THE OSGOODE CERTIFICATE IN
NEGOTIATING AND DRAFTING IT AGREEMENTS

ONLINE & IN-PERSON PROGRAM

- 2 Online Modules
  Available January 15, 2018

- 3 One-day modules (In Person or Webcast)
  February 8 – March 8, 2018

- One day skills workshop (In Person only)
  April 5, 2018

An expert faculty of over 20 senior legal and IT specialists will equip you with the knowledge and key strategies you need to effectively structure, negotiate and draft IT agreements, including:

- Online modules provide the flexibility to learn on your own time
- Learn-by-doing drafting and negotiation workshops
- Personalized feedback

Register today at:

osgoodepd.ca/it-agreements

PROGRAM DIRECTOR
P. Bradley Limpert
Limpert & Associates

PROGRAM FORMAT
A blend of online & in-person learning.

Distance learning via live webcast is also available for select modules.

LOCATION
Osgoode Professional Development
1 Dundas St. West, 26th Floor, Toronto, ON

accredited **cpd**

APPROVED FOR **LawPRO®** RISK MANAGEMENT CREDIT

OSGOODE OSGOODE HALL LAW SCHOOL PROFESSIONAL DEVELOPMENT

YORK UNIVERSITÉ UNIVERSITY **U**

Drawing on the expertise and experience of leading lawyers and experts, including:

Program Director

P. Bradley Limpert
Limpert & Associates

Mr. Limpert is recognized by Intellectual Asset Management of London, UK as one of the world's leading technology licensing and litigation lawyers. Prior to practicing law, Mr. Limpert worked as a software developer, project manager and marketing rep. He is also a Certified Licensing Professional and a Patent Agent.

Program Faculty

Timothy M. Banks
Dentons Canada LLP

Pascal Barabé
Senior Legal Counsel, SAP Canada Inc.

Jason (Jake) Bullen
Cassels Brock & Blackwell LLP

Steve Cimicata
General Counsel, Volaris Group Inc.

Richard F.D. Corley
Goodmans LLP

Ted Crysler
Senior Legal Counsel, Rogers Communications

Daniel Daniele
Norton Rose Fulbright Canada LLP

Simon Hodgett
Osler, Hoskin & Harcourt LLP

May Jim
President, May Jim Business Consulting

John Le Blanc
Senior Legal Counsel, Bank of Nova Scotia

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Leung Law PC

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Vice President - Legal, Sandvine Inc.

Gabriel M.A. Stern
Fasken Martineau DuMoulin LLP

Trevor J. Unruh
Assistant General Counsel
Open Text Corporation

Craig Wilson
Craig Wilson & Company Inc.

The Osgoode Certificate in Negotiating and Drafting IT Agreements

Whether you're a lawyer in private practice or working within an organization in a legal or professional capacity, information technology agreements will likely cross your desk. And, whether you deal with them on a daily basis or only occasionally, you need to know what to look for in order to anticipate possible problems, address key points, and adequately protect your client's or company's interests. Moreover, with the fast pace of evolving technology, emerging IP and web developments are integral to contracting issues – you can't afford to be left behind.

In this intensive Osgoode certificate, an expert faculty of legal and IT specialists from leading technology companies will provide you with the knowledge and practical skills you need to competently and confidently negotiate and draft IT agreements. Reinforce your understanding of key concepts by applying what you've learned in small group "learn-by-doing" drafting and negotiation workshops, where you will benefit from personalized feedback from experienced experts.

In addition to the comprehensive course materials, participants will receive the text *Technology Contracting: Law, Precedents and Commentary* - a value of almost $600. Included are checklists, annotated sample agreements, and precedents which you can put to immediate use in your organization or practice. You'll walk away from this course with a sound understanding of the key IT agreements, proven negotiation strategies, practical drafting tools, and valuable written resources.

What You Will Learn

- Fundamentals of IT system components, players and activities
- Advanced negotiation strategies and tactics
- The key IP issues that affect IT agreements
- Strategies for allocating liability in an IT contract
- Critical cross-border considerations
- Dealing with IT contracting issues in Cloud, SaaS and App environments
- Best practices for proceeding ethically in contract negotiations
- Critical security and privacy issues and how to manage them
- Addressing compliance challenges in open source software licensing
- Drafting and negotiation issues that impact IT agreements

Who Should Attend?

