Execution Version

D2L CORPORATION

- and –

D2L INC.

- and –

SKILLSWAVE CORPORATION

ASSET PURCHASE AGREEMENT

Dated as of June 28, 2024

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**") dated as of June 28, 2024.

B E T W E E N

D2L Corporation (the "**Vendor**"), a corporation duly organized and validly existing under the laws of the Province of Ontario,

– and –

D2L Inc. (the "**Guarantor**"), a corporation duly organized and validly existing under the laws of Canada, in its capacity as a guarantor,

– and –

SkillsWave Corporation (the "**Purchaser**"), a corporation duly organized and validly existing under the laws of Canada

RECITALS:

WHEREAS, the Purchaser is a wholly-owned Subsidiary of the Guarantor, which wishes to undertake a spin-off transaction involving the sale by the Vendor, a wholly-owned Subsidiary of the Guarantor, to the Purchaser of the Purchased Assets, being all of the assets used in connection with the Wave Business conducted by the Vendor, and the subsequent sale by the Guarantor to and acquisition by 1000849849 Ontario Inc. (the "**HoldCo**") of a controlling interest in the Purchaser;

AND WHEREAS the Guarantor, the Purchaser, the HoldCo and 2339351 Ontario Inc. entered into a letter agreement dated as of April 3, 2024 (as amended, supplemented or restated from time to time, the "**Letter Agreement**"), whereby the Purchaser agreed to acquire the Purchased Assets and assume the Assumed Liabilities, and the HoldCo agreed to subsequently acquire such controlling interest in the Purchaser in connection therewith;

AND WHEREAS the Vendor carries on the Wave Business and wishes to sell the Purchased Assets and assign the Assumed Liabilities to the Purchaser, subject to the terms and conditions contained in this Agreement;

AND WHEREAS the Purchaser is willing to purchase the Purchased Assets and to assume the Assumed Liabilities, subject to the terms and conditions contained in this Agreement; and

NOW THEREFORE in consideration for the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
INTERPRETATION

1.1 **Definitions**. Unless otherwise stated, capitalized terms that are used but not otherwise defined in this Agreement shall have the respective meanings assigned to such terms in the Letter Agreement. In this Agreement, unless the context otherwise requires, the following terms have the respective meanings given to them and grammatical variations of those terms have the corresponding meanings:

"**Affiliate**" has the meaning assigned to such term in NI 45-106 provided that, for certainty, the Guarantor and its Subsidiaries shall not be considered Affiliates of the Purchaser or any of its Subsidiaries, and the Purchaser, the Holdco and their respective Subsidiaries shall not be considered Affiliates of the Guarantor and its Subsidiaries.

"**Agreement**" has the meaning ascribed thereto in the preamble;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, (i) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, all policies, guidelines, notices and protocols of any Governmental Authority, as amended;

"**Assumed Liabilities**" means any and all obligations and Liabilities, other than the Retained Liabilities, to the extent arising out of or relating to the Wave Business or the Purchased Assets, in each case whether such obligations and Liabilities arise or accrue prior to, on or after the time of Closing, which will be assumed by the Purchaser at Closing, including without limitation:

(a) any and all Liabilities pursuant to the Transferred Contracts as of the time of Closing and any other obligations pursuant to the Transferred Contracts on and after the time of Closing other than any and all Liabilities arising out of or relating to any Specified Receivable;

(b) employment-related obligations and Liabilities respecting Wave Employees for which the Purchaser is expressly responsible pursuant to Section 4.2 and Section 6.3(c); and

(c) any and all Tax obligations and Liabilities relating to, arising out of or resulting from the Wave Business after the Closing Time;

"**Business Day**" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario;

"**Claim**" has the meaning ascribed thereto in Section 4.8(a),

"**Closing**" means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

"**Closing Agreements**" means, collectively,

(a) this Agreement;

(b) the Share Transfer Agreement between the Vendor and the Guarantor;

(c) the Share Transfer Agreement between the Guarantor and the HoldCo;

(d) the License Agreement;

(e) each of the Investors' Rights Agreement and the Voting Agreement between the Purchaser, the Guarantor and the HoldCo;

(f) the Right of First Refusal and Co-Sale Agreement between the Purchaser, the Guarantor, the HoldCo and John Baker;

(g) the Non-Competition and Non-Solicitation Agreement between the Guarantor and the Purchaser;

(h) the Loan and Security Agreement between the Guarantor and the Purchaser (the "**Loan and Security Agreement**");

(i) the Transitional Services Agreement between the Vendor and the Purchaser;

(j) the Patent Assignment;

(k) the termination agreement regarding the Letter Agreement between the Parties, the Guarantor, the HoldCo and 2339351 Ontario Inc.;

(l) the Reseller Agreement; and

(m) the Referral Agreement,

each dated as of the Closing Date, and each of the agreements expressly contemplated by any of the foregoing agreements to be entered into by any two or more of the Parties, the Guarantor and/or the Holdco on the Closing Date, and for certainty, excluding the Employee Offers;

"**Closing Date**" has the meaning ascribed thereto in Section 5.1;

"**Closing Time**" means the time of Closing on the Closing Date provided for in Section 5.1;

"**Confidential Information**" means, in relation to a party hereto (the "**Discloser**"):

(a) all confidential, non-public or proprietary information or data, in whatever form communicated or maintained, whether orally, in writing, electronically, in computer readable form or otherwise, that the Discloser discloses to, or that is gathered by inspection by a party hereto (the "**Recipient**") or its Representatives in the course of the dealings relating to this Agreement, whether provided before or after the date of this Agreement, including confidential, non-public or proprietary information that contains or otherwise reflects information concerning the Discloser or its businesses, affairs, financial condition, assets, liabilities, operations, prospects or activities, and specifically includes financial information, budgets, business plans, ways of doing business, business results, prospects, customer lists, forecasts, engineering reports, environmental reports, evaluations, legal opinions, names of venture partners and contractual parties, and any information provided to the Discloser or its Representatives by third parties under circumstances in which the Discloser has an obligation to protect the confidentiality of such information;

(b) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any of the information contemplated by (a) above regardless of the identity of the Person preparing the same; and

(c) the terms of this Agreement;

but does not include any information (other than Personal Information) that:

(d) is at the time of disclosure to the Recipient or its Representatives or thereafter becomes generally available to the public, other than as a result of a disclosure by the Recipient or any of its Representatives in breach of this Agreement;

(e) is or was received by the Recipient or its Representatives on a non-confidential basis from a source other than the Discloser or its Representatives if such source is not prohibited from disclosing the information to the Recipient or its Representatives by a confidentiality agreement with, or a contractual, fiduciary or other legal confidentiality obligation to, the Discloser;

(f) was known by the Recipient or its Representatives prior to disclosure and was not subject to any contractual, fiduciary or other legal confidentiality obligation on the part of the Recipient or its Representatives; or

(g) to the extent that it was independently developed by the Recipient or its Representatives without reference to the Confidential Information of the Discloser.

"**Consents**" means:

(a) the consent of **[REDACTED]** to the assignment to the Purchaser of the Master Services Agreement with the Vendor effective July 28, 2023 (the "**[REDACTED] Contract**");

(b) the consent of **[REDACTED]** to the assignment to the Purchaser of the Master Services Agreement with the Vendor dated October 31, 2023 (the "**[REDACTED] Contract**"); and

(c) the consent (if required) of the counterparty to the Vendor or any of its Affiliates to the assignment to the Purchaser of such Contracts on which performance of the **[REDACTED]** Contract is reliant in a material respect, as denoted in Schedule 1.1(a);

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

"**Contracts**" means the contracts listed on Schedule 1.1(b);

"**D2L Business**" means the business conducted by the Vendor consisting of the offering of learning experiences through its Brightspace learning platform and related functionality and services, including those offered under the D2L Link, Performance+ and Creator+ brands, as well as advisory and professional services;

"**Damages**" means any loss, cost, liability, claim, fine, penalty, assessment, damages available at law or in equity (including reasonable costs, fees and expenses of legal counsel, experts, and investigators);

"**Deconsolidation Opinion**" means the opinion prepared by the Guarantor's management and reviewed and verified by a "big 4" national accounting firm other than its auditor KPMG LLP, to the effect that immediately following Closing, the Guarantor is not required under International Financial Reporting Standards and applicable securities laws to prepare and present its financial statements on the basis that it consolidate the Purchaser's or any of Purchaser's Subsidiaries or shareholders (for certainty, other than the Guarantor);

"**Delayed Assumptions**" has the meaning ascribed thereto in Section 2.7(a)(ii);

"**Delayed Transfer Assets**" has the meaning ascribed thereto in Section 2.7(a)(i);

"**Employee Offers**" has the meaning ascribed thereto in Section 4.2(b);

"**ETA**" has the meaning ascribed thereto in Section 2.6;

"**Excluded Assets**" means any all rights in and to any assets used in the D2L Business as of the Closing Time other than the Wave Business and except as otherwise included in the Purchased Assets, including without limitation:

(a) the Brightspace platform, D2L Link, Performance+ or Creator+ and related intellectual property,

(b) any trade-mark, business name, brand or other word or phrase incorporating Desire2Learn, D2L, D2L Link, Performance+ or Creator+ or any word or phrase similar in sound or appearance thereto,

(c) any intellectual property and technology used in both the D2L Business and the Wave Business as of the Closing Time, including components of the technology underlying the Wave Software;

(d) any rights in and to any of the Contracts to the extent that any counterparty(ies) thereto have not provided any consent to assignment or other consent required under such Contract in respect of the Transaction (the "**Excluded Contracts**");

