

# **EXHIBIT 13**

## Asset Purchase Agreement

This Asset Purchase Agreement ("Agreement") is made as of July 23, 1996 ("Effective 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"). This Agreement incorporates herein Exhibits A through E attached hereto.

### SECTION 1

#### Recitals

1.1 In November 1991, Novell acquired a DOS-based desktop operating system business ("DOS Business," as more specifically defined in Section 2.5). Several products corresponding to the DOS Business have been made available by Novell or its predecessors in interest, including, but not limited to, CP/M, 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 certain liabilities of Novell comprising the DOS Business (the "Acquisition").

1.3 In connection with the Acquisition, Novell will (a) transfer to Caldera specified assets and liabilities comprising the DOS Business, including the products associated with the DOS Business ("DOS Products," as defined in Section 2.6); and (b) assign to Caldera certain related rights and agreements. In turn, Caldera agrees to Novell's reservation of rights in the DOS Products as specified in the Reservation of Rights attached hereto as Exhibit A.

### 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 shall have the meanings ascribed to them in Section 5.

2.2 Common Code shall mean those portions of programming code for Personal NetWare, VLMs, or any other Novell products or technologies not developed primarily as components of DOS Products, but which are contained within the programming code of the DOS Products.

2.3 Development Environment shall mean any non-commercially available device, code (source and binary), Documentation, media or development tool (including compilers, workbenches, tools, and 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 shall mean the user manuals and other written materials or machine-readable text and/or graphics that relate to the DOS Products and are either owned by Novell or are Third Party Materials licensed to Novell, 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 directly related to the abuse or enforcement of any right or interest in the Transferred Assets (excluding any portions of such records that consist of privileged communications and are not directly related to such abuse or enforcement), and all marketing collateral, including all pre-existing customer lists pertaining to the DOS Products, e.g., (a) product registration databases, (b) technical support databases and (c) 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 Business shall mean the business of developing, marketing, and distributing the DOS Products.

2.6 DOS Products shall mean the following Novell products, and any other prior or subsequent versions or revisions of such products to the extent owned by Novell as of the Closing:

CP/M	Concurrent DOS	DR DOS 6.0
DR DOS 5.0	Multiuser DOS	Novell DOS 7.0
PALMDOS	GEM	GEM Draw
GEM Wordchart	GEM Graph	GEM Programmers Toolkit
Draw Plus		

The DOS Products include all language versions; however, the Japanese versions of the DOS Products ("DOS-J") are included only to the extent that Novell owns such versions. If Novell Japan, Ltd. ("Novell Japan") owns any part of DOS-J, Novell agrees to cooperate with Caldera in facilitating discussions between Caldera and Novell Japan regarding the transfer of any or all of such part to Caldera under terms (including new consideration) acceptable to Caldera and Novell Japan.

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

2.8 Error shall mean, as the context requires, either a Code Error: program function that is described in user documentation for the DOS Products but is omitted from the DOS Products 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 Documentation 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 Products Code.

2.9 Intellectual Property shall mean (a) the Transferred Marks, (b) the Transferred Copyrights, and (c) the trade secrets, proprietary information, processes, and formulae and all other intellectual property rights (excluding filed patent registrations and issued patents) in the DOS Products, including DOS Products Code and Documentation, and the Related Technology.

2.10 Licensed Patents shall mean (a) Novell's issued patents (including the patent identified in Exhibit D), one or more claims of which may cover one or more of the DOS Products, and (b) any patents issuing from Novell's pending patent applications, one or more claims of which may cover one or more of the DOS Products.

2.11 Related Technology shall mean, to the extent owned by Novell or comprised of Third Party Materials licensed to Novell, 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 in association with them for the development of the DOS Products, that is necessary to the performance by the DOS Products of their intended functions or purposes, whether tangible or intangible, in any stage of development. Related Technology shall include, without limiting or expanding the foregoing, (a) any 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; (b) any existing documentation, development tools and associated documentation (excluding such development tools and associated documentation that are Third Party Materials as to which Novell has not obtained consent(s) to assign the same to Caldera); and (c) all rights of any kind in or to any of the foregoing, including, without limitation, all proprietary rights and trade secrets and copyrights (whether pending, applied for or issued) for the DOS Products, regardless of whether any or all of the foregoing constitutes copyrightable subject matter. Despite the foregoing, Related Technology shall not include (i) any patents and filed patent applications relating to the DOS Business, (ii) Personal NetWare, VLMs, or any other products or technologies not developed primarily as components of DOS Products, (iii) any rights of any kind in or to any of those products or technologies as identified or described in subsection (ii), including, without limitation, all proprietary rights and trade secrets and copyrights (whether registered or pending) for the DOS Products, regardless of whether any or all of the foregoing constitutes copyrightable subject matter, and (iv) 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 (e.g., 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.

2.12 Software Contracts shall mean the items listed in the list(s) specified in Section 6.1 hereof and classified as (a) licenses from third parties (development and/or marketing); (b) licenses from third parties (internal use only); (c) development contracts, work-for-hire agreements, and consulting and employment agreements; (d) distributorships, dealerships, franchises, and manufacturer's representative

contracts; (e) licenses and sublicenses to others; and (f) maintenance, support, or enhancement agreements.

2.13 Third Party Materials shall mean the materials in which a third party is the copyright owner.

2.14 Transferred Assets shall mean the DOS Products, Related Technology (which, in the case of Third Party Materials, is limited to Novell's license rights in such materials), Transferred Marks, Transferred Copyrights, and the Documentation (which, in the case of Third Party Materials, is limited to Novell's license rights in such materials).

2.15 Transferred Copyrights shall mean the copyrights to the DOS Products (excluding Related Technology), including the Transferred Copyright Registrations, licenses for which necessary consents are obtained, and applications pertaining thereto.

2.16 Transferred Copyright Registrations shall mean the copyright registrations identified in Exhibit E hereto.

2.17 Transferred Marks shall mean the following marks, whether formally registered, subject to pending registration applications, or unregistered common law trademarks or reserved trade names, obtained or filed by or on behalf of Novell, but only to the extent of Novell's transferable ownership therein as of the Closing:

CP/M	DR DOS
PALMDOS	MULTIUSER DOS
D and DESIGN	DIGITAL RESEARCH
DRAW PLUS	CONCURRENT DOS
DIGITAL DESIGN	DR LOGO
DIGITAL RESEARCH AND DESIGN	DIGITAL RESEARCH WE MAKE COMPUTERS WORK

### SECTION 3

#### Transfer of Assets; Licenses

3.1 Transfer of Assets, Assignment of Agreements and Assignment of Revenues. 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 to Caldera, in accordance with Section 6.1, the Software Contracts. Effective upon the Closing Date, Novell shall assign to Caldera all revenues associated with the DOS Business that accrue after the Closing Date, except as otherwise provided in Sections 6.3.1 and 6.5.1. After Closing, Novell shall deliver to Caldera, within sixty (60) days after the end of each Novell fiscal quarter, any such revenues received by Novell during the preceding Novell fiscal quarter. Also at Closing, 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

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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. Novell and Caldera agree to execute any and all other instruments and documents, and shall take all other lawful action, that may Caldera as the legal assignee and real party in interest as to all such claims

3.2 Patent License. In the event that any DOS Products incorporate Novell seeks or holds patent or invention protection or any other similar for grants to Caldera a non-exclusive, non-transferrable license to practice the extent necessary to exercise its rights in the Transferred Copyrights or cop. Technology granted to Caldera hereunder.

3.3 Common Code License. Novell hereby grants Caldera a worldwide, irrevocable, perpetual copyright license in the Common Code distribute, display, and perform the Common Code solely as components the Common Code was incorporated by Novell.

Cash has been rec'd.  
- need to do invoice  
(debit memo)  
to G/L acct #  
03-9000-5966-000

#### SECTION 4 Consideration

4.1 Cash. At Closing, Caldera shall deliver to Novell by certified check the sum of \$400,000 (four hundred thousand dollars) (the "Purchase Price").

