

AMYRIS, INC.  
Form PRE 14A  
August 12, 2013

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the Securities**

**Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

|                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Preliminary Proxy Statement  |
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| <input type="checkbox"/> | <input type="checkbox"/>            | Definitive Proxy Statement   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Definitive Additional Materials  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Soliciting Material Pursuant to §240.14a-12  |

**AMYRIS, INC.**

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(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(1)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**AMYRIS, INC.**  
**5885 Hollis Street, Suite 100**  
**Emeryville, California 94608**

## **NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

Dear Amyris stockholder:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders of Amyris, Inc., a Delaware corporation (“Amyris” or the “Company”), will be held on [            ], [            ] [    ], 2013, at [\_\_\_\_\_] Pacific Time, at 5885 Hollis Street, Suite 100, Emeryville, California 94608 (the “Special Meeting”). At the Special Meeting, our stockholders will be asked to consider and vote upon:

1. Approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant, in accordance with NASDAQ Marketplace Rules 5635(b)-(d).

This item of business is more fully described in the Proxy Statement accompanying this Notice of Special Meeting of Stockholders. The record date for the Special Meeting is August 16, 2013. Only stockholders of record at the close of business on the record date may vote at the meeting or at any adjournment thereof. A list of stockholders eligible to vote at the meeting will be available for review for any purpose relating to the meeting during our regular business hours at our headquarters in Emeryville, California for the ten days prior to the meeting.

You are cordially invited to attend the meeting in person. Whether or not you expect to attend the meeting, please vote as soon as possible in order to ensure your representation at the meeting. You may submit your proxy and voting instructions over the Internet, by telephone, or by completing, signing, dating and returning the accompanying proxy card or voter information form as promptly as possible. Please note that if you do not give your broker specific instructions to do so, your broker will NOT be able to vote your shares with respect to the approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d). Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other custodian, nominee, trustee or fiduciary and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder.

**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held on [ ], 2013: the Proxy Statement is available at [ ].**

By Order of the Board,

[Insert Signature Image]

John Melo  
*President and Chief Executive Officer*

Emeryville, California

August [\_\_], 2013

**AMYRIS, INC.**

**PROXY STATEMENT FOR A  
SPECIAL MEETING OF STOCKHOLDERS**

**Information About the Meeting, Meeting Materials, Voting and Proxies**

**Date, Time and Place of Meeting**

The Board of Directors (the “Board”) of Amyris, Inc., a Delaware corporation (“Amyris,” the “Company,” “we,” “our” and similar terms), is asking for your proxy for use at a special meeting of stockholders (the “Special Meeting”) and at any adjournments or postponements thereof. We are holding the Special Meeting on [ ], [ ] [ ], 2013, at [ ] Pacific Time, at our offices at 5885 Hollis Street, Suite 100, Emeryville, California 94608. This proxy statement and the accompanying proxy card are first being mailed to stockholders on or about [ ] [ ], 2013. The address of our principal executive offices is 5885 Hollis Street, Suite 100, Emeryville, California 94608.

**Purpose of Meeting**

On August 8, 2013, we entered into a Securities Purchase Agreement (“Securities Purchase Agreement”) for the sale and issuance of up to \$73,057,060.41 of senior convertible promissory notes to existing investors, Maxwell (Mauritius) Pte Ltd (“Maxwell”), which is currently one of our largest stockholders, and Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS) (“Total”), currently our largest stockholder (the “Initial Note Offering”). The Initial Note Offering will consist of two tranches of note offerings, the first tranche, for the sale of up to \$42,616,618.57 of senior convertible promissory notes, is contemplated to occur following satisfaction of the closing conditions in the Securities Purchase Agreement, including stockholder approval of the transaction at the Special Meeting, and the second tranche, for the sale of up to \$30,440,441.84 of senior convertible promissory notes, will occur at the option of the Company at any time up to 24 months after the date of the Securities Purchase Agreement following the satisfaction of certain closing conditions in the Securities Purchase Agreement, including stockholder approval of the transaction at the Special Meeting. The Initial Note Offering will also involve the issuance to Maxwell of a warrant to purchase 1,000,000 shares of our common stock at an exercise price per share of \$0.01 that will be exercisable only if Total converts existing convertible promissory notes with a certain per share conversion price into shares of our Common Stock. In addition to the Initial Note Offering, the Company is requesting your approval of the sale of up to an additional \$36,942,939.59 of convertible promissory notes to new investors on substantially the same terms as the Initial Note Offering (such additional sales also to occur in two separate tranches of approximately \$12,380,000 and \$24,600,000, respectively) (such additional sales, together with the Initial Note Offering, the “Private Placement”). The Board and the Audit Committee of the Board approved the Private Placement on July 26, 2013 and a special Independent Committee of the Board approved the Private Placement on August 7, 2013, and in connection with such

approvals we have agreed to solicit stockholder approval of the Private Placement in accordance with NASDAQ Marketplace Rules 5635(b)-(d). The amount of senior convertible promissory notes to be sold to Total in the Initial Note Offering will be based on its exercise of its pro rata rights to purchase such securities, which will be based on its percentage ownership at the time of the sale of the notes. Further, Total and Maxwell may exercise their right to purchase their pro rata share of any additional amount of senior convertible promissory notes sold to new investors. The amount of senior convertible promissory notes that may be sold to new investors as shown throughout this proxy statement assumes that neither Total nor Maxwell exercise their pro rata rights with respect to the sale of additional senior convertible promissory notes to new investors. If the amount of senior convertible promissory notes that Total purchases pursuant to the Securities Purchase Agreement decreases due to a change in its pro rata percentage, or if Total or Maxwell elects to purchase their pro rata percentage of senior convertible promissory notes to be sold to new investors, the amount of senior convertible promissory notes to be sold to new investors would be adjusted accordingly.

## **Information Regarding Solicitation and Voting**

Our principal executive offices are located at 5885 Hollis Street, Suite 100, Emeryville, California 94608, and our telephone number is (510) 450-0761. This Proxy Statement contains important information for you to consider when deciding how to vote on the matters brought before the meeting. Please read it carefully.

We will bear the expense of soliciting proxies. In addition to these proxy materials, our directors and employees (who will receive no compensation in addition to their regular salaries) may solicit proxies in person, by telephone or email. We will reimburse brokers, banks and other custodians, nominees and fiduciaries (“Intermediaries”) for reasonable charges and expenses incurred in forwarding soliciting materials to their clients.

## **Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held on [                    ], 2013**

The SEC’s “Notice and Access” rule provides that companies must include in their mailed proxy materials instructions as to how stockholders can access the Company’s proxy statement and other soliciting materials online, a listing of matters to be considered at the relevant stockholder meeting, and instructions as to how shares can be voted. Since, based on timing considerations for the 2013 Special Meeting, we are mailing full sets of proxy materials to our stockholders, as permitted by SEC proxy rules, we are including the information required by the Notice and Access rule in this Proxy Statement and in the accompanying Notice of Special Meeting of Stockholders and proxy card, and we are not distributing a separate Notice of Internet Availability of Proxy Materials.

**The proxy materials, including this Proxy Statement, and a means to vote your shares are available at [                    ]. You will need to enter the 12-digit control number located on the proxy card accompanying this Proxy Statement in order to view the materials and vote.**

## **Questions and Answers**

### **Who can vote at the meeting?**

The Board set August 16, 2013 as the record date for the meeting. If you owned shares of our common stock as of the close of business on August 16, 2013, you may attend and vote your shares at the meeting. Each stockholder is entitled to one vote for each share of common stock held on all matters to be voted on. As of August 16, 2013, there were [                    ] shares of our common stock outstanding and entitled to vote.

### **What is the quorum requirement for the meeting?**

The holders of a majority of our outstanding shares of common stock as of the record date must be present in person or represented by proxy at the meeting in order for there to be a quorum, which is required to hold the meeting and conduct business. If there is no quorum, the holders of a majority of the shares present at the meeting may adjourn the meeting to another date.

You will be counted as present at the meeting if you are present and entitled to vote in person at the meeting or you have properly submitted a proxy card or voter instruction form, or voted by telephone or over the Internet. Both abstentions and broker non-votes (as described below) are counted for the purpose of determining the presence of a quorum.

As of the record date of August 16, 2013, there were [ ] shares of our common stock outstanding and entitled to vote, which means that holders of [ ] shares of our common stock must be present in person or by proxy for there to be a quorum.

**What proposals will be voted on at the meeting?**

There is one proposal scheduled to be voted on at the meeting:

Approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d) (“Proposal 1”).



Some of the members of the Board have interests and arrangements that could affect their decision to support or approve the proposal. Please refer to the section of this proxy statement entitled “*Proposal 1 — Approval of the Issuance of up to \$110,000,000 Aggregate Principal Amount of Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d)— Interests of Certain Persons in the Private Placement.*”

**How does the Board recommend I vote on the proposal?**

The Board recommends that you vote:

- FOR approval of Proposal 1.

**How do I vote my shares in person at the meeting?**

If your shares of Amyris common stock are registered directly in your name with our transfer agent, Wells Fargo Bank, National Association, you are considered, with respect to those shares, to be the stockholder of record. As the stockholder of record, you have the right to vote in person at the meeting.

If your shares are held in a brokerage account or by another intermediary, you are considered the beneficial owner of shares held in street name. As the beneficial owner, you are also invited to attend the meeting. However, since a beneficial owner is not the stockholder of record, you may not vote these shares in person at the meeting unless you obtain a “legal proxy” from the Intermediary that is the record holder of the shares, giving you the right to vote the shares at the meeting. The meeting will be held on [                    ], [                    ] [    ], 2013 at [\_\_\_\_] a.m. Pacific Time at our headquarters located at 5885 Hollis Street, Suite 100, Emeryville, California. You can find directions to our headquarters on our company website at <http://www.amyris.com/en/about-amyris/contact>.

**How can I vote my shares without attending the meeting?**

Whether you hold shares directly as a registered stockholder of record or beneficially in street name, you may vote without attending the meeting. You may vote by granting a proxy or, for shares held beneficially in street name, by submitting voting instructions to your broker, bank or other trustee or nominee. In most cases, you will be able to do

this by using the Internet, by telephone or by mail.

**Voting by Internet or telephone.** You may submit your proxy over the Internet or by telephone by following the instructions for Internet or telephone voting provided with your proxy materials and on your proxy card or voter instruction form.

**Voting by mail.** You may submit your proxy by mail by completing, signing, dating and returning your proxy card or, for shares held beneficially in street name, by following the voting instructions included by your broker or other Intermediary. If you provide specific voting instructions, your shares will be voted as you have instructed.

**What happens if I do not give specific voting instructions?**

If you are a stockholder of record and you either indicate when voting on the Internet or by telephone that you wish to vote as recommended by the Board, or you sign and return a proxy card without giving specific voting instructions, then the proxy holders will vote your shares in the manner recommended by the Board with respect to Proposal 1 and as the proxy holders may determine in their discretion with respect to any other matters properly presented for a vote at the meeting.

If you are a beneficial owner of shares held in street name and do not provide the organization that holds your shares with specific voting instructions, under stock market rules, the organization that holds your shares may generally vote at its discretion only on routine matters and cannot vote on non-routine matters. If the organization that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, the organization will inform the inspector of election that it does not have the authority to vote on this matter with respect to your shares. This is generally referred to as a “broker non-vote.” In tabulating the voting results for any particular proposal, shares that constitute broker non-votes are not considered entitled to vote on that proposal. Thus, broker non-votes will not affect the outcome of Proposal 1, assuming a quorum is obtained.

### **Is the proposal considered “routine” or considered “non-routine”?**

The approval of Proposal 1 is considered non-routine under applicable rules. A broker or other nominee cannot vote without instructions on non-routine matters, and therefore we expect there to be broker non-votes on Proposal 1.

### **What if I am party to a voting agreement related to Proposal 1?**

Under the terms of the voting agreement entered into between Amyris, Maxwell, Total, Biolding Investment SA, KPCB Holdings, Inc., Naxyris S.A., Sualk Capital LTD and TPG Biotechnology Partners II, LP, each stockholder who is a party to such agreement has agreed, subject to the terms and conditions set forth in such voting agreement, to vote the shares of our common stock subject to the voting agreement for the approval of Proposal 1. As of August 1, 2013, the parties to the voting agreement beneficially owned and were entitled to vote approximately 45,000 shares of our common stock, or approximately 60% of the shares of common stock outstanding as of the record date. Please refer to the section of this proxy statement entitled “*Proposal 1 — Approval of The Issuance of up to \$110,000,00 Aggregate Principal Amount of Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d)—Voting Agreements.*”

### **How are votes counted?**

Votes will be counted by the inspector of election appointed for the meeting. The inspector of election will separately count “For” and “Against” votes, abstentions and any broker non-votes. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an “Against” vote for this proposal.

**What is the vote required to approve Proposal 1?**

The proposal must receive a “For” vote from the holders of a majority of the shares of common stock casting votes in person or by proxy on this Proposal 1 at the Special Meeting. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an “Against” vote for this proposal.

**How can I revoke my proxy and change my vote after I return my proxy card?**

You may revoke your proxy and change your vote at any time before the final vote at the meeting. If you are a stockholder of record, you may do this by signing and submitting a new proxy card with a later date, by using the Internet or voting by telephone (either of which must be completed by 12:00 noon Central Time on [            ] [    ], 2013 - your latest telephone or Internet proxy is counted), or by attending the meeting and voting in person. Attending the meeting alone will not revoke your proxy unless you specifically request that your proxy be revoked. If you hold shares through a bank or brokerage firm, you must contact that bank or firm directly to revoke any prior voting instructions.

**How can I find out the voting results of the meeting?**

The preliminary voting results will be announced at the meeting. The final voting results will be reported in a current report on Form 8-K, which we expect to file with the SEC within four business days after the meeting. If final voting results are not available within four business days after the meeting, we intend to file a current report on Form 8-K reporting the preliminary voting results within that period, and subsequently file the final voting results in an amendment to the current report on Form 8-K within four business days after the final voting results are known to us.

## **Forward-Looking Statements**

This Proxy Statement may contain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements may be identified by their use of such words as “expects,” “anticipates,” “intends,” “hopes,” “anticipates,” “believes,” “could,” “may,” “will,” “projects” and other similar expressions, but these words are not the exclusive means of identifying such statements. We caution that a variety of factors, including but not limited to the following, could cause our results to differ materially from those expressed or implied in our forward-looking statements: our cash position and ability to fund our operations, our limited operating history and lack of revenues generated from the sale of our renewable products; our inability to decrease production costs to enable sales of our products at competitive prices; delays in production and commercialization of products due to technical, operational, cost and counterparty challenges; challenges in developing customer base in markets with established and sophisticated competitors; currency exchange rate and commodity price fluctuations; changes in regulatory schemes governing genetically modified organisms and renewable fuels and chemicals, and other risks detailed from time to time in filings we make with the SEC, including our Annual Reports on Form 10-K and our Quarterly Reports on Form 10-Q. Except as required by law, we assume no obligation to update any forward-looking information that is included in this Proxy Statement.

## **Proposal 1-**

### **Approval of the Issuance of up to \$110,000,000 Aggregate Principal Amount of**

**Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable Upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d).**

## **General**

We are asking stockholders to approve the issuance in the Private Placement of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes, the issuance of a warrant to purchase 1,000,000 shares of our common stock and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d). Up to \$73,057,060.41 principal amount of the promissory notes will be sold to existing investors, Maxwell and Total, pursuant to the Securities Purchase Agreement in the Initial Note Offering in two tranches of up to \$42,616,618.57 principal amount and \$30,440,441.84 principal amount, respectively. The closing of the initial tranche is contemplated to occur following stockholder approval of the Private Placement at the Special Meeting. The second tranche is contemplated to occur at the option of the Company at any time up to 24 months after the signing of the Securities Purchase Agreement following the satisfaction of certain closing conditions, including stockholder approval of the Private Placement at the Special Meeting.

In addition to the Initial Note Offering, the Company is requesting in Proposal 1 your approval of the sale of up to an additional \$36,942,939.59 principal amount of senior convertible promissory notes to new investors on substantially the same terms as the Initial Note Offering as outlined in the Securities Purchase Agreement and the Tranche I Notes (as defined below) and the Tranche II Notes (as defined below) (such additional sales also to occur in two separate tranches of approximately \$12,380,000 principal amount and \$24,600,000 principal amount, respectively). The maximum aggregate principal amount of senior convertible promissory notes issuable in each of the first tranche and the second tranche is \$55,000,000 principal amount.

The conversion price of the Tranche I Notes will initially be \$2.44, and will be subject to certain price adjustments, including but not limited to, adjustments (i) in connection with any future securities issuance by the Company at a price less than the then effective conversion price for such notes, (ii) in connection with failure by the Company to achieve certain milestones agreed upon in connection with the execution of the Securities Purchase Agreement (as further described below), (iii) if the Company reduces the conversion price of certain existing promissory notes held by Total (other than pursuant to the terms of such notes) and (iv) in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount (calculated pursuant to the Securities Purchase Agreement). When, and if, the second tranche of the promissory notes are issued, the conversion price of the Tranche II Notes will initially be \$2.87, and will be subject to certain price adjustments, including adjustment (i) in connection with any future securities issuance by the Company at a price less than the then effective conversion price for such notes and (ii) in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount (calculated pursuant to the Securities Purchase Agreement). The warrant to purchase 1,000,000 shares of our common stock at a per share exercise price of \$0.01 will be issued in the Initial Note Offering to Maxwell and will only be exercisable in the event that Total converts certain outstanding convertible promissory notes that have a conversion price as of the date hereof of \$3.08 into shares of the Company's common stock. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

In connection with the Initial Note Offering, the Company also agreed to grant a senior security interest in the Company's intellectual property to Maxwell in connection with their participation in the Initial Note Offering, subject to certain conditions outlined below.