(e) all cash, liquid investments, prepayments (other than the **[REDACTED]** Prepayment), prepaid charges, deposits, sums and fees;

(f) the Specified Receivables;

(g) all tax loss carryforwards, tax credits and tax refunds, whether arising before or after Closing; and

(h) all office equipment including without limitation laptops, computer equipment, printers, copiers, phone equipment, furniture and furnishings, and any other personal property;

"**Governmental Authority**" means:

(a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);

(b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board, or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;

(c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and

(d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association;

"GST/HST" means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA;

"**Guarantor**" has the meaning ascribed thereto in the preamble, and includes its successors and permitted assigns;

"**HoldCo**" has the meaning ascribed thereto in the recitals, and includes its successors and permitted assigns;

"**ITA**" means the *Income Tax Act* (Canada);

"**Key Wave Employees**" means:

[REDACTED]

[REDACTED: PERSONAL INFORMATION]

"**Knowledge of the CLO**" means the actual knowledge of the Chief Legal Officer of the Guarantor, as of the date of this Agreement, based on any Legal Proceedings as are required to have been reported to the Chief Legal Officer of the Guarantor in accordance with the Guarantor's internal controls and without any further inquiry;

"**Legal Proceeding**" means any litigation, action, application, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any Governmental Authority, and includes any appeal or review thereof and any application for leave for appeal or review;

"**Letter Agreement**" has the meaning ascribed thereto in the recitals;

"**Liability**" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person;

“**License Agreement**” means the shared technology license agreement dated as of the date hereof between the Vendor and the Purchaser;

"**Lien**" means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, restriction, easement, option, or encumbrance;

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that individually or in the aggregate with other events, occurrences, facts, condition or change, is or would reasonably be expected to have, both a material and adverse effect on the business, assets, operations, or condition, financial or otherwise, of the Wave Business taken as a whole; provided that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any general change in global, national or provincial political conditions (including any general labour strikes or acts of espionage, sabotage or terrorism or any general outbreak of hostilities or declared or undeclared war or any escalation or worsening thereof) or in general economic, business, banking, regulatory, financial, credit or currency markets, in exchange rates, interest rates or rates of inflation or in capital market conditions in Canada or the United States or globally; (ii) any general change, development, condition or event generally affecting the industries in which the D2L Business or the Wave Business operates; (iii) any natural disaster or any epidemic, pandemic or general outbreaks of illness or disease; (iv) any action required or permitted by the Letter Agreement or the Closing Agreements or required by Applicable Law; (v) any changes in Applicable Law or accounting rules, including applicable accounting standards generally applicable to the industries in which the D2L Business or Wave Business operates; (vi) any actions taken (or omitted to be taken) upon the written request of the Purchaser, or with the written consent of, or under the authority, direction or control of the Purchaser, provided such actions are taken (or omitted to be taken) with the prior written consent of the HoldCo; or (vii) the public announcement, pendency or completion of the Transaction contemplated by the Letter Agreement or the Closing Agreements; provided further that any event, occurrence, fact, condition or change referred to in clauses (i) through (v) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a material and disproportionate effect on the D2L Business or Wave Business, as applicable, compared to other participants in the industries in which the D2L Business or Wave Business, as applicable, operates;

“**NI 45-106**” means National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators

"**Order**" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority;

"**Parties**" means the Purchaser and the Vendor, and includes each of their respective successors and permitted assigns, and "**Party**" means any of the Parties;

"**Patent Assignment**" means the Patent Assignment dated as of the date hereof between the Vendor and the Purchaser (or one of its Affiliates) providing for the transfer of the Wave Patents from the Vendor to the Purchaser (or one of its Affiliates);

"**Permitted Liens**" has the meaning ascribed thereto in the Loan and Security Agreement;

"**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity;

"**Personal Information**" means information about an identifiable individual or any other information that is subject to any Privacy Laws;

"**Privacy Laws**" means any Applicable Law governing the collection, use, disclosure, storage, transfer, destruction or other processing or handling of Personal Information, including the *Personal Information Protection and Electronic Documents Act* (Canada) and any substantially similar provincial legislation;

"**Public Filings**" has the meaning ascribed thereto in Section 4.4;

"**Purchase Price**" has the meaning ascribed thereto in Section 2.3;

"**Purchased Assets**" means any and all assets that are used exclusively or held for use by the Vendor exclusively in the operation of Wave Business as of the time of Closing, including without limitation,

(a) the Wave IP,

(b) the Transferred Contracts and associated Receivables (other than the Specified Receivables), and

(c) a payment in cash in an amount equal to US$**[REDACTED]** in respect of the **[REDACTED]**Contract (the "**[REDACTED] Prepayment**");

but excluding the Excluded Assets;

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

"**Purchaser**" has the meaning ascribed thereto in the preamble, and includes its successors and permitted assigns;

"**Purchaser Group**" means the Purchaser and its Affiliates, and includes each of their respective successors and permitted assigns;

"**Purchaser's Indemnified Parties"** means the Purchaser and the Purchaser's Affiliates and Subsidiaries and their respective Representatives;

"**Receivables**" means all accounts receivable, bills receivable, trade accounts, book debts and insurance claims of the Wave Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits and those listed in Schedule 1.1(e);

"Referral Agreement" means the Referral Agreement dated as of the date hereof between the Vendor and the Purchaser providing for a referral arrangement between the Vendor and the Purchaser by which the Purchaser will be compensated for any sales of products of the Vendor that it refers to the Vendor;

"**Releasee**" has the meaning ascribed thereto in Section 4.8(a).

"**Releasor**" has the meaning ascribed thereto in Section 4.8(a).

"**Replacement Wave Employees**" has the meaning ascribed thereto in Section 4.2(c);

"**Representative**" of a Person includes an employee, agent, officer, director, auditor, adviser, shareholder, partner, or consultant or contractor (other than another party to this Agreement) of that Person;

"**Requestor**" has the meaning ascribed thereto in Section 4.6;

"**Reseller Agreement**" means the Reseller Agreement dated as of the date hereof between the Vendor and the Purchaser providing for the appointment of the Purchaser as a reseller of the Brightspace platform and ancillary services;

"**Resignation and Release**" has the meaning ascribed thereto in Section 4.2(b);

"**Retained Liabilities**" means any and all obligations and Liabilities arising out of or relating to:

(a) the D2L Business, the Excluded Assets (or any Liabilities otherwise not related to the Purchased Assets, the Assumed Liabilities or the Wave Business being transferred to the Purchaser), whether arising before, on or after Closing;

(b) the Purchased Assets or the Wave Business or its operations arising prior to Closing;

(c) employment-related Liabilities as set out in Section 4.2, Section 6.2(c) and Section 6.2(d) for which the Vendor is expressly and exclusively responsible;

(d) any and all Tax obligations and Liabilities relating to, arising out of or resulting from the Wave Business prior to Closing or any and all Tax obligations and Tax Liabilities of the Vendor and any Affiliate or Subsidiary thereof (excluding for these purposes the HoldCo, the Purchaser and their Subsidiaries) relating to, arising out of or resulting from (i) the Transaction contemplated by this Agreement and the Closing Agreements and (ii) any GST/HST obligations and Liabilities;

(e) any amounts payable by the Vendor or any Affiliate or Subsidiary thereof pursuant to the Contracts prior to or as of the Closing Time as recorded on the books and records of the Vendor or any Affiliate or Subsidiary thereof and determined in accordance with International Financial Reporting Standards applied on a consistent basis; and

(f) all Liabilities and obligations pursuant to the Excluded Contracts.

"**Securities Regulator**" means the applicable securities commission, regulator or regulatory authority in each of the provinces and territories of Canada;

"**Specified Receivable**" means:

(a) any Receivable owing to the Vendor pursuant to an invoice rendered by the Vendor under the **[REDACTED]** Contract in respect of services provided prior to the Closing Date and any right to any Receivable to be invoiced by the Vendor or the Purchaser pursuant to the **[REDACTED]** Contract after the Closing Date in respect of services provided prior to the Closing Date, in each case to the extent that such invoice relates or will relate to registrations for courses that have occurred prior to the Closing Date in respect of which the Vendor has made a payment to a person that is an education partner or other academic institution that is party to a Transferred Contract in respect of such course registrations; and

(b) a Receivable owing to the Vendor by an education partner or other academic institution that is party to a Transferred Contract in respect of a referral or other fee owing by that party to the Vendor pursuant to a Transferred Contract in respect of course registrations for which that party has received payment from the Vendor prior to the Closing Date.

"**Subsidiary**" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interest of which is sufficient to elect at least a majority of the board of directors or other governing body (or, if there are no such voting interests, fifty percent (50%) or more of the equity interest of which) is owned directly or indirectly by such first Person;

"**Tax Returns**" means all returns, information returns, reports, declarations, elections, notices, filings and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form;

"**Taxes**" means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, digital services taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, global minimum or "Pillar 2" taxes, GST/HST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, any requirement to pay or repay any amount to a Governmental Authority in respect of a tax credit, refund, rebate, governmental grant or subsidy, overpayment, or similar adjustment of Taxes, and any instalments in respect thereof, together with any tax indemnity obligation, interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and "Tax" means any one of such Taxes;

"**Third Party IP**" means all such intellectual property licensed to the Vendor (or one of its Subsidiaries) by third parties;

"**Transaction**" means the transactions contemplated by this Agreement and the Closing Agreements;

"**Transaction Personal Information**" has the meaning ascribed thereto in Section 4.9.