- Lawyers who advise on IT agreements and software licensing
- In-house counsel and executives managing software and IT services procurement
- IT managers and developers
- IT procurement professionals
- Contract managers and specialists
- Advisors to technology start-ups and entrepreneurs

This Certificate Program Features:

- 2 Online Modules Available – **January 15, 2018**
- 3 One-day modules (In-person or by webcast) – **February 8 – March 8, 2018**
- One day skills workshop (In-person only) – **April 5, 2018**

Agenda

Available January 15, 2018

* It is recommended that attendees view the Online Modules prior to Module 1. You must view both Online Modules to receive your certificate.

Understanding IT System Development Methodologies

This module will provide you with the technical background you need to hit the ground running. You will learn about:

· Establishing scope, planning and specifying requirements: business process, functional and non-functional
· System design: high level versus detailed design
· Development/build stage to implementation/rollout
· Third party contracts

Navigating Ethical Issues in IT Transactions

This module will teach you everything you need to know to handle thorny ethical issues, including how to address conflicts of interest and when the duty of good faith applies in negotiations.

One-day Modules (In Person or Webcast)

Module 1
February 8, 2018
9:00 a.m. – 5:00 p.m. EST

Module One will provide you with the foundational knowledge you need to maximize your understanding and participation in the remainder of the certificate. You will learn about the critical IP aspects of IT contracts, IT systems, reseller and VAR agreements, as well as the key cross-border issues that need

to be considered when approaching IT agreements. The day will end with a primer on negotiation techniques.

Essential IP Elements and Concepts

· Types of information or technology that can be protected by trade secret, copyright, patents, and trademark laws
· Intellectual property: obtaining, registering and enforcing it
· Potential pitfalls arising from joint ownership of IP
· What rights do employees and independent contractors have in the IP they provide as part of technology development?

Overview of IT Systems

· Key components, players and activities in IT systems
  - IT development, deployment, integration, migration and maintenance: who does what?
  - Typical life cycles of software development, licensing, customization and sale
· Effect of technical risks and liabilities on an IT contract
  - Data loss, data integrity; scope creep, integration risk
  - Vendor control of technology architecture

Reseller & VAR Agreements

· Understanding terminology: distinction between Resellers, VARs and distributors
· Exclusive vs. non-exclusive agreements
· Key rights/obligations of Resellers and VARs vs. key obligations of Vendor
· Pricing/payment arrangements
· Term/termination provisions; Representations, warranties and indemnities

Cross-Border Issues in IT Contracting

Increasingly, the scope of technology agreements extends beyond Canada and may engage foreign parties. This session will address multi-jurisdictional issues that affect IT contracts, including factors affecting the scope and terms of cross-border agreements and the protection of IP rights and confidential/personal information across jurisdictions.

Negotiation Techniques for IT Agreements

· Due diligence and preparation for negotiations
· The effect of timing on negotiations
· Can you win without negotiating?
· Structure of negotiations/parallel negotiations
· Creating your BATNA
· How does uncertainty and lack of information affect negotiations?

Module 2
February 22, 2018
9:00 a.m. – 5:00 p.m. EST

In Module 2 we will continue to examine the essential underlying concepts required for negotiating and drafting IT agreements. The discussion will drill down on strategies for allocating liability in an IT contract, and security and privacy issues. The focus will then shift towards examining specific types of IT agreements, including confidentiality, escrow and software development agreements. The day will conclude with an interactive negotiation demonstration which will highlight best practices for negotiating performance warranties and remedies clauses.

Allocating Liability in the IT Contract

· Thinking through limits of liability, disclaimers, waivers and related clauses
· Liability issues associated with privacy, security and confidentiality

Security and Privacy Issues in IT Transactions

· Types of security risks: data integrity, transmission, access control, and more
· Methods for ensuring security of information; dealing with spyware
· Privacy traps in various IT transactions
· The impact of the U.S. and E.U. laws
· Audit issues: reporting, recording and disclosure of security and privacy measures

Confidentiality Agreements and Escrow Agreements

This session will examine two much used but under-appreciated agreements:

Non-Disclosure Agreements (NDAs) and Source Code Escrow Agreements. Learn how to minimize the risks of disclosing and receiving confidential information, as well as the common problems and pitfalls with escrow agreements.

Development Agreements

· A developer's perspective: what assumptions do developers make and what are their implications?

