

09-07-2001

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9.4.01

9-4-01

TO THE ASSISTANT COMMISSIONER OF P.

Attached original documents or copy thereof.

1. Name of conveying party(ies):

Tadpole Technology, Incorporated
2300 Faraday Avenue
Carlsbad, CA 92008

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State of California
- Other:

Additional name(s) of conveying party(ies) attached?
 Yes No

2. Name and address of receiving party(ies):

Name: Tadpole Technology, LLC
Street Address: 2300 Faraday Avenue
City: Carlsbad State: CA ZIP: 92008

- Individual
- Association
- General Partnership
- Limited Partnership
- Corporation - State
- Other: Delaware Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)
Additional name(s) and address(es) attached?
 Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other:

Execution Date: December 18, 2000

4. Application number(s) or registration number(s):

- a. Trademark Application No(s):
None
- b. Trademark Registration No(s):
1,867,551

40E

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Stacey R. Halpern
KNOBBE, MARTENS, OLSON & BEAR, LLP
Customer No. 20,995
Internal Address: Sixteenth Floor
Street Address: 620 Newport Center Drive
City: Newport Beach State: CA ZIP: 92660
Attorney's Docket No.: RDITADP.004T

7. Total fee (37 CFR 1.21(h)): \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

6. Total number of applications and registrations involved: 1

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct, and any attached copy is a true copy of the original document.

Stacey R. Halpern
Name of Person Signing

Signature

8/29/01
Date

Total number of pages including cover sheet, attachments and document: 11

Mail documents to be recorded with required cover sheet information to:

U.S. Patent and Trademark Office
Attn: Assignment Division
Crystal Gateway-4
1213 Jefferson Davis Highway, Suite 320
Arlington, VA 22202

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01 FC:481 40.00 DP

**LIMITED LIABILITY COMPANY
CERTIFICATE OF CORRECTION
FILED TO CORRECT A CERTAIN ERROR IN THE**

CERTIFICATE OF FORMATION

OF

TADPOLE TECHNOLOGY, LLC

**FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF DELAWARE ON OCTOBER 25, 2000**

1. The name of the limited liability company is Tadpole Technology, LLC.
2. A Certificate of Formation (the "Certificate") was filed by the Secretary of State of Delaware on October 25, 2000 that requires correction as permitted by Section 18-211 of the Delaware Limited Liability Company Act.
3. The inaccuracy or defect of the Certificate to be corrected is that an article naming the manager of the limited liability company was not included therein.
4. Article 4 is hereby added to the Certificate to read as follows:

"4. **Manager.** Its Manager is Tadpole Technology Incorporated, a Delaware corporation."

By: 
Kellie E. Davidson
Authorized Person

cc-166388

**TRADEMARK
REEL: 002362 FRAME: 0889**

LIMITED LIABILITY COMPANY AGREEMENT
OF
TADPOLE TECHNOLOGY, LLC,
a Delaware Limited Liability Company

Dated as of December 18, 2000

**LIMITED LIABILITY COMPANY AGREEMENT OF
TADPOLE TECHNOLOGY, LLC**

This Limited Liability Company Agreement ("Agreement") is made as of December 6, 2000 by the parties set forth on the signature page as "Members" pursuant to the provisions of the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, § 18-101 et seq.

WHEREAS, the Company has been formed by the filing of a Certificate of Formation with the Secretary of State of the State of Delaware, pursuant to Section 18-201 of the Delaware Limited Liability Company Act; and

WHEREAS, the Members desire to adopt this Agreement in order to provide for the management of the business and affairs of the limited liability company so formed and to set forth their respective rights, privileges and obligations;

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members hereby agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings (additional terms, used only in specific Articles, may be defined elsewhere in this Agreement):

"Additional Member" has the meaning set forth in Section 6.6(a).

"Adjusted Capital" means, with respect to a Preferred Member, the excess of the sum of such Member's Capital Contributions over distributions to such Preferred Member in accordance with Section 9.5(b).

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Tax Distribution Amount" shall mean cash equal to the product of (i) the Tax Percentage with respect to the items (on an item-by-item basis) described in clause (ii), and (ii) with respect to a Member's Units (including a Member's Restricted Units), the Member's distributive share of the Company's taxable income for a Fiscal Year (or shorter applicable period) determined in accordance with Section 703(a) of the Code as reflected on the Schedule K-1 of such Member. The Tax Distribution Amount with respect to a Member shall be determined by the Managers in their reasonable discretion.

"Tax Items" has the meaning set forth in Section 9.4(a).

"Tax Matters Partner" means the "tax matters partner" of the Partnership, within the meaning of Code Section 6231(a)(7). TTI shall be the Tax Matters Partner.

"Tax Percentage" means 28% of long-term capital gain and 45% of other taxable income, as determined for federal income tax purposes.

"TTI" means Tadpole Technology Incorporated, a California corporation (formerly known as Cycle Computer Corporation) or successor corporation.