"**Transferred Contracts**" means any Contract, including each Contract listed on Schedule 1.1(b), that is assigned from the Vendor to the Purchaser in accordance with the terms of this Agreement and in respect of which the applicable Consent or consent to assignment or other requirement for assignment under the agreement has been obtained in each case, at the Closing Time, but excluding the Excluded Contracts;

"**Transitional Services Agreement**" means the Transitional Services Agreement between the Purchaser and the Vendor, dated as of the Closing Date;

"**Vendor**" has the meaning ascribed thereto in the preamble, and includes its successors and permitted assigns;

"**Vendor Group**" means the Guarantor, the Vendor and their respective Affiliates, and includes each of their respective successors and permitted assigns.

"**Vendor's Indemnified Parties"** means the Vendor and the Vendor's Affiliates and Subsidiaries and their respective Representatives, but excludes the HoldCo, the Purchaser and the Purchaser's wholly-owned Subsidiary SkillsWave LLC;

"**Wave Business**" means the business conducted by the Vendor consisting of the "D2L Wave" workforce education marketplace established by the Vendor to provide employees of Wave customers with the benefits of streamlining the approval, registration, and payment administration workflows and access to training course catalogs, analytics and request management;

"**Wave Employee**" means the Key Wave Employees and employees of the Vendor or its Subsidiaries listed on Schedule 1.1(c);

"**Wave IP**" means

(a) the trade-marks, business names and brands "Wave" and "SkillsWave" and all other permutations or derivatives thereof, and any rights in and to domain names using such words and any registrations or reservations in respect thereof, but in each case excluding any trade-mark, business name, brand or other word or phrase referred to in subsection (b) of the definition of Excluded Assets;

(b) the intellectual property and goodwill used exclusively in conduct of the Wave Business as of the Closing Time;

(c) the Wave Patents and the other intellectual property listed on Schedule 1.1(d); and

(d) the Wave Software,

but excluding, any Third Party IP and the Excluded Assets;

"**Wave Patents**" means the patent applications listed on Schedule 1.1(d); and

"**Wave Software**" means the workplace talent development and learning platform operated under the name "D2L Wave" by the Vendor.

1.2 <u>**Construction**</u>. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any party hereto because of the authorship of any provision of this Agreement. Any reference to any federal, provincial, state, local or foreign law shall be deemed also to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. Any reference to any contract (including schedules, exhibits and other attachments thereto), including this Agreement, shall be deemed also to refer to such contract as amended, restated or otherwise modified, unless the context requires otherwise. The words "include," "includes" and "including" shall be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context requires otherwise. The words "this Agreement," "herein," "hereof," "hereby," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. Where this Agreement states that a party hereto "will" or "shall" perform in some manner or otherwise act or omit to act, it means that such Person is legally obligated to do so in accordance with this Agreement. The captions, titles and headings included in this Agreement are for convenience only and do not affect this Agreement’s construction or interpretation. Any reference to an Article, Section, Schedule or Exhibit in this Agreement shall refer to an Article or Section of, or Schedule or Exhibit to, this Agreement, unless the context otherwise requires. Any reference to the parties hereto shall be deemed to include their respective Subsidiaries, unless stated otherwise.

1.3 <u>**Schedules and Exhibits**</u>. The following Schedules and Exhibits are attached to this Agreement and form an integral part of this Agreement for all purposes:

Exhibit A	-	Allocation of Consideration
Schedule 1.1(a)	-	**[REDACTED]** Contract Reliant Contracts
Schedule 1.1(b)	-	Contracts & Transferred Contracts
Schedule 1.1(c)	-	Wave Employees
Schedule 1.1(d)	-	Intellectual Property & Patents
Schedule 1.1(e)	-	Receivables
Schedule 3.1(d)	-	Consents

1.4 <u>**Subsidiaries.**</u> To the extent any covenants or agreements relate, directly or indirectly, to a Subsidiary of a party hereto, each such provision shall be construed as a covenant of the applicable party hereto to cause (to the fullest extent permitted by Applicable Law) such Subsidiary to perform the required action (or not perform the omitted action).

1.5 **Currency.** All references to dollars or to $ are references to Canadian dollars, unless otherwise specified. In the event that any amounts are required to be converted from a foreign currency to Canadian dollars or vice versa, such amounts shall be converted using the most recent closing exchange rate of the Bank of Canada available before the relevant calculation date.

1.6 **Date for Action; Computation of Time; Time References.** If the date on which any action is required to be taken hereunder by a party hereto is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day. References to days means calendar days and references to time are to local time, Toronto, Ontario, unless stated otherwise.

ARTICLE II
PURCHASE OF ASSETS

2.1 **Purchase and Sale of Purchased Assets**. As of the Closing Time, the Purchaser hereby purchases from the Vendor, and the Vendor hereby sells, transfers, conveys, assigns and delivers to the Purchaser, all right, title and interest in, to and under the Purchased Assets on and subject to the terms of this Agreement and otherwise on an "as is, where is" basis.

2.2 **Assumed Liabilities**. As of the Closing Time, on and subject to the terms of this Agreement, the Purchaser hereby assumes and agrees to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not be liable for any Liability of the Vendor other than the Assumed Liabilities. The Retained Liabilities shall remain the sole responsibility of, and shall be retained, paid and performed solely by, the Vendor.

2.3 **Consideration for the Purchased Assets**. The consideration payable by the Purchaser to the Vendor for the Purchased Assets (the "**Purchase Price**"), which together with the Assumed Liabilities having an agreed aggregate value of $2,000,000, shall be:

(a) issuance by the Purchaser to the Vendor of 70,000,000 Series A-1 Common Shares and 30,000,000 Series B-1 Common Shares in the capital of the Purchaser having an agreed aggregate value of $2,000,000 (the "**Consideration Shares**"); and

(b) the assumption of the Assumed Liabilities for the agreed value as set out in Exhibit A.

2.4 **Allocation of Consideration**.

(a) The Parties agree that the Purchase Price shall be allocated among the Purchased Assets in the manner set forth in Exhibit A. The Purchaser and the Vendor shall report an allocation of the Purchase Price among the Purchased Assets in a manner entirely consistent with Exhibit A and shall not take any position inconsistent therewith in the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to any Tax Returns.

(b) The Parties agree that, as between the Consideration Shares, 100% of the Purchase Price will be allocated to the Series B-1 Common Shares pursuant to Section 26(3) of the *Canada Business Corporations Act*.

2.5 Income Tax Election.

(a) Subsection 20(24) Election. The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under subsection 20(24) of the ITA in the manner required by subsection 20(25) of the ITA and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the ITA and under any other applicable provincial or territorial statute, as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the ITA and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.

(b) Section 22 Tax Election. If available, the Purchaser and the Vendor shall elect jointly in the prescribed form under section 22 of the ITA, section 184 of the *Taxation Act* (Québec), if applicable, and the corresponding provisions of any other applicable Tax statute as to the sale of the Receivables and designate in such election an amount equal to the portion of the Purchase Price allocated to the Receivables pursuant to Section 2.4. This election, or these elections, shall be made within the time prescribed for such elections.

(c) Section 85 Election. The Parties agree that they shall make and file joint elections pursuant to the provisions of subsection 85(1) of the ITA (and under the corresponding provisions of any other applicable provincial or territorial statute) in respect of the transfer of the Purchased Assets pursuant to this Agreement (the "**Section 85 Election**"), in prescribed form and within the prescribed time, specifying as the "Agreed Amounts" in respect of the Purchased Assets the amounts mutually agreed to by the Vendor and the Purchaser, acting reasonably, with the intent that such agreed amounts will result in the disposition of the Purchased Assets by the Vendor to the Purchaser on a tax-deferred basis to the extent permitted under the ITA and any corresponding provincial or territorial tax law that is applicable. If, at any time, the Agreed Amounts as set out in the Section 85 Election or any equivalent provincial or territorial election are determined, for any reason, by the Vendor and the Purchaser to require revision, then the Parties hereto will cooperate in good faith to adjust and amend the Section 85 Election in accordance with the ITA (and amend any applicable provincial or territorial election), at the Vendor's cost and expense, so that the Agreed Amounts in respect thereof will be the amounts determined as contemplated by this Section 2.5(c) and the Parties hereto hereby undertake to perform, at the Vendor's cost and expense, any other related action to give effect to the foregoing amendment. Any adjustment of the Agreed Amounts under this Section 2.5(c) will be deemed to adjust the Agreed Amounts effective as of the Closing Date, to the extent permitted under the ITA.

(d) Other Tax Elections. The Vendor and Purchaser agree to make such other Tax elections, if required or permitted by Applicable Law, as are mutually agreed to by them.

2.6 **GST/HST Election**. If applicable, the Vendor and the Purchaser shall execute jointly an election under section 167 of the *Excise Tax Act* (Canada) (the "**ETA**") to have the sale of the Purchased Assets take place on a GST/HST-free basis under Part IX of the ETA. The Purchaser shall file the election in the manner and within the time prescribed by the relevant legislation. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall indemnify and hold the Vendor harmless in respect of any GST/HST, penalties, interest and other amounts which may be assessed against the Vendor as a result of the transactions under this Agreement not being eligible for such election or as a result of the Purchaser's failure to file the election within the prescribed time.

2.7 **Delayed Transfer**.

