

8.3 Tax Controversies. The Golden Gate Majority Member is hereby designated the Tax Matters Partner and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. The Tax Matters Partner shall keep the Board fully informed of the progress of any examinations, audits or other proceedings, it being agreed that no Member (other than the Golden Gate Majority Member, in its capacity as Tax Matters Partner) shall have any right to participate in any such examinations, audits or other proceedings. Notwithstanding the foregoing, the Tax Matters Partner shall not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining approval of the Board.

ARTICLE IX

RESTRICTIONS ON TRANSFER OF UNITS; PREEMPTIVE RIGHTS

9.1 Transfers of Units.

(a) No Member (other than any member of the Golden Gate Group) may sell, transfer, assign, pledge, encumber or otherwise dispose of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of law) (a "Transfer") any interest (legal or beneficial) in any Units, except Transfers of Units pursuant to and in accordance with Sections 9.1(c).

(b) No Member may Transfer any interest (legal or beneficial) in any Units to any of the businesses competing with the Company set forth on Annex I attached hereto, provided that the restriction contained in this Section 9.1(b) shall not apply to any Transfer of Units by any Member pursuant to Section 12.7 or Section 12.8.

(c) The restrictions contained in Section 9.1(a) shall not apply to any Transfer of Units by any Member (i) to its Affiliates, (ii) pursuant to Section 12.7 or Section 12.8, (iii) to such Member's Family Group (or to the Family Group of such Member's Affiliates) either pursuant to the applicable laws of descent or distribution or by gift, or (iv) pursuant to Section 9.2(b); provided that the restrictions contained in this Agreement will continue to apply to the Units after any Transfer pursuant to clause (i), (iii), or (iv) above and that each of the conditions to the effectiveness of such Transfer set forth in this Agreement must be satisfied by the transferring Member and the transferee prior to the effectiveness of such Transfer. Prior to the Transfer of Units pursuant to clause (i) or (iii) of the first sentence of this Section 9.1(c), the transferor will deliver written notice to the Company, which notice will disclose in reasonable detail the identity of such transferee(s). Notwithstanding the foregoing, no party hereto shall avoid the provisions of this Agreement by making one or more Transfers of Units to one or more transferees permitted under clause (i) of the first sentence of this Section 9.1(c) and then disposing of all or any portion of such party's interest in such transferee.

(d) The rights and obligations of the Members set forth in this Section 9.1 shall continue until the first to occur of (i) the consummation of a Sale of the Company and (ii) the consummation of an IPO.

9.2 Right of First Refusal; Participation Rights.

(a) At least 30 days prior to any Transfer of any Units by any member of the Golden Gate Group (the "Transferring Member") for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8), the Transferring Member will deliver a written notice (the "Offer Notice") to the Company and the Other Members, specifying in reasonable detail the identity of the prospective transferee(s), if then known (the "Proposed Purchaser"), and the terms and conditions of the Transfer. The 30 day period commencing on delivery of the Offer Notice is referred to herein as the "Notice Period". The Offer Notice shall constitute a binding offer to sell the Units described in the Offer Notice to the Other Members on the terms and conditions described therein. Each Other Member may elect to purchase all (but not less than all) of such Other Member's Pro Rata Share (as defined below) of each class of Units specified in the Offer Notice at the price and on the terms specified therein by delivering written notice of such election to the Transferring Member as soon as practical but in any event within ten days after delivery of the Offer Notice. If any Other Members have elected to purchase Units from the Transferring Member, the purchase and sale of such Units shall be consummated as soon as practical, but in any event within 10 days after expiration of the Notice Period. To the extent that the Company and the Other Members have not elected to purchase all of the Units being offered, the Transferring Member may, within 90 days after the expiration of the Notice Period and subject to the provisions of Section 9.2(b) below, transfer such Units to one or more third parties at a price no less than the price per Unit specified in the Offer Notice and on other terms no more favorable to the transferees thereof than offered to the Other Members in the Offer Notice. Any Units not transferred within such 90-day period shall be reoffered to the Other Members under this Section 9.2(a) prior to any subsequent Transfer. Each Other Member's "Pro Rata Share" shall be based upon such Other Member's proportionate ownership of all Units outstanding other than the Units owned by the Transferring Member.

(b) At least 30 days prior to any Transfer of any Units by any member of the Golden Gate Group (the "Transferring Member") for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8), the Transferring Member will deliver a written notice (the "Sale Notice") to the Company and the Other Members specifying in reasonable detail the identity of the Proposed Purchaser and the terms and conditions of the Transfer (which Sale Notice may be the same notice and given at the same time as the Offer Notice under Section 9.2(a)). Notwithstanding the restrictions contained in Section 9.1(a), any or all of the Other Members may elect to participate in the Transfer contemplated by the Sale Notice by delivering written notice (a "Tag-Along Notice") to the Transferring Member within ten days after delivery of the Sale Notice. If no Tag-Along Notice is received by the Transferring Member within such ten-day period, none of the Other Members shall have the right to participate in the Transfer, and the Transferring Member shall have the right for a 90-day period to Transfer to the Proposed Purchaser up to the number of Units stated in the Sale Notice, at a price and on other on terms and conditions in the aggregate no more favorable to the Transferring Member than those stated in the Sale Notice. If any of the Other Members have validly elected to participate in such Transfer (such Other Members, "Participating Members"), the maximum number of Units that