### **Vote Required and Board Recommendation for Proposal 1**

The proposal must receive a "For" vote from the holders of a majority of the shares of common stock casting votes in person or by proxy on Proposal 1 at the Special Meeting. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an "Against" vote for this proposal. Shares represented by executed proxies that do not indicate a vote "For," "Against" or "Abstain" will be voted by the proxy holders "For" the adoption of the resolution. If you own shares through a bank, broker or other holder of record, you must instruct your bank, broker or other holder of record how to vote in order for them to vote your shares so that your vote can be counted on this proposal.

### **The Board recommends a vote "FOR" this Proposal 1.**

The Board unanimously determined that Proposal 1 is advisable and in the best interest of our stockholders and recommended that our stockholders vote in favor of Proposal 1.

In reaching its determination to approve Proposal 1, the Board, with advice from our management and legal advisors, considered a number of factors, including:

- the fact that the proceeds from the Private Placement will enable us to advance our strategic direction;

our financial condition, results of operations, cash flow and liquidity, including our outstanding debt obligations, which required us to raise additional capital for ongoing cash needs;

- our view that the proceeds from the Private Placement will enhance our balance sheet;

the fact that our management and certain of our directors have explored financing options with other potential investors and are not aware of an ability for us to obtain the financing needed for our ongoing cash needs on comparable or better terms to the Private Placement, or at all;

- the fact that the issuance of the Tranche II Notes (as defined below) will be at our election; and



the fact that our stockholders would have an opportunity to approve the Private Placement.

The Independent Committee also considered the following factors adverse to the Private Placement:

the fact that our stockholders who are not participating in the Private Placement may be diluted and the value of our common stock could be diluted upon conversion of the promissory notes and exercise of the warrant;

the fact that the conversion price for the convertible promissory notes to be issued in the first tranche of the Private Placement will initially be at a discount to the market price on the date the Company entered into the Securities Purchase Agreement;

the fact that the conversion prices of the promissory notes issuable in the Private Placement are subject to adjustment and there is no cap on the maximum number of shares that we could be required to issue upon conversion of the promissory notes (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the notes to be issued in the Private Placement);

the fact that the ownership by Maxwell and Total of a substantial percentage of our total voting power may make it more difficult and expensive for a third party to pursue a change of control of our Company;

the fact that convertible promissory notes issuable to Total in the Private Placement will be issued for the conversion of existing debt and, as such, will not be an immediate source of liquidity to us;

the fact that the Private Placement may result in Maxwell sharing a senior security interest in the Company's intellectual property with Total;

the fact that the Private Placement will involve the issuance of a warrant to Maxwell that, under certain circumstances, would be exercisable for 1,000,000 shares of our common stock at a per share exercise price of \$0.01;

the fact that in connection with the Private Placement, the Company may be required to enter into an agreement to reduce the conversion price of certain outstanding convertible promissory notes held by Total, which reduction would result in a related reduction of the conversion price of the convertible notes to be issued in the Private Placement;

the fees and expenses to be incurred by us in connection with the Private Placement; and

the fact that the covenants and restrictions in the Securities Purchase Agreement as described in “*Terms of the Private Placement – Summary of the Terms of the Securities Purchase Agreement*” below may limit our financing flexibility in the future or our ability to participate in a change of control transaction.

In view of the variety of factors considered in connection with the evaluation of the Private Placement and the complexity of these matters, the Board did not find it practicable to, and did not, quantify or otherwise attempt to assign any relative weight to the various factors considered. In addition, in considering the various factors, individual members of the Board may have assigned different weights to different factors.

After evaluating these factors for and against the Private Placement, and based upon their knowledge of our business, financial condition and prospects, and the view of our management, the Board unanimously concluded that the Private Placement is in our best interest and in the best interests of our stockholders, and recommends that all stockholders vote “FOR” the approval of Proposal 1 at the Special Meeting.

### **Purpose of Proposal 1—Nasdaq Stockholder Approval Requirement**

Our common stock is listed on The Nasdaq Global Market (“Nasdaq”) and trades under the ticker symbol AMRS. The rules governing companies with securities listed on Nasdaq require stockholder approval in connection with a transaction other than a public offering involving the sale or issuance by the issuer of common stock (or securities convertible into or exchangeable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for a price that is less than the greater of book or market value of the stock on the date the Company enters into a binding agreement for the issuance of such securities. This requirement is set forth in Nasdaq Marketplace Rule 5635(d). Based on a market price on August 7, 2013 of \$2.82 per share and the sale of the full \$110,000,000 aggregate principal amount of notes issuable in the Private Placement (including notes that may be sold to new investors under terms substantially similar to the terms of the Initial Note Offering), the issuance of the promissory notes would involve the issuance of securities convertible into more than 20% of our common stock at a discount to the market value of our common stock on the date of execution of the binding agreement to issue such securities. Further, the 1,000,000 shares of our common stock issuable to Maxwell upon exercise of the warrant to be issued in connection with the Initial Note Offering would also be counted against the 20% limit.

As detailed in “*Terms of the Private Placement*” below, the first tranche of promissory notes to be sold in the Private Placement will be issued with a conversion price equal to \$2.44, which conversion price is below the greater of book value or market value of the stock at the time the Company entered into a binding agreement to issue such notes and which conversion price will be subject to certain downward adjustments. The notes to be issued in the second tranche of the Private Placement will be issued with a conversion price equal to \$2.87, which conversion price will be subject to downward conversion price adjustments. Finally, the warrant to be issued to Maxwell in the Private Placement will, subject to certain contingencies, be exercisable at a per share exercise price of \$0.01.

Because the Private Placement involves the potential issuance by us of securities convertible into shares of common stock that would represent more than 20% of our currently outstanding common stock at a price below the greater of book or market value of the common stock at the time the Company entered into a binding agreement to issue such securities, stockholder approval is required for the issuance of the senior convertible promissory notes being issued in the Private Placement, the issuance of the shares of common stock issuable upon full conversion of such notes, the issuance of the warrant to be issued to Maxwell in the Private Placement and the issuance of the shares of common stock issuable upon exercise of such warrant.

Nasdaq additionally requires stockholder approval prior to the issuance of securities when the issuance or potential issuance of securities will result in a change of control of the Company. This requirement is set forth in Nasdaq Marketplace Rule 5635(b). Nasdaq defines a change of control as occurring when, as a result of an issuance, an investor or a group would own, or have the right to acquire 20% or more of the outstanding shares of common stock or voting power of a company, and such ownership or voting power would be the largest ownership position. Under certain circumstances, Proposal 1 could result in Maxwell being the largest owner of common stock of the Company in an amount greater than 20%.

Nasdaq Marketplace Rule 5635(c) requires stockholder approval of security issuances at below fair market value made to officers, directors, employees or consultants, or affiliated entities of any such persons. Proposal 1 will result in purchase of securities convertible into shares of common stock by entities affiliated with Philippe Boisseau below the fair market value of our common stock at the time the Company entered into the Securities Purchase Agreement (as outlined above).

By approving Proposal 1, you are approving the proposal for purposes of the requirements under Nasdaq Marketplace Rules 5635(b), (c) and (d), which will result in the purchase of securities convertible into shares of our common stock.

## Terms of the Private Placement

We have entered into the Securities Purchase Agreement with Maxwell and Total (the “Investors”) under which (i) Maxwell has agreed to purchase \$35,000,000 principal amount of senior convertible promissory notes in the first tranche and up to, at our election, \$25,000,000 principal amount of senior convertible promissory notes in the second tranche and (ii) Total has agreed to purchase the lesser of \$7,616,618.57 principal amount and its actual pro rata share of the senior convertible promissory notes sold pursuant to the Securities Purchase Agreement in the first tranche and the lesser of \$5,440,441.84 principal amount and its actual pro rata share of the senior convertible promissory notes sold pursuant to the Securities Purchase Agreement in the second tranche. The Company is also seeking your approval in Proposal 1 to sell up to an additional \$36,942,939.59 principal amount of senior convertible promissory notes to new investors under terms substantially similar to the terms of the Initial Note Offering. The Company contemplates selling such new notes in two tranches paralleling the tranches of the Initial Note Offering such that the Company would issue an additional \$12,383,381.43 principal amount of convertible notes in substantially the form of the Tranche I Notes and an additional \$24,559,558.16 principal amount of convertible notes in substantially the form of the Tranche II Notes.

In addition, the Private Placement will involve the issuance to Maxwell of a warrant to purchase 1,000,000 shares of the Company’s common stock at a per share exercise price of \$0.01. Such warrant will only be exercisable if Total converts existing promissory notes with a certain per share conversion price into shares of the Company’s common stock. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

We are requesting in this Proposal 1 that our stockholders approve the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrants in accordance with NASDAQ Marketplace Rules 5635(b)-(d). The issuance and sale of the convertible promissory notes and the warrant in the Private Placement are intended to be exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Regulation D “safe harbor” provisions of the Securities Act. Set forth below are the material terms of the Private Placement.

**THIS SUMMARY OF THE TERMS OF THE Private Placement IS INTENDED TO PROVIDE YOU WITH BASIC INFORMATION CONCERNING THE Private Placement; HOWEVER, IT IS NOT INTENDED AS A SUBSTITUTE FOR REVIEWING THE FORM OF SECURITIES PURCHASE AGREEMENT, THE FORM OF TRANCHE I SENIOR CONVERTIBLE NOTE AND THE FORM OF TRANCHE II SENIOR CONVERTIBLE NOTE IN THEIR ENTIRETY, WHICH WE HAVE INCLUDED AS ANNEXES A, B AND C, RESPECTIVELY, TO THIS PROXY STATEMENT. THE COMPANY HAS ALSO ATTACHED CERTAIN FINANCIAL INFORMATION OF THE COMPANY AS ANNEX D TO THIS PROXY STATEMENT. YOU SHOULD READ THIS SUMMARY TOGETHER WITH THESE DOCUMENTS.**

*Summary of the Terms of the Securities Purchase Agreement*

We and the Investors have entered into the Securities Purchase Agreement and any additional investors who participate will be required to enter into a securities purchase agreement on substantially similar terms. The Securities Purchase Agreement contains representations and warranties by us and the Investors to each other and is not intended to provide any other factual information about us.

*Representations and Warranties.* We provided representations and warranties that we believe are customary for transactions of this nature for similar businesses. In addition, each Investor made representations and warranties to us that we believe are customary for transactions of this nature. The representations and warranties in the Securities Purchase Agreement were made only for the purposes of the Securities Purchase Agreement and solely for the benefit of the parties to the Securities Purchase Agreement as of specific dates. The assertions embodied in the representations and warranties are subject to qualifications and limitations agreed to by the respective parties in connection with negotiating the terms of the Securities Purchase Agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standards of materiality different from what might be viewed as material to stockholders, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Securities Purchase Agreement as characterizations of the actual state of facts about us and you should read the Securities Purchase Agreement together with the other information concerning us that we publicly file in reports and statements with the SEC.

*Covenants.* We made certain covenants to the Investors that we believe are customary for transactions of this nature for similar businesses, including (a) limitations on the Company's ability to incur additional debt, (b) restrictions on the Company's ability to engage in certain change of control transactions without the consent of the holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes then held by the Investors, (c) restrictions on the Company's ability to purchase assets in one transaction or a series of related transactions in excess of \$20,000,000 without the consent of holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes then held by the Investors, and (d) the provision of certain information rights to the Investors.

*Preemptive Rights.* The Securities Purchase Agreement grants a right of first investment to holders of the Notes with respect to future securities issuances by the Company while such Notes are outstanding.

*Conditions to the Initial Closing.* The obligation of the Investors to purchase the promissory notes on the date of the initial closing of the Private Placement (the "Initial Closing"), which closing is expected to occur shortly after stockholder approval of the Private Placement and which closing will involve the sale and issuance of the Tranche I Notes, is subject to the satisfaction or waiver of specified conditions, including, but not limited to, the following:

our stockholders shall have approved the Private Placement;

the representations and warranties made by us in the Securities Purchase Agreement shall be true and correct in all respects as of the Initial Closing;

unless Total shall have previously released all security interests it holds with respect to the Company's intellectual property, Total, Maxwell and the Company shall have reached an agreement whereby Maxwell shall be given a shared security interest with Total in the Company's intellectual property;

the Company shall have issued a warrant to Maxwell to purchase 1,000,000 shares of the Company's common stock at an exercise price of \$0.01 per share, exercisable only if Total converts existing promissory notes with a certain per share conversion price into shares of the Company's common stock; and

the Company and the Investors shall have obtained all necessary third-party consents and approvals, including any approval required by the relevant competition authorities.

*Conditions to Sale of Tranche II Notes.* The obligation of the Investors to purchase any of the Tranche II Notes, which the Company may require for up to 24 months from the signing date, in addition to the conditions to the Initial Closing outlined above, will be subject to the satisfaction or waiver of specified conditions, including, but not limited to, the following:

a specified Company manufacturing plant shall have previously achieved total production of 750,000 liters within a run period of 45 days;

the current chief executive officer of the Company or an individual approved by holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes, if any, then held by Investors shall remain chief executive officer of the Company;

there shall be no material adverse change in the Company's business from the signing of the Securities Purchase Agreement; and

any security interests held by the Investors in the Company's intellectual property shall have been released in full.



*Description of Senior Convertible Promissory Notes to be Issued*

*Tranche I Notes*

The first tranche of senior convertible promissory notes to be issued in the Private Placement under the Securities Purchase Agreement and such substantially similar notes as shall be issued to new investors in the Private Placement (the “Tranche I Notes”) shall be issued for up to \$55,000,000 aggregate principal amount. Maxwell is committed to purchase \$35,000,000 principal amount of Tranche I Notes pursuant to the Securities Purchase Agreement. Total is committed to purchase the lesser of \$7,616,618.57 principal amount and its actual pro rata share of the Tranche I Notes sold pursuant to the Securities Purchase Agreement, all of which will be issued upon the conversion of outstanding convertible promissory notes of the Company held by Total. Total and Maxwell may also elect to purchase their pro rata share of any of the additional \$12,383,381.43 principal amount of Tranche I Notes which may be sold to new investors.

*Interest and Payment.* The Tranche I Notes shall bear interest at 5.00% per six-month period (subject to adjustment as provided in the Tranche I Notes), compounded semi-annually, and payable beginning on the thirty (30) month anniversary of the issue date, and thereafter, every six months. Should the Company default on a Tranche I Note, the interest rate on such note would increase to 6.5% per six-month period until such default is cured. Should the Company fail to maintain NASDAQ listing status, the interest rate on such note would increase to 8% after the first 180 days of such failure. Interest for the first 30 months will be payable in kind (“PIK”) and added to principal every six months, and thereafter, at the option of the Company, may be payable in cash.

*Conversion.* The Tranche I Notes will be convertible into common stock of the Company at the option of the holder thereof, at any time following the eighteen (18) month anniversary of the Securities Purchase Agreement or earlier in connection with an event of default or change in control.

*Conversion Price.* The Tranche I Notes will be convertible into common stock of the Company at a conversion price equal to \$2.44, and will be subject to certain price adjustments set forth in the Tranche I Notes. The conversion price of the Tranche I Notes will be reduced to \$2.15 if either (a) a specified Company manufacturing plant fails to achieve a total production of 1,000,000 liters within a run period of 45 days prior to June 30, 2014, or the Company fails to achieve gross margins from product sales for a fiscal quarter of at least 5% prior to June 30, 2014 or (b) the Company reduces the conversion price of certain existing promissory notes held by Total prior to the repayment or conversion of the Tranche I Notes, and to \$1.87 if both of the conditions described in clauses (a) and (b) occur. In addition, if the Company sells any shares of its common stock, or securities exercisable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche I Notes, the conversion price of the Tranche I Notes will be reduced to the price or exercise or conversion price of such subsequently issued securities. No maximum number has been provided for the amount of shares that could be issuable on conversion of the Tranche I Notes as a result of the adjustment of the conversion price (in the case of potential anti-dilution

adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche I Notes).

*Maturity.* The Tranche I Notes will mature and become payable in full sixty (60) months from the date of the first issuance of such notes, unless converted into our common stock prior to such time.

*Redemption.* The Tranche I Notes will be redeemable at the Company's option by prepayment of the principal plus all accrued interest of such notes thirty (30) months after the issuance of such notes and on every six-month anniversary thereafter and will be mandatorily redeemable on the maturity date; provided further that the holder of such notes may demand redemption in cash in an amount equal to 101% of the principal plus all accrued interest thereunder in connection with a change of control of the Company.

*Change of Control.* Upon the occurrence of a change of control prior to the maturity date of the Tranche I Notes, each holder will have the right to require the Company to repurchase all or any part of the Tranche I Notes at an offer price in cash equal to 101% of the face value of the Tranche I Notes.

### *Second Tranche Notes*

The second tranche of senior convertible promissory notes to be issued in the Private Placement and such substantially similar notes as shall be issued to new investors in the Private Placement (the “Tranche II Notes” and, with the Tranche I Notes, the “Notes”) shall be issued for up to \$55,000,000 aggregate principal amount. Maxwell is committed to purchase up to \$25,000,000 principal amount of Tranche II Notes at the election of the Company and pursuant to the Securities Purchase Agreement. Total is committed to purchase the lesser of up to \$5,440,441.84 principal amount and its actual pro rata share of the Tranche II Notes sold pursuant to the Securities Purchase Agreement at the election of the Company, all of which could be issued upon the conversion of outstanding convertible promissory notes of the Company held by Total. An additional \$36,942,939.59 principal amount of Tranche II Notes may be sold to new investors. Total and Maxwell may elect to purchase their pro rata share of such additional Tranche II Notes.