"Transfer" means the sale, assignment, transfer, withdrawal, mortgage, pledge, hypothecation, encumbrance, exchange or other disposition of any part or all of a Member's Units, whether or not for value, and whether voluntarily, by operation of law or otherwise.

"Transfer Date" has the meaning set forth in Section 4.2(c).

"Treasury Regulations" means the temporary and final regulations promulgated under the Code.

"Unit(s)" means an interest, or interests, in the Company held by a Member or Assignee of Member, as defined in Section 5.1.

"Units Repurchase Agreements" means the several unit repurchase agreements (in the form of Exhibit A attached hereto) to be executed by each Member who is an employee of the Company or any Subsidiary.

"Unrecovered Preferred Return" has the meaning in Section 9.1(a)(i).

ARTICLE 2

ORGANIZATION AND TERM

Section 2.1 Formation.

(a) The Company has been formed as a Delaware limited liability company by the filing of the Certificate with the Secretary of State of the State of Delaware. The rights and liabilities of all Members shall be as provided under the Delaware Act, the Certificate, and this Agreement. To the extent permitted by applicable law, the provisions of this Agreement

shall override the provisions of the Delaware Act in the event of any inconsistency or contradiction between them.

(b) In order to maintain the Company as a limited liability company under the laws of the State of Delaware, the Company shall from time to time take appropriate action, including the preparation and filing of such amendments to the Certificate and such other assumed name certificates, documents, instruments and publications as may be required by or desirable under law, including, without limitation, action to reflect:

(i) any change in the Company name;

(ii) any correction of false or erroneous statements in the Certificate or the desire of the Managers to make a change in any statement therein in order that it shall accurately represent the agreement among the Members; or

(iii) any change in the time for dissolution of the Company as stated in the Certificate and in this Agreement.

Section 2.2 Name. The Company's name shall be: "Tadpole Technology, LLC." The Company may do business under that name or any other name pursuant to the Approval of the Majority of Members. The Company shall cause appropriate trade name certificates, fictitious name certificates and like statements to be filed and published under the name set forth in this Section 2.2, or such other name as the Company may have or use in any state or jurisdiction from time to time.

Section 2.3 Term. The Company's existence commenced on the date of the filing of the Certificate and shall be perpetual unless and until it is dissolved and terminated in accordance with Article 14.

Section 2.4 Registered Agent and Office. The Company's registered agent and office in Delaware shall be the agent and office of the initial registered agent named in the Certificate. At any time, the Company may designate another registered agent or office, or both.

Section 2.5 Principal Office. The principal office of the Company shall be at 2300 Faraday Avenue, Carlsbad, CA 92008. The Company may change the location of its principal office at any time.

Section 2.6 Other Instruments. Each Member shall execute and deliver to the Company within five days after receipt of a written request therefor such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and take such other action as the Company deems necessary, useful or appropriate to comply with any laws, rules or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

Section 2.7 Initial Public Offering. Upon the determination by TTI to carry out an IPO, Members holding Common Units shall have the right, exercisable in whole or in part by each Member holding Common Units, to exchange the outstanding Common Units into shares of Common Stock of TTI upon the effectiveness of the IPO. In the aggregate, the Common Units issued and outstanding immediately prior to the effectiveness of the IPO shall be convertible into

ARTICLE 4

CAPITAL CONTRIBUTIONS

Section 4.1 Members. The names and addresses of the Members are as reflected on Schedule 1.

Section 4.2 Initial Capital Contributions.

(a) The Capital Contribution of each of the Members as of the date hereof (the "Initial Capital Contribution"), which has been paid in full, and the number of Common Units and Preferred Units issued and sold to each Member as of the date hereof in respect of such Initial Capital Contribution, is set forth opposite such Member's name on Schedule 1 hereto. All Members acknowledge and agree that the Initial Capital Contributions set forth on Schedule 1 represent the amount of money and the Gross Asset Value of all property initially contributed by the Members.

(b) Schedule 2 contains a list of any property contributed by any Members and any liabilities or debts assumed by the Company in connection with such contribution (the "Contributed Property and Assumed Liabilities"). Each Member hereby agrees to use its best efforts to do, or cause to be done, all things necessary, proper, or advisable under applicable laws and regulations to consummate the transfer of the Contributed Property and Assumed Liabilities contemplated by this Agreement as expeditiously as practicable, including, without limitation, the performance of such further acts or the execution and delivery of any additional instruments or documents as the Managers may reasonably request in order to carry out the transfer of the Contributed Property and Assumed Liabilities. If at any time, any further assignments or assurances in law or any other things are necessary or desirable to vest or to perfect or confirm of record in the Company the title to any Contributed Property and Assumed Liabilities, the Managers of the Company are hereby authorized and empowered on behalf of the Company, in the name of and on behalf of such contributing Member, as appropriate, to execute and deliver any and all things necessary or proper to vest or to perfect or confirm title to the Contributed Property and Assumed Liabilities in the Company.