each such Participating Member will be entitled to sell in such contemplated Transfer will be equal to the product of (i) the quotient determined by dividing the number of Units of the class of Units to be Transferred that are owned by such Participating Member by the aggregate number of Units of such class owned by the Transferring Member and all Participating Members in such sale and (ii) the number of Units of such class to be sold in the contemplated Transfer. In the event that the Transferring Member intends to Transfer more than one class or series of Units, the Participating Members shall be entitled to sell in the contemplated Transfer a pro rata portion of the Units of each such class (to the extent such Participating Members own any Units of such class of Units), which portion shall be determined in the manner set forth in the immediately preceding sentence.

For example (by way of illustration only), if the Sale Notice contemplated a sale of 100 Units of a class by the Transferring Member, and if the Transferring Member at such time owns 30% of the Units of such class and if one Participating Member elects to participate and owns 20% of the Units of such class, the Transferring Member would be entitled to sell 60 Units ($30\% \div 50\% \times 100$ Units) and the Participating Member would be entitled to sell 40 Units ($20\% \div 50\% \times 100$ Units).

The Transferring Member will use commercially reasonable efforts to obtain the agreement of the Proposed Purchaser to the participation of the Participating Members in any contemplated Transfer, and the Transferring Member will not Transfer any of its Units to the Proposed Purchaser unless (i) simultaneously with such Transfer, the Proposed Purchaser purchases from the Participating Members the Units which such Participating Members are entitled and have elected to sell to such Proposed Purchaser(s) pursuant to this Section 9.2(b) or (ii) simultaneously with such Transfer, the Transferring Member purchases (on the same terms and conditions specified in this Section 9.2(b)) the number of Units from the Participating Members which the Participating Members would have been entitled, and have elected, to sell pursuant to this Section 9.2(b). The Transferring Member and the Participating Members will bear their pro-rata share (based upon the proceeds, before deduction for expenses, receivable by such Member in relation to the proceeds receivable by all such Members in such Transfer) of the out-of-pocket costs of any Transfer incurred by the Transferring Members pursuant to this Section 9.2(b) to the extent such costs are incurred for the benefit of all Members participating in the Transfer and are not otherwise paid by the Proposed Purchaser or a third party. Costs incurred by the Participating Members participating in the Transfer on their own behalf will not be considered costs of the Transfer hereunder.

(c) If any member of the Golden Gate Group desires to Transfer any Units for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8) and, following the consummation of any such Transfer, the members of the Golden Gate Group would no longer collectively own in the aggregate, directly or indirectly, at least 50 percent of the number of Units held by the members of the Golden Gate Group as of the date hereof (as adjusted for any Units splits or similar transactions), then such Transferring Member shall, prior to entering any negotiations or discussions with any third party with respect to such a Transfer, provide notice to the Company and the Other Members of such desire and shall negotiate exclusively and in good faith with the Other Members regarding the Transfer of such Units to the Other Members on terms and conditions reasonably acceptable to each of the Other Members and to such Transferring Member for a period of 60 days following the delivery of such notice.

If such Transferring Member and the Other Members cannot agree on the terms of such a Transfer of such Units during such 60 day period, such Transferring Member may enter into negotiations or discussions with any third party for the Transfer of such Units and, subject to the provisions of Sections 9.2(a) and 9.2(b), Transfer such Units to one or more third parties.

(d) The rights set forth in this Section 9.2 shall continue with respect to each Unit until the first to occur of (i) the consummation of an IPO or (ii) the consummation of a Sale of the Company.

9.3 Restricted Units Legend.

(a) The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. To the extent such Units are certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE OPERATING AGREEMENT OF THE ISSUER OF SUCH SECURITIES, AS SUCH AGREEMENT MAY BE AMENDED, MODIFIED OR RESTATED FROM TIME TO TIME, AND THE ISSUER RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH TRANSFER RESTRICTIONS HAVE BEEN FULFILLED. A COPY OF SUCH OPERATING AGREEMENT SHALL BE FURNISHED BY THE ISSUER TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE."

(b) In connection with the Transfer of any Units, the transferring Member shall deliver written notice to the Company describing in reasonable detail the proposed Transfer, which shall, if so requested by the Company, be accompanied by (i) an opinion of counsel which (to the Company's reasonable satisfaction) is knowledgeable in securities law matters to the effect that such Transfer of Units may be effected without registration of such Units under the Securities Act or (ii) such other evidence reasonably satisfactory to the Company to the effect that such Transfer of Units may be effected without registration of such Units under the Securities Act. In addition, if the transferring Member delivers to the Company an opinion of such counsel that no subsequent Transfer of such Units shall require registration under the Securities Act, the Company shall promptly upon such contemplated Transfer deliver new certificates for such Units (if then certificated) which do not bear the Securities Act legend set forth in Section 9.3(a). If the Company is not required to deliver new certificates for such Units