce excerpts from the Journal in other works, and to reproduce copies of the Journal as part of compilations with other works, including collections of materials made for use in classes for instructional purposes, customized works, electronic databases, document delivery, and other information services, and publish, distribute, exhibit and license the same.
2. The Journal Owner hereby grants to De Gruyter Open the non-exclusive licence to use the name of the Journal and of the Journal Owner in order to identify the Journal Owner as the source of the Journal.
  3. The Journal Owner shall affix to the front page of electronic copies of each of the Journal's articles published under this Agreement the name, imprint and logo of De Gruyter Open and a copyright notice as follows: "© year of first publication Author(s). This is an open access article licensed under the Creative Commons Attribution-NonCommercial-NoDerivs License (<http://creativecommons.org/licenses/by-nc-nd/3.0/>).", in the manner agreed with De Gruyter Open.
  4. Where this Agreement refers to a licence granted to De Gruyter Open under this Agreement as exclusive, the Journal Owner commits not only to refrain from granting such licence to a third party but also to refrain from exercising the right that is the subject of such licence otherwise than by performing this Agreement.
  5. De Gruyter Open shall be entitled to enforce in respect of third parties, to such extent as permitted by law, the rights licensed to it hereunder.
  6. The licence provided for in this Agreement entitles the Journal Owner to no royalties or other fees. The Journal Owner acknowledges that the Journal content as distributed according to 2.3. hereof will be publicly accessible and such access will be free of charge for the readers.
  7. The non-commercial use of each article published in the Journal under this Agreement will be governed by the Creative Commons Attribution –NonCommercial-NoDerivs license. The Journal Owner warrants that the authors of all articles published in the Journal under this Agreement will retain copyright, will accept that the non-commercial use of the articles will be governed by the aforementioned Creative Commons license, and will grant the Journal Owner the exclusive license for commercial use of the articles (for U.S. government employees: to the extent transferable) throughout the world, in any form, in any language, for the full term of copyright, effective upon acceptance for publication, to such extent as set out in 4.1., 4.4. and 4.5. hereof. Each license granted to the Journal Owner in accordance with the preceding sentence must allow the Journal Owner to sublicense the relevant rights to De Gruyter Open in accordance with this Clause 4.
  8. Creative Commons Attribution-NonCommercial-NoDerivs license means herein a license granted according to the Creative Commons Legal Code as issued by Creative Commons Corporation as displayed on <http://creativecommons.org/licenses/by-nc-nd/3.0/> on the date of this Agreement. In case of alteration of the Creative Commons Legal Code De Gruyter Open may provide the Journal Owner with a new version of such license complying with the altered Creative Commons Legal Code. The Journal Owner may refuse to accept such new version within 14 days of being provided with the same, failing which that new version shall replace the previous one. The Journal Owner agrees not to give such refusal without an important reason. Creative Commons Attribution-NonCommercial-NoDerivs license as used for the purposes of this Agreement can include minor variations from the model determined under this section 4.8., provided, however, that such variations cannot be inconsistent with the scope of the license granted to De Gruyter Open as determined in this Clause 4.



initial De Gruyter Open



initial Journal Owner

§ 5. TERM

1. This Agreement shall be for a period ending on December 31, 2015. Complete annual volumes 2014-2015 of the Journal will be electronically published under this Agreement.
2. Extension of the term of this Agreement - for periods of two years each - shall be automatic unless either party receives written notice of objection from the other party not less than 6 months prior to the term expiration. For the extension to become effective, both parties need to agree the charges as provided by Schedule 2, if De Gruyter Open has notified the Journal Owner of its intention to increase any of them at least 6 months prior to the term expiration.
3. Notwithstanding the provisions of 5.2. hereof, either party shall have the right at any time by giving seven days' notice in writing to the other party to terminate this Agreement in any of the following events:
  - a. if the other party enters into liquidation or becomes insolvent,
  - b. if the other party hereto is guilty of any breach or non-observance of any of its obligations hereunder and does not remedy the same (if it is capable of remedy) within thirty (30) days of notice in writing of such failure or breach being given by the terminating party.
4. In case this Agreement has been terminated by De Gruyter Open according to the provisions of 5.3. hereof, the obligation of De Gruyter Open set out in 2.1.d. terminates when this Agreement terminates.
5. In case this Agreement has been terminated according to the provisions of 5.3. hereof, the provisions of 2.3. hereof and Clause 4 shall remain in force until the end of the calendar year in which the relevant notice period has elapsed.
6. If the Journal Owner has delayed its payments to De Gruyter Open due under this Agreement for more than 60 days, De Gruyter Open has the right to withhold providing the Services, which may include in particular closing access to the content of the Journal or removing its content from the environment described in Clause 2.1.