*Our Ability to Issue the Tranche II Notes.* The Company has the ability to cause the Investors to purchase the Tranche II Notes any time within 24 months of execution of the Securities Purchase Agreement if the Company meets certain conditions within such time period, including that: (a) a specified Company manufacturing plant has achieved total production of 750,000 liters within a run period of 45 days, (b) the current chief executive officer or an individual approved by a majority of the holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes, if any, held by the Investors remains chief executive officer of the Company, (c) there is no material adverse change in the Company’s business and (d) all security interests in the Company’s intellectual property held by the Investors shall have been released in full. The Investors do not have an option to require the Company to sell the Tranche II Notes other than upon the Company’s election to do so. Any new investors will, similarly, be obligated to purchase Tranche II Notes upon the Company’s election.

*Interest and Payment.* The Tranche II Notes shall bear interest at 10% per annum (subject to adjustment as provided in the Tranche II Notes), compounded annually; provided, however, that should the Company default on a Tranche II Note, the interest rate on such note would increase to 12% per annum until such default is cured and should the Company fail to maintain NASDAQ listing status the interest rate on such note would increase to 13% applicable to the first 180 days and 16% applicable thereafter. Interest for the first 36 months shall be payable in kind and added to principal every year following the issue date, and thereafter the Company may continue to pay interest in kind by adding to principal on every year anniversary of the issue date or may elect to pay interest in cash.

*Conversion.* Unless an Event of Default (as defined in the Tranche II Notes) occurs, each Tranche II Note will be convertible into Common Stock at the option of the holder thereof, at any time following the twelve (12) month anniversary of the applicable drawdown or earlier in connection with an event of default or change in control.

*Conversion Price.* When issued, the Tranche II Notes will be convertible into common stock at a conversion price equal to \$2.87 and will be subject to adjustment as set forth in the Tranche II Notes.

Per the price adjustment provisions of the Tranche II Notes, if the Company sells any shares of our common stock, or securities exercisable for or convertible into our common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche II Notes, the conversion price of the Tranche II Notes will be reduced to the price or exercise or conversion price of such subsequently issued securities. No maximum number has been provided for the amount of shares that could be issuable on conversion of the Tranche II Notes as a result of the adjustment of the conversion price (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche II Notes). The Tranche II Notes also provide for downward adjustments for Tranche II Notes held by investors other than Total in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount.

*Maturity.* The Tranche II Notes will mature and become payable in full sixty (60) months from the date of the first issuance of such notes, unless converted into our common stock prior to such time.

*Redemption.* The Tranche II Notes will be mandatorily redeemable by the Company in cash on the maturity date; provided, however, that the holder of such notes may demand redemption in cash in an amount equal to 101% of the principal plus all accrued interest thereunder in connection with a change of control of the Company.

*Change of Control.* Upon the occurrence of a change of control prior to the maturity date of the Tranche II Notes, each holder will have the right to require the Company to repurchase all or any part of the Tranche II Notes at an offer price in cash equal to 101% of the face value of the Tranche II Notes.

*Seniority.* The Notes, collectively, will be senior indebtedness of the Company.

### ***Description of Warrants to be Issued***

The warrant to be issued to Maxwell in the Private Placement (the “Warrant”) will be issued for the purchase of up to 1,000,000 shares of the Company’s common stock at a per share exercise price of \$0.01, provided, however, that such warrant will only be exercisable in the event that Total converts any of its currently outstanding convertible promissory notes that have a conversion price as of the date of Securities Purchase Agreement of \$3.08, as such price may be adjusted pursuant to the terms of such notes, into shares of the Company’s Common Stock. The warrant will be issued in a form that is mutually agreeable to the Company and Maxwell. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

### ***Voting Agreements***

Under the terms of the voting agreement entered into between Amyris, Maxwell, Total, Biolding Investment SA, KPCB Holdings, Inc., Naxyris S.A., Sualk Capital LTD and TPG Biotechnology Partners II, LP, each party has agreed, subject to the terms and conditions set forth in the voting agreement, to vote the shares of our common stock subject to the voting agreement for Proposal 1. As of August 1, 2013, these entities beneficially own and are entitled to vote approximately 45,000,000 shares of our common stock, or approximately 60% of the shares of common stock outstanding as of the record date.

### **Use of Proceeds**

We currently intend to use the net proceeds from the Private Placement for working capital and general corporate purposes, which may include the repayment of indebtedness. Stockholders should understand that we have wide discretion over the use of proceeds.

### **Potential Adverse Effects of Proposed Amendment—Dilution and Impact of the Private Placement on Existing Stockholders**

The Private Placement could have a dilutive effect on current stockholders who are not participating in the Private Placement in that the percentage ownership of the Company held by such current stockholders will decline as a result

of the issuance of the common stock issuable upon conversion or exercise of the Notes and the Warrant. This means also that our current stockholders who are not participating in the Private Placement will own a smaller interest in us as a result of the Private Placement and therefore have less ability to influence significant corporate decisions requiring stockholder approval. Issuance of the common stock issuable upon conversion or exercise of the Notes and the Warrant could also have a dilutive effect on book value per share and any future earnings per share. Dilution of equity interests could also cause prevailing market prices for our common stock to decline.

Because of the conversion price adjustments contained in the Notes and the uncertainty about the aggregate value, if any, of the Notes that will be issued to new investors, the exact magnitude of the dilutive effect of the Notes cannot be conclusively determined. However, the dilutive effect may be material to current stockholders of the Company. By way of example, assuming the sale and issuance of the full \$55,000,000 principal amount of Tranche I Notes and assuming the conversion price of such notes will remain unchanged from the initial conversion price of \$2.44, then approximately 22,540,000 shares of the Company's common stock will be issuable upon conversion of the Tranche I Notes. Assuming sale and issuance of the full \$55,000,000 principal amount of Tranche II Notes (or substantially similar notes issued to new investors) and assuming the conversion price of such notes will remain unchanged from the initial conversion price of \$2.87, then approximately 19,160,000 shares of the Company's common stock will be issuable upon conversion of the Tranche II Notes. Note however that the Private Placement documents do not provide for a floor on the downwards adjustments to the conversion price of the Notes (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Notes). As a result, the number of shares issuable upon conversion of the Notes could be significantly larger than these examples.

In addition to dilution, the existence of additional convertible debt could, under certain circumstances, discourage or make more difficult the Company's efforts to obtain additional financing. And the covenant in the Securities Purchase Agreement imposing restrictions on the Company's ability to engage in a change of control transaction may limit the Company's ability to participate in a change of control transaction.

As a condition to the Initial Closing of the Tranche I Notes, unless Total shall have previously released any security interests it holds with respect to the Company's intellectual property, the Company, Total and Maxwell must reach an agreement whereby Maxwell shall be given a shared security interest with Total in the Company's intellectual property. Such agreement will result in an additional party having a secured interest in the Company's intellectual property and will likely increase the value of the secured interest in the Company's intellectual property, which could limit the Company's ability to pursue certain strategic transactions.

### **Risks to Stockholders of Non-Approval**

If the stockholders do not approve this proposal, one of the conditions to closing the Private Placement will not be achieved and the Company will have to renegotiate financing terms or look for alternative capital investments. Such investments may not be available on favorable terms or at all. Failure to raise additional capital investment would have a material adverse effect on our business and prospects.

### **Interests of Certain Persons in the Private Placement**

When you consider the Board's recommendation to vote in favor of Proposal 1, you should be aware that our directors and executive officers and existing stockholders may have interests in the Private Placement that may be different from, or in addition to, the interests of other of our stockholders. In particular, our director Philippe Boisseau is affiliated with Total and Maxwell is our second largest stockholder and pursuant to its contractual rights with us has appointed a designee Nam Hai Chua, to our Board to serve as a director (the "Affiliated Investors"). Mr. Boisseau is an affiliate of Total and Dr. Chua is the Board designee of Maxwell. The beneficial ownership of such Affiliated Investors as of August 1, 2013, shortly before the signing of the Securities Purchase Agreement is outlined below in the Section titled *Security Ownership of Certain Beneficial Owners and Management*. Maxwell may purchase up to \$60,000,000 principal amount of Notes in the Private Placement (plus such additional amount, if any, as Maxwell elects to purchase pursuant to its pro rata rights with respect to Notes sold to new investors) and Total may purchase up to \$13,057,060.41 principal amount of Notes in the Private Placement (or such lesser amount as determined based upon Total's pro-rata share of each tranche of Notes pursuant to the Securities Purchase Agreement plus such additional amount, if any, as Total elects to purchase pursuant to its pro rata rights with respect to Notes sold to new investors).

Because of the conversion price adjustments contained in the Notes, the exact number of shares issuable to the Affiliated Investors on conversion of the Notes cannot be conclusively determined. The interests to be acquired by such Affiliated Investors may be of material interest to stockholders of the Company in considering Proposal 1. By way of example, assuming Maxwell purchases its full commitment of \$60,000,000 principal amount of Notes and assuming the conversion prices of such notes remain unchanged from the initial conversion price of \$2.44 in the case of Tranche I Notes and \$2.87 in the case of Tranche II Notes, then approximately 23.1 million shares of the Company's common stock will be issuable upon conversion of the Notes purchased by Maxwell and 1,000,000 shares of the Company's common stock will be issuable upon exercise of the Warrant to be issued to Maxwell in the Private Placement, in the event the trigger event for the exercisability of the warrant occurs. Assuming Total purchases its full maximum commitment of \$13,057,060.41 principal amount of Notes (without giving effect to any portion of the Notes sold to new investors that Total may elect to purchase pursuant to its pro rata rights) and assuming the conversion prices of such notes remain unchanged from the initial conversion price of \$2.44 in the case of Tranche I Notes and \$2.87 in the case of Tranche II Notes, then approximately 5.0 million shares of the Company's common stock will be issuable upon conversion of the Notes purchased by Total. As a result, Total and Maxwell could significantly increase their ownership interests in the Company upon conversion or exercise of the Notes and Warrant to be issued in the Private Placement.

The Private Placement was separately approved by the Independent Committee and the Audit Committee of the Board, and neither Mr. Boisseau nor Dr. Chua was a member of, nor participated in, any meetings of the Independent Committee or the Audit Committee.

Each of Maxwell, Total, Bolding Investment SA, KPCB Holdings, Inc., Naxyris S.A., Sualk Capital LTD and TPG Biotechnology Partners II, LP, entered into a voting agreement with Amyris in connection with the Private Placement. Under this voting agreement, each such stockholder agreed, subject to the terms and conditions set forth therein, to vote the shares of our common stock subject to their voting agreements for the approval of the Private Placement.



## Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information with respect to the beneficial ownership of our common stock, as of August 1, 2013, by:

each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our voting securities;

each of our directors;

each of our named executive officers; and

all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes any shares over which the individual or entity has sole or shared voting power or investment power. These rules also treat as outstanding all shares of capital stock that a person would receive upon exercise of stock options held by that person that are immediately exercisable or exercisable within 60 days of the date on which beneficial ownership is determined. These shares are deemed to be outstanding and beneficially owned by the person holding those options for the purpose of computing the number of shares beneficially owned and the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. The information does not necessarily indicate beneficial ownership for any other purpose. Except as indicated in the footnotes to this table and pursuant to applicable community property laws, to our knowledge the persons named in the table below have sole voting and investment power with respect to all shares of common stock attributed to them in the table.

Information with respect to beneficial ownership has been furnished to us by each director and executive officer and certain stockholders, and derived from publicly-available SEC beneficial ownership reports on Forms 3 and 4 and Schedules 13G filed by covered beneficial owners of our common stock. Percentage ownership of our common stock in the table is based on 76,191,229 shares of our common stock outstanding on August 1, 2013. In accordance with SEC regulations, we also include shares subject to options that are currently exercisable or will become exercisable within 60 days of August 1, 2013. Those shares are deemed to be outstanding and beneficially owned by the person holding such option for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Except as otherwise set forth below, the address of the beneficial owner is c/o Amyris, Inc., 5885 Hollis Street, Suite 100, Emeryville, California 94608.

The number and percent of shares owned by Maxwell, Total and their designees does not include any shares issuable on conversion or exercise of any of the Notes or the Warrant that will be issued if Proposal 1 is approved.

| Name and Address of Beneficial Owner  | Number of Shares<br>Beneficially Owned<br>(#) | Percent<br>Of Class (%) |
|---|---|-------------------------|
| <b>5% Stockholders</b>  |   |                         |
| Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS) <sup>(1)</sup> | 13,617,212                                    | 17.9                    |
| Maxwell (Mauritius) Pte Ltd. <sup>(2)</sup>   | 10,353,478                                    | 13.6                    |
| Entities affiliated with FMR LLC <sup>(3)</sup>   | 7,507,863                                     | 9.9                     |
| Biolding Investment SA <sup>(4)</sup>   | 7,484,601                                     | 9.8                     |
| Naxyris SA <sup>(5)</sup>   | 5,639,398                                     | 7.4                     |
| Entities affiliated with Kleiner Perkins Caufield & Byers <sup>(6)</sup>                  | 4,183,224                                     | 5.5                     |
| TPG Biotechnology Partners II, L.P. <sup>(7)</sup>  | 3,933,590                                     | 5.2                     |
| Entities affiliated with Khosla Ventures <sup>(8)</sup>                                   | 3,753,156                                     | 5.0                     |
| <b>Directors and Named Executive Officers</b>   |   |                         |
| John Melo <sup>(9)</sup>  | 1,151,923                                     | 1.5                     |
| Philippe Boisseau <sup>(1)(10)</sup>  | 13,617,212                                    | 17.9                    |
| Nam-Hai Chua <sup>(2)(11)</sup>   | 20,333  | *                       |
| John Doerr <sup>(6)(12)</sup>   | 7,032,825                                     | 9.2                     |
| Geoffrey Duyk <sup>(7)(13)</sup>  | 20,333  | *                       |
| Arthur Levinson <sup>(14)</sup>   | 372,864                                       | *                       |
| Carole Piwnica <sup>(5)(15)</sup>   | 37,666  | *                       |
| Fernando de Castro Reinach <sup>(16)</sup>  | 208,063                                       | *                       |
| HH Sheikh Abdullah bin Khalifa Al Thani <sup>(4)(17)</sup>                                | 7,506,601                                     | 9.9                     |
| R. Neil Williams <sup>(18)</sup>  | 4,666   | *                       |
| Joel Cherry <sup>(19)</sup>   | 479,350                                       | *                       |
| Paulo Diniz <sup>(20)</sup>   | 262,083                                       | *                       |
| Susanna McFerson <sup>(21)</sup>  | 130,600                                       | *                       |
| Steven Mills <sup>(22)</sup>  | 546,830                                       | *                       |
| All Directors and Executive Officers as a Group (14 Persons) <sup>(23)</sup>              | 31,391,349                                    | 39.73                   |

\*Represents beneficial ownership of less than 1%.

- (1) The address of Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS) is 2, Place Jean Millier, 92078 Paris La Défense CEDEX, France.
- Maxwell (Mauritius) Pte Ltd. (“Maxwell”) is wholly owned by Cairnhill Investments (Mauritius) Pte Ltd, which is wholly owned by Fullerton Management Pte Ltd, which is wholly owned by Temasek Holdings (Private) Limited.
- (2) Each of these entities possesses shared voting and investment control over the shares held by Maxwell. The address of for these entities is 60B Orchard Road, #06-18 Tower 2, The Atrium @ Orchard, Singapore 238891. Includes 3,536,968 shares of common stock issuable upon conversion of convertible promissory notes that are convertible within 60 days of August 1, 2013. The following information is based solely on a Schedule 13G/A filed by FMR LLC on February 14, 2013: Fidelity Management & Research Company (“Fidelity”) was the beneficial owner of 7,335,368 shares of our common stock as a result of acting as investment adviser to various investment companies registered under Section 8 of the Investment Company Act of 1940. The number of shares our common stock owned by the investment companies at December 31, 2012 included 3,439,207 shares of Common Stock resulting from the assumed conversion of \$24,309,000 principal amount of outstanding convertible promissory notes. Edward C. Johnson 3d and FMR LLC, through its control of Fidelity, and the funds each had sole power to dispose of the 7,335,368 shares owned by the funds. Members of the family of Edward C. Johnson 3d, Chairman of FMR LLC, are the predominant owners, directly or through trusts, of Series B voting common shares of FMR LLC, representing 49% of the voting power of FMR LLC. The Johnson family group and all other Series B shareholders have entered into a shareholders’ voting agreement under which all Series B voting common shares will be voted in accordance with the majority vote of Series B voting common shares. Accordingly, through their ownership of voting common shares and the execution of the shareholders’ voting agreement, members of the
- (3) Johnson family may be deemed, under the Investment Company Act of 1940, to form a controlling group with respect to FMR LLC. Neither FMR LLC nor Edward C. Johnson 3d, Chairman of FMR LLC, has the sole power to vote or direct the voting of the shares owned directly by the Fidelity Funds, which power resides with the Funds’ Boards of Trustees. Fidelity carries out the voting of the shares under written guidelines established by the Funds’ Boards of Trustees. Pyramis Global Advisors Trust Company (“PGATC”), 900 Salem Street, Smithfield, Rhode Island, 02917, an indirect wholly-owned subsidiary of FMR LLC and a bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, is the beneficial owner of 172,495 shares or 0.274% of our outstanding common stock as a result of its serving as investment manager of institutional accounts owning such shares. The number of shares of our common stock owned by the institutional account(s) at December 31, 2012 included 97,761 shares of Common Stock resulting from the assumed conversion of \$691,000 principal amount of outstanding convertible promissory notes. Edward C. Johnson 3d and FMR LLC, through its control of Pyramis Global Advisors Trust Company, each has sole dispositive power over 172,495 shares and sole power to vote or to direct the voting of 172,495 shares of Common Stock owned by the institutional accounts managed by PGATC as reported above. Except as otherwise noted above, the address for these entities is listed as 82 Devonshire Street, Boston, Massachusetts 02109.
- (4) Biolding Investment SA is indirectly owned by HH, who shares voting and investment control over the shares held by such entity. The address for Biolding Investment SA is 11A Boulevard Prince Henri, L-1724, Luxembourg.

