



ST. FRANCIS XAVIER
UNIVERSITY

**COLLECTIVE AGREEMENT BETWEEN THE BOARD OF GOVERNORS OF ST. FRANCIS XAVIER
UNIVERSITY AND THE ST. FRANCIS XAVIER ASSOCIATION OF UNIVERSITY TEACHERS**

Expires June 30, 2022

**ARTICLE 2.11 POLICY WITH RESPECT TO COPYRIGHTABLE
WORKS AND INTELLECTUAL PROPERTY**

1.0 Intellectual Property

- 1.1 Intellectual property means any result of intellectual or artistic activity, created by an Employee, that can be owned by a person. This includes, but is not limited to, inventions, publications, computer software, works of art, industrial or artistic designs, as well as other creations that can be protected under patent, copyright, or trademark laws. Any provisions of Article 2.11 shall apply to joint creators of a piece of intellectual property, on a *pro rata* basis.
- 1.2 All intellectual property is owned by the Employees who create it except in those cases:
- (a) Where there is a written contract to the contrary between the creator, the University, and/or a third party which assigns the ownership rights of the intellectual property to the University or the third party; or
 - (b) Where the University provides funds, resources, and facilities to the Employee beyond those required for the payment of the Employee's salary and benefits, for the provision of a normal academic environment in which to work, and for the performance of a regular workload by the Employee, in which case, the Employee shall agree to share ownership rights of the intellectual property with the University.
- 1.3 The University shall not enter into any agreement with a third party which alters or abridges, or has the effect of altering or abridging, the intellectual property rights of an Employee without the Employee's written consent.
- 1.4 The StFXAUT shall be given copies of the agreements or contracts specified in Article 12.11.1.2 within 10 days of their conclusion. The nature and content of these agreements or contracts will remain confidential.

- 1.5 In recognition of the University's commitment to scholarship, including teaching, research, and publication activities:
- (a) The University agrees that Employees have complete intellectual and artistic freedom in the creation of intellectual property and the unqualified right to disseminate by any means whatsoever the intellectual property which they own; and
 - (b) The Employee shall grant to the University a non-exclusive, royalty free, irrevocable, indivisible, and non-transferable right to use, solely for internal, non-commercial educational and research purposes, all intellectual property developed by Employees with the use of the University's time, facilities, and resources.
 - (c) Employees shall have an absolute right to publicly disclose information about risks to research participants or the general public or threats to the public interest that become known in the course of their research.
- 2.0 **Patents**
- 2.1 The University and the StFX AUT agree that Employees have no obligation to seek patent protection for the results of their work or to modify research to enhance patentability; nor is the University under any obligation to exploit any potentially patentable discoveries or creations arising out of any Employee's work.
- 2.2 Potentially patentable discoveries or creations arising out of any Employee's work shall be disclosed to the University prior to public disclosure. The purpose for such disclosure is to allow the University to determine if it has ownership rights or obligations to a third party under Article 2.11.1.3
- 2.3 In those cases where Article 2.11.1.3 does not apply to potentially patentable discoveries or creations, the University and the Employee who owns the intellectual property may enter into an agreement to pursue a patent application in the name of the Employee. The cost of this process shall be paid by the University. The Employee and the University shall share in the net proceeds on a case-by-case basis, but in no case shall the Employee receive less than 50%. "Net proceeds" means the proceeds after deduction of all costs incurred by the Employee and/or the University for patent searches, for obtaining patent protection and for maintaining said protection in Canada and other countries.
- 2.4 In the event that the Employee and the Employer enter into an agreement pursuant to Article 2.11.2.3, but are unable to agree to an income sharing arrangement as specified, the matter will be referred to mediation and arbitration pursuant to Article 2.11.1.6. Either the Employee or the StFX AUT may have carriage of the dispute.
- 2.5 In the event that the University elects not to pursue a patent application on behalf of an Employee within forty-five (45) days following disclosures made under Article 2.11.2.2, Employees shall have the right to make their own arrangements for patent protection at their own expense and shall be entitled to all the proceeds therefrom.

