THE OSGOODE CERTIFICATE IN
# NEGOTIATING & DRAFTING IT AGREEMENTS

- Module One: March 25, 2021
- Module Two: April 8, 2021
- Module Three: April 22, 2021
- Module Four: May 20, 2021

**PLUS! Two Online Primers\* available on demand upon registration**

\*Must view both Online Primers
 (1 hour each) to obtain your Certificate.

## Do you have the skills and knowledge you need to confidently negotiate and draft IT agreements?

Join expert legal and IT specialists in this innovative and intensive course. You'll get a deep dive into the essential aspects of structuring, negotiating and drafting IT agreements, including:

- Allocating liability and managing security, compliance and privacy issues

- Crucial drafting tips and advanced negotiation strategies and tactics

- Key IP issues that affect IT agreements

- Critical cross-border considerations, emerging issues and technology trends

- **PLUS!** Get personalized feedback, essential skills and practical strategies through learn-by-doing drafting and negotiating workshops.

**Register today at:**
osgoodepd.ca/it-agreements

### Program Director

**Bradley Limpert**
Limpert & Associates

### Location

**ONLINE – Live & Interactive**

*You will have online access to the program for 120 days.*

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# The Osgoode Certificate in
# Negotiating & Drafting IT Agreements

To ensure an optimal learning environment, the program restricts enrollment. Reserve your place now to take advantage of this unique opportunity to enhance your experience with:

- 2 Online Primers (On Demand)

- 3 One-Day Modules of Lectures and Demonstrations

- One-Day Skills Workshop

*" Very valuable learning for my role as an IT Procurement Manager. "*

*" Thorough content, well qualified speakers presenting on topics and well laid out program. "*

Whether you're a lawyer in private practice or working within an organization in a legal or professional capacity, IT agreements will likely cross your desk. To avoid costly mistakes, you need to know how to anticipate problems, cover-off key points and adequately protect your client's interests.

## Are you prepared?

In this intensive Osgoode Certificate, an expert faculty will provide you with the knowledge and skills you need to confidently and competently structure IT contracts and get practical tools to draft and negotiate contentious clauses. Over 4 Modules, you'll also learn about the critical business, tech and IP aspects underlying IT agreements, giving you a solid grounding in essential concepts.