§ 6. REPRESENTATIONS AND WARRANTIES

1. The Journal Owner represents and warrants that:
  - a. it exclusively owns the Journal,
  - b. it owns or it has acquired copyright and other intellectual property rights to the contents of the Journal, published or distributed under this Agreement,
  - c. the Journal and the use thereof contemplated by this Agreement do not and will not infringe the copyright, trademark, patent or other intellectual property rights of any third party,
  - d. it will reimburse De Gruyter Open in respect of all costs and will compensate all damages that may result from claims of third parties, if any of the warranties given in points a, b and c above is not or will not be true within the duration of this Agreement,
  - e. it acknowledges that De Gruyter Open is unable to exercise control either over the availability of the Internet or any other data network, and that De Gruyter Open can give no warranty that the content will be available for access by customers at all times on the Internet or on any other data network; accordingly De Gruyter Open shall not be liable, subject to mandatory law, for such unavailability or lack of access.
2. De Gruyter Open represents and warrants that:
  - a. its personnel possesses and will possess the proper skill, training, experience and background to perform the services under this Agreement,
  - b. it has entered or will enter into agreements with the providers of the solutions necessary to perform all the Services and to meet all obligations undertaken by De Gruyter Open by this Agreement.

  
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initial Journal Owner



§ 7. CONFIDENTIALITY

Each party hereto shall, except as required by law or to perform this Agreement, keep strictly confidential all information contained in this Agreement and all information resulting from the implementation of this Agreement, and not use this confidential information in any way other than for the performance of its obligations hereunder. This shall not apply to such information as is publicly available when received by such party or then becomes publicly available otherwise than as a result of such party's breach of this Agreement, or to any disclosure or use as authorized by the other party in writing. This Clause 7 shall survive termination or expiry of this Agreement for 3 years.

§ 8. MISCELLANEOUS

1. Neither party may assign any of its rights or delegate any of its duties or obligations under this Agreement without the other party's written consent. De Gruyter Open may, however, assign all of its rights and obligations hereunder to a company or partnership that is dependent on De Gruyter Open, that controls De Gruyter Open or that is controlled by a company or partnership that controls De Gruyter Open (the relation of dependence or control to be assessed according to the Polish Commercial Companies Code), unless such assignee is insolvent at the time of such assignment.
2. Changes of or supplements to this Agreement shall not be valid unless made in writing. The same rule shall apply to termination of this Agreement and any other notice that this Agreement requires to be given in writing.
3. This Agreement, including the schedules, constitutes the full and complete statement of the agreement of the parties with respect to the subject matter hereof and supersedes any previous offers, agreements, understandings or communications, whether written or oral, relating to such subject matter.
4. Unless this Agreement expressly provides otherwise, De Gruyter Open's liability for its failure to provide the Services in accordance with this Agreement shall only arise where such failure is due to De Gruyter Open's intentional fault or gross negligence or that of a person for whom De Gruyter Open is liable.
5. If any provision in this Agreement is held to be invalid or unenforceable, that provision shall be, inasmuch as possible, construed, limited, modified or, if necessary, severed, to the extent necessary to eliminate its invalidity or unenforceability.
6. This Agreement shall be governed by the laws of Poland, and any disputes arising out of this Agreement or related hereto shall be instituted in the Polish courts having jurisdiction over De Gruyter Open's registered office.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officer, as of the date first written above

Signed for and on behalf of De Gruyter Open: **De Gruyter Open Sp. z o.o.**

By: Jacek Ciesielski

Position: President of the Management Board

**De Gruyter Open Sp. z o.o.**  
Warszawa, ul. Bogumiła Żupa 32A  
878738, REGON: 01734274  
tel. 22 701 50 15

Signed for and on behalf of the Journal Owner: **Institute of Construction and Architecture, Slovak Academy of Sciences**

By: Peter Matiašovský

Position: Director of the Institute

**Institute of Construction and Architecture, Slovak Academy of Sciences**  
Inštitút staviteľstva a architektúry  
Slovenskej akadémie vied  
Vajnarská cesta 9  
040 01 Bratislava 45

**Schedule 1 – Journal**

The services described in § 2 of this Agreement are in respect of the following Journal(s):

Name	ISSN	from volume year	from volume number	issues per volume	articles per volume
Building Research Journal	1335- 8863	2014	61	4	35

