CHAPTER 8:
FUTURE WORKS
NOW THAT YOU KNOW WHAT’S EXPECTED from you for the book that’s the subject of your contract, it’s time to start thinking about the future. It takes a lot of money and time for publishers to find authors who can deliver high-quality writing, so they naturally want to hold onto successful authors for as long as possible and to discourage these authors from jumping to a competitor if their books are successful. This chapter covers three clauses in a contract that may affect authors’ future works: option, revised edition, and non-compete provisions.

OPTION PROVISIONS

*Option* provisions in a publishing agreement give publishers the right (but not the obligation) to publish future books by an author. For this reason, option
provisions favor the publisher: You’re obligated to give them the choice of whether or not to publish your next book, but they are under no obligation to do so. There are several different ways an option can be structured. The two most common option types are: (a) your publisher gets a right to purchase a future work on pre-set terms (say, the same terms as your first contract); or (b) your publisher gets a right of first refusal on future works. Here’s a fairly author-friendly example of the latter:

The Publisher shall have the first opportunity to read and consider for publication the Author’s next work of a similar nature. If the Publisher and Author are unable to agree to terms for its publication within a reasonable period, the Author shall be at liberty to enter into an agreement with another publisher provided that the Author shall not subsequently accept from anyone else terms equivalent or less favorable than those which have been offered by the Publisher.

While it may be appealing to work on your future book projects with a publisher that you already have
a relationship with, some authors prefer not to agree to option provisions and to negotiate for each future project separately. This could result in more author-favorable terms in the future, particularly if they have multiple offers for their next book.

Luckily for authors, publishers are generally willing to negotiate option provisions and sometimes will remove them altogether. Even if the publisher insists on some sort of option, there are several author-friendly modifications you can request:

• You could limit the option period to a set number of years and require the publisher to decide on any submitted work soon after submission (say, thirty days).

• You could include a right to refuse the publisher’s offer. For example, some authors include language saying that the publisher’s offer to publish is not binding and the author can contact other publishers.

• You could alter the provision to require only that you submit a proposal to the publisher. This would force your publisher to decide on whether it is
going to exercise its option earlier in the writing process.

• You could limit the definition of “next work” to something closely related to the original work (e.g., the next book in a series).

Be wary of option clauses that require subsequent contracts to be “on the same terms” as the original contract. You may be in a stronger position to negotiate subsequent books than you were for your first, especially if sales data is available that shows your first book performed well in the market.

**REVISED EDITIONS**

Many publication contracts, especially those for non-fiction and academic works, contain a *revised edition* clause that covers publication of new editions. If your book is likely to have subsequent editions, think carefully about what you might want to do with it in the future. Some authors will want to continue writing later editions of their books; others find this to be a grind and would rather go on to other projects. Either way, your agreement should reflect what you’re willing to do
for your publisher in the future when and if revisions occur.

One option is to punt: Omit the revised edition clause and negotiate your involvement in the next edition when the time comes. Some contracts anticipate this negotiation as follows:

Any revised edition of the Work shall be subject to the agreement of the parties, as to be determined through good faith negotiation.

If your publisher won’t agree to this, you may want to include language in the revised edition clause that clarifies the amount of work you’ll have to do for future iterations of the book and what you’ll get out of it.

**When Will You Have to Complete a New Edition?**

If you are obliged to write revised editions, you will want to ensure that you will have enough time to put together a new edition, particularly if you anticipate making significant changes. Be realistic about how long it will take you to make revisions, set yourself a reasonable deadline, and include your revision timetable in the contract.
How Much of the Original Text Will You Have to Change?

It is unlikely that either you or your publisher will want the book to be entirely rewritten with each subsequent edition. Nevertheless, you might consider including terms that limit how much text you will be required to change with each update. It’s also not a bad idea to include language in the contract that requires the publisher to pay an additional advance if you’re asked to surpass that limit.

How Will Royalties Be Calculated for a New Edition?

Your publisher may ask for the right to hire another author to write the next edition if you are not willing or able to do so yourself. If this happens, your contract should specify the amount of royalties you will retain for each subsequent edition. For example, if the publisher hires a substitute to write the second edition of your book, you might get 75% of the royalties and the new author 25%. On the third edition, royalties may be split evenly. And on all other editions you may get 25% and the new author 75%.
How Will the Revised Edition Be Credited?

Usually, when a new author takes over a revised edition, her name is added to the book. If it’s important for you that a revised edition will be published in your name only (with credit given to the reviser in, say, the preface), you may want to specify that in your contract. You may also want to propose a procedure by which you are either consulted or have power to approve whomever the publisher wants to do the revision if you are unable or unwilling to do so yourself.

NON-COMPETE PROVISIONS

Non-compete provisions restrict what types of work you can publish in the future, as well as when and where you can publish them. A publisher’s rationale for wanting a non-compete provision is relatively straightforward: Non-compete clauses reassure the publisher that its investment in an author will not be undercut by the author doing a deal with another publisher for a directly competing book. It’s understandable that your publisher would not want some other firm to publish similar works by you, because similar works will compete for readers’ money and attention and may make your original work obsolete.
A standard non-compete provision restricts authors from publishing new works on the same topic as the work covered by the publishing agreement. This provision may last for a specific length of time, but it could also extend for the “life of the agreement.” How strict the non-compete provision is will vary from contract to contract. Some provisions restrict you from writing anything even remotely related to your original topic, whereas others might prevent you from writing a very similar book within a set period of time. A relatively broad non-compete provision may look something like this:

The Author may not, without the prior consent in writing of the Publisher, publish or edit for any other publisher any work which may reasonably be regarded by the Publisher as likely to compete with or prejudicially affect the sale of the Work or the exploitation of any rights in the Work granted to the Publisher under this Agreement.

Academic authors and nonfiction authors may need to pay particular attention to these terms because their
ability to pursue a scholarly research agenda by publishing new works on similar topics could be directly affected by these provisions.

**Success Story**

As an academic author, *Authors Alliance* founding member Jessica Silbey was concerned that a standard non-compete clause would unduly limit her ability to publish other works based on her research and data. When she placed *The Eureka Myth: Creators, Innovators and Everyday Intellectual Property*, Professor Silbey negotiated a narrowed non-compete clause that allows her to publish future works based on her research, as long as these do not function as market substitutions. This revised non-compete clause protects her publisher’s investment in her book and enables Silbey to realize the dissemination goals that are crucial to her academic career.

Authors can narrow the scope of non-compete provisions by defining a competing work as one that directly harms the sale of the earlier work, by limiting the time period of the non-compete, and by limiting what it
means for the work to be “similar.” See the following example:

No Author shall, without the Publisher’s prior written consent, prepare or assist in the preparation of any other Work on the same subject as the Work that might, in the Publisher’s reasonable judgment, interfere with or injure sales of the Work.

To further limit the scope of the non-compete provision, authors may want to add language to their contracts that limits the effect of the clause to a specified number of years after the work is first published. In addition, especially if you’re an academic author, you may want to include an exception to the non-compete clause that covers scholarly or professional uses so that your contract does not unnecessarily interfere with your career. For example:

The Author may draw on and refer to material contained in the Work in preparing articles for publication in scholarly and professional journals and papers for delivery at professional meetings provided
In some states, non-compete clauses, particularly broad ones, are unenforceable. If you feel unduly constrained by your non-compete clause, you may want to consult a lawyer to find out the extent to which you are bound by it.