You will also get the opportunity to reinforce your understanding of key concepts and apply what you've learned in small group drafting and negotiation workshops, where you will benefit from personalized feedback from expert facilitators.
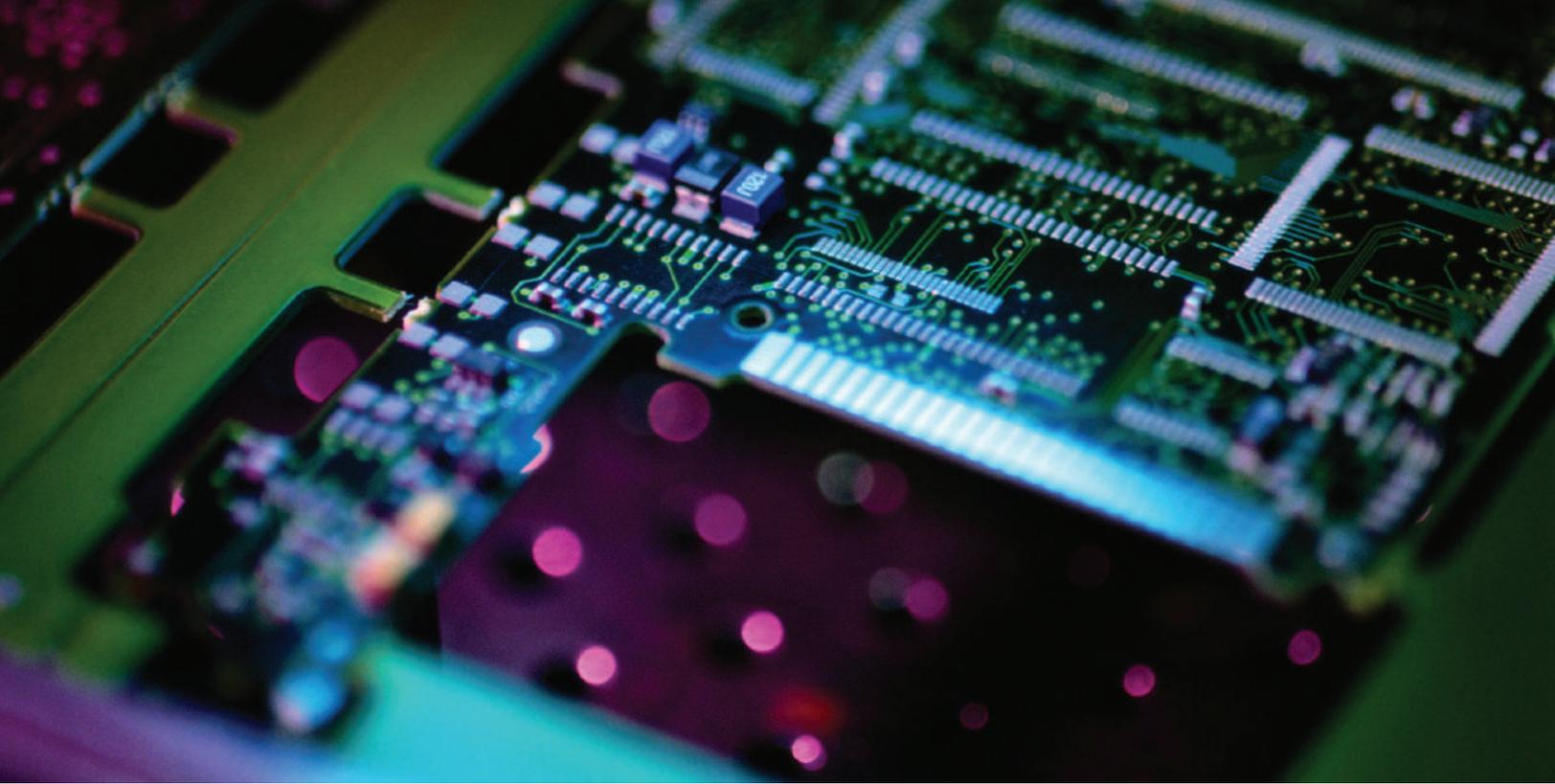
## Get Practical Tips, Knowledge & Strategies, in areas including:

- Fundamentals of IT components, players and activities

- Strategies for allocating liability in an IT contract

- Key IP issues that affect IT agreements

- Addressing compliance challenges in open source software licensing

- Advanced negotiation strategies and tactics

- Common drafting and negotiation issues that impact IT agreements

- Best practices for proceeding ethically in contract negotiations

- Critical security and privacy issues and how to manage them

- Critical cross-border considerations

- Emerging issues and technology trends

> " I have attended multiple online classes, but your platform is superior! The quality was excellent."
>
> **Andrée-Anne Chevalier,** Vigilance Santé Inc., Co-President

## Who Should Attend:

- Lawyers and professionals 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

- IT advisors and consultants

- Contract managers and specialists

- Government professionals managing software and IT services procurement

- Outsourcing professionals

- Advisors to technology start-ups and entrepreneurs

# Drawing on the expertise and experience of leading legal and IT specialists, including:

## Program Director

Bradley Limpert

**Bradley Limpert**
Limpert & Associates

Bradley 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, he worked as a software developer, project manager and marketing rep. Bradley is also a Certified Licensing Professional and a Patent Agent.