- Shares of common stock held by Naxyris SA, an investment vehicle owned by Naxos Capital Partners SCA Sicar. Ms. Piwnica is Director of NAXOS UK, which is affiliated with Naxos Capital Partners SCA Sicar. Ms. Piwnica disclaims beneficial ownership of all shares of Amyris common stock that are or may be beneficially owned by Naxyris SA or any of its affiliates. The address for Naxyris SA is 40 Boulevard Joseph II, L-1840, Luxembourg. Includes 3,724,558 shares of common stock held by Kleiner Perkins Caufield & Byers XII, LLC (“KPCB XII”), 67,952 shares held by KPCB XII Founders Fund, LLC (“KPCB XII Founders”), 144,707 shares beneficially held by Clarus, LLC, whose manager is L. John Doerr, and 246,007 shares held by other individual managers. KPCB XII Associates, LLC is the managing member of KPCB XII, KPCB XII Founders and Clarus, LLC, and, as such, may also be deemed to possess sole voting and investment control over the shares held by such entities. Mr. Doerr is a
- (5) manager of the KPCB XII Associates, LLC and, as such, has shared voting and investment control over the shares held by these entities. Mr. Doerr disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein. The shares are held for convenience in the name of “KPCB Holdings, Inc. as nominee” for the account of entities affiliated with Kleiner Perkins Caufield & Byers and others. KPCB Holdings, Inc. has no voting, dispositive or pecuniary interest in any such shares. The address for Mr. Doerr and these entities is 2750 Sand Hill Road, Menlo Park, California 94025.
- Includes 3,933,590 shares of common stock (the “TPG Stock”) held by TPG Biotechnology Partners II, L.P. (“Partners II”), a Delaware limited partnership, whose general partner is TPG Biotechnology GenPar II, L.P., a Delaware limited partnership, whose general partner is TPG Biotechnology GenPar II Advisors, LLC, a Delaware limited liability company, whose sole member is TPG Holdings I, L.P., a Delaware limited partnership, whose general partner is TPG Holdings I-A, LLC, a Delaware limited liability company, whose sole member is TPG Group Holdings (SBS), L.P., a Delaware limited partnership, whose general partner is TPG Group Holdings (SBS) Advisors, Inc., a Delaware corporation (“Group Advisors”). Messrs. David Bonderman and James G. Coulter are directors, officers and sole shareholders of Group Advisors, and may therefore be deemed to beneficially own the TPG Stock. Messrs. Bonderman and Coulter disclaim beneficial ownership of the TPG Stock except to the extent of their pecuniary interest therein. Dr. Duyk is a partner of TPG Biotech. TPG Biotech is affiliated with TPG Biotechnology Partners II, L.P. Dr. Duyk disclaims beneficial ownership of all of the TPG Stock that is or may be beneficially owned by Partners II or any of its affiliates. The address for each of Group Advisors and Messrs. Bonderman and Coulter is c/o TPG Global, LLC, 301 Commerce Street, Suite 3300, Fort Worth, TX 76102.
- The following information is based solely on a Schedule 13G/A filed on February 14, 2013 by Khosla Ventures II, L.P. (“KV II”), Khosla Ventures Associates II, LLC (“KVA II”), Khosla Ventures III, L.P. (“KV III”), Khosla Ventures Associates III, LLC (“KVA III”), Vinod Khosla (“Khosla”) and VK Services, LLC (“VK Services,” together with KV II, KVA II, KV III, KVA III and Khosla, collectively, the “Reporting Persons”): Includes (i) 3,424,654 shares of common stock held by KV II, (ii) 161,504 shares of common stock held by KV III, (iii) 109,326 shares of common stock held by VK Services and (iv) 57,672 shares of common stock held by affiliates of the Reporting Persons that
- (8) are subject to the voting and investment control of certain of the Reporting Persons. VK Services serves as the manager of KVA II and KVA III, which serves as the general partner of KV II and KV III, respectively. As such, KVA II, KVA III and VK Services possess power to direct the voting and disposition of the shares owned by KV II and KV III and may be deemed to have indirect beneficial ownership of the shares held by KV II and KV III. In addition, Khosla serves as the manager of VK Services. As such, Khosla possesses power to direct the voting and disposition of the shares owned by KV II and KV III and may be deemed to have indirect beneficial ownership of the shares held by KV II and KV III. KVA II, KVA III and Khosla hold no shares directly.
- Shares beneficially owned by Mr. Melo include (i) 2,525 shares of common stock, (ii) 479,999 restricted stock units, all of which were unvested as of August 1, 2013, and (iii) 669,399 shares of common stock issuable upon
- (9) exercise of options that were exercisable within 60 days of August 1, 2013. If these options were exercised in full, 94,368 of these shares would be subject to vesting and a right of repurchase in our favor upon Mr. Melo’s cessation of service prior to vesting.
- (10) Shares beneficially owned by Mr. Boisseau represent 13,617,212 shares of common stock held by Total Energies Nouvelles Activités USA. Mr. Boisseau is a member of the Executive Committee of Total S.A., the ultimate

parent company of Total Energies Nouvelles Activités USA, and, as such, may be deemed to share voting or investment power over the securities held by Total Energies Nouvelles Activités USA. Mr. Boisseau holds no shares of Amyris directly and disclaims beneficial ownership of the common stock, except to the extent of his pecuniary interest therein, if any.

Shares beneficially owned by Dr. Chua include (i) 6,000 restricted stock units, all of which were unvested as of August 1, 2013 and (ii) 14,333 shares of common stock issuable upon exercise of options that were exercisable (11) within 60 days of August 1, 2013. Dr. Chua was designated to serve as our director by Maxwell. Dr. Chua is not an affiliate of Maxwell and disclaims beneficial ownership of all shares of Amyris common stock that are or may be beneficially owned by Maxwell or any of its affiliates.

Shares beneficially owned by Mr. Doerr include (i) 3,000 shares of common stock, (ii) 3,049,439 shares of common stock held by Foris Ventures, LLC, in which Mr. Doerr indirectly owns all of the membership interests, (iii) 8,503 shares of common stock held by The Vallejo Ventures Trust U/T/A 2/12/96, of which Mr. Doerr is a (12) trustee, (iv) 4,183,224 shares of common stock held by entities affiliated with Kleiner Perkins Caufield & Byers of which Mr. Doerr is an affiliate, excluding 246,007 shares over which Mr. Doerr has no voting or investment power, (v) 6,000 restricted stock units, all of which were unvested as of August 1, 2013, and (vi) 28,666 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

Shares beneficially owned by Dr. Duyk include (i) 6,000 restricted stock units, all of which were unvested as of August 1, 2013, and (ii) 14,333 shares of common stock issuable upon exercise of options that were exercisable (13) within 60 days of August 1, 2013. Dr. Duyk is a partner of TPG Biotech. TPG Biotech is affiliated with TPG Biotechnology Partners II, L.P. Dr. Duyk disclaims beneficial ownership of all of the TPG Stock that is or may be beneficially owned by Partners II or any of its affiliates.

Shares beneficially owned by Dr. Levinson include (i) 214,864 shares of common stock, (ii) 6,000 restricted stock (14) units, all of which were unvested as of August 1, 2013, and (iii) 152,000 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

Shares beneficially owned by Ms. Piwnica include (i) 3,000 shares of common stock, (ii) 6,000 restricted stock units, all of which were unvested as of August 1, 2013, and (iii) 28,666 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013. Ms. Piwnica is Director of NAXOS (15) UK, a consulting firm advising private equity and was designated to serve as our director by Naxyris SA, an investment vehicle owned by Naxos Capital Partners SCA Sicar. NAXOS UK is affiliated with Naxos Capital Partners SCA Sicar. Ms. Piwnica disclaims beneficial ownership of all shares of Amyris common stock that are or may be beneficially owned by Naxyris SA or any of its affiliates.

Shares beneficially owned by Dr. Reinach include (i) 3,000 shares of common stock, (ii) 170,397 shares of common stock held by Sualk Capital Ltd, an entity for which Dr. Reinach serves as sole director, (iii) 6,000 (16) restricted stock units, all of which were unvested as of August 1, 2013, and (iv) 28,666 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

Shares beneficially owned by HH include (i) 7,484,601 shares of common stock held by Bolding Investment SA, (17) an entity indirectly owned by HH, (ii) 6,000 restricted stock units, all of which were unvested as of August 1, 2013, and (iii) 16,000 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

Shares beneficially owned by Mr. Williams include (i) 3,000 restricted stock units, all of which were unvested as (18) of August 1, 2013, and (iii) 1,666 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

Shares beneficially owned by Dr. Cherry include (i) 19,331 shares of common stock, (ii) 250,999 restricted stock units, all of which were unvested as of August 1, 2013, and (iii) 209,020 shares of common stock issuable upon (19) exercise of options that were exercisable within 60 days of August 1, 2013. If these options were exercised in full, 11,334 of these shares would be subject to vesting and a right of repurchase in our favor upon Dr. Cherry's cessation of service prior to vesting.

Shares beneficially owned by Mr. Diniz include (i) 43,334 shares of common stock, (ii) 86,666 restricted stock (20) units, all of which were unvested as of August 1, 2013, and (iii) 132,083 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

(21) Shares beneficially owned by Ms. McFerson include (i) 600 shares of common stock, and (ii) 130,000 restricted stock units, all of which were unvested as of August 1, 2013.

Shares beneficially owned by Mr. Mills include (i) 15,830 shares of common stock, (ii) 391,000 restricted stock (22) units, all of which were unvested as of August 1, 2013, and (iii) 140,000 shares of common stock issuable upon exercise of options that were exercisable within 60 days of August 1, 2013.

(23) Shares beneficially owned by all our executive officers and directors as a group include the shares of common stock described in footnotes (9) through (22) above.

## Financial Information

Certain financial information is provided with this proxy statement and is attached hereto as Annex D, consisting of:

A. Condensed Consolidated Financial Statements as of and for the Three and Six Months ended June 30, 2013 (Unaudited):

Condensed Consolidated Balance Sheets as of June 30, 2013 and December 31, 2013

Condensed Consolidated Statements of Operations for the Three and Six months ended June 30, 2013 and 2012

Condensed Consolidated Statements of Comprehensive Loss for the Three and Six months ended June 30, 2013 and 2012

Condensed Consolidated Statements of Stockholders' Equity for the Six months ended June 30, 2013

Condensed Consolidated Statements of Cash Flows for the Six months ended June 30, 2013 and 2012

B. Management's Discussion and Analysis of Financial Condition and Results of Operations as of and for the Three and Six Months ended June 30, 2013

C. Consolidated Year-End Financial Statements:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2012 and 2011

Consolidated Statements as of Operations for the years ended December 31, 2012, 2011 and 2010

Consolidated Statements of Comprehensive Loss for the years ended December 31, 2012, 2011 and 2010

Consolidated Statements of Convertible Preferred Stock, Redeemable Noncontrolling Interest and Equity (Deficit) for the years ended December 31, 2012, 2011 and 2010

Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010

Notes to Consolidated Financial Statements

Year-End Financial Statement Schedules:

Schedule II Valuation and Qualifying Accounts for the years ended December 31, 2012, 2011 and 2010



D. Management's Discussion and Analysis of Financial Condition and Results of Operations for the Years ended December 31, 2012, 2011 and 2010

E. Quantitative and Qualitative Disclosures About Market Risk

F. Supplementary Financial Data - Selected Quarterly Financial Data (Unaudited)

We will provide to any stockholder entitled to vote at our 2013 Special Meeting of Stockholders, at no charge, a copy of our Annual Report on Form 10-K for fiscal 2012 filed with the SEC on March 28, 2013, including the financial statements and the financial statement schedules contained in the Form 10-K and our Quarterly Report on Form 10-Q for the six months ended June 30, 2013. We make our Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, as well as our other SEC filings, available free of charge through the investor relations section of our website located at <http://investors.amyris.com/index.cfm> as soon as reasonably practicable after they are filed with or furnished to the SEC. Information contained on or accessible through our website or contained on other websites is not deemed to be part of Proxy Statement. In addition, you may request a copy of the Annual Report on Form 10-K and Quarterly Report on Form 10-Q in writing by sending an e-mail request to Amyris Investor Relations, attention Joel Velasco, at [investor@amyris.com](mailto:investor@amyris.com), calling (510) 740-7481, or writing to Amyris Investor Relations at 5885 Hollis Street, Suite 100, Emeryville, California 94608.

## **Householding of Proxy Materials**

The SEC has adopted rules that permit companies and intermediaries to satisfy the delivery requirements for proxy statements and annual reports, including Notices of Internet Availability of Proxy Materials, with respect to two or more stockholders sharing the same address by delivering a single Notice of Internet Availability of Proxy Materials or other proxy materials addressed to those stockholders. This process, which is commonly referred to as “householding,” potentially means extra convenience for stockholders and cost savings for companies.

A number of brokers with account holders who are Amyris stockholders may be “householding” our proxy materials. A single copy of the Notice or other proxy materials may be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker that they will be “householding” communications to your address, “householding” will continue until you are notified otherwise or you submit contrary instructions. If, at any time, you no longer wish to participate in “householding” and would prefer to receive a separate Notice or other proxy materials, you may: (1) notify your broker; (2) direct your written request to Amyris Investor Relations at 5885 Hollis Street, Suite 100, Emeryville, California 94608 or to investor@amyris.com; or (3) contact Amyris Investor Relations at (510) 740-7481. Stockholders who currently receive multiple copies of the Notice or other proxy materials at their addresses and would like to request “householding” of their communications should contact their brokers. In addition, we will promptly deliver, upon written or oral request to the address or telephone number above, a separate copy of the Notice to a stockholder at a shared address to which a single copy of the documents was delivered.

## **Stockholder Proposals to be Presented at Next Annual Meeting**

Stockholder proposals may be included in our proxy statement for an annual meeting so long as they are provided to us on a timely basis and satisfy the other conditions set forth in SEC regulations under Rule 14a-8 regarding the inclusion of stockholder proposals in company-sponsored proxy materials. For a stockholder proposal to be considered for inclusion in our proxy statement for the annual meeting to be held in 2014, we must receive the proposal at our principal executive offices, addressed to the Secretary, no later than December 10, 2013. In addition, a stockholder proposal that is not intended for inclusion in our proxy statement under Rule 14a-8 may be brought before the 2014 annual meeting so long as we receive information and notice of the proposal in compliance with the requirements set forth in our Bylaws, addressed to the Secretary at our principal executive offices, not later than February 23, 2014 nor earlier than January 24, 2014.

## **Other Matters**

The Board knows of no other matters that will be presented for consideration at the Special Meeting. If any other matters are properly brought before the meeting, it is the intention of the persons named in the accompanying proxy to vote on such matters in accordance with their best judgment.

**BY ORDER OF THE BOARD OF  
DIRECTORS**

John Melo  
*President and Chief Executive Officer*

Emeryville, California

August [ ], 2013

**ANNEX A**

**SECURITIES PURCHASE AGREEMENT**

## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of August 8, 2013 by and among Amyris, Inc., a Delaware corporation (the “Company”), and the individuals or entities listed on Schedule I hereto (each, a “Purchaser,” and collectively, the “Purchasers”).

### Preliminary Statement

Subject to the terms and conditions hereof, the Purchasers desire to purchase, and the Company desires to offer and sell to the Purchasers, (a) \$42,616,618.57 in principal amount of the Company’s Tranche I Senior Convertible Notes (the “Tranche I Notes”) and (b) \$30,440,441.84 in principal amount of the Company’s Tranche II Senior Convertible Notes (the “Tranche II Notes,” and, together with the Tranche I Notes, the “Securities” and each, a “Security”). The Tranche I Notes will be evidenced by convertible notes in the form attached hereto as Exhibit A and the Tranche II Notes will be evidenced by convertible notes in the form attached hereto as Exhibit B. The Securities will be convertible into shares (the “Underlying Securities”) of the Company’s common stock, \$0.0001 par value per share (the “Common Stock”), in accordance with the terms of the Securities.

### Agreement

The parties, intending to be legally bound, agree as follows:

#### ARTICLE 1 SALE OF SECURITIES

1.1. Tranche I Closing. Subject to the terms and conditions hereof, at the Tranche I Closing (as defined in Section 2.1) the Company will sell to each Purchaser, and each Purchaser will purchase from the Company, a Tranche I Note in the principal amount set forth next to such Purchaser’s name on Schedule I hereto under the column “Tranche I Closing Amount.” The total purchase price payable by each Purchaser for the Tranche I Notes that such Purchaser is hereby agreeing to purchase at the Tranche I Closing is the amount set forth next to such Purchaser’s name on Schedule I hereto under the column “Tranche I Closing Amount” (the “Tranche I Closing Total Purchase Price”). The sale and purchase of the Tranche I Notes to each Purchaser shall constitute a separate sale and purchase hereunder.