(c) In the event any contract assigned to and assumed by the Company ("Assumed Contract") in connection with a Member's Initial Capital Contribution requires the consent of another party thereto, the Member assigning such contract (the "Assigning Member"), will make all reasonable efforts to obtain such consent in writing prior to the effective date of such assignment and transfer (the "Transfer Date"). If another party to any Assumed Contract requires a specific written assumption by the Company of the Assigning Member's obligations thereunder as a condition to consent to assignment thereof, the Company agrees to provide such written assumption on terms no less favorable in all material respects to the Company than the existing terms of such Assumed Contract. Nothing in this Agreement shall be construed as an attempt to assign any Assumed Contract which is not assignable without the consent of the other party or parties thereto, unless such consent shall have been obtained. If, after the Company and the Assigning Member have made all reasonable efforts to obtain the consent of any such other party to such Assumed Contract, such consent shall not have been obtained at or prior to the Transfer Date, such Assumed Contract shall not be deemed assigned to the Company hereunder,

and the Company and the Assigning Member shall cooperate in an arrangement (each, an "Assignment Arrangement") reasonable to both the Company and the Assigning Member designed to provide the Company with all of the benefits of such Assumed Contract and all of the obligations under such Assumed Contract arising on or after the Transfer Date, including the enforcement of any rights of the Assigning Member against such other party thereto arising out of the breach or cancellation thereof by such other party or otherwise. The Company and the Assigning Member shall, for a reasonable period, not to exceed ninety (90) business days following the Transfer Date, continue to use all reasonable efforts to attempt to obtain such consents. If the Company and the Assigning Member enter into any Assignment Arrangement in connection with any such Assumed Contract, the Company after the Transfer Date shall be responsible for the performance of such contract and any payments required to be made to the other party to such contract or agreement to the same extent as would have been required if the Assumed Contract had been effectively assigned to the Company on the Transfer Date. In addition, after the Transfer Date, in order that the full value of every Assumed Contract and all claims and demands with respect to such Assumed Contracts may be realized, the Assigning Member hereby agrees that it will, at the written request and under the direction of the Company and as shall be permitted by law and the terms of such Assumed Contracts, take all actions and do or cause to be done all things as shall be reasonably necessary in order that the Company after the Transfer Date may obtain the full benefit and enjoyment of the Assumed Contracts.

(d) No Member shall be required to lend or advance any funds to the Company. Except in connection with such Member's admission to the Company as an Additional Member, no Member shall be required after the date hereof to pay any contributions, assessments or payments to the Company, whether on liquidation of the Company or otherwise; provided, however, that a Member may be required to repay distributions made to it as provided in Section 18-607 of the Delaware Act or Section 13.1.

Section 4.3 Withdrawals and Return of Capital; Interest. No Member shall have the right to receive any interest on any portion of such Member's Capital Contribution; provided, however, that Members holding Preferred Units shall be entitled to receive the Preferred Return thereon. Except as otherwise provided in this Agreement, in the Employment Agreements, the Units Repurchase Agreement, the Company shall not redeem or repurchase any Units, and no Member shall have the right to receive a return on, or to withdraw all or any part of, its Capital Contribution.

Section 4.4 Additional Capital Contributions. No Member shall be required to make any additional capital contributions to the Company.

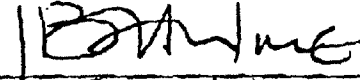
ARTICLE 5

UNITS

Section 5.1 Units. A Member's share of the Profits and Losses of, and right to receive distributions from, the Company shall be represented by the "Unit" or "Units" held by such Member. The Units shall be comprised of Preferred Units (the "Preferred Units") and Common Units (the "Common Units"). Holders of Preferred Units and Common Units shall be

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

TADPOLE TECHNOLOGY
INCORPORATED

By: 
Name: Bernard Hulme
Title: President

John Bannon


Mark Johnston

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

TADPOLE TECHNOLOGY
INCORPORATED

By: _____
Name:
Title:



John Bannon



Mark Johnston

**SCHEDULE 2
SCHEDULE OF CONTRIBUTED PROPERTY AND ASSUMED LIABILITIES**

Property Contributed by Tadpole Technology Incorporated

All property and assets and rights under all contracts and all employee of TTI, except as set forth below (the "Excluded Assets").

Tadpole Technology Incorporated Liabilities Assumed by Tadpole Technology, LLC

All liabilities, except those set forth below (the "Excluded Liabilities")

Excluded Liabilities: All liabilities and obligations arising in connection with the Excluded Assets after the date of such transfer to Tadpole Cartesia, Inc. and Tadpole J-Slate, Inc.

Excluded Assets: See attached pages for list of assets transferred to Tadpole Cartesia, Inc. and Tadpole J-Slate, Inc. prior to the date of this Agreement.

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