## Program Faculty

**Pascal Barabé**
Senior Legal Counsel, SAP Canada Inc.

**Isi (Izzy) Caulder**
Patent & Trademark Agent,
Bereskin & Parr LLP

**Richard F.D. Corley**
Goodmans LLP

**Jennifer R. Davidson**
Deeth Williams Wall LLP

**Jennifer MacInnis**
Associate General Counsel and
Assistant Secretary of the Board,
Ryerson University

**Andrew Nunes**
Fasken LLP

**Laila Paszti**
Norton Rose Fulbright Canada LLP

**Robert Percival**
Blake, Cassels & Graydon LLP

**Thomas Prowse**
VP, Legal, Tehama Inc.

**Joel Ramsey**
Torys LLP

**John Sibley**
Senior Manager, Deloitte Canada LLP

**Steven Slavens**
Torys LLP

**Stephen Spracklin**
City of Vaughan

**Gabriel M. A. Stern**
Fasken LLP

*"The faculty was very knowledgeable and made the materials approachable."*

*"I liked the breadth of the program. It provided a good foundation."*

**- 2018 Participants**

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osgoodepd.ca/
it-agreements

# Agenda

### Understanding IT System Development Methodologies

This module provides you with the technical background you need to hit the ground running:

- Establishing scope, planning and specifying requirements
- System 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.

## MODULE 1

### Thursday, March 25, 2021
### 9:00 a.m. – 5:00 p.m. EDT
### Foundations of IT Agreements

Module 1 will provide you with the foundational knowledge you need to maximize your understanding and participation in the remainder of the certificate. You will learn the critical IP and technological aspects of IT contracts, systems and development, as well as the key cross-border issues to consider in IT agreements. The day will end with a primer on negotiation techniques.

### Essential IP Elements & Concepts

- Aspects of IT that can be protected by trade secret, copyright, patents, and trademark laws
- How is IP obtained, registered and enforced?
- What is legally protectable confidential information?
- Independent creation as a defence to infringement and risks arising from joint ownership of IP
- What rights do employees and independent contractors have in the IP they create?

### Understanding the IP in Your IT: Intellectual Property Considerations Critical to Your Technology Agreements

- Identifying the IP and its ownership; potential pitfalls arising from joint ownership of IP
- Copyright, trade secrets, confidential information, outsourcing, M&A
- Characterizing IP involved in the transaction: foreground versus background IP; base product versus customization; methodologies versus work product
- What rights do employees and independent contractors have in the IP they provide as part of technology development?
- How information technology agreements can impact M&A transactions

### Key Components, Players & Activities in IT Systems

- IT development, deployment, integration, migration and maintenance: who does what?
- The roles and interests of the key players: Systems Analyst, Programmer, Project Manager, etc.
- Typical life cycles of software development, licensing, customization and sale

### Reseller & VAR Agreements

- Understanding terminology and distinctions: 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, representations, warranties and indemnities

### Risks and Liabilities from a Technical Perspective

- Data loss, data integrity
- Scope creep, integration risk
- Limitations of testing, bugs and defects
- Interaction with legacy systems and interface with other systems
- Vendor control of technology architecture

### Critical Cross-Border Issues in IT Contracting

Increasingly, the scope of technology agreements reaches beyond Canada and may engage foreign parties. Learn the multi-jurisdictional issues that affect IT contracts, includes 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

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

### Take-Home Drafting Assignment: Distribution
*The take-home drafting assignment will be distributed. This assignment is expected to take about 3-4 hours to complete and it will be due the week after Module 3.*

## MODULE 2

### Thursday, April 8, 2021
### 9:00 a.m. – 5:00 p.m. EDT
### Privacy/Security; Software Development

Module 2 will continue to examine the essential underlying concepts required for negotiating and drafting IT agreements. The discussion will drill down on strategies to allocate liability in an IT contract, and security and privacy issues. The focus will shift to examining specific types of IT agreements, including software development agreements. The day will conclude with an interactive demonstration to highlight best practices and tips for negotiating performance warranties and guarantee 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
- Indemnities and how they are structured

### Security Issues in IT Transactions

- Types of security risks: data integrity, transmission, access control, and more
- Methods for ensuring security of information and dealing with spyware

### Privacy Issues Affecting IT Transactions

- Privacy overview and common traps in various IT transactions
- The impact of the US and EU laws
- Audit issues: reporting, recording and disclosure of security and privacy measures