4.2 Reservation of Rights. At Closing, Novell and Caldera will execute the Reservation of Rights attached hereto as Exhibit A.

4.3 Allocation of Purchase Price. Within forty-five (45) days after the Closing, Caldera shall prepare and deliver to Novell, subject to Novell's approval, an allocation of the Purchase Price plus any other consideration properly allocable among the Transferred Assets. The parties agree that all tax returns and reports (including Internal Revenue Service ("IRS") Form 8594) and all financial statements shall be prepared in a manner consistent with (and the parties shall not otherwise take a position inconsistent with) the Allocation unless required by the IRS or state taxing authority. The Allocation shall be prepared in a manner consistent with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated hereunder.

#### SECTION 5 Closing Date; Delivery; Termination

5.1 Closing Date. The Closing of this Agreement shall be held at the offices of Novell, Inc. at 1555 North Technology Way, Orem, Utah, 84057 at 11:00 a.m. on July 23, 1996, or at such other time and place upon which Novell and Caldera shall agree.

5.2 Deliveries by Novell. 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 by Novell at Closing

pursuant to this Agreement, (b) a fully-executed Bill of Sale, and (c) to the best of Novell's knowledge, a true, correct and complete copy of Novell DOS 7.0. Within fifteen (15) days after Closing, Novell will make reasonable efforts to deliver to Caldera (i) a true, correct and complete copy of the Related Technology pertaining to Novell DOS 7.0, (ii) a complete copy of the Documentation pertaining to Novell DOS 7.0, and (iii) a copy of, or a list describing, the complete Development Environment pertaining to Novell DOS 7.0. Within ninety (90) days after Closing, Novell will make reasonable efforts to deliver to Caldera true and complete copies of all other DOS Products and the Related Technology, Documentation, and Development Environment pertaining to such products. If Novell discovers any of the foregoing items, or if it discovers more complete or additional copies of such items, after the time period specified for delivery has expired, Novell will promptly deliver the same to Caldera without being in default under this Agreement. Caldera acknowledges that Novell's delivery of the foregoing is subject to any and all necessary consents from third party licensors.

5.3 Deliveries by Caldera. At the Closing, Caldera shall deliver to Novell (i) a certified check as described in Section 4.1, (ii) the fully-executed Reservation of Rights referred to in Section 4.2, and (iii) a true, correct and fully-executed copy of each document specified and required to be delivered by Caldera at Closing pursuant to this Agreement.

5.4 Taking of Necessary Action. 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 to carry out the purposes of this Agreement, the parties shall take all such lawful action.

## SECTION 6

### Transition

6.1 Transfer of Customers/Assignments. Within fifteen (15) days after 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 DOS Customers"), and (c) a list of all Current DOS Customers and any others entitled to receive service and support of DOS Products. As soon as reasonably practicable after the delivery of such lists, (i) Novell shall supply Caldera with copies of all contracts and summaries of all agreements not reduced to writing that relate to the items listed, and (ii) Novell and Caldera will cooperate with each other in conducting joint contacts with the Third Party Licensors and Current DOS Customers (to the extent permitted by contract) to attempt to obtain, where necessary, consent to transfer orders from Novell to Caldera (or to issue new orders to Caldera for the same or similar terms) and to assign and delegate Novell's rights and obligations under the corresponding licenses and contracts. At 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. Except for Novell's continuing obligations under any non-assigned contracts as described in Sections 6.1 and 6.3, Caldera shall assume at Closing all obligations and liabilities of Novell relating to the DOS Business, including, but not limited to (a) all obligations and liabilities, whether existing on the Closing Date or arising thereafter, under the Software Contracts described in Section 6.1, and (b) all other obligations of product support and customer service relating to the DOS Products.

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. At Closing, Caldera shall assume full responsibility 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. Notwithstanding anything in this Agreement to the contrary, "Transitional Contracts" shall not include those contracts and agreements described in the exceptions made to the representations and warranties in Section 7.11, as specifically set forth in Exhibit B, Schedule of Exceptions.

6.3.1 Revenue From Transitional Contracts. Novell may retain (or may obtain from Caldera at Caldera's cost of materials) such units of inventory of DOS Products as it deems reasonably necessary to satisfy customers under Transitional Contracts. Caldera shall be entitled to any revenue 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 accrue, and are received by Novell, after Closing. All revenues from the Transitional Contracts that (a) accrue before Closing, (b) were pre-paid before Closing, or (c) under the terms of such contracts should have been paid before Closing, belong to Novell. Following the Closing, Novell may modify the Transitional Contracts so long as such modifications do not renew or extend the term of such contracts. Novell may not enter into any new Transitional Contracts after the Closing.

6.4 Maintenance of Business. Novell shall use reasonable efforts to maintain its relationship with each of its major suppliers and customers and employees relating to the Transferred Assets. If, on or before the Closing Date, Novell becomes aware of a material deterioration in the

6.5 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 Closing, provided however, the foregoing shall not be construed to require Novell to exert efforts greater than those exerted as of the Effective Date.

6.6 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 or otherwise commit or create any obligation to do any of the things described in the preceding clauses.

6.6.1 ACER License. The parties acknowledge that Novell is currently negotiating a Novell DOS 7.0 source code license agreement with Acer, Inc. ("ACER License"). If Novell completes and executes the ACER License before Closing, Novell will attempt to transfer and assign to Caldera the ACER License in accordance with the terms and conditions of Section 6.1, but will in any event retain (a) all rights to all license fees and any other amounts to be paid by ACER under the ACER License, and (b) all support and training obligations arising thereunder. If Novell does not complete and execute the ACER License before Closing, Novell will transfer and assign to Caldera at Closing, in accordance with Section 6.1, any and all rights and interests relating to the ACER License negotiations; provided, however, that Caldera pay to Novell, as a finder's fee, fifty percent (50%) of any and all amounts received by Caldera that relate to or arise out of the ACER Agreement and related negotiations. To assist in the transition of the DOS Business to Caldera, if the ACER Agreement does not close on or before the Closing Date, Novell shall continue to make good faith efforts to negotiate the ACER License, or something substantially similar thereto, with ACER on behalf of Caldera.

6.7 Access. During the seven (7) year period immediately following the Closing, each party shall cooperate with the other in providing all information reasonably requested and permitting reasonable access to all employees, data and records relating to the DOS Products when requested in writing to provide or permit the same for all legitimate purposes of the requesting party. The cost and expense in providing or permitting access to information hereunder shall be borne by the requesting party. The requesting party, as a condition to being provided with access to information hereunder, shall, at the request of the other party, execute a confidentiality and non-use agreement in form and substance acceptable to such other party.

6.8 Indemnification.

6.8.1 Indemnification by Novell. Novell shall indemnify, defend, and hold harmless Caldera and its respective successors and assigns and the directors, officers, employees, and agents of

each (collectively, the "Caldera Group"), at, and at any time after, the Closing, from and against any and all demands, claims, actions, or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Caldera Group, directly or indirectly, by reason of, resulting from, or arising in connection with any of the following:

6.8.1.1 Breach of Obligation. Any breach of any representation, warranty, or agreement of Novell contained in or made pursuant to this Agreement or any other agreements or instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby (collectively, "Ancillary Agreements").

6.8.1.2 Failure to Obtain Consents. The failure to obtain any necessary consents to the contracts specified in (a) of Section 6.1, except for the Fifth Generation License Agreement, the STAC Electronics Strategic Development Agreement, the Golden Bow Systems VCache Driver Source Code License Agreement, and the Multisoft Corporation License Agreement.

6.8.1.3 Noncompliance with Bulk Sales Law. Any failure to comply with any "bulk sales" or similar laws relating to notices to creditors.