- 2.6 The University waives, disclaims and abandons any interest in or claim to any invention, improvement, design or development made by Employees without the use of the University's time, resources, or facilities.
- 2.7 In all circumstances where an Employee wishes to use the University's time, resources, and facilities exclusively for development or production of potentially patentable discoveries and creations, the Employee shall enter into a written agreement with the University as specified in Article 2.11.1.2 which details the specific provision and use of funds, equipment, facilities, and resources; and which also delineates any assignment of intellectual property rights that may be related to the potential discoveries or creations.
- 2.8 In the case of Employees who have written arrangements with the University prior to the coming into effect of this Article with respect to patents, such arrangements shall continue until they naturally expire. Any renewal of such agreements must be made in accordance with the terms of Article 2.11.
- 3.0 **Copyright**
- 3.1 In accordance with Article 2.11.1.2, and as provided for by the *Copyright Act of Canada*, an Employee who is the creator, the author or the first person bringing the work into existence is the first owner of copyright in the work.
- 3.2 Copyright applies to all original scholarly, scientific, literary, dramatic, musical and artistic and recorded works. Such works include but are not limited to: books, texts, articles, monographs, glossaries, bibliographies, modular posters, study guides, laboratory manuals, correspondence course packages, interactive textbooks, course work delivered on the Internet, multimedia instructional packages, syllabi, tests and work papers, lectures, musical and/or dramatic composition, choreographic works, cartographic materials, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, computer programs; live video and audio broadcasts, programmed instructional materials, drawings, paintings, sculptures, photographs, and other works of art.
- 3.3 The University and the StFX AUT agree that the copyright to all forms of scholarly, scientific, literary, dramatic, musical, artistic and recorded works shall be retained by the Employees responsible for the creation of the work. The University acknowledges that it has no interest in and makes no claim to any copyright for works created by a member, except as set out in Article 2.11.3.4 below.
- 3.4 The Employee shall share copyright with the Employer when:
- (a) The Employer provides direct support for the creation of the work as specified in Article 2.11.1.2(b); or
 - (b) The Employer directly commissions the work or enters into an agreement under Article 2.11.1.2(a).

- 3.5 Otherwise than as specifically agreed to by the Employee in writing, all agreements for the provision of direct support or commission to create work of academic or artistic value shall provide that the Employee responsible for the creation of the work shall retain the exclusive right to revise, rework, or amend any work.
- 3.6 To encourage harmony with the principle of first owner's rights, such rights will be relinquished in proportion to the direct support provided by the University to a maximum of one half (50%). More specifically, any direct support beyond one half (50%) of the rights vested in the first owner shall constitute a commission.
- 3.7 Any assignment of first owner's rights which is greater than one half (50%) shall be distinguished from an agreement for direct support and shall be deemed a commission.
- 3.8 In the event that the University or assignee relinquishes their rights in any work, all economic and moral rights shall revert back to the first owner. In the event that the first owner is deceased, the rights shall revert to the estate of the first owner.
- 4.0 **Dispute Resolution**
- 4.1 Any dispute between Employees and the University to which the Academic Vice-President & Provost is not a party and which arises in relation to this article shall initially be referred to the Academic Vice-President & Provost who shall attempt to mediate between the parties. In such cases where the Academic Vice-President & Provost is a party to the dispute the President shall designate a mutually agreed upon University delegate to mediate between the parties. Such mediation may continue for a maximum of thirty (30) days after the referral of the dispute.
- 4.2 If the dispute is resolved through mediation, the settlement shall be reduced to writing and countersigned by the Academic Vice-President & Provost and the parties within five (5) days of the resolution.
- 4.3 If any dispute between an Employee and the University is not resolved through the application of sub-clauses 4.1 and 4.2 of this article, then the University or the Faculty member(s) may submit the dispute to arbitration by a single arbitrator as outlined in Article 1.1.7.18 of this Collective Agreement.
- 5.0 In the event that either the Patent or Copyright Acts of Canada are amended to the extent that Article 2.11 requires revision, the University and the StFXAUT shall re-open the negotiation of Article 2.11 by mutual agreement.