(a) If within 24 months after Closing a Party discovers that:

(i) the Purchaser holds any Excluded Assets or the Vendor holds any Purchased Assets, then the Purchaser will promptly transfer (or cause to be transferred) such Excluded Assets to the Vendor (and the Vendor shall accept such transfer), and the Vendor will promptly transfer (or cause to be transferred) such Purchased Assets to the Purchaser (and the Purchaser shall accept such transfer), as applicable and in each case subject to obtaining any required consent or approval of any third Person or satisfying any applicable requirement of any applicable contract or Applicable Law (the "**Delayed Transfer Assets**"), with the Party possessing any such Delayed Transfer Assets after Closing holding such Delayed Transfer Assets in trust for and at the direction of the other Party in advance of such transfer in each case; and

(ii) the Purchaser holds any Retained Liabilities or the Vendor holds any Assumed Liabilities, then the Vendor will promptly assume (or cause to be assumed) such Retained Liabilities from the Purchaser, and the Purchaser will promptly assume (or cause to be assume) such Assumed Liabilities from the Vendor, as applicable (the "**Delayed Assumptions**"), with the Party possessing any such Delayed Assumptions after Closing holding such Delayed Assumptions in trust for and at the direction of the other Party in advance of such transfer in each case,

(b) From the Closing and until the earlier of (i) the date that is 24 months after Closing, and (ii) the date all such Delayed Transfer Assets are transferred or such Delayed Assumptions are assumed, the Vendor and the Purchaser shall, at their own cost and expense, as applicable, make commercially reasonable efforts to:

(i) maintain the existence and hold the applicable Delayed Transfer Assets and any proceeds therefrom in trust for the other Party and provide an accounting to the other Party of any proceeds from the applicable Delayed Transfer Assets;

(ii) maintain the existence and hold the applicable Delayed Assumptions and any proceeds therefrom in trust for the other Party;

(iii) provide the Purchaser the allowable use of and unrestricted access to the Delayed Transfer Assets as permitted by Applicable Law; and

(iv) only use, maintain, hold, dispose of or otherwise deal with the Delayed Transfer Assets and/or the Delayed Assumptions or third Persons to whom such assets or obligations relate, as applicable, in accordance with the written instructions or consent or direction of the Party for which such assets or obligations are being held in trust.

(c) If any consent or approval of any third Person is required to be obtained or requirement of any applicable contract or Applicable Law is required to be satisfied in connection with a transfer or assumption in accordance with Section 2.7(a), the Parties shall use their respective commercially reasonable efforts to obtain such consent or approval or satisfy such requirement, failing which the Parties will not proceed with such transfer or assumption.

(d) To the extent that any Contract or any claim, right or benefit arising under or resulting from such Contract is not capable of being transferred without the consent of any third Person, or if the transfer of any Contract would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the consent of such third Person is obtained, except as otherwise expressly provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer any such Contract unless and until such consent has been obtained. In such event, the Parties shall negotiate in good faith to modify or supplement the terms hereof and any then-existing arrangements between such Party and any third Person in respect of such Delayed Transfer Asset or Delayed Assumptions to reflect the fact that such asset or obligation is not capable of being transferred in accordance with this Section 2.7(d), including the re-allocation of the Purchase Price under Sections 2.3 and 2.4 and any affected Tax-related elections or filings (or revised elections or filings) required or permitted under Sections 2.5 and 2.6 to reflect the same.

(e) Without limiting the generality of Section 2.7(a), if within 24 months after Closing a Party discovers that:

(i) the Purchaser holds any Specified Receivable, then the Purchaser will promptly transfer (or cause to be transferred) such Specified Receivable to the Vendor (and the Vendor shall accept such transfer), with the Purchaser holding such Specified Receivable in trust for and at the direction of the Vendor in advance of such transfer in each case;

(ii) the Purchaser holds any Liability relating to any Specified Receivable, then the Vendor will promptly assume (or cause to be assumed) such Liability from the Purchaser with the Purchaser holding such Liability in trust for and at the direction of the Vendor in advance of such transfer; and

(iii) the Vendor holds any Receivable or receives any associated proceeds, revenues or Liabilities associated with a Receivable that is not a Specified Receivable, the Parties will cooperate in good faith to complete a reconciliation of such Receivables to ensure all pre-Closing Receivables and associated proceeds, revenues and Liabilities are for the account of the Vendor and all post-Closing Receivables and associated proceeds, revenues and Liabilities are for the account of the Purchaser, and the Vendor will promptly transfer and remit (or cause to be transferred and remitted) such Receivables and all proceeds, revenues and Liabilities relating thereto to the Purchaser.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 **Representations and Warranties of the Vendor**. The Vendor hereby represents and warrants to the Purchaser and acknowledges that the Purchaser is relying upon such representations and warranties in connection with entry into this Agreement, the purchase by the Purchaser of the Purchased Assets and the assumption by the Purchaser of the Assumed Liabilities, that:

(a) the Vendor is a corporation duly organized and validly existing under the laws of the Province of Ontario, with full power and authority to enter into this Agreement and the other Closing Agreements;

(b) all corporate and other proceedings required to be taken by or on the part of the Vendor to authorize it and any applicable Subsidiaries to execute, deliver and carry out this Agreement and the other Closing Agreements and to contribute, sell, assign, transfer, convey and deliver the Purchased Assets and the Assumed Liabilities to the Purchaser have been duly and properly taken. Neither the execution and delivery of this Agreement or the other Closing Agreements by the Vendor, nor compliance with its or their terms, will result in a breach or violation of the constating documents of the Vendor or, other than in any material respect and as at the date of the Letter Agreement, Applicable Law, contracts or arrangements to which the Vendor or its Subsidiaries is a party or by which any of their property or business is bound, as applicable;

(c) this Agreement and the other Closing Agreements constitutes the valid and binding obligation of the Vendor and any applicable Subsidiary enforceable against the Vendor and any applicable Subsidiary in accordance with its terms subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;

(d) no consent or approval of any Person or Governmental Authority is required by or with respect to the Vendor or any applicable Subsidiary in connection with the execution and delivery of this Agreement and the other Closing Agreements and the consummation of the transactions contemplated hereby and thereby, except for such consents or approvals that, individually or in the aggregate, would not have a Material Adverse Effect on the Wave Business or are as disclosed in Schedule 3.1(d);

(e) the Vendor has good and marketable legal and beneficial title to all of the Purchased Assets (other than the Wave IP), free and clear of any and all Liens of any other Person except for Permitted Liens and any such Liens that, individually or in the aggregate, would not have a Material Adverse Effect on the Wave Business;

(f) to the knowledge of the Vendor, there are no Liabilities in respect of the Purchased Assets or the Wave Business, other than the Assumed Liabilities and the Retained Liabilities;

(g) based solely on the Knowledge of the CLO, as of the date hereof there are no Legal Proceedings in progress, pending or threatened against or affecting the Wave Business or any of the Purchased Assets or the Assumed Liabilities that, individually or in the aggregate, would have a Material Adverse Effect on the Wave Business;

(h) the Vendor is purchasing the Consideration Shares as principal and comes within the categories of persons who are referred to in section 2.4(2) of NI 45-106;

(i) the Vendor is not a non-resident of Canada for purposes of the ITA;

(j) the Vendor is registered for GST/HST purposes under the ETA and its registration number is **[REDACTED]**; and **[REDACTED: PERSONAL INFORMATION]**

(k) except as would not result in a Material Adverse Effect, since the date of the Letter Agreement, the Vendor has conducted the Wave Business only in the ordinary course consistent with past practice, in accordance with Applicable Law and all governing Contracts and otherwise in accordance in all material respects within the budget for the Purchaser approved by the Board of Directors of the Vendor on March 19, 2024, subject to such conduct as is necessary in the Vendor's reasonable discretion to close and implement the Transaction as contemplated by this Agreement. Except (i) as would not result in a Material Adverse Effect or (ii) in accordance with the foregoing provisions of this Section 3.1(k), the Vendor has not without the prior written consent of the Purchaser, and provided such actions were also taken (or omitted to be taken) with the prior written consent of the HoldCo:

    (i) transferred, assigned or otherwise disposed of any Purchased Assets;

    (ii) made any acquisitions or commitments for capital expenditures or incurred any obligations or indebtedness, in each case on behalf of the Wave Business or the Purchaser;

    (iii) terminated or changed the terms of employment of any of the Wave Employees (other than (i) what was required in the ordinary course of business consistent with past practice, (ii) as has been agreed to by John Baker in respect of certain terminations or pausing in hiring of employees, or (iii) as otherwise provided herein); or

    (iv) amended any material provision of the Contracts in any manner adverse to the Purchaser in any material respect, other than (i) as reasonably required to obtain the consent of the counterparty to the assignment to the Purchaser contemplated herein, and (ii) in consultation with the Purchaser.

EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT OR ANY OTHER CLOSING AGREEMENT, THE VENDOR SPECIFICALLY DISCLAIMS (ON ITS OWN BEHALF AND ON BEHALF OF ITS SUBSIDIARIES (OTHER THAN THE PURCHASER AND THE PURCHASER'S SUBSIDIARIES AND THEIR REPRESENTATIVES) AND REPRESENTATIVES) ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY WITH RESPECT TO MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PURCHASED ASSETS, ANY PART THEREOF, THE WORKMANSHIP THEREOF, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT THE PURCHASED ASSETS ARE OTHERWISE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND THE PURCHASER SHALL RELY SOLELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF AND THE REPRESENTATIONS AND WARRANTIES OF THE VENDOR EXPRESSLY SET FORTH IN THIS SECTION 3.1.