6.8.2 Indemnification by Caldera. Caldera shall indemnify, defend, and hold harmless Novell and its successors and assigns and the directors, officers, employees, and agents of each (collectively, the "Novell Group"), at, and at any time after, the Closing, from and against any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other expenses of investigation, handling, and litigation, and settlement amounts and including any net income tax amount associated with all such indemnification recoveries (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Novell Group, directly or indirectly, by reason of, resulting from, or arising in connection with any of the following:

6.8.2.1 Breach of Obligation. Any breach of any representation, warranty, or agreement of Caldera contained in or made pursuant to this Agreement or any Ancillary Agreement.

6.8.2.2 Assumed Liabilities. Any of the liabilities assumed under Section 6.2.

6.8.2.3 Failure to Obtain Consents. The failure to obtain any necessary consents to the contracts specified in (a) of Section 6.1, except for the Fifth Generation License Agreement, the STAC Electronics Strategic Development Agreement, the Golden Bow Systems VCache Driver Source Code License Agreement, and the Multisoft Corporation License Agreement.

6.8.3 Notice of Claim. The party entitled to indemnification under this Section 6.7 (the "Claimant") shall promptly deliver to the party liable for such indemnification hereunder (the "Obligor") notice in writing (the "Required Notice") of any claim for recovery hereunder, specifying in reasonable detail the nature of the Loss and, if known, the amount, or an estimate of the amount, of the liability arising therefrom (the "Claim"). The Claimant shall provide to the Obligor as promptly as practicable thereafter information and documentation reasonably requested by the Obligor to support and verify the claim asserted, provided that, in so doing, it may restrict or condition any disclosure in the interest of preserving privileges of importance in any foreseeable litigation.

6.8.4 Defense. If Obligor assumes the defense or the prosecution thereof, including the employment of counsel or accountants, Obligor shall do so at its own cost and expense. The Claimant shall have the right to employ counsel separate from counsel employed by the Obligor in any such action and to participate therein, but the fees and expenses of such counsel employed by the Claimant shall be at its expense. The Claimant shall have the right to determine and adopt (or, in the case of a proposal by Obligor, to approve) a settlement of such matter in its reasonable discretion, except that Claimant need not consent to any settlement that (a) imposes any nonmonetary obligation or (b) Obligor does not agree to pay in full. The Obligor shall not be liable for any settlement of any such claim effected without its prior written consent, which shall not be unreasonably withheld. Whether or not the Obligor chooses to so defend or prosecute such claim, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information, and testimony, and attend such conferences, discovery proceedings, hearings, trials, and appeals, as may be reasonably requested in connection therewith.

6.8.5 Limitations. Notwithstanding anything in this Section 6.7 to the contrary:

6.8.5.1 Threshold. No indemnification or any other claim for damages under this Agreement or any Ancillary Agreement shall be payable by Novell to Caldera until (and then only to the extent that) the total of all Losses by Caldera equals or exceeds \$25,000.

6.8.5.2 Maximum Liability. Except for Losses arising out of the intentional and willful misconduct of Novell, Novell's total aggregate liability to Caldera under this Agreement shall not exceed \$1,000,000.

6.8.5.3 Third Party Claim. In the event that a claim is brought by a third party against Caldera ("third-party claim") for which Novell is, or may be, obligated to indemnify Caldera hereunder, Caldera agrees that it will not bring any claim against Novell (by third-party complaint or otherwise) for indemnification of any such third-party claim, until such third-party claim is finally adjudicated (including appeals), settled and compromised, and/or otherwise fully and completely resolved and Caldera has made payment thereon. In such event, Novell agrees to waive, for a period of one year after the third-party claim is finally resolved as described herein, any statute of limitations defense that Novell may have as to Caldera's claim for indemnity. However, if Novell chooses to assume the defense of any such third party claim pursuant to Section 6.7.4, Caldera may seek indemnification from Novell without regard to the conditions set forth in this Section 6.7.5.3.

6.8.6 Exclusive Remedy. The parties acknowledge and agree that Section 6.7 contains the exclusive remedies of the parties for damages arising out of any breach of, or misrepresentation relating to, this Agreement and any Ancillary Agreement.

## SECTION 7

### Representations and Warranties of Novell

Subject to the exceptions described 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 makes each of the following representations and warranties (in Sections 7.1 through 7.18) to Caldera, made as of the Closing Date:

7.1 Organization and Standing. 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 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 will be enforceable in accordance with their respective terms.

7.4 No Conflict. Neither the execution and delivery of this Agreement and any Ancillary Agreements, nor the consummation of the transactions contemplated hereby or thereby, will violate or conflict with (a) 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, (b) any provision of any charter, bylaw or other governing or organizational instrument of Novell, or (c) except insofar as consents are to be procured under this Agreement, 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.

7.5 Required Contract Consents. Except for the required consent(s) expressly referred to in this Agreement, no approval, authorization, consent, permission, or waiver to or from, or notice, filing, or recording to or with, any person is necessary for (a) the execution and delivery of this Agreement and any Ancillary Agreements, or the consummation by Novell of the transactions contemplated hereby; (b) the transfer and assignment to Caldera at Closing of the Transferred Assets, or (c) the ownership and use of the Transferred Assets and the conduct of the DOS Business.

7.6 Title to Tangible Property. Caldera shall obtain good and marketable title to all of the tangible Transferred Assets (i.e., the Documentation and business records of 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 Title to Intellectual Property.

7.8.1 Ownership. Except as otherwise expressly provided in this Agreement, Novell owns the Intellectual Property and Patents. Except as specified in Exhibit B, Section 2.17 is a listing of the Transferred Marks that consists of the relevant marks, which may be trademarks subject to registrations or pending registration applications in the U.S. or key foreign jurisdictions, or may be common law trademarks or reserved trade names, that are to be transferred to Caldera by virtue of this transaction, such registrations or applications also to be maintained by or formally assigned to Caldera at Caldera's own desire and expense. Except as specified in Exhibit B, Exhibit D sets forth, to the best of Novell's knowledge and belief, all of Novell's issued patents the claims of which may cover the DOS Products. Except as specified in Exhibit B, Exhibit E sets forth, to the best of Novell's knowledge and belief, all registered copyrights to the DOS Products. If Novell subsequently discovers or determines that there are any patents or copyrights that, in accordance with the terms of this Agreement, should have been included in Exhibits D and E, respectively, Novell will, without being in default under this Agreement, promptly notify Caldera and either license the patent or transfer the copyright, as the case may be, to Caldera under mutually-acceptable terms that are consistent with this Agreement.

7.8.2 Procedures for Copyright Protection. To the best of Novell's knowledge and belief, in no instance has the eligibility of the DOS Products or DOS Products Code for protection under applicable copyright law been forfeited to the public domain by omission of any required notice or any other action.

7.8.3 Trade Secret Protection. To the best of Novell's knowledge and belief, the source code and system documentation relating to the DOS Products have, except for any valid licenses and sublicenses of the same to other parties, (a) at all times been maintained in confidence, and (b) 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.

7.8.4 Personnel Agreements. To the best of Novell's knowledge and belief, 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 Products Code, Documentation, or Intellectual Property on behalf of Novell either (a) 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 (b) 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.

7.8.5 Absence of Claims. To the best of Novell's knowledge and belief, no claims are currently being 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 Novell does not, to Novell's best knowledge and belief, infringe on the rights of any other person.

7.9 Contracts--General. To the best of Novell's knowledge and belief, the Software Contracts described in the lists referred to in Section 6.1 (a) 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 Products, and (b) are valid, binding, and enforceable in accordance with their terms and are in full force and effect. To the best of Novell's knowledge and belief, 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.

7.10 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. Except for such programming and materials properly licensed to Novell, the DOS Products and Documentation do not contain, to the best of Novell's knowledge and belief, (a) any other programming or materials in which any third party may claim superior, joint, or common ownership, including any right or license, or (b) derivative works of any programming or materials not owned in their entirety by Novell and included in the Transferred Assets.

7.11 Third-Party Interests or Marketing Rights in DOS Products. To the best of Novell's knowledge and belief, 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. To the best of Novell's knowledge and belief, 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. To the best of Novell's knowledge and belief, 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.