1.2. Tranche II Closings. Subject to the terms and conditions hereof, from time to time at a Tranche II Closing (as defined in Section 2.2), the Company may elect to sell to each Purchaser, and upon such election each Purchaser will purchase from the Company, a Tranche II Note in a principal amount equal to the product of (a) the aggregate principal amount of Tranche II Notes the Company elects to sell at such Tranche II Closing, and (b) the percentage set forth next to such Purchaser's name on Schedule I hereto under the column "Tranche II Closing Percentage" (such amount, a "Tranche II Closing Total Purchase Price", with any Purchaser's Tranche I Closing Total Purchase Price or any other Tranche II Closing Total Purchase Price being referred to herein as a "Total Purchase Price"); provided, however, that in no event shall the aggregate Tranche II Closing Total Purchase Price paid by any Purchaser exceed that amount set forth on Schedule I hereto under the column "Maximum Tranche II Closing Amount." The total purchase price payable by each Purchaser for the Tranche II Notes that such Purchaser hereby agrees to purchase at any Tranche II Closing shall be the Tranche II Closing Total Purchase Price applicable to such Purchaser in connection with such Tranche II Closing. The sale and purchase of the Tranche II Notes to each Purchaser shall constitute a separate sale and purchase hereunder.

ARTICLE 2  
CLOSING; DELIVERY

2.1. Tranche I Closing. The closing of the purchase and sale of the Tranche I Notes by and to the Purchasers hereunder (the "Tranche I Closing") shall be held at the offices of Fenwick & West LLP, 801 California Street, Mountain View, California 94041 within three (3) business days following the date on which the last of the conditions set forth in Articles 5 and Section 6.1 have been satisfied or waived in accordance with this Agreement (such date, the "Tranche I Closing Date"), or at such other time and place as the Company and the Purchasers mutually agree upon.

2.2. Tranche II Closings. At any time and from time to time after the satisfaction of the Tranche II Closing Conditions (as defined in Section 6.2), the Company may in its sole discretion elect to sell to each Purchaser, on the terms and conditions set forth in this Agreement, without obtaining the signature, consent or permission of any of the Purchasers, in additional closings (each, a "Tranche II Closing", with each of the Tranche I Closing and any other Tranche II Closing being referred to herein as a "Closing"), Tranche II Notes in a principal amount equal to the applicable Tranche II Closing Total Purchase Price for such Purchaser, provided that each such subsequent sale is consummated no later than two (2) years after the date of this Agreement, and (b) the aggregate principal amount of Tranche II Notes sold at all the Tranche II Closings shall not exceed \$30,440,441.84. Schedule I to this Agreement shall be updated to reflect the principal amount of Tranche II Notes purchased by each Purchaser at each such Tranche II Closing and, if applicable, the cancellation or conversion of convertible indebtedness of the Company to such applicable Purchaser in connection with such Tranche II Closing.

2.3. Delivery.

(a) At the Tranche I Closing, the Company shall execute and deliver to the Purchasers this Agreement, the Amendment No. 4 to Amended and Restated Investors' Rights Agreement in the form attached hereto as Exhibit C (the "Rights Agreement Amendment"), and the other documents referenced in Section 6.1.

(b) At any Closing, each Purchaser shall either (i) pay the Company the applicable Total Purchase Price in immediately available funds, (ii) pay the Company the applicable Total Purchase Price by cancellation or conversion of the principal amount of convertible indebtedness of the Company to such applicable Purchaser (other than indebtedness pursuant to an outstanding Security) for borrowed money, plus any then accrued and unpaid interest thereon, in an amount equal to the applicable Total Purchase Price, or (iii) (A) initiate irrevocable payment instructions to its paying bank to make the payment (an "Irrevocable Payment Instruction") to the Company of the applicable Total Purchase Price in immediately available funds and (B) deliver to the Company confirmation that such Purchaser has made an Irrevocable Payment Instruction, such confirmation to either be in the form of (x) a federal reference number or other similar written evidence that a wire has been initiated, or (y) a side letter in the form attached hereto as Schedule 2.3(b) (a "Payment Commitment Letter").





(c) At any Closing, or, if applicable, upon receipt of the applicable amount of the Total Purchase Price due in respect of such Closing from a Purchaser who makes an Irrevocable Payment Instruction at such Closing, the Company shall deliver to each Purchaser a Tranche I Note or Tranche II Note, as applicable, with a principal amount as provided in Article I above, such Tranche I Note or Tranche II Note, as applicable, to be registered in the name of such Purchaser, or in such nominee's or nominees' name(s) as set forth next to such Purchaser's name on Schedule I hereto, against payment of the purchase price therefor as provided in Article I above by wire transfer of immediately available funds to such account or accounts as the Company shall designate in writing to Purchaser at least two (2) days prior to the date of the applicable Closing or by cancellation or conversion of convertible indebtedness of the Company to such applicable Purchaser. Each Purchaser purchasing a Tranche I Note or Tranche II Note, as applicable, through conversion or cancellation of convertible indebtedness agrees that each convertible promissory note held by such Purchaser is cancelled as of the applicable Closing and all principal and interest outstanding thereunder shall be converted as reflected on Schedule I (as updated from time to time in accordance with Section 2.2 hereof); provided that to the extent only a portion of the principal and interest outstanding thereunder shall be converted as reflected on Schedule I (as updated from time to time in accordance with Section 2.2 hereof) as of the date of such Closing, then the Company shall issue a new convertible promissory note to such Purchaser reflecting the remaining principal and interest outstanding under such original convertible promissory note after giving effect to the conversion contemplated hereby.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents, warrants and covenants to each Purchaser, except as set forth in the disclosure letter supplied by the Company to the Purchasers dated as of the date hereof (the "Disclosure Letter"), which exceptions shall be deemed to be part of the representations and warranties made hereunder as provided therein, as follows:

3.1. Organization and Standing. The Company and each of its subsidiaries is duly incorporated, validly existing, and in good standing under the laws of the jurisdiction of its organization. Each of the Company and its subsidiaries has all requisite power and authority to own and operate its respective properties and assets and to carry on its respective business as presently conducted and as proposed to be conducted. The Company and each of its subsidiaries is qualified to do business as a foreign entity in every jurisdiction in which the failure to be so qualified would have, or would reasonably be expected to have, a Material Adverse Effect. As used herein, a "Material Adverse Effect" means any event, change, occurrence, condition, circumstance or effect, individually or in the aggregate, that has been, is or could reasonably be expected to be, directly or indirectly, materially adverse to the business, properties, tangible and intangible assets, liabilities, operations, prospects, financial condition or results of operation of the Company and its subsidiaries or the ability of the Company or any of its subsidiaries to perform their respective obligations under the Transaction Agreements (as defined below).

3.2. Subsidiaries. As used in this Agreement, references to any “subsidiary” of a specified Person shall refer to an Affiliate controlled by such Person directly, or indirectly through one or more intermediaries, as such terms are used in and construed under Rule 405 under the Securities Act (which, for the avoidance of doubt, shall include the Company’s controlled joint ventures, including shared-controlled joint ventures). The Company’s subsidiaries are listed on Exhibit 21.01 to the Company’s Annual Report on Form 10-K for the year ended December 31, 2012 and, except as Previously Disclosed (as defined in Section 3.9) are the only subsidiaries, direct or indirect, of the Company as of the date hereof. All the issued and outstanding shares of each subsidiary’s capital stock have been duly authorized and validly issued, are fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities, and, except as Previously Disclosed, are owned by the Company or a Company subsidiary free and clear of all liens, encumbrances and equities and claims. As used herein, “Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, and an “Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person.

3.3. Power. The Company has all requisite power to execute and deliver this Agreement, to sell and issue the Securities hereunder, and to carry out and perform its obligations under the terms of this Agreement, the Rights Agreement Amendment, the Securities and any ancillary agreements and instruments to be entered into by the Company hereunder (together, the “Transaction Agreements”).

3.4. Authorization. The execution, delivery, and performance of the Transaction Agreements by the Company has been duly authorized by all requisite action on the part of the Company and its officers, directors and stockholders, and the Transaction Agreements constitute the legal, valid, and binding obligations of the Company enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors’ rights generally, and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies (together, the “Enforceability Exceptions”).

3.5. Consents and Approvals. Except for any Current Report on Form 8-K or Notice of Exempt Offering of Securities on Form D to be filed by the Company in connection with the transactions contemplated hereby, the Company is not required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by the Transaction Agreements. Assuming the accuracy of each of the representations and warranties of each Purchaser in Article 4 of this Agreement, no consent, approval, authorization or other order of, or registration, qualification or filing with, any court, regulatory body, administrative agency, self-regulatory organization, stock exchange or market (including The NASDAQ Stock Market LLC (“The NASDAQ Stock Market”), or other governmental body is required for the execution and delivery of these Transaction Agreements, the valid issuance, sale and delivery of the Securities to be sold pursuant to this Agreement other than such as have been made or obtained, or for any securities filings required to be made under federal or state securities laws applicable to the offering of the Securities.



3.6. Non-Contravention. The execution and delivery of the Transaction Agreements, the issuance, sale and delivery of the Securities (including the issuance of the Underlying Securities upon conversion thereof) to be sold by the Company under this Agreement, the performance by the Company of its obligations under the Transaction Agreements and/or the consummation of the transactions contemplated thereby will not (a) conflict with, result in the breach or violation of, or constitute (with or without the giving of notice or the passage of time or both) a violation of, or default under, (i) any bond, debenture, note or other evidence of indebtedness, or under any lease, license, franchise, permit, indenture, mortgage, deed of trust, loan agreement, joint venture or other agreement or instrument to which the Company or any subsidiary is a party or by which it or its properties may be bound or affected, (ii) the Company's Restated Certificate of Incorporation, as amended and as in effect on the date hereof (the "Certificate of Incorporation"), the Company's Bylaws, as amended and as in effect on the date hereof (the "Bylaws"), or the equivalent document with respect to any subsidiary, as amended and as in effect on the date hereof, or (iii) any statute or law, judgment, decree, rule, regulation, ordinance or order of any court or governmental or regulatory body (including The NASDAQ Stock Market), governmental agency, arbitration panel or authority applicable to the Company, any of its subsidiaries or their respective properties, except in the case of clauses (i) and (iii) for such conflicts, breaches, violations or defaults that would not be likely to have, individually or in the aggregate, a Material Adverse Effect, or (b) result in the creation or imposition of any lien, encumbrance, claim, security interest or restriction whatsoever upon any of the material properties or assets of the Company or any of its subsidiaries or an acceleration of indebtedness pursuant to any obligation, agreement or condition contained in any material bond, debenture, note or any other evidence of indebtedness or any material indenture, mortgage, deed of trust or any other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company is subject. For purposes of this Section 3.6, the term "material" shall apply to agreements, understandings, instruments, contracts or proposed transactions to which the Company is a party or by which it is bound involving obligations (contingent or otherwise) of, or payments to, the Company in excess of \$100,000 in a 12-month period.

3.7. The Securities. The Securities have been duly authorized by the Company and, when duly executed and delivered and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, subject to the Enforceability Exceptions. The issuance and delivery of the Securities is not subject to any preemptive or similar rights.

3.8. The Underlying Securities. Upon issuance and delivery of the Securities in accordance with this Agreement, the Securities will be convertible at the option of the holder thereof into shares of the Underlying Securities in accordance with the terms of the Securities. The Underlying Securities reserved for issuance upon conversion of the Securities have been duly authorized and reserved and, when issued upon conversion of the Securities in accordance with the terms of the Securities, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

3.9. No Registration. Assuming the accuracy of each of the representations and warranties of each Purchaser herein, the issuance by the Company of the Securities (including the issuance of the Underlying Securities upon conversion thereof) is exempt from registration under the Securities Act of 1933, as amended (the "Securities Act").

3.10. Reporting Status. The Company is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and has, in a timely manner, filed all documents and reports that the Company was required to file pursuant to Section I.A.3.b of the General Instructions to Form S-3 promulgated under the Securities Act in order for the Company to be eligible to use Form S-3 for the two years preceding the date hereof or such shorter time period as the Company has been subject to such reporting requirements (the foregoing materials, together with any materials filed by the Company under the Exchange Act, whether or not required, collectively, the "SEC Documents"). The SEC Documents complied as to form in all material respects with requirements of the Securities Act and Exchange Act and the rules and regulations of the U.S. Securities and Exchange Commission (the "SEC") promulgated thereunder (collectively, the "SEC Rules"), and none of the SEC Documents and the information contained therein, as of their respective filing dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As used in this Agreement, "Previously Disclosed" means information set forth in or incorporated by reference into the SEC Documents filed with the SEC on or after March 28, 2013 but prior to the date hereof (except for risks and forward-looking information set forth in the "Risk Factors" section of the applicable SEC Documents or in any forward-looking statement disclaimers or similar statements that are similarly non-specific and are predictive or forward-looking in nature).

3.11. Contracts. Each indenture, contract, lease, mortgage, deed of trust, note agreement, loan or other agreement or instrument of a character that is required to be described or summarized in the SEC Documents or to be filed as an exhibit to the SEC Documents under the SEC Rules (collectively, the "Material Contracts") is so described, summarized or filed. The Material Contracts to which the Company or its subsidiaries are a party have been duly and validly authorized, executed and delivered by the Company and constitute the legal, valid and binding agreements of the Company or its subsidiaries, as applicable, enforceable by and against the Company or its subsidiaries, as applicable, in accordance with their respective terms, subject to the Enforceability Exceptions.

3.12. Capitalization. As of the date of the Agreement, the authorized capital stock of the Company consists of (a) 200,000,000 shares of Common Stock, \$0.0001 par value per share, 76,191,229 shares of which are issued and outstanding as of the date hereof, and (b) 5,000,000 shares of Preferred Stock, \$0.0001 par value per share, of which no shares are issued and outstanding as of the date hereof. All subscriptions, warrants, options, convertible securities, and other rights (contingent or other) to purchase or otherwise acquire equity securities of the Company issued and outstanding as of the date hereof, or material contracts, commitments, understandings, or arrangements by which the Company or any of its subsidiaries is or may be obligated to issue shares of capital stock, or securities or rights convertible or exchangeable for shares of capital stock, are as set forth in the SEC Documents. The issued and outstanding shares of the Company's capital stock have been duly authorized and validly issued, are fully paid and nonassessable, have been issued in compliance with all applicable federal and state securities laws, and were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities. Except as Previously Disclosed, no holder of the Company's capital stock is entitled to preemptive or similar rights. There are no bonds, debentures, notes or other indebtedness having general voting rights (or convertible into securities having such rights) of the Company issued and outstanding. Except as Previously Disclosed, there are no agreements or arrangements under which the Company or any of its subsidiaries is obligated to register the sale of any of their securities under the Securities Act. The Company has made available to the Purchasers, a true, correct and complete copy of the Company's Certificate of Incorporation and Bylaws.

3.13. Legal Proceedings. Except as Previously Disclosed, there is no action, suit or proceeding before any court, governmental agency or body, domestic or foreign, now pending or, to the knowledge of the Company, threatened against the Company or its subsidiaries wherein an unfavorable decision, ruling or finding would reasonably be expected to, individually or in the aggregate, (i) materially adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, this Agreement or (ii) have a Material Adverse Effect. The Company is not a party to or subject to the provisions of any injunction, judgment, decree or order of any court, regulatory body, administrative agency or other governmental agency or body that might have, individually or in the aggregate, a Material Adverse Effect.

3.14. No Violations. Neither the Company nor any of its subsidiaries is in violation of its respective certificate of incorporation, bylaws or other organizational documents, or to its knowledge, is in violation of any statute or law, judgment, decree, rule, regulation, ordinance or order of any court or governmental or regulatory body (including The NASDAQ Stock Market), governmental agency, arbitration panel or authority applicable to the Company or any of its subsidiaries, which violation, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries is in default (and there exists no condition which, with or without the passage of time or giving of notice or both, would constitute a default) in the performance of any bond, debenture, note or any other evidence of indebtedness in any indenture, mortgage, deed of trust or any other material agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or by which the properties of the Company are bound, which would be reasonably likely to have a Material Adverse Effect. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company or any current or former director or officer of the Company and the Company is not an "ineligible issuer" pursuant to Rules 164, 405 and 433 under the Securities Act. The Company has not received any comment letter from the SEC relating to any SEC Documents which has not been finally resolved. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act.



3.15. Governmental Permits: FDA Matters.

(a) Permits. The Company and its subsidiaries possess all necessary franchises, licenses, certificates and other authorizations from any foreign, federal, state or local government or governmental agency, department or body that are currently necessary for the operation of their respective businesses as currently conducted, except where such failure to possess would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such permit which, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) EPA and FDA Matters. As to each of the manufacturing processes, intermediate products and research or commercial products of the Company and each of its subsidiaries, including, without limitation, products or compounds currently under research and/or development by the Company, subject to the jurisdiction of the United States Environmental Protection Agency ("EPA") under the Toxic Substances Control Act and regulations thereunder ("TSCA") or the Food and Drug Administration ("FDA") under the Federal Food, Drug and Cosmetic Act and the regulations thereunder ("FDCA") (each such product, a "Life Science Product"), such Life Science Product is being researched, developed, manufactured, tested, distributed and/or marketed in compliance in all material respects with all applicable requirements under the FDCA and TSCA and similar laws and regulations applicable to such Life Science Product, including those relating to investigational use, premarket approval, good manufacturing practices, labeling, advertising, record keeping, filing of reports and security. The Company has not received any notice or other communication from the FDA, EPA or any other federal, state or foreign governmental entity (i) contesting the premarket approval of, the uses of or the labeling and promotion of any Life Science Product or (ii) otherwise alleging any violation by the Company of any law, regulation or other legal provision applicable to a Life Science Product. Neither the Company, nor any officer, employee or agent of the Company has made an untrue statement of a material fact or fraudulent statement to the FDA or other federal, state or foreign governmental entity performing similar or equivalent functions or failed to disclose a material fact required to be disclosed to the FDA or such other federal, state or foreign governmental entity.