3.2 **Representations and Warranties of the Purchaser**. The Purchaser hereby represents and warrants to the Vendor and the Guarantor and acknowledges that the Vendor and Guarantor are relying upon such representations and warranties in connection with the entry into this Agreement, the sale by the Vendor of the Purchased Assets and the transfer by the Vendor to the Purchaser of the Assumed Liabilities, that:

(a) the Purchaser is a corporation duly organized and validly existing under the laws of Canada, with full power and authority to enter into this Agreement and the other Closing Agreements;

(b) all corporate and other proceedings required to be taken by or on the part of the Purchaser to authorize it and any applicable Subsidiaries to execute, deliver and carry out this Agreement and the other Closing Agreements have been duly and properly taken. Neither the execution and delivery of this Agreement or the other Closing Agreements by the Purchaser, nor compliance with its or their terms, will result in a breach or violation of the constating documents of the Purchaser;

(c) this Agreement and the other Closing Agreements constitutes the valid and binding obligation of the Purchaser and any applicable Subsidiaries enforceable against the Purchaser and any applicable Subsidiaries in accordance with its terms subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;

(d) the Purchaser is a "private issuer" within the meaning of NI 45-106; and

(e) the Purchaser is registered for GST/HST purposes under the ETA and its registration number is **[REDACTED]**. **[REDACTED: PERSONAL INFORMATION]**

3.3 **Representations and Warranties of the Guarantor**. The Guarantor hereby represents and warrants to the Purchaser and acknowledges that the Purchaser is relying upon such representations and warranties in connection with the entry into this Agreement, the sale by the Vendor of the Purchased Assets and the transfer by the Vendor to the Purchaser of the Assumed Liabilities, that:

(a) the Guarantor is a corporation duly organized and validly existing under the laws of Canada, with full power and authority to enter into this Agreement and the other Closing Agreements to which it is a party;

(b) all corporate and other proceedings required to be taken by or on the part of the Guarantor to authorize it and any applicable Subsidiaries to execute, deliver and carry out this Agreement and the other applicable Closing Agreements have been duly and properly taken. Neither the execution and delivery of this Agreement or the other applicable Closing Agreements by the Guarantor, nor compliance with its or their terms, will result in a breach or violation of the constating documents of the Guarantor;

(c) this Agreement and the other applicable Closing Agreements constitutes the valid and binding obligation of the Guarantor and any applicable Subsidiaries enforceable against the Guarantor and any applicable Subsidiaries in accordance with its terms subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought; and

(d) no consent or approval of any Person or Governmental Authority is required by or with respect to the Guarantor or any applicable Subsidiary in connection with the execution and delivery of this Agreement and the other Closing Agreements and the consummation of the transactions contemplated hereby and thereby, except for such consents or approvals that, individually or in the aggregate, would not have a Material Adverse Effect on the Wave Business or are as disclosed in Schedule 3.1(d).

3.4 **Survival of Representations and Warranties**. The representations and warranties of the parties hereto set forth in this Agreement shall survive after the Closing Time. The limitation period applicable to any proceeding in respect of such representations and warranties shall be as prescribed by Applicable Law.

ARTICLE IV
COVENANTS

4.1 **Consents**.

(a) The Parties shall cooperate and use their respective commercially reasonable efforts, and in the case of the Consents, their reasonable best efforts, to obtain as promptly as practicable after the Closing all consents to assignment or other consents required in respect of the Transaction from any counterparties under each of the Contracts; *provided that* the Parties agree that (i) as a condition of any such consent or Consent, as applicable, and related assignment of a Contract, the Vendor will not remain obliged under the applicable Contract for the remainder of its current term, including acting as a reseller, and (ii) the Vendor shall not be obliged to agree to any condition or term of consent or Consent, as applicable, to the extent that it determines, acting reasonably and having sought and taken into account the advice of a Canadian "big 4" national accounting firm other than its auditor KPMG LLP, that such condition or term would adversely affect the prospect of satisfying the Deconsolidation Opinion; and further provided that the direct, out-of-pocket expense of obtaining such consent or Consent, as applicable, payable to any third party Person shall be (i) in the case of consent or Consent related to any customer Contract, borne by D2L; and (ii) in the case of any other consent or Consent, mutually agreed upon by the Parties.

(b) To the extent that Consents sought by the Parties pursuant to Section 4.1(a) are not obtainable in respect of any Contract, as mutually determined by the Parties, each acting reasonably, the Parties agree that such Contracts will be deemed to be an "Excluded Asset," that the obligations and Liabilities under such Transferred Contract shall be deemed to be a "Retained Liability", and that the Vendor shall have the right to terminate or agree to any amendment to any such Contract after Closing, but subject in all cases to compliance with the provisions of Section 2.7.

4.2 Employment Matters

(a) Other than any Wave Employees or Replacement Wave Employees that are hired by the Purchaser or its Subsidiaries pursuant to the terms of the Employee Offers, and any services provided under the Transitional Services Agreement, the Purchaser will establish a separate management and employment team from the Vendor and its Affiliates and, other than with respect to John Baker, there will be no overlap of leadership teams or employees between the Purchaser and the Vendor, and their respective Affiliates; except that, for so long as the HoldCo maintains control over the Purchaser, John Baker, in his capacity as Executive Chair of the Purchaser, may dedicate no more than 25% of his professional time to matters involving the Wave Business. The Purchaser hereby agrees and covenants that John Baker will not hold any office or other position with the Purchaser or any of its Subsidiaries other than Executive Chair and director for so long as he is the Chair of the Board of Directors of or an officer of the Guarantor.

(b) The Purchaser or one of its Subsidiaries will make an offer of employment to each of the Wave Employees (including the Key Wave Employees) (collectively, the "**Employee Offers**") conditional on Closing and execution of a Resignation and Release. Each Employee Offer will be on compensation terms (including base salary, cash incentives vacation and equity-based compensation), benefits and other terms that are in aggregate no less favourable than the current terms of employment of such employee with the Vendor or its Affiliates, and contain termination, confidentiality, intellectual property assignment, non-solicitation and non-competition provisions (if legally permissible) substantially in the form of their respective employment agreements with the Vendor or its Affiliates, with recognition of each Wave Employee’s pre-Closing employment with Vendor and its Affiliates for all employment-related purposes, it being understood that:

(i) if any Wave Employee accepts an Employee Offer and executes a Resignation and Release in favour of the Vendor and its Affiliates effective at the time of Closing in a form satisfactory to the Vendor, acting reasonably (a "**Resignation and Release**"), then following Closing, if such Wave Employee is terminated without cause by the Purchaser or its

Subsidiary (including a constructive dismissal or resignation for good reason) within the six (6) month period immediately following Closing, such employee will be entitled to receive a separation package from the Purchaser or its Subsidiary calculated having regard to their full tenure with the Vendor and the Purchaser and their respective Affiliates, and the Vendor's severance arrangements in effect immediately prior to the Closing Time, as mutually agreed by the Parties (and with the prior written consent of the HoldCo), which amount will be paid by the Purchaser or its Subsidiary as employer on the termination of employment and fully funded to the Purchaser, in advance, by the Vendor, provided that such amount shall not be paid by the Purchaser or its Subsidiary or funded by the Vendor if the Wave Employee accepts an offer of employment from the Vendor or its Affiliates except to the extent that (i) such offer of employment does not constitute full mitigation of the separation package from the Purchaser (and funded by the Vendor, as aforesaid) to which the Wave Employee is entitled, such amount to be mutually agreed by the parties, acting reasonably, and (ii) the Wave Employee has not provided a satisfactory release in favour of the Purchaser and its Subsidiaries, as determined by the Purchaser acting reasonably (and with the prior written consent of the HoldCo), in respect of their entitlement;

(ii) if any Wave Employee who accepts an Employee Offer and executes a Resignation and Release has any accrued but unpaid or unused vacation entitlements as of the time of Closing, the Vendor or its Affiliates (other than the Purchaser or its Subsidiaries) shall make payment to such employee of an amount equal to such accrued but unpaid or unused vacation entitlement to the employee through the Vendor's or its Affiliate's (other than the Purchaser or its Subsidiaries) usual payroll system in the first payment cycle immediately following Closing; and

(iii) to the extent that a Wave Employee accepts an Employee Offer and executes a Resignation and Release effective on the Closing, the Vendor agrees to accelerate the vesting of their rights under any restricted stock units granted to them pursuant to the long-term incentive plan of the Vendor to the extent that they were scheduled to have vested on or prior to January 31, 2025.

(c) With respect to services required by the Purchaser or its Subsidiaries that would have otherwise been provided by a Wave Employee that does not accept an Employee Offer, the Parties will cooperate in good faith (and in consultation with the HoldCo) to identify and facilitate the hiring of suitable replacement employees, including employees of the Vendor or its Affiliates (the "**Replacement Wave Employees**") on or prior to Closing, provided that in the case of Replacement Wave Employees, the Vendor's prior written consent, which may be unreasonably withheld, shall be required in respect of any employee of the Vendor identified by the Purchaser as a potential Replacement Wave Employee, it being understood that the Vendor may determine not to provide its consent (i) to the extent that the individual is not in the same functional area as a Wave Employee that does not accept an Employee Offer; (ii) that the individual is regarded by the Vendor as performing a critical role or is involved in one or more ongoing priority projects relating to the D2L Business; or (iii) that the individual's departure would be otherwise materially adverse to a current business priority of the Vendor relating to the D2L Business.

4.3 **Confidentiality**.

(a) From the date hereof until the date that is five (5) years following the Closing Date, the parties hereto shall treat confidentially and not disclose, and shall cause each of its Representatives to treat confidentially and not disclose, other than as expressly contemplated by this Agreement, any Confidential Information of each other party hereto. Each party hereto shall use, and shall cause its Representatives to use, reasonable safeguards and protections that are no less stringent than those such Recipient uses with respect to its own Confidential Information of a similar nature, in order to maintain the confidentiality and security of any Confidential Information of each other party hereto.