7.12 Conduct of Business.

7.12.1 Absence of Particular Events. Since the end of Novell's last full fiscal year, Novell has not (a) suffered any damage or destruction adversely affecting the DOS Business or involving the Transferred Assets that would materially affect the transactions contemplated under this Agreement; (b) incurred any liability or obligation relating to the DOS Business other than in the ordinary course consistent with past practice; or (c) agreed to take any action described in this Section 7.12.1.

7.12.2 Absence of Joint Ventures, etc. 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.

7.13 Schedules and Exhibits Yet to Be Prepared. Any 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.

7.14 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 requested facts known or reasonably available to Novell that are material to the transaction contemplated by this Agreement.

7.15 Court Orders, Decrees, and Laws. There is no outstanding or, to Novell's best knowledge, threatened order, writ, injunction, or decree of, or any action, suit, or proceeding pending before, 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.

7.16 Governmental 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.

7.17 Brokers or Finders. Novell has not 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.

7.18 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. Caldera has had sufficient opportunity to ask questions of, and receive answers from, representatives of Novell concerning the terms and conditions of this Agreement. Caldera has carefully read this Agreement and each term and provision contained herein and has consulted with legal counsel regarding such terms and provisions and, by execution hereof, Caldera affirms its informed and voluntary consent hereto.

8.2 Authorization. Caldera has all requisite legal power and authority to enter into 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 No Conflict. Neither the execution and delivery of this Agreement and the Ancillary Agreements, nor the consummation of the transactions contemplated hereby or thereby, will violate or conflict with (a) any federal, state, or local law, regulation, ordinance, zoning requirement, governmental restriction, order, judgment, or decree applicable to Caldera, (b) any provision of any charter, bylaw or other governing or organizational instrument of Caldera, or (c) any mortgage, indenture, license, instrument, trust, contract, agreement, or other commitment or arrangement to which Caldera is a party or by which Caldera is bound.

8.4 Compliance With Law. As of the Effective Date, 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

## Confidential

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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 No Defaults. As of the Effective Date, 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.

8.6 Litigation. As of the Effective Date, 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, alter, or materially delay any of the transactions contemplated under this Agreement.

8.7 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.

8.8 Disclosure. No representation, warranty, or statement made by Caldera in this Agreement or in any document or certificate furnished or to be furnished to Novell 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. Caldera has disclosed to Novell all facts known or reasonably available to Caldera that are material to this Agreement and the consummation of the transactions contemplated herein.

8.9 Truth at Closing. All of the representations, warranties, and agreements of Caldera contained in this Section 8 shall be true and correct and in full force and effect on and as of the Closing Date.

8.10 NO IMPLIED REPRESENTATIONS. 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.

## SECTION 9 Conditions to Closing

9.1 Conditions to Novell's Obligations. Novell's obligation to enter into the transactions contemplated hereby at the Closing is subject to the fulfillment as of the Closing Date of the following conditions:

9.1.1 Execution of Documents. All other agreements and documents contemplated hereby shall have been executed.

9.1.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by Caldera on or before the Closing Date shall have been performed or complied with in all respects, and all consents required to be obtained by Caldera shall have been obtained.

9.1.3 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 or 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.

9.2 Conditions to Caldera's Obligations. Caldera's obligation to enter into the transactions contemplated hereby at the Closing is subject to the fulfillment as of the Closing Date of the following conditions:

9.2.1 Execution of Documents. All other agreements and documents contemplated hereby shall have been executed.

9.2.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by Novell on or before the Closing Date shall have been performed or complied with in all respects, and all consents required to be obtained by Novell before Closing shall have been obtained.

9.2.3 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; 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.

9.2.4 Investigations. Neither any investigation of Novell by Caldera, nor the Exhibits or Schedules hereto, 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.

9.2.5 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 legal counsel, 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.

9.2.6 No Material Adverse Change. From the Effective Date 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 (see Section 6.2), or the financial condition, operations, or prospects of the DOS Business.

9.2.7 Certificate of Novell. Novell shall deliver a certificate executed on behalf of Novell by an authorized representative with signature authority to the effect that, as of the Closing Date: (a) all representations and warranties made by Novell in this Agreement are true and complete in all material respects; (b) all covenants, obligations, and conditions of this Agreement to be performed by Caldera 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 or financial condition of Novell, or in Novell's ability to perform its obligations under this Agreement, between the date of this Agreement and the Closing Date.

## 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 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. Caldera 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. Caldera shall pay and promptly discharge when due the entire amount of any and all such taxes. The parties shall cooperate to the extent reasonably requested and legally permitted to minimize any such taxes. If Novell is obligated to pay any of such taxes, Caldera shall reimburse Novell on demand for the amount of such payment.

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 Binding Effect / Assignment. Except as specifically otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. However, Caldera may not assign or delegate any of its rights or obligations under this Agreement unless Caldera assigns and delegates all such rights and obligations, together (and concurrently) with all of Caldera's rights and obligations under the Novell Cross Platform Services and Novell Products Source Code License Agreement executed in conjunction with this Agreement, to the same party.

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 prepaid, addressed (a) if to Caldera, at 633 South 550 East, Provo, Utah 84606, Attention: Bryan Sparks, 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. Except as specifically provided otherwise in this Agreement, 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.

10.9 Confidentiality.

10.9.1 For purposes of this Agreement, "Confidential Information" means (a) the terms and conditions of this Agreement, (b) all verbal and written communications between the parties in connection with this Agreement, (c) any information or knowledge obtained in any investigation pursuant to Section 10.8, and (d) 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 acknowledge that, after the Effective Date, the Transferred Assets will constitute Confidential Information of Caldera.

10.9.2 The parties acknowledge the extremely sensitive nature of all Confidential Information under this Agreement and that any unauthorized disclosure of the same may place either or both of the parties at a severe competitive disadvantage or may otherwise result in irreparable damage to either or both parties. Accordingly, the receiving party of Confidential Information agrees to restrict access to Confidential Information only to those employees and independent contractors (a) who require access as part of the receiving party's negotiation of, or performance under, this Agreement, (b) who have been notified of the extremely sensitive nature of the Confidential Information, and (c) who do not constitute an unreasonable risk of disclosure, inadvertent or otherwise, of the Confidential Information. These confidentiality obligations shall survive for ten (10) years from the date of this Agreement.

10.9.3 The foregoing restrictions shall not apply to any portion of the Confidential Information which (1) is already rightfully in the possession of the receiving party without obligation of confidence; or (2) becomes generally available to the public (i) through no fault of the receiving party 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 no obligation to limit or restrict the assignment of such persons. However, nothing in this Section or in the Agreement will be deemed to grant to the receiving party a license under the disclosing party's 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 one 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 if it 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.

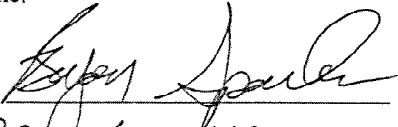
Confidential

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.

10.14 Definition / Acknowledgment. As used in this Agreement, the term "to the best knowledge and belief" of a party, and terms of similar effect, shall mean that the relevant party shall have conducted, or caused its officers, employees or agents to conduct, an investigation within its own company as may be reasonable and prudent under the circumstances and, after such investigation, no facts have come to the attention of the relevant party that would cause the relevant party to reasonably conclude that the facts as to which such best knowledge and belief are asserted contain any material misstatement or omission. The obligation to investigate shall not require the relevant party to inquire beyond its own current employees or its own existing company files and records. As pertaining to Novell, Caldera understands and acknowledges that Novell has not been actively conducting the DOS Business and that many, if not all, of Novell's employees who worked directly in the DOS Business or who otherwise had detailed knowledge and expertise concerning the DOS Products, Related Technology, Documentation, and Development Environment are no longer employees of Novell.

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

Caldera, Inc.


Signature: 

Name: BRYAN SPARKS

Title: President, CEO

Date: 23 July 1996

Novell, Inc.