3.16. Listing Compliance. The Company is in compliance with the requirements of The NASDAQ Stock Market for continued listing of the Common Stock thereon and has no knowledge of any facts or circumstances that could reasonably lead to delisting of its Common Stock from The NASDAQ Stock Market. The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or the listing of the Common Stock on The NASDAQ Stock Market, nor has the Company received any notification that the SEC or The NASDAQ Stock Market is contemplating terminating such registration or listing. The transactions contemplated by the Transaction Agreements will not contravene the rules and regulations of The NASDAQ Stock Market. The Company will comply with all requirements of The NASDAQ Stock Market with respect to the issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof), including the filing of any additional listing notice with respect to the issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof).





3.17. Intellectual Property.

(a) The Company and/or its subsidiaries owns or possesses, free and clear of all encumbrances, all legal rights to all intellectual property and industrial property rights and rights in confidential information, including all (i) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisional, reissues, re-examinations, substitutions and extensions thereof, (ii) trademarks, trademark rights, service marks, service mark rights, corporate names, trade names, trade name rights, domain names, logos, slogans, trade dress, design rights, and other similar designations of source or origin, together with the goodwill symbolized by and of the foregoing, (iii) trade secrets and all other confidential information, ideas, know-how, inventions, proprietary processes, formulae, models, and other methodologies, (iv) copyrights, (v) computer programs (whether in object code, subject code or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all related documentation, (vi) licenses to any of the foregoing, and (vii) all applications and registrations of the foregoing, and (viii) all other similar proprietary rights (collectively, "Intellectual Property") used or held for use in, or necessary for the conduct of their businesses as now conducted and as proposed to be conducted, and neither the Company nor any of its subsidiaries (i) has received any communications alleging that either the Company or any of its subsidiaries has violated, infringed or misappropriated or, by conducting their businesses as now conducted and as proposed to be conducted, would violate, infringe or misappropriate any of the Intellectual Property of any other Person, (ii) knows of any basis for any claim that the Company or any of its subsidiaries has violated, infringed or misappropriated, or, by conducting their businesses as now conducted and as proposed to be conducted, would violate, infringe or misappropriate any of the Intellectual Property of any other Person, and (iii) knows of any third-party infringement, misappropriation or violation of any Company or any Company subsidiary's Intellectual Property. The Company has taken and takes reasonable security measures to protect the secrecy, confidentiality and value of its Intellectual Property, including requiring all Persons with access thereto to enter into appropriate non-disclosure agreements. To the knowledge of the Company, there has not been any disclosure of any material trade secret of the Company or a Company subsidiary (including any such information of any other Person disclosed in confidence to the Company) to any other Person in a manner that has resulted or is likely to result in the loss of trade secret in and to such information. Except as Previously Disclosed, and except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, there are no outstanding options, licenses or agreements, claims, encumbrances or shared ownership interests of any kind relating to the Company's or its subsidiaries' Intellectual Property, nor is the Company or its subsidiaries bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other Person.

(b) To the Company's knowledge, none of the employees of the Company or its subsidiaries are obligated under any contract (including, without limitation, licenses, covenants or commitments of any nature or contracts entered into with prior employers), or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or its subsidiaries or would conflict with their businesses as now conducted and as proposed to be conducted. Neither the execution nor delivery of the Transaction Agreements will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any contract, covenant or instrument under which the Company or its subsidiaries or any of the employees of the Company or its subsidiaries is now obligated, and neither the Company nor its subsidiaries will need to use any inventions that any of its employees, or Persons it currently intends to employ, have made prior to their employment with the Company or its subsidiaries, except for inventions that have been assigned or licensed to the Company or its subsidiaries as of the date hereof. Each current and former employee or contractor of the Company or its subsidiaries that has developed any Intellectual Property owned or purported to be owned by the Company or its subsidiaries has executed and delivered to the Company a valid and enforceable Invention Assignment and Confidentiality Agreement that (i) assigns to the Company or such subsidiaries all right, title and interest in and to any Intellectual Property rights arising from or developed or delivered to the Company or such subsidiaries in connection with such Person's work for or on behalf of the Company or such subsidiaries, and (ii) provides reasonable protection for the trade secrets, know-how and other confidential information (1) of the Company or such subsidiaries and (2) of any third party that has disclosed same to the Company or such subsidiaries. To the knowledge of the Company, no current or former employee, officer, consultant or contractor is in default or breach of any term of any employment, consulting or contractor agreement, non-disclosure agreement, assignment agreement, or similar agreement. Except as Previously Disclosed, to the knowledge of the Company, no present or former employee, officer, consultant or contractor of the Company has any ownership, license or other right, title or interest, directly or indirectly, in whole or in part, in any Intellectual Property that is owned or purported to be owned, in whole or part, by the Company or its subsidiaries.

3.18. Financial Statements. The consolidated financial statements of the Company and its subsidiaries and the related notes thereto included in the SEC Documents (the "Financial Statements") comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing and present fairly, in all material respects, the financial position of the Company and its subsidiaries as of the dates indicated and the results of its operations and cash flows for the periods therein specified subject, in the case of unaudited statements, to normal year-end audit adjustments. Except as set forth in such Financial Statements (or the notes thereto), such Financial Statements (including the related notes) have been prepared in accordance with U.S. generally accepted accounting principles applied on a consistent basis throughout the periods therein specified ("GAAP"). Except as set forth in the Financial Statements, neither the Company nor its subsidiaries has any material liabilities other than liabilities and obligations that have arisen in the ordinary course of business and which would not be required to be reflected in financial statements prepared in accordance with GAAP.

3.19. Accountants. PricewaterhouseCoopers LLP, which has expressed its opinion with respect to the consolidated financial statements contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2012, are registered independent public accountants as required by the Exchange Act and the rules and regulations promulgated thereunder (and by the rules of the Public Company Accounting Oversight Board).



3.20. Internal Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) that are effective and designed to ensure that (i) information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified by the SEC Rules, and (ii) such information is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure. The Company is otherwise in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act of 2002, as amended and the rules and regulations promulgated thereunder.

3.21. Off-Balance Sheet Arrangements. There is no transaction, arrangement or other relationship between the Company or its subsidiaries and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its Exchange Act filings and is not so disclosed or that otherwise would be reasonably likely to have, individually or in the aggregate, a Material Adverse Effect. There are no such transactions, arrangements or other relationships with the Company that may create contingencies or liabilities that are not otherwise disclosed by the Company in its Exchange Act filings.

3.22. No Material Adverse Change. Except as set forth in the SEC Documents in each case, filed or made through and including the date hereof, since March 28, 2013:

(a) there has not been any event, occurrence or development that, individually or in the aggregate, has had or that could reasonably be expected to result in a Material Adverse Effect;

(b) the Company has not incurred any liabilities (contingent or otherwise) other than (1) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (2) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or not required to be disclosed in filings made with the SEC;

(c) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock other than routine withholding in accordance with the Company's existing stock-based plan;

(d) the Company has not altered its method of accounting or the identity of its auditors, except as Previously Disclosed;

(e) the Company has not issued any equity securities except pursuant to the Company's existing stock-based plans or as otherwise Previously Disclosed; and

(f) there has not been any loss or damage (whether or not insured) to the physical property of the Company or any of its subsidiaries.

The Company is not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the applicable Closing, will not be Insolvent (as defined below). For purposes of this Section, “Insolvent” means, with respect to any Person, (i) the present fair saleable value of such Person’s assets is less than the amount required to pay such Person’s total indebtedness, (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is currently proposed to be conducted.

3.23. No Manipulation of Stock. Neither the Company nor any of its subsidiaries, nor to the Company’s knowledge, any of their respective officers, directors, employees, Affiliates or controlling Persons has taken and will not, in violation of applicable law, take, any action designed to or that might reasonably be expected to, directly or indirectly, cause or result in stabilization or manipulation of the price of the Common Stock.

3.24. Insurance. The Company and its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and its subsidiaries are engaged. The Company and its subsidiaries will continue to maintain such insurance or substantially similar insurance, which covers the same risks at the same levels as the existing insurance with insurers which guarantee the same financial responsibility as the current insurers, and neither the Company nor any subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

3.25. Properties. The Company and its subsidiaries have good and marketable title to all the properties and assets (both tangible and intangible) described as owned by them in the consolidated financial statements included in the SEC Documents, free and clear of all liens, mortgages, pledges, or encumbrances of any kind except (i) those, if any, reflected in such consolidated financial statements (including the notes thereto), or (ii) those that are not material in amount and do not adversely affect the use made and proposed to be made of such property by the Company or its subsidiaries. The Company and each of its subsidiaries hold their leased properties under valid and binding leases. The Company and each of its subsidiaries own or lease all such properties as are necessary to its operations as now conducted.

3.26. Tax Matters. The Company and its subsidiaries have filed all Tax Returns, and these Tax Returns are true, correct, and complete in all material respects. The Company and each subsidiary (i) have paid all Taxes that are due from the Company or such subsidiary for the periods covered by the Tax Returns or (ii) have duly and fully provided reserves adequate to pay all Taxes in accordance with GAAP. No agreement as to indemnification for, contribution to, or payment of Taxes exists between the Company or any subsidiary, on the one hand, and any other Person, on the other, including pursuant to any Tax sharing agreement, lease agreement, purchase or sale agreement, partnership agreement or any other agreement not entered into in the ordinary course of business. Neither the Company nor any of its subsidiaries has any liability for Taxes of any Person (other than the Company or any of its subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of any state, local or foreign law), or as a transferee or successor, by contract or otherwise. Since the date of the Company's most recent Financial Statements, the Company has not incurred any liability for Taxes other than in the ordinary course of business consistent with past practice. Neither the Company nor its subsidiaries has been advised (a) that any of its Tax Returns have been or are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its Taxes. Neither the Company nor any of its subsidiaries has knowledge of any Tax liability to be imposed upon its properties or assets as of the date of this Agreement that is not adequately provided for. The Company has not distributed stock of another corporation, or has had its stock distributed by another corporation, in a transaction that was governed, or purported or intended to be governed, in whole or in part, by Section 355 of the Internal Revenue Code (i) in the two years prior to the date of this Agreement or (ii) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Internal Revenue Code) in conjunction with the purchase of the Securities. "Tax" or "Taxes" means any foreign, federal, state or local income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall, profits, environmental, customs, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative or add-on minimum or other similar tax, governmental fee, governmental assessment or governmental charge, including any interest, penalties or additions to Taxes or additional amounts with respect to the foregoing. "Tax Returns" means all returns, reports, or statements required to be filed with respect to any Tax (including any elections, notifications, declarations, schedules or attachments thereto, and any amendment thereof) including any information return, claim for refund, amended return or declaration of estimated Tax.

3.27. Investment Company Status. The Company is not, and immediately after receipt of payment for the Securities will not be, an "investment company," an "affiliated person" of, "promoter" for or "principal underwriter" for, or an entity "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, or the rules and regulations promulgated thereunder.

3.28. Transactions With Affiliates and Employees. Except as Previously Disclosed, none of the officers or directors of the Company or its subsidiaries and, to the knowledge of the Company, none of the employees of the Company or its subsidiaries is presently a party to any transaction with the Company or any subsidiary (other than for services as employees, officers and directors required to be disclosed under Item 404 of Regulation S-K under the Exchange Act).

3.29. Foreign Corrupt Practices. Neither the Company nor its subsidiaries or Affiliates, any director or officer, nor to the knowledge of the Company, any agent, employee or other Person acting on behalf of the Company or its



subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity, (b) made or promised to make any direct or indirect unlawful payment to any foreign or domestic government official or employee (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any Person acting in an official capacity for or on behalf of any of the foregoing, or of any political party or part official or candidate for political office (each such Person, a “Government Official”)) from corporate funds, (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended or (d) made or promised to make any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic Government Official.

3.30. Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, and the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law on October 26, 2001)), applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the Company's knowledge, threatened.

3.31. OFAC. Neither the Company, any director or officer, nor, to the Company's knowledge, any agent, employee, subsidiary or Affiliate of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

3.32. Environmental Laws. The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a Material Adverse Effect on the Company and its subsidiaries, taken as a whole.

3.33. Employee Relations. Neither the Company nor any of its subsidiaries is a party to any collective bargaining agreement or employs any member of a union. Neither the Company nor any of its subsidiaries is engaged in any unfair labor practice. There is (i) (x) no unfair labor practice complaint pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or threatened, (y) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries and (z) no union representation dispute currently existing concerning the employees of the Company or any of its subsidiaries, and (ii) to the Company's knowledge, (x) no union organizing activities are currently taking place concerning the employees of the Company or any of its subsidiaries and (y) there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees or any applicable wage or hour laws. No executive officer of the Company (as defined in Rule 501(f) promulgated under the Securities Act) has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. No executive officer of the Company, to the knowledge of the Company, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its subsidiaries to any liability with respect to any of the foregoing matters.

3.34. ERISA. The Company and its subsidiaries are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (herein called "ERISA"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company or any of its subsidiaries would have any liability; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan"; or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"); and each "Pension Plan" for which the Company would have liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

3.35. Obligations of Management. To the Company's knowledge, each officer and key employee of the Company or its subsidiaries is currently devoting substantially all of his or her business time to the conduct of the business of the Company or its subsidiaries, respectively. The Company is not aware that any officer or key employee of the Company or its subsidiaries is planning to work less than full time at the Company or its subsidiaries, respectively, in the future. To the Company's knowledge, no officer or key employee is currently working or plans to work for a competitive enterprise, whether or not such officer or key employee is or will be compensated by such enterprise. To the Company's knowledge, no officer or Person currently nominated to become an officer of the Company or its subsidiaries is or has been subject to any judgment or order of, the subject of any pending civil or administrative action by the SEC or any self-regulatory organization.

3.36. Integration; Other Issuances of Securities. Neither the Company nor its subsidiaries or any Affiliates, nor any Person acting on its or their behalf, has issued any shares of Common Stock or shares of any series of preferred stock or other securities or instruments convertible into, exchangeable for or otherwise entitling the holder thereof to

acquire shares of Common Stock which would be integrated with the sale of the Securities to the Purchasers for purposes of the Securities Act or of any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of The NASDAQ Stock Market, nor will the Company or its subsidiaries or Affiliates take any action or steps that would require registration of any of the Securities under the Securities Act or cause the offering of the Securities to be integrated with other offerings if any such integration would cause the issuance of the Securities hereunder to fail to be exempt from registration under the Securities Act as provided in Section 3.9 above or cause the transactions contemplated hereby to contravene the rules and regulations of The NASDAQ Stock Market. The Company is eligible to register the Underlying Securities for resale by the Purchasers using Form S-3 promulgated under the Securities Act.

3.37. No General Solicitation. Neither the Company nor its subsidiaries or any Affiliates, nor any Person acting on its or their behalf, has offered or sold any of the Securities by any form of general solicitation or general advertising.

3.38. No Brokers' Fees. The Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

3.39. Registration Rights. Except as set forth in (i) the Amended and Restated Investors' Rights Agreement dated June 21, 2010, by and among the Company and the parties listed on Exhibits A through G thereof, as amended by Amendment No. 1 to Amended and Restated Investors' Rights Agreement dated February 23, 2012, as further amended by Amendment No. 2 to Amended and Restated Investors' Rights Agreement dated December 24, 2012, as further amended by Amendment No. 3 to Amended and Restated Investors' Rights Agreement dated March 27, 2013, and as further amended by the Rights Agreement Amendment (as amended, the "Rights Agreement"); (ii) the Registration Rights Agreement, dated February 27, 2012, by and among the Company and the several purchasers signatory thereto; and (iii) the Registration Rights Agreement, dated July 30, 2012, by and between the Company and Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS) ("Total"), the Company has not granted or agreed to grant to any Person any rights (including "piggy-back" registration rights) to have any securities of the Company registered with the SEC or any other governmental authority that have not been satisfied or waived.

3.40. Application of Takeover Protections. There is no control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's charter documents or the laws of its state of incorporation that is or could become applicable to any of the Purchasers as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Agreements, including, without limitation, as a result of the Company's issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and the Purchasers' ownership of the Securities.

3.41. Disclosure. The Company understands and confirms that the Purchasers will rely on the foregoing representations in effecting transactions in the Securities. All disclosure furnished by or on behalf of the Company to the Purchasers in connection with this Agreement regarding the Company, its business and the transactions contemplated hereby is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchasers make or have made any representations or warranties with respect to the transactions contemplated hereby other than those set forth in Article 4 hereto. Other than (a) side letters contemplated by Section 2.3(b) hereof, (b) that certain letter agreement and memorandum of understanding of even date herewith by and among the Company, Total and Maxwell (Mauritius) Pte Ltd ("Temasek") (such agreement, the "MOU"), and (c) letter agreements regarding waivers of rights entered into by the Company and certain of its stockholders on or about August 8, 2013, the Company has not entered into any letter agreement with a Purchaser hereunder in connection with the transactions contemplated hereby.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Each Purchaser, as to itself only and not with respect to any other Purchaser, represents, warrants and covenants to the Company with respect to this purchase as follows:

4.1. Organization. The Purchaser is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

4.2. Power. The Purchaser has all requisite power to execute and deliver this Agreement and to carry out and perform its obligations under the terms of this Agreement.

4.3. Authorization. The execution, delivery, and performance of this Agreement by the Purchaser has been duly authorized by all requisite action, and this Agreement constitutes the legal, valid, and binding obligation of the Purchaser enforceable in accordance with its terms (subject to the Enforceability Exceptions).

4.4. Consents and Approvals. The Purchaser need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

4.5. Non-Contravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will violate in any material respect any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Purchaser is subject. No approval, waiver, or consent by the Purchaser under any instrument, contract, or agreement to which the Purchaser or any of its Affiliates is a party is necessary to consummate the transactions contemplated hereby.