(b) If a party hereto or any of its Representatives is required by: (i) Applicable Law; (ii) the request or Order of a Governmental Authority; or (iii) a valid and effective legal process, to disclose all or any part of the Confidential Information of each other party hereto, such party shall, to the extent legally permitted, (a) immediately notify the other parties hereto of the request or requirement, (b) consult with the other parties hereto on the advisability of taking legally available steps to resist or narrow the request or lawfully avoid the requirement, and (c) if requested by another party hereto, take all necessary steps to seek a protective order or other appropriate remedy, it being agreed that the Purchaser shall not be required to participate in any proceeding involving any Governmental Authority. If a protective order or other remedy is not available, or if the other parties hereto waive or fail to waive compliance with the provisions of this Section 4.3(b), (i) the party receiving the request for disclosure or its Representatives, as the case may be, may disclose to the Person requiring disclosure only that portion of the Confidential Information which such party is advised by written opinion of counsel is legally required to be disclosed, and (ii) such party shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by such party or its Representatives not permitted by this Agreement.

(c) From and after the Closing, each of the Guarantor and the Vendor shall, and shall cause their respective Affiliates and Subsidiaries and their respective Representatives to, maintain the confidentiality of all confidential or non-public information relating to the Purchased Assets and the Assumed Liabilities, this Agreement and any other Closing Agreement executed or delivered in connection with this Agreement, except any disclosure of such information and agreements as may be required by Applicable Law or otherwise with the prior written consent of the Purchaser, it being understood by the parties hereto that from and after the Closing Time, all information relating to the Purchased Assets, the Assumed Liabilities and the Wave Business will constitute confidential and proprietary information of the Purchaser and will not constitute confidential or proprietary information of the Guarantor, the Vendor or any of their respective Affiliates or Subsidiaries (excluding for these purposes the Purchaser and its Subsidiaries). The Vendor shall deliver all books and records relating to the Purchased Assets, the Assumed Liabilities and the Wave Business to the Purchaser on Closing and, thereafter, shall promptly provide to the Purchaser all additional documents, communications or other information it or any of its Affiliates or Subsidiaries may receive or obtain access to from time to time relating to the Purchased Assets, the Assumed Liabilities or the Wave Business transferred to the Purchaser pursuant to this Agreement.

(d) The Purchaser acknowledges and agrees that it is aware, and it shall advise its employees, that (i) the Confidential Information of the Vendor and its Affiliates may include material non-public information and that Canadian securities laws impose restrictions on trading securities when in possession of such information and on communicating such information to any other Person, and (ii) they remain subject to the restrictions under the Insider Trading Policy of the Vendor and its Affiliates in respect of such information.

4.4 **Cooperation.** The Purchaser shall cooperate fully, and shall use commercially reasonable efforts to cause its Subsidiaries and Representatives to cooperate fully, with the Guarantor or its Subsidiaries, at the Guarantor's cost, to the extent reasonably requested by the Guarantor in the preparation of any filings required to be made by the Guarantor with any Securities Regulator pursuant to applicable securities laws, or otherwise required to be made publicly available by or on behalf of the Guarantor (collectively, the "**Public Filings**"). Prior to any printing or public release of any Public Filings, the Guarantor shall provide the Purchaser and its applicable Representatives with advance notice of such requirements and a reasonable opportunity to review and comment on all such Public Filings, and, in exchange, an appropriate executive officer of the Purchaser shall, if requested by the Guarantor, certify on behalf of the Purchaser (and not in his or her personal capacity) that the information relating to the Purchaser or the Wave Business in such Public Filings is accurate, true, complete and correct in all material respects.

4.5 **Release of Obligations**. The Purchaser will use its commercially reasonably efforts as promptly as practicable following the Closing to cause the Vendor to be released from all of its obligations in respect of all Purchased Assets.

4.6 **Access to Information**. Each Party shall provide a requesting party (the "**Requestor**") with reasonable access upon reasonable advance written request to all information (other than information that is (a) protected from disclosure by the attorney-client privilege or work product doctrine, (b) the subject of a confidentiality agreement between such party and a third party that prohibits disclosure to the other party, or (c) prohibited from disclosure under Applicable Law) owned by such Party or within such Party's possession that relates to either the Wave Business or in the case of the Vendor, the business, assets or Liabilities of the Vendor, and such access is reasonably required by the Requestor (i) to comply with requirements imposed on the Requestor by any Governmental Authority, (ii) for use in any proceeding (except for a litigation matter involving one or more Parties), (iii) to satisfy audit, accounting, tax or similar requirements, (iv) to obtain insurance, or (v) to comply with the Requestor's obligations under this Agreement or any other Closing Agreement. The Purchaser shall adopt and comply with a prudent record retention policy with respect to information owned by or in its possession or control and created prior to the time of Closing. Each Party shall preserve and retain information in its possession or control in accordance with its record retention policy or for any longer period as may be required by (a) any Governmental Authority, (b) any litigation matter, (c) Applicable Law, or (d) any Closing Agreement.

4.7 **Compliance with Applicable Law and Policies**. Each Party shall comply with all Applicable Laws and, to the extent required by the Transferred Contracts, the applicable policies prescribed in such Transferred Contracts, if any.

4.8 Release.

(a) As a material inducement to the Vendor Group and the Purchaser Group to enter into this Agreement, effective as of the Closing, each of the Vendor Group and the Purchaser Group (collectively, and each, a "**Releasor**"), agrees, other than as contemplated in Sections 4.2, 6.2 and 6.3, as applicable and except as otherwise contemplated under any Closing Agreement (excluding, for purposes of this Section 4.8, in the case of the Vendor, the Purchaser and the Purchaser's Subsidiaries), not to sue and fully releases and forever discharges the Purchaser Group or the Vendor Group, as applicable, and each of their respective directors, officers, employees, members, managers, equityholders, agents, assigns and successors, past and present (collectively, and each, a "**Releasee**"), in respect of and from any and all actions, causes of action, suits, claim, debts, Liabilities, duties, demands, accounts, bonds, covenants, contracts, proceedings, losses, cost, Taxes, obligations, damages available at law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages), diminution in value, interest, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind or nature in law, equity or otherwise, that the Releasor ever had, now has or can, shall or may hereafter have against the Releasee for or by reason of or in any way arising out of any fact, matter or event (individually referred to as a "**Claim**" and collectively, the "**Claims**"); provided, that nothing in this Section 4.8 shall (i) operate to release or discharge any Claim by a Releasor against a Person in respect of their employment by either the Vendor Group or the Purchaser Group, as applicable, or (ii) operate to release or discharge any obligation of any Releasee under any Closing Agreement or prohibit a Releasor (as applicable) from enforcing its rights under any Closing Agreement. It is the intention of each Releasor that such release be effective as a bar to each and every demand and Claim hereinabove specified and in furtherance of such intention, each Releasor hereby expressly waives, effective as of the Closing, any and all rights and benefits conferred upon such Person by the provisions of Applicable Law and expressly agrees that this release will be given full force and effect according to each and all of its express terms and provisions.

(b) Each of the Vendor Group and the Purchaser Group further covenants and agrees not to make or continue any Claim against any Person which might be entitled to claim, pursuant to the provisions of any Applicable Law or otherwise, contribution, indemnity or other relief over against any Releasee arising out of or in relation to the matters released or discharged pursuant to Section 4.8(a).

(c) Each of the Vendor Group and the Purchaser Group hereby represents, warrants and covenants that such party has not assigned and will not assign to any other Person any of the Claims that the undersigned is releasing herein.

4.9 Transaction Personal Information.

(a) To the extent a party hereto discloses any Personal Information to another party hereto as a result of the consummation of the Transaction or otherwise in connection with this Agreement (the "**Transaction Personal Information**"), the receiving party will:

(i) only use and disclose such Transaction Personal Information solely: (i) for the purposes for which such Transaction Personal Information was initially collected, or was permitted to be used or disclosed, prior to the Closing; or (ii) as otherwise permitted under applicable Privacy Laws;

(ii) protect such Transaction Personal Information using security safeguards appropriate to the sensitivity of the information; and

(iii) give effect to any withdrawal of consent requested by the individual to whom such Transaction Personal Information pertains.

(b) Without limiting the obligations set forth in Section 4.9(b), the Parties acknowledge that: (i) the email accounts associated with the Wave Business ("**Transferred Email Accounts**") that are to be transferred to Purchaser as part of the Purchased Assets may contain Personal Information that forms part of the Excluded Assets ("**Vendor PI**"); and (ii) Vendor is subject to applicable Privacy Laws and contractual obligations in respect of the Vendor PI. To ensure compliance with applicable Privacy Laws and Vendor's contractual obligations, until all Vendor PI has been deleted or destroyed in accordance with section (v) below, the Purchaser shall:

(i) Ensure that all Transferred Email Accounts and Vendor PI are hosted and stored only in Canada;

(ii) Not access or use Vendor PI for any purpose except as instructed in writing by Vendor or as necessary to facilitate the deletion or destruction in accordance with section (v) below;

(iii) Not disclose any Vendor PI to any person except as instructed in writing by Vendor or as otherwise required under Applicable Law;

(iv) Promptly notify Vendor of any breach of security safeguards protecting the Vendor PI that result in incident involving the actual or reasonably suspected unauthorized access to, or unauthorized use or disclosure of, Vendor PI; and

(v) Ensure that the Vendor PI is subject to commercially reasonable record retention policies and schedules and that Vendor PI is securely deleted or destroyed in accordance with such policies and schedules.

ARTICLE V
CLOSING ARRANGEMENTS

5.1 **Closing**. The Closing shall take place at the Closing Time at the offices of the Blake, Cassels & Graydon LLP in the City of Toronto, Ontario on {{month}} {{day}}, 2024 (the "**Closing Date**").

5.2 **Closing Deliveries by the Guarantor and the Vendor**. Each of the Guarantor and the Vendor shall deliver or cause to be delivered to the Purchaser at Closing the Closing Agreements, other than this Agreement, to which the Guarantor or the Vendor (or its applicable

Affiliate) is a party, duly executed by the Guarantor and/or the Vendor, as applicable (or its applicable Affiliate).

5.3 **Closing Deliveries by the Purchaser**. The Purchaser shall deliver or cause to be delivered to the Guarantor and/or the Vendor, as applicable, at Closing:

(a) the Consideration Shares, duly executed by the Purchaser; and

(b) the Closing Agreements other than this Agreement to which the Purchaser is a party, duly executed by the Purchaser (or its applicable Affiliate).

5.4 **Possession**. At the Closing Time, the Vendor shall deliver or cause to be delivered to the Purchaser or its nominee possession of the Purchased Assets.

ARTICLE VI
INDEMNIFICATION

6.1 **Survival**.

(a) Except as set forth in Section 6.1(b), all provisions of this Agreement and of any other agreement, certificate or instrument delivered pursuant to this Agreement, shall not merge on Closing but shall survive the execution, delivery and performance of this Agreement, the Closing and the execution and delivery of any transfer documents or other documents of title to the Purchased Assets and all other Closing Agreements, certificates and instruments delivered pursuant to this Agreement and the payment of the consideration for the Purchased Assets.

(b) The representations and warranties of each party hereto contained in this Agreement will not merge on and will survive the Closing and will continue in full force and effect, notwithstanding the Closing until: (i) in the case of the representations and warranties of the Vendor set forth in Sections 3.1(a), 3.1(b) and 3.1(c), the representations and warranties of the Purchaser set forth in Sections 3.2(a), 3.2(b) and 3.2(c), and the representations and warranties of the Guarantor set forth in Sections 3.3(a), 3.3(b) and 3.3(c) without limit as to time; and (ii) with respect to all other representations and warranties of each party hereto, until the second anniversary of the Closing Date.

6.2 **Indemnity by the Vendor**. The Vendor shall indemnify the Purchaser's Indemnified Parties and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

(a) any incorrectness in or breach of any representation or warranty of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(b) any breach or any non-fulfilment of any covenant or agreement on the part of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(c) all pre-Closing employment-related Liabilities for employees of the Vendor or its Subsidiaries who were involved in the Wave Business or D2L Business prior to the

Closing, including any Key Wave Employees, Wave Employees and Replacement Wave Employees, and such Liabilities shall include all severance and benefits liabilities for such employees who do not accept Employee Offers made in accordance with this Agreement or are not offered employment by the Purchaser or its Subsidiaries or remain employed by Vendor or its Affiliates; and

(d) any post-Closing employment-related claims as may be made by Wave Employees involved in the Wave Business or D2L Business pre-Closing, against the Purchaser or any Subsidiary thereof, that are related to events occurring pre-Closing or in connection with the Transaction or the transition of their employment from the Vendor to the Purchaser or its Subsidiaries.

6.3 **Indemnity by the Purchaser**. The Purchaser shall indemnify the Vendor's Indemnified Parties and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

(a) any incorrectness in or breach of any representation or warranty of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(b) any breach or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

(c) subject to Sections 4.2(b)(i), 4.2(b)(ii), 6.2(c) and 6.2(d), all post-Closing employment-related Liabilities for Wave Employees (including Key Wave Employees) and Replacement Wave Employees who accept Employee Offers and commence employment with the Purchaser or its Subsidiaries post-Closing, including all severance and benefits Liabilities for such employees whose employment is terminated by the Purchaser or its Subsidiaries following Closing.

6.4 **Certain Limits on Indemnity**.

(a) No Damages may be recovered from the Vendor pursuant to Section 6.2 or from the Purchaser pursuant to Section 6.3 unless a notice of claim for indemnity under Section 6.3(a) or Section 6.3(b), as applicable, is delivered by the other Party on or before the second anniversary of the Closing Date.

(b) No Damages may be recovered from the Vendor pursuant to Section 6.2 or from the Purchaser pursuant to Section 6.3 unless and until the accumulated aggregate amount of Damages of the Purchaser's Indemnified Parties arising pursuant to Section 6.2 or Section 6.3, as applicable, exceeds $100,000, in which event the accumulated aggregate amount of all such Damages may be recovered.

(c) The aggregate indemnification Liability of the Vendor with respect to all claims under Section 6.2 or the Purchaser with respect to all claims under Section 6.3 shall not exceed an amount equal to the Purchase Price plus the agreed amount, if any, of the Assumed Liabilities.

ARTICLE VII
MISCELLANEOUS

7.1 **Notices**. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, by prepaid nationally recognized overnight courier, or by email to the Purchaser or to the Vendor, as the case may be, at their respective addresses set forth below:

If to the Purchaser, to:	SkillsWave Corporation 66 Wellington Street West, Suite 5300 TD Bank Tower, Box 48 Toronto, Ontario M5K 1E6 Attention: Mr. John Baker Email: **[REDACTED]**
If to the Vendor or the Guarantor, to:	D2L Inc. 137 Glasgow Street, Suite 560 Kitchener, ON N2G 4X8 Attention: Anna Forgione Email: **[REDACTED]**

[REDACTED: PERSONAL INFORMATION]

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

7.2 **Notice and Cure**. Each party hereto shall promptly notify the other parties hereto of the occurrence, or failure to occur, of any event or state of facts which occurrence or failure would, or would be reasonably expected to result in the failure to comply with or satisfy in all material respects any material condition or agreement contained in this Agreement to be complied with or satisfied by such party prior to or at the time of Closing.

7.3 **Successors and Assigns**.

(a) The Vendor may assign this Agreement, in whole or in part, to any direct or indirect wholly-owned Subsidiary (other than the Purchaser and its Subsidiaries), without the consent of the Purchaser, provided that any such transfer shall be subject to such transferee or assignee first entering into an agreement to be bound by all of the Vendor's rights and obligations under this Agreement, in form and substance satisfactory to the Purchaser, acting reasonably, and in no case shall the Vendor be released from any of its rights or obligations under this Agreement or any other Closing Agreement.

(b) The Purchaser shall not assign this Agreement without the prior written consent of the Vendor (and any assignment or transfer in violation of the foregoing will be void), provided that the Purchaser shall have the right to assign its rights or obligations under this Agreement to any of its wholly-owned Subsidiaries or Affiliates in connection with a corporate reorganization or restructuring; provided that any such assignment (a) shall require the prior written consent of the Vendor (which consent shall not be unreasonably withheld, delayed, or conditioned), and (b) shall be subject to such assignee first entering into an agreement to be bound by all of the Purchaser's rights and obligations under this Agreement, in form and substance satisfactory to the Vendor, acting reasonably, and in no case shall the Purchaser be released from any of its rights or obligations under this Agreement or any other Closing Agreement.

(c) This Agreement enures to the benefit of, and binds the parties hereto and their respective successors and permitted assigns.

7.4 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

7.5 **Further Assurances**.

(a) Subject to the provisions of this Agreement, each party hereto will, from time to time, as its own cost and expense, do all acts and things and execute and deliver all such further documents and instruments, as another party hereto may, either before the Closing, reasonably require or request to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement and, following the completion of the Transaction, to document or evidence any of the transactions or events set out herein.

(b) The Vendor agrees that, from time to time after the date hereof, it shall, at its sole expense, at the reasonable request of the Purchaser, execute and deliver, or cause to be executed and delivered, such other and further instruments of sale, transfer, assignment and conveyance and take such other and further action as may be necessary or appropriate in order to (a) document the Purchaser's ownership of all of the Vendor's right, title and interest in, to and under the Purchased Assets contemplated by this Agreement to be sold, transferred, assigned, conveyed and delivered to the Purchaser, (b) vest in the Purchaser ownership of all of the Vendor's right, title and interest in, to and under the Purchased Assets as required by this Agreement, (c) put the Purchaser in possession of the Purchased Assets, and (d) assist the Purchaser in demonstrating or otherwise evidencing to third parties that the Vendor has transferred to the Purchaser all of the Vendor's right, title and interest in, to and under the Purchased Assets. The Purchaser agrees that from time to time after the date hereof, it shall, at its sole expense, at the reasonable request of the Vendor, execute and deliver, or cause to be executed and delivered, such other and further instruments of assumption and take such other and further action as may be necessary or appropriate in order to give effect to the Purchaser's assumption of the Assumed Liabilities. If any party to this Agreement discovers that the Vendor holds any right, title or interest in, to or under the Purchased Assets contemplated by this Agreement to be sold, transferred, assigned, conveyed and delivered to the Purchaser, such party shall provide notice of such fact to the other party, and the Vendor shall promptly cause to be executed and delivered instruments of sale, transfer, assignment and conveyance as may be necessary or appropriate in order to vest in the Purchaser ownership of all of such right, title and interest in, to and under such Purchased Assets.

7.6 **Amendment**.

(a) Subject to Section 7.6(b), this Agreement may be amended by mutual written agreement of the parties hereto.