Signature: 

Name: STEVEN W. BENTLEY

Title: SR. DIRECTOR

Date: 23 JULY 1996

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**Exhibit A**  
**Reservation of Rights**

**Exhibit B**  
**Novell Schedule of Exceptions**

The following are exceptions to Novell's representations and warranties set forth in Sections 7.1 through 7.18:

Section 7.7 - Novell DOS 7.0 has some compatibility issues with Win 3.11 and Windows for Workgroups, and is not necessarily 100% compatible with all DOS-based programs.

Section 7.8.3 - Novell has reason to believe that CP/M code may be found in MS-DOS.

Section 7.11 - Novell has entered into, or is currently negotiating, the following contracts that constitute "licenses and sublicenses to others," but which are not for internal use only:

The Software Reproduction Program to the Statement of Work 6 (OEM Programs, dated July 25, 1994) to Master Task Agreement between Novell, Inc. and Novell K.K. (Agreement No. N-NK-1, dated February 21, 1992)

Strategic Development Agreement between Novell and The Santa Cruz Operation, Inc. ("SCO"), dated effective December 6, 1995

Pending Novell DOS 7.0 Source Code License Agreement between Novell and Acer, Inc. (see Section 6.5.1)

Caldera acknowledges that Novell has not been actively conducting the DOS Business and that many, if not all, of Novell's employees who worked directly in the DOS Business or who otherwise had detailed knowledge and expertise concerning the DOS Products, Related Technology, Documentation, and Development Environment are no longer employees of Novell. Consequently, there may be other contracts similar to the foregoing of which Novell is not currently aware. If, however, Novell subsequently discovers any such contracts, Novell will promptly notify Caldera of the same without breach of this Agreement.

Section 7.12.1 (and possibly affecting Section 7.9) - Novell announced that it was discontinuing the DOS Business, resulting in the de-booking of DOS Business revenue.

**Exhibit C**  
**Bill of Sale**

KNOW BY THESE PRESENTS THAT:

Novell, Inc., a Delaware corporation ("Novell"), for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, transfer, convey, assign, and deliver unto Caldera, Inc., a Utah corporation ("Caldera"), all of Novell's right, title and interest (subject to that certain Reservation of Rights dated as of July 23, 1996) in and to the "Transferred Assets," as such term is defined in the Asset Purchase Agreement between Novell and Caldera dated as of the same date ("Agreement"), which assets include the following software products, subject to the limitations, terms, and conditions of the Agreement:

CP/M	DR DOS 6.0	Concurrent DOS
DR DOS 5.0	Multiuser DOS	Novell DOS 7.0
PALMDOS	GEM	GEM Draw
GEM Wordchart	GEM Graph	GEM Programmers Toolkit
Draw Plus		

TO HAVE AND TO HOLD, all and singular, of the properties, assets and rights granted and transferred hereby, with the appurtenances thereof, unto Caldera, its successors and assigns forever, to and for their own use and benefit.

For the consideration aforesaid, Novell hereby constitutes and appoints Caldera, its successors and assigns, the true and lawful attorney or attorneys of Novell, with full power of substitution, for Novell and, subject to Novell's prior written consent, in its name and stead, or otherwise, but on behalf and for the benefit of Caldera, its successors and assigns, to demand and receive from time to time, any and all properties hereby given, granted, bargained, sold, assigned, transferred, conveyed, set over, confirmed and delivered and give receipts and releases for and in respect to the same and any part thereof, and from time to time to institute and prosecute, subject to Novell's prior written consent, in the name of Novell or otherwise, but for the benefit of Caldera, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Caldera, its successors or assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in and to the properties hereby given, granted, bargained, sold, assigned, transferred, set over, confirmed, delivered or conveyed. All actions taken by Caldera under the foregoing power of attorney shall be at Caldera's expense.

Novell, for itself and its successors and assigns, does hereby covenant with Caldera, its successors and assigns, that Novell and its successors and assigns will execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, at Caldera's expense, all such further deeds, bills of sale, transfers, assignments, conveyances, powers of attorney, conveying and confirming unto Caldera, its successors and assigns, all and singular, the properties hereby granted, sold, assigned, transferred, conveyed and delivered as Caldera, its successors or assigns, shall reasonably require, provided, however, that Caldera, its successors and assigns shall prepare all necessary documentation which shall be acceptable to Novell in its sole and reasonable judgment.

Confidential

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All terms not otherwise defined herein shall have the meanings defined in the Asset Purchase Agreement dated as of the date hereof by and between Caldera and Novell.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of July 23, 1996.

Novell, Inc.

Caldera, Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Confidential

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**Exhibit D**  
**Novell Patents**

U.S. Patent No. 5,355,501  
Idle Detection System  
Issued October 11, 1994, filed March 9, 1990  
Inventors: Roger Gross and John P. Constant  
Reel/Frame - 7054/0028

**Exhibit E**  
**Registered Copyrights**

TITLE & NATURE OF WORK	REGISTRATION NO.
Multuser DOS DR NET System Builder's Kit, Release 2.12	TX-u 478-214
DR DOS Release 3.3 (Computer program)	TX-u 336-808
DR DOS Release 3.4 (Computer program)	TX-u 417-804
DR DOS User's and Reference Guide for Release 3.4	TX 3-152-568
DR DOS Release 3.41 (Computer program)	TX-u 417-803
DR DOS Release 5.0 (Computer program)	TX-u 434-662
DR DOS System Builders Kit, Release 5.0 (Computer program)	TX-u 478-216
Digital Research Multuser DOS, Release 5.0 (Computer program)	TX-u 478-212
DR DOS 5.0 ViewMax User Guide	TX 3-330-749
DR DOS User's Guide	TX 2-435-512
DR DOS Programmer's Guide	TX 2-435-511
DR DOS Reference Guide	TX 2-435-513
DR DOS Quick Reference Card	TX 3-187-261
Implementing DR DOS in ROM with a ROMDISK	TX 3-187-267
DR DOS Supplement Code Page User's Guide	TX 3-187-374
DR DOS Release 6.0 (Computer program)	TX-u 504-950
NOVELL DOS 7 (Computer program & manuals)	TX 4-057-655
Concurrent DOS XM Release 6.0 (Computer program)	TX 2-267-252
Concurrent DOS 386 Release 2.0 (Computer program)	TX 2-267-251
Concurrent DOS 3.1 (Computer program)	TX 1-461-578

Concurrent CP/M-86 Operating System Programmer's Guide	TX 1-007-260
Concurrent CP/M-86 Operating System User's Guide	TX 1-007-261
GEM Desk Top (Computer program)	TX-u 190-605
GEMAES (Computer program)	TX-u 190-603
GEMVDI (Computer program)	TX-u 190-606
GEM Draw (Computer program)	TX-u 190-604
GEM Draw User's Guide	TX 1-656-405
GEM Desktop Publisher, Release 2.01 (Computer program)	TX-u 402-597
X/GEM for FlexOS, Release 1.0 (Computer program)	TX-u 400-902
GEM Scan, Release 1.1 (Computer program)	TX-u 411-466
GEM/3 Desktop, Release 3.0 (Computer program)	TX-u 401-079
GEM Desktop (User manual)	TX 1-656-404
GEM Programmer's Guide, Volumes 1 and 2	TX 1-656-406
GEM/4 DRIVDI, Release 4.01 (Computer program)	TX-u 478-215
CP/M Assembler (ASM) User's Guide	TX 676-802
ASM-86 The CP/M-86 Assembler User's Guide	TX 679-779
CP/M Dynamic Debugging Tool (DDT) User's Guide	TX 706-282
ED: A Context Editor for the CP/M Disk System User's Manual	TX 676-803
An Introduction to CP/M Features and Facilities (Manual)	TX 676-805
CP/M System Alteration Guide	TX 676-804
CP/M 2.0 Interface Guide	TX 497-680
CP/M 2.0 User's Guide for CP/M 1.4 Owners	TX 497-681

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CP/M Interface Guide	TX 651-843
CP/M-68K Operating System User's Guide	TX 1-219-684
CP/M-68K Operating System Programmer's Guide	TX 1-219-683
CP/M-86 Operating System IBM Display Writer Reference Manual	TX 870-816
CP/NOS Release Notes	TX 1-029-838
The C Language Programmer's Guide for the CP/M-86 Family of Operating Systems	TX 1-186-703
C Language Programmer's Guide for the CP/M-86 Family of Operating Systems	TX 1-189-794
CP/M MAC Macro Assembler: Language Manual and Applications Guide	TX 965-815
PASCAL/MT+ User's Guide Release 5 CP/M-8080-Z80	TX 967-543
PASCAL/MT+ Reference Data Release 5 CP/M-8080-Z80	TX 967-541
Pascal/MT+ Language Programmer's Guide for the CP/M-86 Family of Operating Systems	TX 1-160-615
Pascal/MT+ Language Programmer's Guide for the CP/M Family of Operating Systems	TX 1-160-614
Pascal/MT+ Language Reference Manual	TX 1-160-613
PASCAL/MT+86 Language Reference Manual	TX 1-007-235
PASCAL/MT+ Speedprogramming Package User's Guide Release 5 CP/M-8080-Z80	TX 967-542
Programmer's Utilities Guide (PUB-86, r.1.1) for the CP/M-86 Family of Operating Systems	TX 1-135-962
CP/M SID Symbolic Instruction Debugger User's Guide	TX 863-775
SID Symbolic Instruction Debugger Command Summary	TX 679-716
CP/M TEX Text Formatter User's Guide	TX 920-292

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Addenda to CP/M TEX Text Formatter User's Guide	TX 938-268
The CP/M Z-80 Microcomputer ZSID Symbolic Instruction Debugger Command Summary Z-80 Version	TX 858-213
CP/M 1.4 Computer Software Program	TX 679-456
CP/M 2.1 Computer Software Program	TX 679-740
CP/M 2.0 Computer Software Program	TX 1-241-338
CP/M 2.2 Computer Software Program	TX 1-169-701
CP/M 2.0 Alteration Guide	TX 487-777

### RESERVATION OF RIGHTS

This Reservation of Rights ("Agreement") is made and entered into as of July 23, 1996 (the "Effective Date"), by and between Novell, Inc., a Delaware corporation ("Novell") and Caldera, Inc., a Utah corporation ("Caldera").

### RECITALS

WHEREAS, pursuant to that certain Asset Purchase Agreement entered into between the parties as of the same date (the "Asset Purchase Agreement"), Caldera purchased certain assets from Novell related to the DOS Business (as such term is defined in the Asset Purchase Agreement); and

WHEREAS, Novell desires to retain, and Caldera desires to allow Novell to retain, certain rights to such transferred assets on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1 Definitions. For purposes of this Agreement, the following definitions will apply. Any other capitalized terms in this Agreement will have the same meanings as defined in the Asset Purchase Agreement, unless otherwise defined in this Agreement.

1.1 Binary Code. "Binary Code" shall mean DOS Products Code that loads and executes without further processing by a software compiler or linker or that results when Source Code is processed by a software compiler.

1.2 Confidential Full Source License. Under a Confidential Full Source License, the copyright licensor grants to the copyright licensee a non-exclusive, non-transferable, worldwide, perpetual, irrevocable, and payment-bearing license under the copyright licensor's copyrights covering the licensed product(s) ("Licensed Work"). This Confidential Full Source License grants all of the following rights:

- (a) To use, reproduce and distribute the Licensed Work internally.
- (b) To create or have created Derivative Works by modifying the Source Code of the Licensed Work and to reproduce and distribute internally the Derivative Works in Source Code form or in Binary Code form.
- (c) To create or have created Derivative Works by modifying the documentation associated with the Licensed Work and to reproduce and distribute internally such Derivative Works in any form.

- (d) To distribute externally to end-users, either directly or through distributors, copies in Binary Code form only of the Licensed Work or Derivative Works thereof and copies in any form of the documentation associated with Licensed Work or any Derivative Works of such documentation. Such distribution shall be in accordance with the copyright licensee's standard software distribution license practices subject to approval by the copyright licensor, which shall be agreed upon in advance by the parties. Both such parties expect that such distribution right would be payment-bearing.
- (e) To exercise all rights to the Licensed Work with regard to pictorial, graphic or audio/visual works, including icons, screens, music and characters, that are created as a result of execution of any Code or any Derivative Work thereof in accordance with the granted license.
- (f) To use all development environment materials that accompany the Licensed Work to produce Binary Code that is identical to that produced by the copyright licensor.
- (g) To sublicense the Licensed Work in Source Code form.

1.3 Derivative Work. "Derivative Work" shall mean a work that is based on one or more preexisting works (such as a revision, enhancement, modification, translation, localization, abridgment, condensation, expansion, or any other form in which such preexisting work may be recast, transformed, or adapted) and that, if prepared without authorization of the copyright owner of such preexisting work, would constitute copyright infringement under U.S. law.

1.4 Enhancements. "Enhancements" shall mean changes, additions or new releases, other than Maintenance Modifications, to the Code and 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.

1.5 Licensed DOS Products. "Licensed DOS Products" shall mean the DOS Products and Related Technology (as defined in the Asset Purchase Agreement), and any other products that are based on the Licensed DOS Product Source Code, including all Maintenance Modifications and Enhancements and upgrades thereof.

1.6 Licensed DOS Product Source Code. "Licensed DOS Product Source Code" shall mean the Source Code of the Licensed DOS Products in the form such code exists as of the date of this Agreement.

1.7 Licensed Marks. "Licensed Marks" means the licensed trademarks and logos associated with the Licensed DOS Products and Derivative Works thereof.

1.8 Limited Source License. Under a Limited Source License, the copyright licensor grants to the copyright licensee a non-exclusive, non-transferable, worldwide, revocable, and payment-bearing license under the copyright licensor's copyrights covering the licensed product(s) ("Licensed Work"). This Limited Source License grants all of the following rights:

- (a) To use, reproduce and distribute the Licensed Work internally.
- (b) To create or have created Derivative Works by modifying the Source Code of the Licensed Work and to reproduce and distribute internally the Derivative Works in Source Code form or in Binary Code form.
- (c) To create or have created Derivative Works by modifying the documentation of the Licensed Work and to reproduce and distribute internally such Derivative Works in any form.
- (d) To distribute externally to end-users, either directly or through distributors, copies in Binary Code form only of the Licensed Work or Derivative Works thereof and copies in any form of the documentation associated with the Licensed Work or any Derivative Works of such documentation. Such distribution shall be in accordance with the copyright licensee's standard software distribution license practices, subject to approval by the copyright licensor, which shall be agreed upon in advance by the parties. Both such parties expect that such distribution right would be payment-bearing.
- (e) To exercise all rights to the Licensed Work with regard to pictorial, graphic or audio/visual works, including icons, screens, music and characters, that are created as a result of execution of any Code or any Derivative Work thereof in accordance with the granted license.

1.9 Maintenance Modification. "Maintenance Modification" shall mean any modification or revision to DOS Products Code or to Documentation, other than an Enhancement, that corrects an error or provides an other incidental correction.

1.10 Source Code. "Source Code" shall mean the human-readable form of the DOS Products Code and related system documentation, including all comments and any procedural language.

1.11 Subsidiary. "Subsidiary" shall mean a corporation, company or other entity (i) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are owned or controlled, directly or indirectly, by a party hereto, or (ii) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty

percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a party hereto. However, such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

2     Reserved Rights. Subject to the terms and conditions of this Agreement, Novell hereby reserves a nonexclusive, perpetual, worldwide, royalty-free, paid up, irrevocable right:

2.1     To use, reproduce and distribute the Licensed DOS Products internally within Novell in Source Code and Binary Code form.

2.2     To create or have created Derivative Works of the Licensed DOS Product Source Code and to reproduce and distribute internally such Derivative Works in Source Code form and in Binary Code form.

2.3     To create or have created Derivative Works of the Licensed DOS Products and to reproduce and distribute internally such Derivative Works in Source Code form and in Binary Code form.

2.4     To create or have created Derivative Works of the Documentation of the Licensed DOS Products and to reproduce and distribute internally such Derivative Works in any form.

2.5     To reproduce, have reproduced and distribute externally to end-users, either directly or indirectly through resellers, distributors and other third parties, copies of the Licensed DOS Products and Derivative Works permitted hereunder, each in Binary Code form only, and copies of the Documentation therefor and any Derivative Works of the Documentation permitted hereunder. Such distribution shall be in accordance with Novell's standard software distribution and publishing agreements used by Novell in connection with its products. Novell shall not have the right under the foregoing license to distribute the Licensed DOS Products or Derivative Works thereof in any form except bundled with, or in support of, an operating system owned or licensed by Novell; provided, however, that such limitation shall not apply to any Related Technology.

2.6     To use, reproduce, revise, modify, enhance, condense, expand, collect, compile, link adapt, translate, localize, port, merge, integrate and recast any portion (but not all or substantially all) of the Source Code of the Licensed DOS Products (including all Maintenance Modifications, Enhancements, and upgrades thereof) in the development, revision, modification, enhancement, condensation, expansion, adaptation, translation, and localization of operating system products owned or licensed by Novell ("DOS Enhanced Products"). Novell shall also have the right to market and distribute externally to end users, either directly or indirectly through resellers, distributors, and other third parties, copies of the DOS Enhanced Products in

Binary Code form only. Such distribution shall be in accordance with Novell's, or its licensee's, standard software distribution and publishing agreements.

2.7 To exercise all rights to the Licensed DOS Products and Derivative Works with regard to pictorial, graphic or audiovisual works, including icons, screens, music and characters, that are created as a result of execution of the Licensed DOS Products or any Derivative Work thereof.

2.8 Novell shall have the right to sublicense the foregoing rights to third parties, including its Subsidiaries; provided, however, that the products or business of any such third party does not directly compete with the Licensed DOS Products and that such third parties be subject to the restrictions and obligations of Novell hereunder.

2.10 Caldera acknowledges that Novell has granted The Santa Cruz Operation, Inc. and its subsidiaries (collectively "SCO") a license to DR DOS for use in the UnixWare product Novell has transferred to SCO. Accordingly, Novell hereby reserves the right to grant SCO the following licenses solely to the extent necessary to preserve SCO's existing license rights from Novell: (a) a non-exclusive, worldwide, non-transferable Confidential Full Source License in DR DOS and all associated documentation for use with DR DOS solely in connection with SCO's marketing and licensing of UnixWare; (b) the right to grant sublicenses to original equipment manufacturers ("OEMs") as a Limited Source License to make modification to DR DOS for the purpose of porting DR DOS in conjunction with UnixWare to the OEM's platform. The resulting binary version of DR DOS must be associated with UnixWare.

2.11 Caldera also acknowledges that Novell is currently negotiating a Novell DOS 7.0 source code license agreement with ACER, Inc. (the "ACER License"). If Novell completes and executes the ACER License before Closing (as specified forth in the Asset Purchase Agreement), Caldera shall, effective upon Closing, grant to Novell all rights and licenses in Novell DOS 7.0 and related Documentation that are necessary, but only to the extent necessary, to preserve ACER's and Novell's respective rights and obligations agreed upon in the ACER License. If Novell does not complete and execute the ACER License before Closing, no such license grant will be necessary and all rights and interests relating to the ACER License negotiations will be transferred to Caldera in accordance with Section 6.5.1 of the Asset Purchase Agreement.

2.12 Novell also reserves the right to maintain existing licenses of the DOS Products to Novell Japan, and existing licenses to OEMs and customers of Novell Japan, pursuant to the Software Reproduction Program to the Statement of Work 6 (OEM Programs, dated July 25, 1994) to the Master Task Agreement between Novell, Inc. and Novell K.K. (Agreement No. N-NK-1, dated February 21, 1992). Novell will make commercially reasonable efforts to facilitate discussions between Caldera and Novell Japan with respect to: obtaining the consent of Novell Japan for Novell to assign the DOS Products portions of its agreements with Novell Japan to Caldera; to resolve disposition of the existing DOS Products licenses existing between Novell

Japan and its licensees; assignment of any localizations or transactions of DOS-J from Novel Japan to Caldera. To the extent Novell Japan seeks consideration with respect to the above, the consideration shall be provided by Caldera.

3        Trademark Rights. Novell hereby reserves, for itself and its Subsidiaries, a non-exclusive, nontransferable, worldwide, perpetual, fully-paid-up, royalty-free right to use the Licensed Marks solely in association with marketing, distributing, and sublicensing the Licensed DOS Products and Derivative Works thereof. Novell, its Subsidiaries, and their agents may use the Licensed Marks on such promotional display and advertising materials as may, in Novell's judgment, promote the Licensed DOS Products and Derivative Works thereof. All such use of the Licensed Marks must be in accordance with Caldera's trademark usage policies and proper legal standards.

4        Patent License. Caldera hereby grants to Novell and its Subsidiaries, sublicensees, and customers a non-exclusive, nontransferable, worldwide, perpetual, fully-paid-up right and license under any patents owned by Caldera, or with respect to which Caldera has a right to grant such rights and licenses, to the extent required by Novell to fully exercise the copyright license granted herein, including the right to make, use, and sell products and services based on or incorporating the Licensed DOS Products.

5        Ownership.

5.1      Derivative Works. Novell shall retain all right, title and interest in and to all DOS Enhanced Products and all Derivative Works created in compliance with this Agreement; provided that Novell hereby grants to Caldera, its successors and assigns, a nonexclusive, perpetual, worldwide, royalty-free, paid up, irrevocable license to use, reproduce, revise, modify, enhance, condense, expand, collect, compile, link adapt, translate, localize, port, merge, integrate and recast any portion (but not all or substantially all) of the Source Code of such Derivative Works (including all maintenance modifications, enhancements, and upgrades thereof) in the development, revision, modification, enhancement, condensation, expansion, adaptation, translation, and localization of products owned or licensed by Caldera and to market and distribute externally to end users, either directly or indirectly through resellers, distributors, and other third parties, copies of such Caldera products in Binary Code form only. Such distribution shall be in accordance with the standard software distribution and publishing agreements of Caldera or its licensees. Nevertheless, the obligations of this Section 5.1 shall not apply to Derivative Works of the Source Code (including all maintenance modifications, enhancements, and upgrades thereof) or portions thereof that Novell in its reasonable discretion deems to be highly confidential or highly proprietary materials, the license of which to Caldera would damage Novell's business interests, but Novell shall provide Caldera with written notice (describing such Derivative Works with reasonable specificity) when such Derivative Works or portions thereof are withheld.

5.2      Residuals. All rights not explicitly granted above shall remain solely and exclusively in Caldera.

6     Technical Support. After the Effective Date, Novell shall be responsible for post-sales technical support of the Licensed DOS Products and DOS Enhanced Products sold by Novell.

7     Warranty Disclaimer. CALDERA ACKNOWLEDGES THAT ANY CODE LICENSED TO CALDERA UNDER SECTION 5.1 IS LICENSED "AS IS", WITHOUT ANY WARRANTIES REGARDING FUNCTIONALITY, PERFORMANCE, USE, OPERATION OR SPECIFICATIONS, AND WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8     Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS OR DATA OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT.

9     Term and Termination.

9.1   Term. This Agreement shall commence as of the Effective Date and shall continue in full force and effect unless and until terminated as provided herein.

9.2   Termination. Either party shall have the right to terminate this Agreement, upon written notice to the other party, if the other party breaches any material term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice of the breach.

9.3   Survival. The provisions of Sections 2 through 8 shall survive termination of this Agreement for any reason.

10    General Terms.

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 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   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.