**Schedule 2 – Charges and Payment****1. Charge**

- a. The charge for the services provided under this Agreement for the Journal(s) listed in Schedule 1 is 20 (twenty) Euro net (plus VAT, if applicable) per article. This charge applies as long as the Publishing Services Master Agreement between De Gruyter Open and Veda, the Publishing House of the Slovak Academy of Sciences, representing the Slovak Academy of Sciences remains in force. If the Master Agreement has expired or become terminated, the charge is 60 (sixty) Euro net (plus VAT, if applicable). This charge applies also if the Journal Owner has not delivered the articles to De Gruyter Open, but published them elsewhere.
- b. The parties agree that De Gruyter Open can increase the charge per article for the period that this Agreement is to be automatically extended under Clause 5.2. To become effective, both parties need to agree to that increase.
- c. The charge is paid in advance for each calendar year. De Gruyter Open issues the invoice for the first calendar year within 30 days from the date of this Agreement, and for the following calendar years not earlier than in December of the preceding year. The Journal Owner pays the invoice not later than in 30 days from its date.
- d. If, through De Gruyter Open or otherwise, the Journal has published for the given volume more articles than the number provided in Schedule 1, De Gruyter Open issues the invoice for those extra articles not earlier than on 15<sup>th</sup> January of the following calendar year. The Journal Owner pays the invoice not later than in 30 days from its date. If, through De Gruyter Open or otherwise, the Journal has published for the given volume fewer articles than the number provided in Schedule 1, De Gruyter Open issues the correcting invoice to the latest yearly invoice. The amount given in the correcting invoice can be deducted by the Journal Owner from the payment of the next yearly invoice, on condition that the parties have agreed (pursuant to Clause 5.1 or Clause 5.2) that this Agreement will remain in force for the following calendar year and no party has given notice of termination pursuant to Clause 5.3. If the conditions referred to in the preceding sentence are not met, De Gruyter Open transfers the amount given in the correcting invoice into the Journal Owner's bank account within 30 days of receiving the Journal Owner's notice in writing requesting such payment and providing details of such bank account, provided, however, that this time-period cannot commence as long as it is not known whether the conditions referred to in the preceding sentence are met.
- e. All banking expenses associated with the payment will be borne by the Journal Owner.

**Schedule 3 – Production Schedule**

The parties agree that the Journal Owner will deliver the content of each issue to De Gruyter Open according to the following timetable:



initial De Gruyter Open



initial Journal Owner



- issue 1/2014 - by March 31, 2014
- issue 2/2014 - by June 30, 2014
- issue 3/2014 - by September 30, 2014
- issue 4/2014 - by December 31, 2014
- issue 1/2015 - by March 31, 2015
- issue 2/2015 - by June 30, 2015
- issue 3/2015 - by September 30, 2015
- issue 4/2015 - by December 31, 2015

To the extent that the timetable according to which the Journal Owner will deliver the content of each issue to De Gruyter Open has not been set out above or in a separate written agreement of the parties, the following rules will apply:

- a. the Journal Owner will, by notice in writing given to De Gruyter Open no less than 2 months prior to the beginning of a calendar year, set the timetable for that year,
- b. if the Journal Owner fails to set the timetable for a calendar year in accordance with point a, the timetable that was binding in respect of the previous calendar year will apply to the former year as well.

**Schedule 4 – File quality requirements (as of the date of this Agreement)**

No.	Requirements - Article	Online PDF	Created By Distiller
1.	PDF created by Distiller	Advised	
2.	Use of De Gruyter Open Distiller Settings	Advised	X
3.	Compatibility 1.3	Required	X
4.	PDF X 3	No	
5.	Certified PDF	No	
6.	Internal Hyperlinks	Required	
7.	External Hyperlinks	No	
8.	Trimbox	No	
9.	Page size equal for all pages	Yes	
10.	Equal page orientation for all pages	Required	
11.	No empty pages	Required	
12.	Document layers	No	
13.	Crop Marks	No	
14.	Custom transfer curve	No	
15.	Device color space	No	
16.	Transparency	No	
17.	Annotations set to print	No	
18.	Security	No	
19.	Line weight 0.2 pt	Yes	
20.	Embedded PostScripts fragments	No	
21.	All fonts embedded	Required	
22.	Batch optimized	Required	X
23.	Color in CMYK	No	
24.	RGB	Yes	X
25.	Image resolution (dpi) Greyscale	< 150 / > 300	X
26.	Color	< 150 / > 300	X
27.	Bitmap	< 600 / > 900	X
28.	Image compression:JPG	Yes	X
29.	Images with 16 bit color depth	No	
30.	File size limitation	No	

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initial Journal Owner