· Rates of failure in development agreements; remedies, including non-financial remedies, for developer's non-performance; providing for escalation and dispute resolution procedures

· Understanding the vendor/developer's interests: key pitfalls purchasers should watch for in the agreement

· Incorporating documents produced in the development process into the legal agreement

Demonstration: Negotiating Performance Warranties and Remedies

This interactive session will provide participants with an opportunity to observe a live negotiation from the supplier and customer perspectives. The panel will examine various negotiation positions, as well as provide guidance on the strategic use of language when drafting these important clauses.

Module 3
March 8, 2018
9:00 a.m. – 4:30 p.m. EST

In Module 3 we will continue to examine specific types of IT agreements, including outsourcing, support and maintenance and software licensing agreements. Rounding out the day, three expert faculty members will deliver our second interactive demonstration session, focusing on the negotiation of a License Agreement from the perspective of both supplier and customer.

IT Outsourcing Agreements

· Forms of "outsourcing", including cloud computing, SaaS, and various shared service arrangements

· Specifying service levels in the agreement; multi-sourcing and sub-contractors

· Indemnities and limitations of liability

· Change control and governance

· Benchmarking and other price/innovation clauses

IT Support and Maintenance Agreements

· How to select the type of support coverage

· Characterizing errors and problems: anticipating and avoiding disputes

· Software updates, upgrades & support for old versions; hardware support and maintenance

· Standard versus customized packages; on-line versus on-site support

Software Licensing Agreements

· Portal access license versus license agreement - pros and cons from licensee and licensor perspectives

· Software bundling: issues arising from inclusion of third party products; rights in derivative works

· Object code versus source code license agreements

· Relationship between software license, consulting services, maintenance and support

Open Source Software Licensing

· Benefits and risks of open source software – Mixing open source and proprietary software

· Types of open source software licenses – addressing open source software in your business model

Demonstration: Negotiating a License Agreement

Participants will observe experienced practitioners negotiate the key elements of a License Agreement, and will learn tools to effectively address such issues as payment terms, scope, ownership of IP, strategies for negotiating value-adds, and governance provisions.

Drafting and Negotiation Workshops
(In-person only)

Module 4
April 5, 2018
9:00 a.m. – 5:15 p.m. EST

In Module 4, you will have an opportunity to put into action what you have learned. The day will feature two small group, interactive workshops, plus a presentation on advanced negotiation techniques.

Drafting Workshop: License Agreement

In this hands-on, small group workshop, you will have a valuable opportunity to receive personalized feedback from our expert faculty on your drafting skills. Prior to the module, participants will be provided with a fact scenario and segments of a License Agreement and asked to re-draft and submit various key clauses for discussion in the workshop.

*NOTE: Advance preparation is required for the drafting workshop.

Advanced Negotiation Techniques for IT Agreements

Building on the negotiation techniques presentation delivered in Module 1, you will learn about using Game Theory and Behavioural Economics in your negotiations, as well as how to conduct a self-assessment of your negotiation skills.

Tying it All Together: Mock Negotiation

Using a common fact scenario in conjunction with confidential facts for each party, you will work in small groups and engage in a mock negotiation representing the interests of either the vendor or customer.

This is an interactive session in which you will receive personalized feedback and guidance from an expert facilitator.

*NOTE: Because of the interactive nature of the day, in person attendance is required for this module.

Registration Details

Fee per Delegate
$2,795 plus HST
Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

Program Changes
We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions
Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 21 days prior to the program date. If a cancellation request is made with less than 21 days notice, a $150 administration fee will apply. No other refund is available.

For Further Program–Related Information please contact:
Alexandra Karacsony, Program Lawyer at 416.673.4673 or email akaracsony@osgoode.yorku.ca

Certificate of Program Completion

You will receive an Osgoode Certificate upon completion of the program. To receive the certificate participants must: (1) view both of the Online Modules, (2) attend all 4 modules, (3) complete and submit the Drafting Assignment by the deadline, (4) receive a passing grade on the Drafting Assignment, and (5) participate in the drafting workshop and mock negotiation. Please note that Modules 1-3 may be completed in person or by webcast. However, all registrants must attend Module 4 in person.

4 Convenient Ways to Register

Mail   Online   Fax   Call

Register today at:
osgoodepd.ca/it-agreements

accredited CPD

OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.

CPD

Eligible CPD Hours - LSUC (ON): 30h 30m (27h 30m Substantive, 3h Professionalism).

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca