EXHIBIT 29

Paul Graff

COPY

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REVISION NO. 1
MARKED TO SHOW CHANGES FROM
VERSION DATED 6/7/96
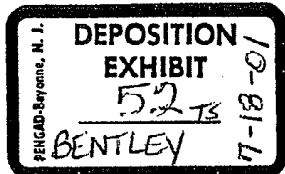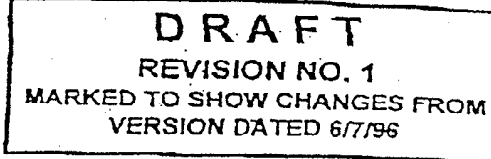
Novell, Inc. and Caldera, Inc.
Asset Purchase Agreement

This Asset Purchase Agreement ("Agreement") is made as of _____ July 1, 1996 [[CALDERA WOULD
PREFER TO CONCLUDE THIS AGREEMENT AS SOON AS POSSIBLE, WHETHER THAT BE BEFORE OR
AFTER JULY 1]]("Transfer Date") between Caldera, Inc., a corporation organized and existing under the laws of
the State of Utah ("Caldera"), and Novell, Inc., a corporation organized and existing under the laws of the State of
Delaware ("Novell").

SECTION 1
Preamble

1.1 In November 1991, Novell acquired a DOS-based desktop operating system business ("DOS Business").
Since that acquisition, Novell has endeavored to further the business. Several products corresponding to the DOS
Business have been made available by Novell or its predecessors in interest, including, but not limited to, Multiuser
DOS, Concurrent DOS, DR DOS and Novell DOS.

1.2 Caldera and Novell believe that it is in their best interests, respectively, that Caldera acquire substantially
all of the assets and assume the warranty and support liabilities of Novell comprising the DOS Business (the
"Acquisition").

1.3 In connection with the Acquisition, Novell will (a) transfer to Caldera the assets and liabilities comprising
the DOS Business, including the products associated with the DOS Business ("DOS Products"); and (b) assign to
Caldera all certain related rights and agreements except as specifically reserved to Novell hereunder. In turn,
Caldera will (a) grant back to Novell a non-transferable license for the DOS Products, including Enhancements and
Maintenance Modifications, for internal use by Novell as well as for inclusion within products of Novell or of any
entity in which Novell owns an interest of ten percent (10%) or greater, but not for sale as a standalone product.
[[CALDERA WOULD BE HAPPY TO NEGOTIATE A LICENSE WITH ANY ENTERPRISE IN WHICH
NOVELL OWNS A MINORITY STAKE, SO LONG AS THAT ENTERPRISE'S PRODUCT OR BUSINESS IS
NOT DIRECTLY COMPETITIVE WITH THE DOS BUSINESS, BUT CALDERA CAN'T AGREE TO PERMIT
NOVELL'S LICENSE TO EXTEND BEYOND NOVELL AND ITS SUBSIDIARIES.]]

SECTION 2
Defined Terms

Capitalized terms in this Agreement have the meanings stated in this Section 2 or defined elsewhere in this
Agreement. A reference to a particular Exhibit is to an Exhibit to this Agreement, each of which is incorporated
into and made a part of this Agreement by that reference. A reference to a particular Section is to a Section of this
Agreement.

2.1 Closing and Closing Date: "Closing" and "Closing Date" shall have the meanings ascribed to them in
Section 5.

2.2 DOS Code: "DOS Code" shall mean the computer programming code (binary and source) for the DOS
Products.

2.3 Development Environment: "Development Environment" means any non-commercially available device,
code (source and binary), Documentation, media or development tool (including compilers, workbenches, tools, and

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higher-level or proprietary languages) that have been used in, or are useful for, the development, maintenance or implementation of the DOS Products or Related Technology, provided that such items are reasonably available to Novell and only to the extent such items are transferable by Novell and are no longer being used in other technologies of Novell.

2.4 Documentation: "Documentation" means the user manuals and other written materials or machine-readable text and/or graphics that relate to the DOS Products and that are owned by Novell or are Third Party Materials, including, by way of example and not by way of limitation, materials useful for design, generation or printing (for example, logic manuals, flow charts, and principles of operation), all machine-readable text or graphic files subject to display or print-out, all test materials (including test scripts and the programs necessary to use such test scripts), all accounting and legal records relative to the abuse or enforcement of any right or interest in the Transferred Assets and all marketing collateral, including all pre-existing customer lists pertaining to the DOS Products Software, e.g., (i) product registration databases, (ii) technical support databases and (iii) other customer databases maintained by Novell for the DOS Products, if any. Such database lists shall not include the computer programs necessary to access the database lists, but shall be in a delimited ASCII format.

2.5 DOS Products: (UNDER REVIEW) "DOS Products" means the following Novell products, and any other prior or subsequent versions, revisions or instantiations [[WHAT DOES THIS MEAN?]] of such products to the extent owned or transferable by Novell as of the Closing:

DR DOS 6.0	Concurrent DOS	DR DOS 5.0
Multiuser DOS	Novell DOS 7.0	PALMDOS
GEM	GEM Draw	GEM Programmers Toolkit
Gem Wordchart	Gem Graph	Draw Plus
Japanese DOS [[?]]	[[ANY OTHER DOS PRODUCTS]]	

2.6 Enhancements shall mean changes, additions or new releases, other than Maintenance Modifications, to the DOS Code and related documentation that are provided to Caldera's end-users without charge and that improve functions, add new functions, or improve performance by changes to system design or coding.

2.7 Error shall mean, as the context requires, either a Code Error: a program function that is described in user documentation for the DOS Products but is omitted from the DOS Code, or a program function or user interface that does not operate or that gives incorrect results when measured against its design specifications, or a Document Error: a failure of the related documentation to accurately describe a program function, or a failure of such documentation to enable reasonably competent users to correctly operate the associated DOS Code.

2.8 Intellectual Property: "Intellectual Property" means patents, trademarks, service marks, trade names, and copyrights (including registrations, licenses, and applications pertaining thereto), and all other intellectual property rights, trade secrets, and other proprietary information, processes, and formulae used in the DOS Business or otherwise necessary for the ownership and use of the Transferred Assets and the conduct of the DOS Business. As of the date hereof, the Intellectual Property includes the registered trademarks and service marks, the reserved trade names, the registered copyrights, and the filed patent applications and issued patents listed in Section 2.14 and in Schedule 2.8 hereto.

2.9 2.8   Maintenance Modification - shall mean any modification or revision to DOS Code or to related documentation, other than an Enhancement, that corrects an Error or provides an other incidental correction.

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2.10~~2.9~~ Related Technology: *(UNDER REVIEW)* "Related Technology" means, to the extent owned by Novell or to the extent that such Related Technology is comprised of Third Party Materials as of the Closing, all existing technology authored, discovered, developed, made, perfected, improved, designed, engineered, devised, acquired, produced, conceived or first reduced to practice by Novell or its predecessors in interest, or any of their employees or contractors in the scope of their employment or association with them for the development of the DOS Products, and that are useful in ~~necessary to~~ the development of the DOS Products or to the performance by the DOS Products of their intended functions or purposes, whether tangible or intangible, in any stage of development, including without limitation existing enhancements, designs, technology, improvements, inventions, works of authorship, trade secrets, formulas, processes, routines, subroutines, techniques, concepts, methods, ideas, algorithms, source code, object code, flow charts, diagrams, coding sheets, source code listings and annotations, programmers' notes, work papers, and work product if any exists at the time of execution of this Agreement, all documentation, development tools and associated documentation (excluding such development tools and associated documentation which are ~~not owned by Novell, i.e.,~~ Third Party Materials and as to which Novell has not obtained such consent(s) or other action or document as may be necessary or appropriate in order to allow it to assign the same to Caldera) and all rights of any kind in or to any of the foregoing, including without limitation all proprietary rights and trade secrets and all patents and copyrights (whether pending, applied for or issued) for the DOS Products, regardless of whether any or all of the foregoing constitutes copyrightable or patentable subject matter. Despite the foregoing, Related Technology does not include Personal NetWare, VLMs, or any other products or technologies not developed primarily as components of DOS Products (except to the extent that such products share programming code or functions with the DOS Products), nor does it include any interests in Third Party Materials or other technologies owned by third parties if such Novell interests are not transferable under the terms of applicable licensing agreements (i.e., STAC) and if Novell and Caldera, in the exercise of reasonable commercial efforts, are unable to secure consent to the transfer of such interests to Caldera notwithstanding the terms of the applicable agreements.

2.11 Software Contracts: "Software Contracts" means all contracts, agreements, licenses, and other commitments and arrangements, oral or written, with any person or entity respecting the ownership, license, acquisition, design, development, distribution, marketing, use, or maintenance of computer program code, related technical or user documentation, and databases, in each case relating to or arising out of the DOS Business. As of the date that is two (2) weeks subsequent to the execution date of this Agreement, the Software Contracts consist of the items listed in the list(s) specified in Section 6.1 hereof and classified as (1) licenses from third parties (development and/or marketing); (2) licenses from third parties (internal use only); (3) development contracts, work-for-hire agreements, and consulting and employment agreements; (4) distributorships, dealerships, franchises, and manufacturer's representative contracts; (5) licenses and sublicenses to others; and (6) maintenance, support, or enhancement agreements.

2.12~~2.10~~ Third Party Materials: "Third Party Materials" shall mean the materials in which a third party is the copyright owner.

2.13~~2.11~~ Transferred Assets: "Transferred Assets" shall mean the DOS Products, the Intellectual Property, the Related Technology, the Transferred Marks, and the Documentation and all other assets of the DOS Business described herein or in any schedule or exhibit hereto. ~~and the Claims.~~

2.13 Transferred Marks: *(UNDER REVIEW)* "Transferred Marks" shall mean the following marks and all applications and registrations obtained or filed by or on behalf of Novell for such marks, but only to the extent of Novell's transferable ownership therein as of the Closing:

DR DOS   PALMDOS
MULTIUSER DOS   D and DESIGN

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DIGITAL RESEARCH
CONCURRENT DOS
DR LOGO

DIGITAL RESEARCH AND DESIGN

DRAW PLUS
DIGITAL DESIGN
DIGITAL RESEARCH WE MAKE
COMPUTERS WORK
[[WHAT ABOUT GEM-RELATED
TRADEMARKS? ARE THERE OTHERS?]]

~~2.13 Claims: "Claims" shall mean any and all claims or causes of action associated with any of the DOS Products or Related Technology, including but not limited to any claims or causes of action for copyright or patent infringement, trade secret misappropriation, or violation of any applicable antitrust laws.~~

SECTION 3
Transfer of Assets

3.1 <u>Transfer of Assets. Assignment of Agreements and Assignment of Revenues</u>. At Closing, Novell shall grant, transfer, convey, and assign to Caldera all of Novell's right, title and interest in and to the Transferred Assets in accordance with the Bill of Sale attached as Exhibit C, and shall assign the Agreements specified in Section 6.1 to Caldera. Effective as of the Transfer Date, Novell shall assign to Caldera all revenues associated with the DOS Business that accrue and are received by Novell, except as otherwise provided in Section 6.3.1. After Closing, Novell shall deliver to Caldera, within thirty (30) days after the end of each Novell fiscal quarter, any such revenues received by Novell during the preceding Novell fiscal quarter. <u>In addition, Novell shall grant, transfer, convey and assign to Caldera all of Novell's right, title and interest in and to any and all claims or causes of action held by Novell at the Closing Date and associated directly or indirectly with any of the DOS Products or Related Technology, including but not limited to any claims or causes of action for declaratory or injunctive relief or damages, whether any such claim is a claim at law or in equity and whether any such claim is matured or unmatured.</u>

~~3.2 Exploitation of Assets: Caldera agrees to make commercially reasonable efforts to utilize and exploit the Transferred Assets and to otherwise carry out the purposes of this Agreement, which efforts must include, but are not necessarily limited to, seeking to obtain any and all necessary financing to develop, protect, preserve and turn to account all of the Transferred Assets.~~ <u>[[SINCE THIS IS A STRAIGHT "CASH FOR ASSETS" SALE, WE CAN'T SEE THAT NOVELL HAS A LEGITIMATE INTEREST IN SUCH A REQUIREMENT AND CALDERA HAS NO INTEREST IN "BUYING A LAWSUIT" ABOUT WHETHER IT UTILIZED COMMERCIALLY REASONABLE EFFORTS OR WHETHER IT SOUGHT TO OBTAIN FINANCING WITH SUFFICIENT ENERGY TO SUIT NOVELL.]]</u>

SECTION 4
Consideration

4.1 <u>Cash</u>: At Closing, Caldera shall deliver to Novell by certified check the sum of $1,000,000 (One Million Dollars) as consideration for the transfers under this Agreement.

4.2 <u>Grant Back License</u>: At Closing, Caldera will execute in favor of Novell the Grant Back License Agreement attached as Exhibit A. <u>[[WE ARE STILL WAITING FOR A DRAFT OF THE GRANT BACK LICENSE AGREEMENT.]]</u>

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SECTION 5
Closing Date; Delivery; Termination

5.1 <u>Closing Date</u>: The Closing of this Agreement shall be held at the offices of Novell, Inc. at 1555 North Technology Way, Orem, Utah 84057 on or before 10:00 a.m. on _____, or at such other time and place upon which Novell and Caldera shall agree.

5.2 <u>Deliveries</u>: At the Closing, Novell will deliver to Caldera (a) a true, correct and fully executed copy of each document specified and required to be delivered pursuant to this Agreement, (b) a fully executed Bill of Sale, (c) a true, correct and complete copy of the DOS Products and Related Technology, (d) a complete copy of the Documentation, and (e) a copy of the complete Development Environment; no part of such Development Environment that is generally available shall be required to be delivered, provided that any such part shall be fully described in lieu of delivery. At the Closing, Caldera shall deliver to Novell a certified check as described in Section 4.1 and a fully executed Grant Back License Agreement as described in Section 4.2.

5.3 <u>Taking of Necessary Action</u>: Novell and Caldera shall deliver or cause to be delivered to one another such other instruments and documents necessary or appropriate to evidence the due execution, delivery, and performance of this Agreement. If, at any time after the Closing Date, any further action is necessary or ~~appropriate~~ desirable to carry out the purposes of this Agreement, the parties shall take all such lawful action.

5.4 <u>Option to Terminate</u>: <u>Each party</u> ~~Novell~~ reserves the right to terminate this Agreement for any reason upon written notice to Caldera on or before August 1, 1996. <u>In the event of such a termination, Caldera shall convey, by appropriate instruments, all of the items delivered to it at the Closing and Novell will pay to Caldera the sum of $1,000,000 plus interest thereon at the rate 9.25% per annum, based on the actual number of days elapsed between the Closing Date and the date of payment. In addition, Novell shall reimburse Caldera for any and all actual expenses (but not corporate overhead) of operating the DOS Business during the time between the Closing Date and the date of such written notice (which expenses shall be presented to Novell at the time of the delivery of the documents of conveyance referred to herein), which reimbursement shall take place within five days of the date of the delivery of documents of conveyance from Caldera to Novell.</u>

[handwritten margin note: 2-way termination billing]

SECTION 6
Transition

6.1 <u>Transfer of Customers/Assignments</u>: No less than two (2) weeks before Closing, Novell shall provide to Caldera (a) a list of all third parties by whom Novell is currently licensed to use Third Party Materials in connection with the DOS Products ("Third Party Licensors"); (b) a list of all original equipment manufacturers, distributors, dealers, value added resellers, and major account customers who are currently authorized to exercise any right in the DOS Products ("Current Customers"), and (c) a list of all Current Customers and others entitled to receive service and support of DOS Products. <u>As soon as possible following the delivery of such lists, Novell shall supply Caldera with copies of all contracts and summaries of all agreements which are not reduced to writing relating to the items listed.</u> Within two (2) weeks after Closing, Novell and Caldera will cooperate with each other in conducting joint contacts with the Third Party Licensors and Current Customers (to the extent required and permitted by contract) to attempt to obtain, <u>where necessary,</u> consent to transfer orders from Novell to Caldera (or to issue new orders to Caldera for the same or similar terms) and to assign Novell's rights and benefits under the corresponding licenses

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and contracts. At Prior to Closing, Novell shall assign to Caldera those licenses and contracts for which such customer consent is not required or has been obtained.

6.1.1   Non-Assignment of Certain Items: Notwithstanding anything to the contrary in this Agreement, to the extent that the assignment of any license or contract requires the consent of any other party, neither this Agreement nor any action taken pursuant to its provisions shall constitute an assignment or an agreement to assign such license or contract if the requisite consents are not obtained and such assignment or attempted assignment would constitute a material breach.

6.2   Assumption of Obligations: At Closing, Caldera shall assume all product warranty and support liabilities and perform all obligations (including, but not limited to, all support and product warrant obligations) relating to the DOS Business. Unless expressly described in this Agreement, no taxes, no employee liabilities and no liability of Novell other than liabilities to unrelated third parties directly attributable to product warranty or support functions shall be assumed by Caldera.

6.3   Transition Assistance: Notwithstanding Section 6.1, the parties acknowledge that it may not be practical or advisable to assign certain contracts (such as Novell's Master License Agreements ("MLAs")) pursuant to which Novell has granted customers certain rights to, among other things, use, distribute, and/or obtain maintenance and support for the DOS Products (such contracts to be referred to hereafter collectively as "Transitional Contracts"). In such cases, Novell and Caldera will use diligent efforts to transition to Caldera such business (concerning the DOS Business only) and the customer relationship (concerning the DOS Business only) such that any new agreements concerning the DOS Business will be entered into by, and support and maintenance will be provided by, Caldera. After the Closing Date, Caldera shall be responsible for providing customer maintenance and support services relating to DOS Products under those contracts assigned to Caldera, while Novell will remain responsible for providing such services under the Transitional Contracts until such Transitional Contracts terminate or are transferred to Caldera. Novell and Caldera will each make commercially reasonable efforts to implement a smooth transition of operations from Novell to Caldera so that any customers who acquire DOS Products either before or after the Closing Date will experience as little disruption or delay in supply, support, or service as is reasonably practicable.

6.3.1   Revenue From Transitional Contracts: Novell may retain (or may obtain from Caldera at Caldera's cost of materials) such units or inventory of DOS Products as it deems reasonably necessary to satisfy customers under Transitional Contracts [[HOW MANY UNITS ARE WE TALKING ABOUT HERE? IF IT'S A SMALL NUMBER THEN IT'S NO PROBLEM, BUT LET'S NOT LEAVE THIS OPEN-ENDED.]]. Caldera shall be entitled to the revenue received by Novell for the DOS Products and related support and maintenance provided under the Transitional Contracts (net of Novell's costs and expenses incurred for products, materials, support, and maintenance), to the extent that such revenues are billable by Novell after the Closing. Following the Closing, Novell shall not renew, extend the term of, or enter into any new Transitional Contracts. Except for the revenue from MLAs, Novell and Caldera shall negotiate a mutually-acceptable arrangement to afford Caldera the benefits of ongoing customer contracts that are intended to be assigned hereunder but that cannot be assigned because of third party objections.

6.4   Maintenance of Business: Novell shall use its reasonable best efforts to maintain the relationship with each of its major suppliers, customers and employees relating to the Transferred Assets. If, on or before the Closing Date, Novell becomes aware of a material deterioration in the relationship with any major customer, supplier, or key employee of Novell as it relates to the Transferred Assets, Novell will promptly bring such information to the attention of Caldera and, if requested by Caldera, will exercise reasonable efforts to restore the relationship. Novell will make commercially reasonable efforts to maintain the value and condition of the Transferred Assets until

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Closing, provided however, the foregoing shall not be construed to require Novell to exert efforts greater than those exerted as of the effective date of this Agreement.

6.5 Conduct of Business: Except as provided otherwise herein or as approved or as recommended by Caldera, Novell will through the Closing Date continue to deal with the Transferred Assets and conduct its business related thereto in the ordinary course and will not, without the prior written consent of Caldera: (a) encumber or permit to be encumbered any of the Transferred Assets; (b) license the DOS Products, except in the Ordinary course of business consistent with past practice; (c) amend or terminate any of the agreements identified in Section 6.1; (d) waive or release any material right or claim related to the Transferred Assets except in the ordinary course of business, consistent with past practice; or (e) agree to otherwise commit or create any obligation to do any of the things described in the preceding clauses.

SECTION 7
Representations and Warranties of Novell

Except as set forth in the Schedule of Exceptions attached hereto as Exhibit B, referring specifically to the representations and warranties in this Agreement and which reasonably identifies the basis for an exception thereto, Novell represents and warrants to Caldera as follows:

7.1 Organization and Standing: Articles and Bylaws: As of the Closing Date, Novell is a corporation duly organized and existing under the laws of the State of Delaware and will be in good standing under such laws.

7.2 Corporate Power: Novell has all requisite corporate power to execute and deliver this Agreement and all agreements to be executed and delivered pursuant to the terms hereof (collectively, the "Ancillary Agreements").

7.3 Authorization: All corporate action on the part of Novell, its directors, and its stockholders necessary for the authorization, execution, delivery, and performance of this Agreement and the Ancillary Agreements by Novell has been taken. This Agreement and the Ancillary Agreements, when executed and delivered by Novell, will constitute valid and binding obligations of Novell and enforceable in accordance with their respective terms.

7.4 No Conflict: Neither the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby, nor the consummation of the transactions contemplated hereby or thereby, will violate or conflict with (1) any federal, state, or local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree applicable to Novell, the DOS Business, or the Transferred Assets, (2) any provision of any charter, bylaw, or other governing or organizational instrument of Novell, or (3) except insofar as consents are to be procured prior to Closing, any mortgage, indenture, license, instrument, trust, contract, agreement, or other commitment or arrangement to which Novell is a party or by which Novell or any of the Transferred Assets is bound.

7.4 Compliance with Other Instruments; Non-Burdensome, etc.: Novell's execution, delivery and performance of, and compliance with, this Agreement and the Ancillary Agreements will not have resulted and will not result in any violation of, conflict with, constitute a default under, or result in the creation of any mortgage, pledge, lien, encumbrance or charge upon any of the properties or assets of Novell.

7.5 Required Contract Consents. Except as set forth in Exhibit B (such scheduled items being referred to herein as the "Required Contract Consents"), no approval, authorization, consent, permission, or waiver to or from, or notice, filing, or recording to or with, any person (other than the governmental authorities addressed in Section 4.4) is

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necessary for (1) the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby by Novell or the consummation by Novell of the transactions contemplated hereby; (2) the transfer and assignment to Caldera at Closing of the Transferred Assets, or (3) the ownership and use of the Transferred Assets and the conduct of the DOS Business.

7.6 Title to Tangible Property. Caldera at Closing shall obtain good and marketable title to all of the tangible Transferred Assets (i.e., the inventories of DOS Products, Documentation, and business records or the DOS Business), free and clear of all title defects, liens, restrictions, claims, charges, security interests, or other encumbrances of any nature whatsoever, including any mortgages, leases, chattel mortgages, conditional sales contracts, collateral security arrangements, or other title or interest retention arrangements.

7.7 Condition of Property. All of the tangible Transferred Assets are in good order, condition, and repair, ordinary wear and tear excepted, and are suitable for use in the DOS Business in the ordinary course.

7.8 Inventory. All inventory is of usable quality and includes no material amount of obsolete or discontinued items or items that cannot be used by Caldera in the DOS Business in the ordinary course. All inventory has been recorded using the "First-In, First-Out" accounting method.

7.9 Title to Intellectual Property.

7.9.1 Ownership. Except for the rights and licenses validly and effectively established by the Transferred Contracts, Novell owns; Caldera shall receive at Closing, and the Intellectual Property includes, all patents, trademarks, service marks, trade names, and copyrights (including registrations, licenses, and applications pertaining thereto) and all other intellectual property rights, trade secrets, and other proprietary information, processes, and formulae used in the DOS Business or otherwise necessary for the ownership and use of the Assets and the conduct of the DOS Business. Except as specified in Exhibit B, Section 2.14 hereof sets forth all registered trademarks and service marks, and all reserved trade names. Except a specified in Exhibit B, Schedule 7.9.1 hereof sets forth all registered copyrights, and all filed patent applications and issued patents used or useful in the DOS Business or otherwise necessary for the conduct of the DOS Business as heretofore conducted.

7.9.2 Procedures for Copyright Protection. In no instance has the eligibility of the DOS Products or DOS Code for protection under applicable copyright law been forfeited to the public domain by omission of any required notice or any other action.

7.9.3 Procedures for Trade Secret Protection. Novell has promulgated and used its best efforts to enforce the trade secret protection program set forth in Schedule 7.9.3. Insofar as Novell knows, there has been no material violation of such program by any person or entity. The source code and system documentation relating to the DOS Products (1) have at all times been maintained in confidence and (2) have been disclosed by Novell only to employees and consultants having "a need to know" the contents thereof in connection with the performance of their duties to Novell.

7.9.4 Personnel Agreements. All personnel, including employees, agents, consultants, and contractors, who have contributed to or participated in the conception and development of the DOS Products or DOS Code, Documentation, or Intellectual Property on behalf of Novell either (1) have been party to a "work-for-hire" arrangement or agreement with Novell, in accordance with applicable federal and state law, that has accorded Novell full, effective, exclusive, and original ownership of all tangible and intangible property thereby arising, or (2) have executed appropriate instruments of assignment in favor of Novell as assignee that have conveyed to Novell full, effective, and exclusive ownership of all tangible and intangible property thereby arising.

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7.9.5 Absence of Claims. No claims have been asserted by any person or entity to the use of the Intellectual Property, and Novell does not know of any valid basis for any such claim. The use of the Intellectual Property, such as patents and trademarks, by the Novell does not infringe on the rights of the person.

7.10 Adequacy of Documentation. The Documentation includes the source code, system documentation, statements of principles of operation, and schematics for all DOS Products or DOS Code, as well as any pertinent commentary or explanation that may be necessary to render such materials understandable and usable by a trained computer programmer. The Documentation also includes any program (including compilers), "workbenches," tools, and higher level (or "proprietary") language used for the development, maintenance, and implementation of the DOS Products.

7.11 Contracts—General. The Software Contracts described in the lists referred to in Section 6.1 constitute all contracts, agreements, licenses, and other commitments and arrangements in effect as of the date of such lists that apply to or effect directly or indirectly the DOS Product. All such contracts are valid, binding, and enforceable in accordance with their terms and are in full force and effect. There are no existing defaults by Novell under any such contracts and no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default thereunder.

7.12 Third-Party Components in DOS Products. Novell has validly and effectively obtained the right and license to use, copy, modify, and distribute the third-party programming and materials contained in the DOS Products and Documentation pursuant to the Software Contracts identified as "licenses from third parties (development and/or marketing)" or "Licenses from third parties (internal use only)" the lists to be provided pursuant to Section 6.1. The DOS Products and Documentation contain no other programming or materials in which any third party may claim superior, joint, or common ownership, including any right or license. The DOS Products and Documentation do not contain derivative works of any programming or materials not owned in their entirety by Novell and included in the Assets.

7.13 Third-Party Interests or Marketing Rights in DOS Products. Novell has not granted, transferred, or assigned any right or interest in the DOS Products, the Documentation, or the Intellectual Property to any person or entity, except pursuant to the Software Contracts identified as "distributorships, dealerships, franchises, and manufacturer's representative contracts" or "licenses and sublicenses to others" in the lists to be supplied pursuant to Section 6.1. Except as set forth in Exhibit B, all Software Contracts identified as "licenses and sublicenses to others" in the lists supplied pursuant to Section 6.1 constitute only end-user agreements, each of which grants the end-user thereunder solely the nonexclusive right and license to use an identified DOS Products and related user documentation, for internal purposes only, on a single central processing unit (CPU). There are no contracts, agreements, licenses, and other commitments and arrangements in effect with respect to the marketing, distribution, licensing, or promotion of the DOS Products or any other inventory, the Documentation, or the Intellectual Property by any independent salesperson, distributor, sublicensor, or other remarketer or sales organization, except for the Software Contracts identified as "distributorships, dealerships, franchises, and manufacturer's representative contracts" in the lists to be provided pursuant to Section 6.1.

7.14 Accounts Receivable. Any accounts receivable are fully collectible within the customary collection cycle. All accounts receivable call for payment to be made within at least ninety (90) days to the principal office of the Novell.

7.15 Undisclosed Liabilities. Except as set forth in Exhibit B, there are no liabilities or obligations, secured or unsecured (whether absolute, accrued, contingent, or otherwise, and whether due or to become due).

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7.16 Conduct of Business.

7.16.1 Ordinary Course of Business: No Removal or Disposal of Assets. Except as set forth in Exhibit B, since _____ 19____ Novell has operated the DOS Business in the ordinary course consistent with past practices, and has not removed or disposed of any assets that were assets of the DOS Business as of _____ 19____ except in the ordinary course.

7.16.1 No Material Adverse Change. Except as set forth in Exhibit B, since _____, 19____ there has been no material adverse change in the DOS Business or the Transferred Assets or in the financial condition, operations, or prospects of the DOS Business.

7.16.2 Absence of Particular Events. Except as set forth in Exhibit B, since _____ 19____ Novell has not (1) suffered any damage or destruction adversely affecting the DOS Business or involving the Transferred Assets in the amount of $5,000 in any one instance; (2) incurred any liability or obligation relating to the DOS Business other than in the ordinary course consistent with past practice; (3) made any change in any method, practice, or principle of accounting involving the DOS Business or the Transferred Assets or (4) agreed to take any action described in this Section 7.16.2.

7.16.3 Absence of Joint Ventures, etc. Except as set forth in Exhibit B, Novell is not a party to any joint venture or other similar agreement or arrangement that involves any sharing of profits of the DOS Business or the Transferred Assets or is similar to or competitive with the DOS Business, other than the Software Contracts identified as "licenses from third parties (development and/or marketing)" or "distributorships, dealerships, franchises, and manufacturer's representative contracts" in lists to be provided pursuant to Section 6.1.

7.17 Sufficiency of Rights. Except as set forth in Exhibit B, and assuming the renewal or continuation of all business arrangements currently in place (and, to the best of Novell's knowledge, no reason exists why such renewal or continuation in favor of Caldera could be obstructed), the Transferred Assets constitute all of the properties, rights, and privileges necessary for the indefinite continuation of the conduct of the DOS Business by Caldera in substantially the same manner as it has been operated by Novell during the four year period preceding the Closing Date (not including any period during such time that Novell failed to actively pursue the DOS Business).

7.18 Schedules and Exhibits Yet to Be Prepared. The Schedules and Exhibits to be prepared following execution of this Agreement or following the Closing of this Agreement shall be true and complete when submitted for inclusion in this Agreement and shall set forth all information sought by this Agreement with respect thereto.

7.19 Disclosure. No representation, warranty, or statement made by Novell in this Agreement or in any document or certificate furnished or to be furnished to Caldera pursuant to this Agreement contains or will contain any untrue statement or omits or will omit to state any fact necessary to make the statements contained herein or therein not misleading. Novell has disclosed to Caldera all facts known or reasonably available to Novell that are material to the financial condition, operation, or prospects of the DOS Business, the Transferred Assets, and the assumed liabilities.

7.20 Truth at Closing. All of the representations, warranties, and agreements of Novell contained in this Section 7 shall be true and correct and in full force and effect on and as of the Closing Date.

7.21 7.5 Litigation, etc.: As of the date of this Agreement, there are no actions, suits, proceedings, or investigations pending before any court or governmental agency (or, to the besat of Novell's knowledge, is there any threat thereof) that relate to the incorporation of Novell, the DOS Business, or that question the validity of this Agreement or the Ancillary Agreements or any action taken or to be taken in connection herewith or therewith. The

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foregoing includes, without limitation, actions pending or threatened involving the prior employment of any employees of Novell, such employees' use of knowledge in connection with the DOS Business, or any information or techniques proprietary to any of their former employers.

7.22 Court Orders, Decrees, and Laws: There is no outstanding or, to Novell's best knowledge, threatened order, writ, injunction, or decree of any court, governmental agency, or arbitration tribunal against Novell affecting, involving, or relating to the DOS Business or the Transferred Assets. Novell is not in violation of any applicable federal, state, or local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree affecting, involving, or relating to the DOS Business or the Transferred Assets except where noncompliance has no material adverse effect upon the financial condition, operation, or prospects of the DOS Business (including under ownership by Caldera) or the Transferred Assets, and Novell has received no notices of any allegation of any such violation. The foregoing shall be deemed to include laws and regulations relating to the federal patent, copyright and trademark laws, state trade secret and unfair competition laws, and to all other applicable laws, including equal opportunity, wage and hour, and other employment matters, and antitrust and trade regulation laws.

~~7.6 Patents and Other Intangible Assets: (NEEDS FURTHER REVIEW) As of the date of this Agreement, Novell is unaware of any infringement of or conflict with the rights of others with respect to any patents, patent applications, trademarks, trade names, brand names, trade secrets, inventions, processes, formulae or copyrights necessary for the operation of the DOS Business.~~

7.23 7.7 Government Consent, etc.: No consent, approval, or authorization of, or designation, declaration or filing with, any governmental authority on the part of Novell is required in connection with the valid execution and delivery of this Agreement and the Ancillary Agreements.

7.24 7.8. Brokers or Finders: Novell has no incurred, and will not incur, directly or indirectly, as a result of any action taken by Novell pursuant to this Agreement, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or the Ancillary Agreements.

7.25 7.9 Disclosure: The representations and warranties of Novell contained in (a) this Agreement, the Ancillary Agreements and the exhibits or schedules attached hereto, and (b) any certificate furnished or to be furnished to Caldera at the Closing, when read together, do not, to the best of Novell's knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

7.26 7.10 No Implied Representations: It is the explicit intent of each party hereto that Novell is not making any representation or warranty whatsoever, express or implied, except those representations and warranties of Novell contained in this Agreement.

SECTION 8
Representations and Warranties of Caldera

Caldera hereby represents and warrants to Novell as follows:

8.1 Access to Data; Legal Opinions: Caldera has had sufficient opportunity to ask questions of, and receive answers from, representatives of Novell concerning the terms and conditions of this transaction, and to obtain any information requested by Caldera. On or before the Closing Date, Caldera shall have received a legal opinion from

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legal counsel to Caldera, in form and substance reasonably satisfactory to Novell, relating to due authority, execution, validity, and similar matters relating to this Agreement.

8.2 <u>Authorization</u>: Caldera has all requisite legal power and authority to enter in to this Agreement and to consummate the transactions contemplated herein. All action on the part of Caldera, its trustees, directors, and its owners necessary for the authorization, execution, delivery, and performance of this Agreement and the execution and delivery of the Ancillary Agreements by Caldera has been taken. This Agreement and the Ancillary Agreements, when executed and delivered by Caldera, will constitute valid and legally binding obligations of Caldera, enforceable in accordance with their respective terms.

8.3 <u>Compliance With Law</u>: Caldera has conducted its business so as to comply in all material respects with all laws, rules and regulations, judgments, decrees, and orders of any court, administrative agency, commission, regulatory authority, or other governmental authority that are applicable to its operations. As of the date of this Agreement, there are no judgments or orders, injunctions, decrees, stipulations, or awards (whether rendered by a court of administrative agency or by arbitration) against Caldera with any continuing affect, that reasonably would be expected to have a material adverse affect on the business and financial condition of Caldera or on Caldera's ability to perform its obligations under this Agreement.

8.4 <u>No Defaults</u>. As of the date of this Agreement, Caldera is not, nor has it received notice that it will be with the passage of time, in default or violation of (a) any judgment, decree, order, injunction, or stipulation applicable to Caldera, or (b) any agreement, note, mortgage, indenture, contract, lease, instrument, permit, franchise, or license to which Caldera is a party or by which Caldera may be bound, in a manner that reasonably would be expected to have a material adverse effect on the business and financial condition of Caldera or on Caldera's ability to perform its obligations under this Agreement.

8.5 <u>Litigation</u>. As of the date of this Agreement, there is no action, suit, proceeding, claim or governmental investigation pending or, to the knowledge of Caldera, threatened, against Caldera that reasonably would be expected to have a material adverse effect on the business and financial condition of Caldera or on Caldera's ability to perform its obligations under this Agreement, or that otherwise seeks to prevent, after, or materially delay any of the transactions contemplated under this Agreement.

8.6 <u>No Implied Representations</u>. It is the explicit intent of each party hereto that Caldera is not making any representation or warranty whatsoever, express or implied, except those representations and warranties of Caldera contained in this Agreement.

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SECTION 9

Conditions to Closing

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Caldera's obligation to enter into the transactions contemplated hereby at the Closing is subject to the

9.1

9.2   No change —

9.3 Conditions to Novell's Obligations.

~~9.3 Certificate of Caldera.~~ Caldera shall deliver a certificate executed on behalf of Caldera by an authorized representative with signature authority to the effect that, as of the Closing Date: (a) all representations and warranties made by Caldera in this Agreement are true and complete in all material respects; (b) all covenants, obligations, and conditions of this Agreement to be performed by Novell on or before such date have been so performed in all material respects, and (c) there has been no material adverse change in the business and financial condition of Caldera, or in Caldera's ability to perform its obligations under this Agreement, between the date of this Agreement and the Closing Date.

9.4 Conditions to Caldera's Obligations

9.4.1 Representations and Warranties True at Closing Date. Novell's representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of such date; Novell shall have complied with the covenants and agreements set forth herein to be performed by it on or before the Closing Date; and Novell shall have delivered to Caldera a certificate dated the Closing Date and signed by a duly authorized officer of Novell to all such effects.

9.4.2 Investigations. Neither any investigation of Novell by Caldera, nor the Exhibits or Schedules herein, nor any other document delivered to Caldera as contemplated by this Agreement, shall have revealed any facts or circumstances that, in the good faith judgment of Caldera, reflect in a material adverse way on the Transferred Assets, the assumed liabilities, or the business, operations, or prospects of the DOS Business.

9.4.3 Consents. All required consents shall have been obtained.

9.4.4 No Litigation. No Litigation shall be threatened or pending against Caldera or Novell before any court or governmental agency that, in the reasonable opinion of counsel for Novell, could result in the restraint or prohibition of any such party, or the obtaining of damages or other relief from such party, in connection with this Agreement or the consummation of the transactions contemplated hereby.

9.4.5 No Material Adverse Change. From the date of this Agreement until the Closing Date, Novell shall not have suffered any material adverse change (whether or not such change is referred to or described in any supplement to the Schedules), the Assumed Liabilities, or the financial condition, operations, or prospects of the DOS Business.

9.4.6 Opinion of Novell's Counsel. Novell shall have delivered to Caldera an opinion of its counsel (who may be an employee of Novell), dated as of the Closing Date, in form and substance satisfactory to Caldera and its counsel, to the effect that:

9.4.7 No-Compete Agreement. At or prior to the Closing, Novell shall have entered into a no-compete agreement in form acceptable to Caldera and its counsel, the effectiveness of which shall be expressly contingent upon the occurrence of Closing.

SECTION 10
Miscellaneous

10.1 Governing Law. This Agreement shall be governed in all respects by the laws of the state of Utah as those laws are applied to agreements between Utah residents entered into and to be performed entirely within Utah. Any

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action or proceeding brought by any party against another arising out of or related to this Agreement shall be brought in a state or federal court of competent subject matter jurisdiction located within Utah County, Utah, and each of the parties to this Agreement consents to the personal jurisdiction of those courts.

10.2 Taxes. Novell Buyer shall be responsible for all excise, sales, value-added, use, registration, stamp, transfer and other like taxes imposed or levied on it by reason of this Agreement and the transactions contemplated hereby. The parties shall cooperate to the extent reasonably requested and legally permitted to minimize any such taxes, including but not limited to the electronic transmission by remote telecommunications of the DOS Products and Related Technology.

10.3 Survival. The representations, warranties and covenants contained herein or made pursuant to this Agreement shall, unless otherwise indicated, survive the Closing and shall in no way be affected by any investigation made by or on behalf of Caldera or Novell.

10.4 Successors and Assigns. Except as specifically otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

10.5 Entire Agreement; Amendment. The Agreement, the Ancillary Agreements and the other documents delivered pursuant hereto and the agreements and documents contemplated thereby constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof, and thereof, and no party shall be liable or bound to any other party in any manner by any representations, warranties or covenants except as specifically set forth herein or therein. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the party against whom enforcement of any such amendment, waiver, discharge or termination is sought.

10.6 Notices, etc. All notices and other communications required or permitted under this Agreement shall be in writing and shall be delivered personally (including by courier or overnight express service) or mailed by first class mail, postage pre-paid, addressed (a) if to Caldera, at 899 West Center Street, Orem, Utah 84058, Attention: Ralph Yarrow, or at such other address as Caldera furnishes, (b) if to Novell, at 1555 North Technology Way, Orem, Utah 84057, Attention: David R. Bradford, or at such other address as Novell furnishes.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered at the address of the party to be notified; provided, however, that such address shall have been furnished to the person giving notice (as specified above) and the address shall be at an entity that maintains regular business hours (except for holidays) throughout the entire year. In the event that the address furnished is not at an entity that maintains regular business hours, notice shall be deemed given upon the earlier of personal delivery or, if sent by mail, at the earlier of its receipt or seventy-two (72) hours after deposit in a regularly maintained receptacle for the deposit of the U.S. mail addressed and mailed as aforesaid.

10.7 Expenses. Each party shall bear its own expenses incurred on its behalf with respect to this Agreement and the transactions contemplated hereby.

10.8 Access to Information. Novell and Caldera shall each provide the other and its accountants, counsel, and other representatives, reasonable access during normal business hours during the period prior to the Closing Date to (a) all of its properties, books, contracts, commitments, and records, and (b) all other information concerning its business, properties and personnel (subject to restrictions imposed by applicable law) as the other may reasonably request, it being understood that access to information concerning Novell shall pertain only to the DOS Business.

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10.9 Confidentiality. For purposes of this Agreement, "Confidential Information" means (a) the terms and conditions of this Agreement, (b) any information or knowledge obtained in any investigation pursuant to Section 10.8, (c) any other information that the disclosing party desires to protect against unrestricted disclosure by the receiving party and that (i) if disclosed in tangible form, is marked in writing as "confidential" or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." The parties also acknowledge that, after the date hereof, the Transferred Assets will constitute Confidential Information of Caldera. The receiving party of Confidential Information agrees to exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall in no event be less than the receiving party gives to protect its own trade secrets. The receiving party may disclose Confidential Information only to its employees or agents who need to know such information and shall inform such employees, by way of policy and agreement, that they are bound by obligations of confidentiality. These confidentiality obligations shall survive for three (3) years from the date of this Agreement. The foregoing restriction shall not apply to any portion of the Confidential Information which (1) is already in the possession of the receiving party without obligations of confidence; or (2) becomes generally available to the public in any manner or from (i) through no fault of Digisoft [[WHO IS DIGISOFT? IS THIS SUPPOSED TO BE NOVELL OR CALDERA]]or its employees, agents or representatives in the case of Transferred Assets, or (ii) without breach of this Agreement in the case of any other Confidential Information; (3) is independently developed by the receiving party without the benefit of the Confidential Information, or rightfully received from another source on a non-confidential basis; (4) is released for disclosure by the disclosing party with its written consent; (5) is required by a court or a governmental agency to be disclosed or is otherwise required by law or is necessary in order to establish rights under this Agreement; provided, that, with respect to clause (5) above, the receiving party shall first notify the disclosing party of such required disclosure and shall take such steps the disclosing party shall reasonably request to limit the scope of such disclosure and otherwise protect the confidentiality of the Confidential Information; or (6) consists of Residuals. The term "Residuals" means ideas, concepts, know-how, or techniques contained in information that are retained in memory by persons who have access to the Confidential Information. The receiving party shall have not obligation to limit or restrict the assignment of such persons. However, this provision will not be deemed to grant to the receiving party a license under the disclosing party' copyrights or patents or to give the receiving party the right to disclose, except as set forth elsewhere in this Agreement, the business plans of the disclosing party or any financial, statistical, or personnel data.

10.10   Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute on instrument.

10.11   Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, provided that no such severability shall be effective it if materially changes the economic benefit of this Agreement to any party.

10.12   Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

10.13   Mutual Drafting. This Agreement is the joint product of Novell and Caldera, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of Novell and Caldera, and shall not be construed in favor of or against any party hereto.

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10.14   Intent of the Parties. Although the Schedules and Exhibits in this Agreement are intended to be complete, to the extent any rights or assets of Novell primarily relate to the DOS Business or are otherwise necessary for the ownership and use of the Transferred Assets and the conduct of the DOS Business, but are not properly itemized or do not appear on the applicable Schedules or Exhibits where required, then, unless this Agreement otherwise provides directly for Caldera to provide for or obtain such rights or assets in a different way, the general language of Section 3.1 shall govern and such rights and assets shall nonetheless be deemed transferred to Caldera at Closing. It is mutually acknowledged that the Schedules and Exhibits not attached hereto and the lists referred to in Section 6.1 are to be prepared as of the date specified in Section 6.1, and consequently the Transferred Assets so identified may vary on the Closing Date because of the effect of ongoing operations. Further, because the date specified in Section 6.1 will occur following the execution of this Agreement, the omission of such items until such time on or shortly after the that date as they have been completed and the parties have agreed on their contents shall not impair the effectiveness of this Agreement.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date first above written.

Caldera, Inc.   Novell, Inc.

Signature _____   Signature _____
Name _____   Name _____
Title _____   Title _____
Date _____   Date _____

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Contractual Obligations Caldera assumes -> copies.
- MLA deliveries
- support

Darlette Klein => MLA expert

Current distribution contracts

Restriction on our use of "Novell DOS" naming.

"Continuing reasonable access to upgrades reasonably necessary" etc.

Suit timing