4.6. Purchase for Investment Only. The Purchaser is purchasing the Securities for the Purchaser's own account for investment purposes only and not with a view to, or for resale in connection with, any "distribution" in violation of the Securities Act. By executing this Agreement, the Purchaser further represents that it does not have any contract, undertaking, agreement, or arrangement with any Person to sell, transfer, or grant participation to such Person or to any third Person, with respect to any of the Securities. The Purchaser understands that the Securities have not been registered under the Securities Act or any applicable state securities laws by reason of a specific exemption therefrom that depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

4.7. Disclosure of Information. The Purchaser has had an opportunity to review the Company's filings under the Securities Act and the Exchange Act (including risks factors set forth therein) and the Purchaser represents that it has had an opportunity to ask questions and receive answers from the Company to evaluate the financial risk inherent in making an investment in the Securities. The Purchaser has not been offered the opportunity to purchase the Securities by means of any general solicitation or general advertising.

4.8. Risk of Investment. The Purchaser realizes that the purchase of the Securities will be a highly speculative investment and the Purchaser may suffer a complete loss of its investment. The Purchaser understands all of the risks related to the purchase of the Securities. By virtue of the Purchaser's experience in evaluating and investing in private placement transactions of securities in companies similar to the Company, the Purchaser is capable of evaluating the merits and risks of the Purchaser's investment in the Company and has the capacity to protect the Purchaser's own interests.

4.9. Advisors. The Purchaser has reviewed with its own tax advisors the federal, state, and local tax consequences of this investment and the transactions contemplated by this Agreement. The Purchaser acknowledges that it has had the opportunity to review the Transaction Agreements and the transactions contemplated thereby with the Purchaser's own legal counsel.

4.10. Finder. The Purchaser is not obligated and will not be obligated to pay any broker commission, finders' fee, success fee, or commission in connection with the transactions contemplated by this Agreement.

4.11. Restricted Securities. The Purchaser understands that the Securities must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from registration is otherwise available. Moreover, the Purchaser understands that, except as set forth in the Rights Agreement, the Company is under no obligation to register the Securities. The Purchaser is aware of Rule 144 promulgated under the Securities Act ("SEC Rule 144") that permits limited resales of securities purchased in a private placement subject to the satisfaction of certain conditions.

4.12. Legend. It is understood by the Purchaser that the Security and any other document representing or evidencing the Securities shall be endorsed with a legend substantially in the following form:

"THE SECURITIES REPRESENTED BY THIS NOTE AND THE SECURITIES ISSUABLE UPON ITS CONVERSION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES



LAWS OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE ACT OR SUCH LAWS AND, IF REASONABLY REQUESTED BY THE COMPANY, UPON DELIVERY OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT THE PROPOSED TRANSFER IS EXEMPT FROM THE ACT OR SUCH LAWS.

Subject to Section 8.3, the Company need not register a transfer of Securities unless the conditions specified in the foregoing legend are satisfied. Subject to Section 8.3, the Company may also instruct its transfer agent not to register the transfer of any of the Securities unless the conditions specified in the foregoing legend are satisfied.

4.13. Investor Qualification. The Purchaser is an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act. The Purchaser agrees to furnish any additional information that the Company deems reasonably necessary in order to verify such Purchaser’s status as an “accredited investor.”

## ARTICLE 5

### CONDITIONS TO COMPANY’S OBLIGATIONS AT each CLOSING.

The Company’s obligation to complete the sale and issuance of the Securities and deliver the Securities to each Purchaser, individually, at each Closing shall be subject to the following conditions to the extent not waived by the Company:

(a) Receipt of Payment. The Company shall have received payment (or confirmation that an Irrevocable Payment Instruction has been made, or a Payment Commitment Letter has been delivered, with respect to such payment), by wire transfer of immediately available funds or by conversion of indebtedness of the Company to such applicable Purchaser, in the full amount of the applicable Total Purchase Price for the applicable Securities being purchased by such Purchaser at such Closing as set forth next to such Purchaser’s name on Schedule I hereto (as updated from time to time in accordance with Sections 2.1 and 2.2 hereof).

(b) Representations and Warranties. The representations and warranties made by such Purchaser in Section 4 hereof shall be true and correct in all material respects as of, and as if made on, the date of the applicable Closing.

(c) Receipt of Executed Documents. Such Purchaser shall have executed and delivered to the Company the Rights Agreement Amendment.

## ARTICLE 6

### CONDITIONS TO PURCHASERS’ OBLIGATIONS AT EACH CLOSING

6.1. Conditions to any Closing. Each Purchaser's obligation to accept delivery of the Securities and to pay for the Securities at the applicable Closing shall be subject to the following conditions to the extent not waived by such Purchaser:

(a) Representations and Warranties. The representations and warranties made by the Company in Section 3 hereof (i) with respect to the Tranche I Closing, shall be true and correct in all respects as of, and as if made on, the date of this Agreement and as of the Tranche I Closing as though such representations and warranties were made on and as of such date, and (ii) with respect to any other Closing, shall be true and correct in all material respects as of, and as if made on, the date of this Agreement and as of the date of such Closing as though such representations and warranties were made on and as of such date.

- (b) Receipt of Related Documents. The Company shall have executed and delivered to such Purchaser the Rights Agreement Amendment.
- (c) Legal Opinion. The Purchasers shall have received an opinion of Fenwick & West LLP, counsel to the Company, dated as of the applicable Closing, substantially in the form set forth in Exhibit D hereto.
- (d) Certificate. Each Purchaser shall have received a certificate dated as of the applicable Closing and signed by the Company's Chief Executive Officer and Chief Financial Officer to the effect that (i) with respect to the Tranche I Closing, the representations and warranties of the Company in Section 3 hereof are true and correct in all respects as of, and as if made on, the date of this Agreement and as of the Tranche I Closing, and that the Company has satisfied in all material respects all of the conditions set forth in this Agreement and required to be satisfied as of the Tranche I Closing, or (ii) with respect to any other Closing, the representations and warranties of the Company in Section 3 hereof are true and correct in all material respects as of, and as if made on, the date of this Agreement and as of such Closing, and that the Company has satisfied in all material respects all of the conditions set forth in this Agreement and required to be satisfied as of such Closing.
- (e) Good Standing. The Company is validly existing as a corporation in good standing under the laws of Delaware as evidenced by a certificate of the Secretary of State of the State of Delaware, a copy of which was provided to the Purchasers on the applicable Closing.
- (f) Secretary's Certificate. Each Purchaser shall have received a certificate, executed by the Secretary of the Company and dated as of the applicable Closing, as to (A) the resolutions approving the issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof) as adopted by an Independent Committee of the Board of Directors and/or the Company's Board of Directors in a form reasonably acceptable to such Purchaser, (B) confirmation that the Company has obtained the Stockholder Approval, (C) the Certificate of Incorporation, and (D) the Bylaws, each as in effect as of such Closing.
- (g) Board Approval. The terms and conditions of the issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and the Transaction Agreements shall have been approved by an Independent Committee of the Board of Directors and/or a majority of the disinterested directors of the Board of Directors, as applicable.
- (h) Stockholder Approval. The terms and conditions of the issuance of the Securities (including the issuance of the Underlying Securities upon conversion thereof) and the Transaction Agreements shall have been approved by a majority of the Company's stockholders whose vote was counted at the Stockholders Meeting (such approval, the "Stockholder Approval").

(i) Other Approvals. The Company and Temasek, as applicable, shall have obtained all governmental, regulatory or third party consents and approvals, if any, including, but not limited to, regulatory approvals (if any) from Austria, Germany and Japan, and given all notices, if any, necessary for the sale of the Securities, including, without limitation, from The NASDAQ Stock Market.

(j) Receipt of Securities. The Company shall have executed and delivered to the Purchasers the Securities to be purchased by and sold to the Purchasers at the applicable Closing as described herein, duly executed by the Company.

(k) Security Interest. Unless Total shall have previously released all security interests it holds with respect to the Company's and its subsidiaries' Intellectual Property, including, but not limited to, any such security interest created in favor of Total pursuant to the Intellectual Property Security Agreement dated as of April 26, 2013, by the Company in favor of Total, and any related security documents, Total, Temasek and the Company shall have executed an agreement in accordance with the terms of the MOU whereby Temasek shall be given a security interest in collateral that shall be acceptable to Temasek but that will not include any intellectual property that has been or will be licensed exclusively to Total pursuant to the terms of the Master Framework Agreement, made and entered into as of July 30, 2012, between the Company and Total (the "Master Framework Agreement") and any agreements or amendments entered into pursuant thereto or in connection therewith (the "Temasek Collateral"), and the Company shall have used commercially reasonable efforts to perfect such security interest in the Temasek Collateral in accordance with applicable law.

(l) Warrant. The Company shall have issued to Temasek a warrant in a form reasonably acceptable to Temasek, which warrant will be exercisable for 1,000,000 shares of Common Stock at an exercise price per share of \$0.01; provided, however, that such warrant shall only be exercisable in the event that Total converts any of the Total Notes (as defined in the Securities) issued pursuant to the Second Closing (as defined in that certain Securities Purchase Agreement dated July 30, 2012 by and between the Company and Total (the "Total Purchase Agreement")) that have a conversion price as of the date hereof of \$3.08, as may be adjusted pursuant to the terms of the Total Notes, into shares of the Company's Common Stock.

(m) Brazilian Antitrust Approval. Pursuant to the Brazilian Law No. 12.529 as of November 30, 2011 (the "Brazilian Competition Law"), the Purchasers shall have obtained any required approvals from the Brazilian competition authorities with respect to the transactions contemplated hereby.

6.2. Additional Conditions to Tranche II Closings. Each Purchaser's obligation to accept delivery of the Tranche II Notes in connection with any Tranche II Closing and to pay for such Tranche II Notes at a Tranche II Closing shall be subject to the conditions set forth in Section 6.1 and the following additional conditions (collectively, the "Tranche II Closing Conditions") to the extent not waived by such Purchaser:

(a) Tranche II Milestone. The Company shall have achieved a total production of 750,000 liters within a run period of forty-five (45) days at the fermentation plant owned and operated by Paraíso Bioenergia S.A. in Brotas, Sao Paulo State, in Brazil.

(b) Key Man. John Melo shall continue to serve as the Company's Chief Executive Officer unless Mr. Melo shall have ceased to serve as the Company's Chief Executive Officer due to death or Disability (as defined in Section 22(e)(3) of the Code) or, to the extent Mr. Melo is not the Company's Chief Executive Officer, any such new Chief Executive Officer shall have been approved by the Purchasers holding at least 50% in principal amount of all then outstanding Tranche I Notes and Tranche II Notes.

(c) No Material Adverse Effect. There shall not have occurred any event and no circumstance shall exist that, in combination with any other events or circumstances, has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect with respect to the Company and each of its subsidiaries, taken as a whole.

(d) Release of Security Interest. All security interests held by the Purchasers in respect of the Company's and its subsidiaries' Intellectual Property shall have been released in full.

ARTICLE 7  
COVENANTS of the company

7.1. Payment of Principal and Interest. The Company covenants and agrees that it will duly and punctually pay the principal of and interest on the Securities in accordance with the terms of such Securities.

7.2. Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of the Securities; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law.

7.3. Corporate Existence. Subject to Section 7 of the Securities, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence in accordance with its organizational documents and the rights (charter and statutory), licenses and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right, license or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not adverse in any material respect to the Purchasers.

7.4. Taxes. The Company shall pay prior to delinquency all taxes, assessments and governmental levies, except as contested in good faith and by appropriate proceedings.

7.5. Proxy Filing. The Company shall prepare and file with the SEC, as promptly as practicable after the date of this Agreement, a proxy statement in preliminary form relating to the Stockholders Meeting (as defined in Section 7.6) (such proxy statement, including any amendment or supplement thereto, the "Proxy Statement"). The Company shall cause the Proxy Statement to comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder. The Company shall cause the definitive Proxy Statement to be mailed as



promptly as possible after the date the staff of the SEC advises that it has no further comments thereon or that the Company may commence mailing the Proxy Statement.

7.6. Stockholders Meeting. The Company will take, in accordance with applicable law and its Certificate of Incorporation and Bylaws, all action necessary to convene a meeting of holders of the Company's Common Stock (the "Stockholders Meeting") as promptly as practicable after the date of this Agreement to consider and vote upon the adoption of this Agreement and the transactions contemplated hereby.

7.7. Right of First Investment.

(a) For so long as any Tranche I Notes or Tranche II Notes are outstanding, the Company hereby agrees to provide each of the Purchasers the "Right of First Investment" (as defined below). The "Right of First Investment" means that the Company will use all reasonable efforts to provide the Investors with (i) a right to participate in future sales by the Company in a capital raising transaction for cash of any debt securities or shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class or series of the Company's capital stock ("ROFI Securities") that are offered pursuant to an exemption from or in a transaction not subject to, the registration requirements of the Securities Act; and (ii) a right to participate in future sales of any ROFI Securities of any existing or future subsidiary of the Company by the Company or any subsidiary of the Company; provided, however, that "ROFI Securities" shall not include any Total Notes issued to Total pursuant to the Total Purchase Agreement as part of the Third Closing (as defined in the Total Purchase Agreement) on the terms set forth in the Total Purchase Agreement and the related Total Note as waived by Temasek pursuant to the Waiver Regarding Right of First Investment dated as of August 17, 2012 among the Company and the "Investors" set forth therein, including but not limited to the "Conversion Price" being \$7.0682 ("Excluded Securities").

(b) In connection with any exercise of a Purchaser's Right of First Investment pursuant to this Agreement, such Purchaser shall be permitted to pay for any ROFI Securities purchased in connection with such exercise by surrendering to the Company all, or any portion, of the Tranche I Notes or Tranche II Notes issued by the Company to such Purchaser pursuant to this Agreement and all or a portion of the outstanding amounts due pursuant to such Tranche I Notes or Tranche II Notes, as applicable, shall be cancelled in exchange for the ROFI Securities and the Company shall immediately issue a new Security for the remaining amounts under such Tranche I or Tranche II Notes.

(c) With respect to any future sales of ROFI Securities as set forth in Section 7.7(a) above, the Company, on behalf of itself or its applicable subsidiary, will notify the Purchasers in writing (the "Notice") stating (i) its bona fide intention to offer such ROFI Securities, (ii) the number of such ROFI Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such ROFI Securities.

(d) Within thirty (30) business days after giving of the Notice, each Purchaser may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such ROFI Securities that equals the proportion that the number of shares of, and/or securities convertible into or exchangeable or exercisable for any shares of (on an as converted basis), any class or series of the Company's capital stock held by such Purchaser bears to the total number of shares of, and securities convertible into or exchangeable or exercisable for any shares of (on an as converted basis), any class or series of the Company's capital stock then outstanding. The Company shall promptly, in writing, inform each Purchaser that elects to purchase all the ROFI Securities available to it ("Fully Exercising Investor") of any other Purchaser's failure to do likewise. During the five (5) business day period commencing after such information is given, each Fully Exercising Investor shall be entitled to elect to purchase up to that portion of the ROFI Securities offered hereunder to, and not subscribed for by, the Purchasers that is equal to the proportion that the number of shares of Common Stock of the Company issued and held by such Fully Exercising Investor bears to the total number of shares of Common Stock of the Company issued and held by all Fully Exercising Investors who wish to purchase some of the unsubscribed ROFI Securities.

(e) The Company may, during the seventy-five (75) day period following the expiration of the period provided in paragraph 7.7(d) hereof, offer the remaining unsubscribed portion of such ROFI Securities to any person or persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Notice. If the Company does not consummate the sale of the ROFI Securities, or enter into a definitive agreement for the sale of such ROFI Securities, within such period, or if the Company enters into such a definite agreement and such agreement is not consummated within seventy-five (75) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such ROFI Securities shall not be offered unless first reoffered to the Purchasers in accordance herewith.

7.8. Change of Control. For so long as any Tranche I Notes or Tranche II Notes are outstanding, the Company shall not consummate a Change of Control (as defined in the Tranche I Notes) without the prior written consent of the Purchasers holding at least 50% in principal amount of all then outstanding Tranche I Notes and Tranche II Notes.

7.9. Competition Laws. Each Purchaser and the Company agree to (i) file any notifications required by the Brazilian Competition Law or any similar laws of Austria, Germany or Japan, if applicable, in connection with the transactions contemplated hereby, (ii) supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the Brazilian Competition Law or any similar laws of Austria, Germany or Japan, if applicable, and (iii) use its commercially reasonable efforts to take or cause to be taken all other actions necessary, proper, or advisable consistent with this Section 7.9 to promptly obtain any clearance required by the Brazilian, Austrian, German or Japanese competition authorities, and in any event prior to the Tranche I Closing.

7.10. Information Rights. For so long as any Tranche I Notes or Tranche II Notes are outstanding, the Company shall provide the Purchasers with the following information:

(a) unaudited quarterly (as soon as available and in any event within 40 days of the end of each quarter) and audited (by a nationally recognized accounting firm) annual (as soon as available and in any event within 60 days of the end of each fiscal year) financial statements prepared in accordance with GAAP, which statements shall include:

(i) the consolidated balance sheets of the Company and its subsidiaries and the related consolidated statements of income, shareholders' equity (with respect to annual reports only) and cash flows;

- (ii) a comparison to the corresponding data for the corresponding periods of the previous fiscal year; and
  
- (iii) a reasonably detailed narrative descriptive report of the operations of the Company and its subsidiaries in the form and to the extent prepared for presentation to the senior management of the Company for the applicable period and for the period from the beginning of the then current fiscal year to the end of such period;
  
- (b) to the extent the Company is required by law or pursuant to the terms of any outstanding indebtedness of the Company to prepare such reports, any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act actually prepared by the Company as soon as available;
  
- (c) such other information as the Purchasers shall reasonably request; and
  
- (d) the JV Documents (as defined in the MOU);

provided that any such information shall be deemed to have been provided when such reports are publicly available via the SEC's EDGAR system or any successor to the EDGAR system.