10.3   Entire Agreement; Amendment. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof, and neither party shall be liable or bound to the other party in any manner by any representations, warranties

or covenants except as specifically set forth herein. 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.

10.4 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 prepaid, addressed (a) if to Novell, at 1555 North Technology Way, Orem, Utah 84057, Attention: David R. Bradford, or such other person and/or address as Novell furnishes to Caldera, or (b) if to Caldera, at 633 South 550 East, Provo, Utah 84606, Attention: Bryan Sparks, or such other person and/or address as Caldera furnishes to Novell.

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 72 hours after deposit in a regularly maintained receptacle for the deposit of the U.S. mail, addressed and mailed as aforesaid.

10.5 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any party hereunder upon any breach or default of Caldera or Novell under this Agreement shall impair any such right, power or remedy of such party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default thereafter or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any such holder, shall be cumulative and not alternative.

10.6 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 one instrument.

10.7 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

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shall continue in full force and effect without said provision, provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

10.8 Titles & Headings. The titles and headings used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

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

The parties hereto have caused this Agreement to be executed as of the day and year first set forth above.

NOVELL, INC.

Signature: Steven W. Bentley

Name: STEVEN W. BENTLEY

Title: SR. DIRECTOR

CALDERA, INC.

Signature: Bryan Sparks

Name: BRYAN SPARKS

Title: President, CEO

**Exhibit C**  
**Bill of Sale**

KNOW BY THESE PRESENTS THAT:

Novell, Inc., a Delaware corporation ("Novell"), for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, transfer, convey, assign, and deliver unto Caldera, Inc., a Utah corporation ("Caldera"), all of Novell's right, title and interest (subject to that certain Reservation of Rights dated as of July 23, 1996) in and to the "Transferred Assets," as such term is defined in the Asset Purchase Agreement between Novell and Caldera dated as of the same date ("Agreement"), which assets include the following software products, subject to the limitations, terms, and conditions of the Agreement:

CP/M	DR DOS 6.0	Concurrent DOS
DR DOS 5.0	Multiusers DOS	Novell DOS 7.0
PALMDOS	GEM	GEM Draw
GEM Wordchart	GEM Graph	GEM Programmers Toolkit
Draw Plus		

TO HAVE AND TO HOLD, all and singular, of the properties, assets and rights granted and transferred hereby, with the appurtenances thereof, unto Caldera, its successors and assigns forever, to and for their own use and benefit.

For the consideration aforesaid, Novell hereby constitutes and appoints Caldera, its successors and assigns, the true and lawful attorney or attorneys of Novell, with full power of substitution, for Novell and, subject to Novell's prior written consent, in its name and stead, or otherwise, but on behalf and for the benefit of Caldera, its successors and assigns, to demand and receive from time to time, any and all properties hereby given, granted, bargained, sold, assigned, transferred, conveyed, set over, confirmed and delivered and give receipts and releases for and in respect to the same and any part thereof, and from time to time to institute and prosecute, subject to Novell's prior written consent, in the name of Novell or otherwise, but for the benefit of Caldera, its successors and assigns, any and all proceedings at law, in equity or otherwise, which Caldera, its successors or assigns, may deem proper in order to collect, assert or enforce any claim, right or title of any kind in and to the properties hereby given, granted, bargained, sold, assigned, transferred, set over, confirmed, delivered or conveyed. All actions taken by Caldera under the foregoing power of attorney shall be at Caldera's expense.

Novell, for itself and its successors and assigns, does hereby covenant with Caldera, its successors and assigns, that Novell and its successors and assigns will execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, at Caldera's expense, all such further deeds, bills of sale, transfers, assignments, conveyances, powers of attorney, conveying and confirming unto Caldera, its successors and assigns, all and singular, the properties hereby granted, sold, assigned, transferred, conveyed and delivered as Caldera, its successors or assigns, shall reasonably require, provided, however, that Caldera, its successors and assigns shall prepare all necessary documentation which shall be acceptable to Novell in its sole and reasonable judgment.

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All terms not otherwise defined herein shall have the meanings defined in the Asset Purchase Agreement dated as of the date hereof by and between Caldera and Novell.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of July 23, 1996.

Novell, Inc.

Signature: Steven W. Benton

Name: STEVEN W. BENTON

Title: SR. DIRECTOR

Caldera, Inc.

Signature: Bryan Sparks

Name: BRYAN SPARKS

Title: President, CEO

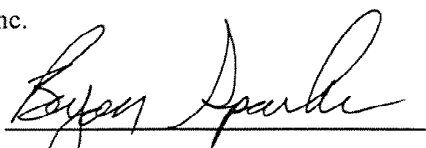
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**Certificate of Caldera, Inc.**

Caldera, Inc. ("Caldera"), by and through its undersigned representative, hereby certifies that, as of July 23, 1996: (a) all representations and warranties made by Caldera in that certain Asset Purchase Agreement between Caldera and Novell, Inc. ("Novell") ("Agreement") are true and complete in all material respects; and (b) all covenants, obligations, and conditions of the Agreement to be performed by Novell on or before such date have been so performed in all material respects.

Caldera, Inc.

Signature: 

Name: BRYAN SPARKS

Title: President, CEO

Date: 23 July 1996

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July 23, 1996

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**Certificate of Novell, Inc.**

Novell, Inc. ("Novell"), by and through its undersigned representative, hereby certifies that, as of July 23, 1996: (a) all representations and warranties made by Novell in that certain Asset Purchase Agreement between Novell and Caldera, Inc. ("Caldera") ("Agreement") are true and complete in all material respects; and (b) all covenants, obligations, and conditions of the Agreement to be performed by Caldera on or before such date have been so performed in all material respects.

Novell, Inc.

Signature: Steven W. Bentley

Name: STEVEN W. BENTLEY

Title: SR. DIRECTOR

Date: 23 JULY 1996

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July 23, 1996

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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. Novell and Caldera agree to execute any and all other instruments and documents, and shall take all other lawful action, that may be necessary to establish Caldera as the legal assignee and real party in interest as to all such claims.

3.2 Patent License. In the event that any DOS Products incorporate technology in which Novell seeks or holds patent or invention protection or any other similar form of legal protection, Novell grants to Caldera a non-exclusive, non-transferrable license to practice the Licensed Patents solely to the extent necessary to exercise its rights in the Transferred Copyrights or copyright licenses in the Related Technology granted to Caldera hereunder.

3.3 Common Code License. Novell hereby grants Caldera a fully paid-up, royalty-free, worldwide, irrevocable, perpetual copyright license in the Common Code to use, reproduce, modify, distribute, display, and perform the Common Code solely as components of the DOS Products in which the Common Code was incorporated by Novell.

#### SECTION 4 Consideration

4.1 Cash. At Closing, Caldera shall deliver to Novell by certified check the sum of \$400,000 (four hundred thousand dollars) (the "Purchase Price").

4.2 Reservation of Rights. At Closing, Novell and Caldera will execute the Reservation of Rights attached hereto as Exhibit A.

4.3 Allocation of Purchase Price. Within forty-five (45) days after the Closing, Caldera shall prepare and deliver to Novell, subject to Novell's approval, an allocation of the Purchase Price plus any other consideration properly allocable among the Transferred Assets. The parties agree that all tax returns and reports (including Internal Revenue Service ("IRS") Form 8594) and all financial statements shall be prepared in a manner consistent with (and the parties shall not otherwise take a position inconsistent with) the Allocation unless required by the IRS or state taxing authority. The Allocation shall be prepared in a manner consistent with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated hereunder.

#### SECTION 5 Closing Date; Delivery; Termination

5.1 Closing Date. The Closing of this Agreement shall be held at the offices of Novell, Inc. at 1555 North Technology Way, Orem, Utah, 84057 at 11:00 a.m. on July 23, 1996, or at such other time and place upon which Novell and Caldera shall agree.

5.2 Deliveries by Novell. 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 by Novell at Closing.

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