### Drafting and Negotiating your Contract with the Judge or Arbitrator in Mind

- Special short session highlighting the importance of keeping the Judge and Arbitrator in mind when drafting

### Confidentiality Agreements and Escrow Agreements

This session will examine two key but under-appreciated contracts: 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: key assumptions and their implications
- Failure rates and remedies, includes non-financial, non-performance and providing for escalation and dispute resolution procedures
- Understanding vendor/developer interests: key pitfalls purchasers should watch out for
- Incorporating development documents into the legal agreement

### Demonstration: Negotiating Performance Warranties & Remedies

You will have an opportunity to observe and interact with a live negotiation from the perspective of both supplier and customer. The panel will examine various negotiation positions and provide guidance on the strategic use of language when drafting these important clauses.

### Take-Home Drafting Assignment: Discussion/Q&A

*You will have the chance to clarify your outstanding questions on the drafting assignment. This assignment is expected to take about 3-4 hours to complete and it will be due the week after Module 3.*

## MODULE 3

### Thursday, April 22, 2021
### 9:00 a.m. – 5:00 p.m. EDT
### Fundamentals of Key IT Agreements

Module 3 will continue to examine specific types of IT agreements, including outsourcing, support and maintenance and software licensing agreements. Expert faculty 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 shared service arrangements
- Specifying service levels in the agreement: multi-sourcing and sub-contractors
- Indemnities and limitations of liability
- Change of 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, includes online versus on-site support

### Software Licensing Agreements

- Portal access license vs license agreements: pros/cons from licensee and licensor perspectives
- Software bundling: issues arising from inclusion of 3rd party products, rights in derivative works
- Object code vs source code license agreements
- Relationship between software license, consulting services, maintenance and support Maintaining and Insuring

### 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

- Trends, policy approaches and issues to watch out for

### Demonstration: Negotiating a License Agreement

Observe senior practitioners negotiate the key elements of a License Agreement, and learn tools to effectively address issues including payment terms, scope, ownership of IP, strategies for negotiating value-adds, and governance provisions.

### Drafting Assignment Deadline
*The drafting assignment will be due the week after this Module 3.*

## MODULE 4

### Thursday, May 20, 2021
### 9:00 a.m. – 5:00 p.m. EDT
### Interactive Drafting & Negotiation Workshop

**NOTE:** *Due to the interactive nature of this workshop, live online attendance is required for this Module.*

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

### DRAFTING WORKSHOP & ASSIGMENT REVIEW: License Agreement

Get personalized feedback on your drafting skills and gain strategies, best practices and model drafting clauses from highly experienced faculty.

### Instructional Session: Advanced Negotiation Techniques for IT Agreements

Building on the negotiation techniques primer 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.

### NEGOTIATION WORKSHOP: Tying It All Together (Mock Negotiation)

In small groups, you will engage in a mock negotiation representing either the vendor or customer. You will receive individualized support and feedback from an expert facilitator and benefit from a master debrief and group discussion.

# Registration Details

## Fee per Delegate
**$2,995 plus HST**

Fees include attendance, electronic materials, technical support and 120-day access to program archives. Visit www.osgoodepd.ca/financial-assistance for details 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:
Myrsini Zacharakis, Program Lawyer 416.278.7721
or email: MZacharakis@osgoode.yorku.ca

# Certificate of Program Completion

You will receive a certificate upon completion of **The Osgoode Certificate In Negotiating & Drafting IT Agreements.** Participants must attend all program modules view both online primers, complete/pass the take-home assignment and participate in the workshops to receive a certificate.

# 4 Convenient Ways to Register

Mail    Online    Fax    Call

**Register today at:**
osgoodepd.ca/it-agreements

Here's what some of our past participants had to say about this Certificate program:

*" Overall well worth the amount paid and brilliant concept to use a case study as a tool for delivering the contents of the program."*

*" This course provided me with the knowledge I needed for my current assignment and increased my capability in this area by 1-2 years. The precedent cases are helpful and gave me an understanding on where the boundaries are. The gotchas [from practitioners] were good as I don't necessary know what to look for."*