(b) Notwithstanding Section 7.6(a),

(i) the parties hereto agree that, to the extent that following the execution of this Agreement, new material information, a new development or a change in material information is obtained or discovered by a party in each case that was not known to a party hereto but in existence at the time of the execution of the Letter Agreement or this Agreement, the parties hereto will in good faith discuss that information or change and the appropriateness of amending the terms hereof and reflecting such amendment in this Agreement, having regard to the parties' intent in entering into the Letter Agreement; and

(ii) if as a result of the terms of this Agreement or the Transaction (including without limitation the terms of the Consideration Shares and/or the other Closing Agreements) the Guarantor, as long as the Guarantor or any of its Subsidiaries continue to hold the Consideration Shares, is required to consolidate the financial results and condition of the Purchaser in the Guarantor's consolidated financial statements, the Guarantor and the Purchaser shall agree to amend such terms or agreements as applicable and as reasonably satisfactory to the Purchaser, and to accept the surrender or waiver by the Guarantor of such terms, in each case for no consideration payable by the Purchaser, in order to assist the Guarantor in avoiding the obligation to consolidate the financial results and condition of the Purchaser.

7.7 **Waiver**. Any party hereto may extend the time for the performance of any of the obligations or acts of another party hereto, or waive compliance with any of the other parties' agreements or the fulfilment of any conditions to its own obligations contained herein; provided, however, that any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of the party hereunder to be bound by the waiver and, unless otherwise provided in the written waiver, will be limited to the specific breach or condition waived. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party hereto from any other or further exercise of that right or the exercise of any other right.

7.8 **Entire Agreement; Paramountcy**. The parties hereto agree that this Agreement, together with the Closing Agreements, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including the Letter Agreement. There are no conditions, representations, warranties, obligations or other agreements between the parties in connection with the subject matter hereof (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement or the other Closing Agreements. In the event and to the extent of an inconsistency or conflict between any of the terms of this Agreement, including its Schedules and Exhibits, and the Letter Agreement, the conflict or inconsistency shall be resolved by giving this Agreement precedence.

7.9 **Time of Essence**. Time is of the essence in this Agreement.

7.10 **Binding Effect**. This Agreement binds and benefits the parties hereto and their respective successors and permitted assigns. This Agreement is for the sole benefit of the parties hereto and nothing in this Agreement, express or implied, confers or intends to confer any rights or remedies of any nature whatsoever in favour of any Person (including any employee, shareholder or partner, as applicable, of the parties hereto) other than the parties hereunder.

7.11 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdictions will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

7.12 **Publicity**. Each party hereto agrees to refrain from making any public announcement in connection with the Transaction, except (i) with the prior written consent of the other parties hereto, or (ii) as may be required by Applicable Law or in which event the party required to make the announcement shall inform the other parties hereto of the contents of the announcement proposed to be made and shall use its reasonable efforts to obtain the other parties approval for the announcement, which approval may not be unreasonably withheld.

7.13 **Injunctive Relief**. The parties hereto agree that irreparable harm may occur for which money Damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to seek specific performance of the terms of this Agreement and an injunction or injunctions and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief hereby being waived.

7.14 **Third Party Beneficiaries**. The parties hereto intend that this Agreement will not benefit or create any right or cause of action in favour of any person other than the parties hereto, and that no Person, other than the parties hereto, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The parties hereto reserve their right to vary or rescind the rights at any time and in any way whatsoever granted by or under this Agreement to any Person who is not a party hereto, if any, without notice to or consent of that Person.

7.15 **Fees and Expenses.** Except as otherwise expressly contemplated in any other Closing Agreement, each party hereto will bear its own fees and expenses in connection with the Transaction incurred after April 3, 2024 including, without limitation, the costs and expenses of all attorneys and other professional advisors. Each party hereto will bear its own fees and expenses in connection with the Transaction incurred on and prior to April 3, 2024, provided that the Guarantor will bear all reasonable and documented fees and expenses incurred by the Purchaser on and prior to April 3, 2024 related to attorneys and other professional advisors engaged by it in connection with the Transaction.

7.16 **Disputes**. Subject to Section 7.13, all disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, including, without limitation, with respect to any such agreement's formation, execution, validity, application, interpretation, performance, breach, termination or enforcement (in each such case, a "**Dispute**"), may at the option of any party to the Dispute, be submitted to direct negotiations in accordance with Section 7.17.

7.17 **Direct Negotiation.**

(a) If any party hereto considers that any Dispute has arisen, then such party shall first deliver a notice to such other party describing the nature and the particulars of such Dispute.

(b) Within ten (10) Business Days following delivery of the notice described in Section 7.17(a) to such other party, the parties shall meet (whether by phone or in person) in an attempt to resolve the Dispute.

(c) If the Dispute is still unresolved after 10 Business Days following the commencement of the meeting described in Section 7.17(b), then the chief financial officer (or another designee with full authority to resolve such Dispute) of each party hereto shall meet (whether by phone or in person) in an attempt to resolve the Dispute, such meeting to be held within 10 Business Days of the commencement of the meeting described in Section 7.17(b).

(d) If the Dispute is still unresolved after ten (10) Business Days following the commencement of the meeting described in Section 7.17(c), then such Dispute shall be submitted to arbitration in accordance with Section.

(e) Notwithstanding anything in this Section 7.17, a party hereto may at any time submit a Dispute to arbitration in accordance with Section 7.18.

7.18 **Arbitration**

(a) Submission to Arbitration. All Disputes shall be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada commenced by notice of submission to the ADR Institute of Canada by one or more of the parties hereto.

(b) Single Arbitrator. All Disputes shall be by a single arbitrator selected by the ADR Institute of Canada in the event that the parties hereto are unable to mutually agree upon an arbitrator within ten (10) Business Days of the Dispute being submitted to arbitration to the ADR Institute of Canada.

(c) Place and Language of Arbitration. The arbitration shall be in Toronto, Ontario in the English language.

(d) Finality of Award. Any award or determination of the arbitral tribunal shall be final and binding on the parties hereto and there shall be no appeal on any ground, including for greater certainty, any appeal on a question of law, a question of fact, or a question of mixed fact and law.

(e) Costs. The sole arbitrator may apportion costs of the arbitration, including the reasonable fees and disbursements of the parties hereto, between the parties hereunder in such manner as the sole arbitrator considers reasonable.

(f) Interest. Any award for the payment of money may include pre-award and post-award interest.

7.19 **Governing Law**. The parties agree that this Agreement is governed exclusively by the laws of the Province of Ontario and the laws of Canada applicable therein without regard to its conflict of laws principles.

7.20 **Relationship with Closing Agreements**. Except to the extent expressly contemplated in this Agreement, the rights and obligations of the parties hereto set forth herein, shall not affect, or be affected by, the rights and obligations set forth in any other Closing Agreement, and no breach under this Agreement shall constitute a breach under any other Closing Agreement unless the breach under this Agreement also constitutes a breach under such other Closing Agreement, as applicable, by the terms thereof.

7.21 **Guarantee**.

(a) Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Purchaser's Indemnified Parties, as primary obligor, the full and prompt performance, observance, payment and discharge when due of obligations, liabilities, indebtedness, covenants and agreements of the Vendor under this Agreement and agrees to indemnify the Purchaser's Indemnified Parties in the event that such full and prompt performance, observance, payment and discharge of the Vendor's obligations is not made.

(b) In the event that any Purchaser's Indemnified Party becomes entitled to recover losses in connection with the Vendor's obligations under this Agreement, such Purchaser's Indemnified Party shall recover all or a portion of such losses by proceeding against the Vendor and/or the Guarantor in accordance with this Agreement.

(c) The Guarantor acknowledges and agrees that the Purchaser would not have agreed to consummate the transactions contemplated hereby without the guarantee of the Guarantor contained in this Section 7.21.

(d) The Liability of the Guarantor by reason of this Section 7.21 is primary, and the Purchaser's Indemnified Parties shall not be required to present or make any demand on the Vendor for performance of any obligations under this Agreement, nor to exhaust any legal, contractual or equitable remedies against the Vendor, prior to proceeding against the Guarantor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Vendor:

D2L CORPORATION

By: (Signed) *"Joshua Huff"*
Name: Joshua Huff
Title: Chief Financial Officer

Purchaser:

SKILLSWAVE CORPORATION

By: (Signed) *"John Baker"*
Name: John Baker
Title: Executive Chair

Guarantor:

D2L INC.

By: (Signed) *"Joshua Huff"*
Name: Joshua Huff
Title: Chief Financial Officer

Exhibit A
Allocation of Consideration

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Schedule 1.1(a)
[REDACTED] Contract Reliant Contracts

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Schedule 1.1(b)
Contracts & Transferred Contracts

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Schedule 1.1(c)
Wave Employees

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Schedule 1.1(d)
Intellectual Property & Patents

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Patents

#	Document/Patent number	Title	Inventor name	Publication date
1	US-20230245256-A1	METHODS AND SYSTEMS FACILITATING COURSE REGISTRATION, ENROLLMENT AND PAYMENT	Baker; John et al.	2023-08-03
2	US-20230245579-A1	SYSTEM TO DETERMINE A PERSONALIZED LEARNING PATHWAY	Baker; John et al.	2023-08-03

Schedule 1.1(e)
Receivables

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]

Schedule 3.1(d)
Consents

[REDACTED]

[REDACTED: DISCLOSURE WOULD VIOLATE CONFIDENTIALITY PROVISIONS AND SERIOUSLY PREJUDICE ISSUER.]