Additionally, the Company shall permit any authorized representatives designated by any Purchaser reasonable access during normal business hours and upon reasonable notice to visit and inspect any of the properties of the Company or any of its subsidiaries, including its and their books of account, and to discuss its and their affairs, finances and accounts with its and their officers, all at such times as such Purchaser may reasonably request.

7.11. Updated Disclosure Letter. Prior to any Closing, the Company shall deliver to the Purchasers an updated Disclosure Letter (each, an "Updated Disclosure Letter"), which Updated Disclosure Letter shall be dated as of such Closing but shall not be deemed to be part of the representations and warranties made at such Closing as provided therein.

7.12. Seniority of Notes. The Company acknowledges, agrees and covenants that the Securities shall be its senior obligations, ranking senior in right of payment to Common Stock and to future issuances of Debt (as defined in the Tranche I Notes) other than (i) Debt that is permitted to be secured in accordance with the limitations on Debt in Section 6 of the Tranche I Notes under Sections 6(a)(ii)(a) or (c), and (ii) for the avoidance of doubt, the Total Notes, which Total Notes shall be pari passu with the Securities except as provided in the MOU.



ARTICLE 8

OTHER AGREEMENTS OF THE PARTIES

8.1. Securities Laws Disclosure: Publicity. Promptly after the Tranche I Closing Date, the Company shall issue a press release (the "Press Release") reasonably acceptable to the Purchasers disclosing all material terms of the transactions contemplated hereby. On or before 5:30 p.m., New York City time, on the fourth trading day immediately following the execution of this Agreement, the Company will file a Current Report on Form 8-K with the SEC describing the terms of the Transaction Agreements. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or an Affiliate of any Purchaser, or include the name of any Purchaser or an Affiliate of any Purchaser in any press release or filing with the SEC or any regulatory agency or trading market, without the prior written consent of such Purchaser, except (i) as required by federal securities law in connection with (A) any registration statement contemplated by the Rights Agreement and (B) the filing of final Transaction Agreements (including signature pages thereto) with the SEC and (ii) to the extent such disclosure is required by law, request of the Staff of the SEC or trading market regulations, in which case the Company shall provide the Purchasers with prior written notice of such disclosure permitted under this subclause (ii). Each Purchaser, until such time as the transactions contemplated by this Agreement are required to be publicly disclosed by the Company as described in this Section 8.1, will maintain the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

8.2. Form D. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Purchaser (provided that the posting of the Form D on the SEC's EDGAR system shall be deemed delivery of the Form D for purposes of this Agreement).

8.3. Removal of Legend and Transfer Restrictions. The Company hereby covenants with the Purchasers to promptly, and in no event later than three trading days following the delivery by the Purchaser to the Company of a Security (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer), in connection with the transfer or sale of all or a portion of the Securities pursuant to (1) an effective registration statement that is effective at the time of such sale or transfer, (2) a transaction exempt from the registration requirements of the Securities Act in which the Company, if reasonably requested, receives an opinion of counsel reasonably satisfactory to the Company that the Securities are freely transferable and that the legend is no longer required on such Security, or (3) an exemption from registration pursuant to SEC Rule 144, deliver or cause the Company's transfer agent to deliver to the transferee of the Securities or to the Purchaser, as applicable, a new Security representing such Securities that is free from all restrictive and other legends. The Company acknowledges that the remedy at law for a breach of its obligations under this Section 8.3 may be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 8.3 with respect to any Purchaser, the Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

8.4. Use of Proceeds. The Company agrees to use the proceeds of the offering for bona fide general corporate purposes and to provide working capital.

8.5. Subsequent Securities Sales. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchasers, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.



8.6. Listing; SEC Compliance.

(a) Listing. The Company shall promptly take any action required to maintain the listing of all of the Underlying Securities, once they have been issued, upon each national securities exchange and automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of the Underlying Securities from time to time issuable under the terms of the Securities. The Company shall not take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on The NASDAQ Stock Market.

(b) SEC Filings. The Company shall take all actions within its control to comply with the reporting requirements of the Exchange Act and each applicable national securities exchange and automated quotation system on which the Common Stock is listed. The Purchasers' sole remedy for breach of this Section 8.6(b) will be as set forth in Section 5 of the Securities.

(c) Current Information. The Company shall make and keep public information available, as those terms are understood and defined in SEC Rule 144 for so long as required in order to permit the resale of the Securities or Underlying Securities pursuant to SEC Rule 144.

8.7. Register. The Company shall keep a "register" which shall provide for the recordation of the name and address of, and the amount of outstanding principal and interest owing to, each Purchaser. The entries in the register shall be conclusive evidence of the amounts due and owing to each Purchaser in the absence of manifest error. The Company and each Purchaser shall treat each Person whose name is recorded in the register pursuant to the terms hereof as a Purchaser for all purposes. The obligations of the Company to each Purchaser under the Securities (the "Obligations") are registered obligations and the right, title and interest of any Purchaser and its assignees in and to such Obligations shall be transferable only upon notation of such transfer in the register. This Section 8.7 shall be construed so that the Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any other relevant or successor provisions of the Code or such regulations). The register shall be available for inspection by any Purchaser from time to time upon reasonable prior notice.

8.8. Federal Income Tax Reporting. Notwithstanding anything to the contrary contained herein, each party hereto hereby acknowledges and agrees that for United States federal, state and local income tax purposes, the aggregate "issue price" of the Securities under Section 1273(b) of the Code shall equal the principal amount of any such Securities on the date of issuance. Each party hereto agrees to use the foregoing issue price for all income tax, financial accounting and regulatory purposes with respect to this transaction. Each party hereto further acknowledges and agrees that the Obligations shall be treated as debt for all tax and accounting purposes and no party shall take any position inconsistent therewith.



ARTICLE 9  
MISCELLANEOUS

9.1. Survival. The representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement and the sale of the Securities.

9.2. Indemnification.

(a) Indemnification of Purchasers. The Company agrees to indemnify and hold harmless each Purchaser and its Affiliates and their respective directors, officers, trustees, members, managers, employees and agents, and their respective successors and assigns, from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable attorney fees and disbursements and other expenses reasonably incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, "Losses") to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under this Agreement, and will reimburse any such Person for all such Losses as they are incurred by such Person.

(b) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt notice to the Company of any claim with respect to which it seeks indemnification and (ii) permit the Company to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided that any Person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (a) the Company has agreed to pay such fees or expenses, or (b) the Company shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such Person or (c) in the reasonable judgment of any such Person, based upon written advice of its counsel, a conflict of interest exists between such Person and the Company with respect to such claims (in which case, if the Person notifies the Company in writing that such Person elects to employ separate counsel at the expense of the Company, the Company shall not have the right to assume the defense of such claim on behalf of such Person); and provided, further, that the failure of any indemnified party to give notice as provided herein shall not relieve the Company of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the Company in the defense of any such claim or litigation. It is understood that the Company shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. The Company will not, except with the consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. No indemnified party will, except with the consent of the Company, consent to entry of any judgment or enter into any settlement.

9.3. Assignment; Successors and Assigns. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, that this Agreement may be assigned by any Purchaser to the valid transferee of any security purchased hereunder if such security remains a “restricted security” under the Securities Act. This Agreement and all provisions thereof shall be binding upon, inure to the benefit of, and are enforceable by the parties hereto and their respective successors and permitted assigns.

9.4. Notices. All notices, requests, and other communications hereunder shall be in writing and will be deemed to have been duly given and received (a) when personally delivered, (b) when sent by facsimile upon confirmation of receipt, (c) one business day after the day on which the same has been delivered prepaid to a nationally recognized courier service, or (d) five business days after the deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, in each case addressed, as to the Company, to Amyris, Inc., 5885 Hollis Street, Suite 100, Emeryville, CA 94608, Attn: General Counsel, facsimile number: (510) 740-7416, with a copy to Fenwick & West LLP, 801 California Street, Mountain View, CA 94041, Attn: Dan Winnike, Esq., facsimile number: (650) 938-5200, and as to the Purchaser at the address and facsimile number set forth below the Purchaser's signature on the signature pages of this Agreement. Any party hereto from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto. Each Purchaser and the Company may each agree in writing to accept notices and other communications to it hereunder by electronic communications pursuant to procedures reasonably approved by it; provided that approval of such procedures may be limited to particular notices or communications.

9.5. Governing Law. This Agreement, and the provisions, rights, obligations, and conditions set forth herein, and the legal relations between the parties hereto, including all disputes and claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to its conflict of law provisions.

9.6. Dispute Resolution.

9.6.1 Escalation. Prior to commencing any arbitration in connection with any dispute, controversy or claim arising out of relating to this Agreement or the breach, termination or validity thereof ("Dispute"), the parties shall first engage in the procedures set forth in this Section 9.6.1. Such Dispute shall first be referred by written notice of the Dispute (the "Dispute Notice") from any party to its executive officers and to the executive officers of each party that the party sending the Dispute Notice has the Dispute with (the "Executive Officers") and the Executive Officers shall attempt to resolve such Dispute within ten (10) days after a party sent the Dispute Notice to the Executive Officers by meeting (either in person or by video teleconference, unless otherwise mutually agreed) at a mutually acceptable time, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the Dispute has not been resolved within thirty (30) days after the Dispute Notice has been sent by a party to its Executive Officers and to the Executive Officers of the other party or parties, then either the party that has sent the Dispute Notice, or the party or parties that have received the Dispute Notice may, by written notice to the other party or parties, elect to submit the Dispute to arbitration pursuant to Section 9.6.2. If a party's Executive Officer intends to be accompanied at a meeting by an attorney, the Executive Officers of the other party shall be given at least seventy-two (72) hours' notice of such intention and may also be accompanied by an attorney. All negotiations conducted pursuant to this Section 9.6.1, and all documents and information exchanged by the parties in furtherance of such negotiations, (i) are the Confidential Information (as defined in Section 9.6.4) of the parties, and (ii) shall be inadmissible in any arbitration conducted pursuant to this Section 9.6 or other proceeding with respect to a Dispute.

9.6.2 Arbitration.

(a) All Disputes arising out of, relating to or in connection with this Agreement, which have not been resolved pursuant to Section 9.6.1, shall be submitted to mandatory, final and binding arbitration before an arbitral tribunal pursuant to the Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce (the “ICC Rules”), in effect at the time of filing of the request for arbitration, as modified hereby. The International Court of Arbitration of the International Chamber of Commerce (the “ICC Court”) shall administer the arbitration.

(b) There shall be three (3) arbitrators. If there are two parties to the arbitration, then one arbitrator shall be nominated by the initiating claimant party in the request for arbitration, the second nominated by the respondent party within thirty (30) days of receipt of the request for arbitration, and the third (who shall act as chairperson of the arbitral tribunal) nominated by the two (2) party-appointed arbitrators within thirty (30) days of the selection of the second arbitrator. In the event that either party fails to nominate an arbitrator, or if the two party-appointed arbitrators are unable or fail to agree upon the third arbitrator, within the time periods specified herein, the ICC Court shall appoint the remaining arbitrator(s) required to comprise the arbitral tribunal. If there are more than two parties to the arbitration, the claimant(s) shall jointly nominate one arbitrator and the respondent(s) shall jointly nominate one arbitrator, within thirty (30) days of receipt by respondent(s) of a copy of the request for arbitration. For avoidance of doubt, where there are two or more claimant(s), none of the claimants has to nominate an arbitrator in their request for arbitration. The third arbitrator (who shall act as chairperson of the arbitral tribunal) shall be nominated by the two (2) party-appointed arbitrators within thirty (30) days of the nomination of the second arbitrator. If either the claimant(s) or the respondent(s) fail to timely nominate an arbitrator, or if the two party-appointed arbitrators are unable or fail to agree upon the third arbitrator, within the time periods specified herein, then on the request of any party, the ICC Court shall appoint the remaining arbitrator(s) required to comprise the arbitral tribunal. The claimant in the arbitration shall provide a copy of the request for arbitration to the respondent at the time such request is submitted to the Secretariat of the International Chamber of Commerce.

(c) Each arbitrator chosen under this Section shall speak, read, and write English fluently and shall be either (i) a practicing lawyer who has specialized in business litigation with at least ten (10) years of experience in a law firm, (ii) an arbitrator experienced with commercial disputes, or (iii) a retired judge.

(d) The place of arbitration shall be Paris, France. The language of the arbitral proceedings and of all submissions and written evidence and any award issued by the arbitral tribunal shall be English. Any party may, at its own expense, provide for translation of any documents submitted in the arbitration or translation or interpretation of any testimony taken at any hearing before the arbitral tribunal. For the avoidance of doubt, no party is under any obligation to provide for translation of any documents submitted in the arbitration or translation or interpretation of any testimony taken at any hearing before the arbitral tribunal.

(e) The award shall be in writing, state the reasons for the award and be final and binding. The arbitral tribunal shall, subject to its discretion, endeavor to issue its award within four (4) months of the end of the hearing, or as soon as possible thereafter. It is expressly understood and agreed by the parties that the rulings and award of the arbitral tribunal shall be binding on the parties, their successors and permitted assigns. Judgment on the award rendered by the arbitral tribunal may be entered in any court having competent jurisdiction.

(f) Each party shall bear its own costs and expenses and attorneys' fees, and the party that does not prevail in the arbitration proceeding, as determined by the arbitral tribunal, shall pay the arbitrator's fees and any administrative fees of arbitration. All proceedings and decisions of the tribunal shall be deemed Confidential Information of each of the Parties, and shall be subject to Section 9.6.4.

9.6.3 Interim Relief.

(a) The arbitral tribunal shall have the power to grant any remedy or relief that it deems appropriate, whether provisional or final, including conservatory relief and injunctive relief, and any such measures ordered by the arbitral tribunal may, to the extent permitted by applicable law, be deemed to be a final award on the subject matter of the measures and shall be enforceable as such.

(b) In addition to the remedies and relief available under Section 9.6.3(a) above and the ICC Rules, and subject to Section 9.6.2 above, each party expressly retains the right at any time to apply to any court of competent jurisdiction for interim, injunctive, provisional or conservatory relief, including pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(c) For purposes of Section 9.6.3(b), each party hereby irrevocably and unconditionally consents and agrees that any action for interim, provisional and/or conservatory relief brought against it with respect to its obligations or liabilities under or arising out of or in connection with this Agreement may be brought in the courts located in Paris, France or the state or federal courts located in the Borough of Manhattan, New York City, New York, and each party hereby irrevocably accepts and unconditionally submits to the non-exclusive jurisdiction of the aforesaid courts *in personam*, with respect to any such action for interim, provisional or conservatory relief. In any such action, each of the parties irrevocably waives, to the fullest extent they may effectively do so, any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens or any right of objection to jurisdiction on account of its place of incorporation or domicile, which it may now or hereafter have to the bringing of any such action or proceeding in the courts located in Paris, France or in the state or federal courts located in the Borough of Manhattan, New York City, New York.

(d) Each party hereby irrevocably consents and agrees that the service of any and all legal process, summons, notices and documents which may be served in any action arising under this Agreement may be made by sending a copy thereof by express courier to the party to be served at the address set forth in the notice provision of this Agreement, with such service to be effective upon receipt. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.



(e) Each party hereto hereby irrevocably waives any and all right to trial by jury in any legal proceeding brought pursuant to this Section 9.6.

9.6.4 Confidentiality. The Company and each of the Purchasers agree to use, and to use its reasonable best efforts to ensure that its authorized representatives use the same degree of care as such party uses to protect its own confidential information (but in no event less than reasonable care) to keep confidential the information provided to it pursuant to this Agreement, and any other information furnished to it which the disclosing party identifies as being confidential or proprietary (so long as such information is not in the public domain) or, under the circumstances surrounding disclosure, such party knows or has reason to know should be treated as confidential (“Confidential Information”), unless otherwise required by law (provided that a party shall, to the extent permitted by law, promptly notify the other party of any required disclosure and take reasonable steps to minimize the extent of any such required disclosure); provided, however, that Confidential Information shall not include information, that (i) was in the public domain prior to the time it was furnished to such recipient, (ii) is at the time of the alleged breach (through no willful or improper action or inaction by such recipient) generally available to the public, (iii) was rightfully disclosed to such recipient by a third party without restriction or (iv) as of the time of the alleged breach, had been independently developed (as evidenced by written records) without any use of Confidential Information.

9.7. Severability. In the event that any provision of this Agreement or the application of any provision hereof is declared to be illegal, invalid, or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected except to the extent necessary to delete such illegal, invalid, or unenforceable provision unless that provision held invalid shall substantially impair the benefits of the remaining portions of this Agreement.

9.8. Headings. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

9.9. Entire Agreement. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof, including without limitation, solely with respect to Section 7.7 hereof and only for as long as any Tranche I Notes or Tranche II Notes are outstanding, any right of first investment a Purchaser may have pursuant to a previously existing agreement with the Company, including without limitation that certain letter agreement dated as of February 23, 2012 by and among the Company and the stockholders of the Company party thereto and the Master Framework Agreement; provided that notwithstanding anything in this Agreement, Total retains the right to pay the Company the applicable Total Purchase Price for the Tranche I and Tranche II Notes by the cancellation of Total Notes (as defined in the Securities), as provided in Section 5.1 of the Master Framework Agreement.

9.10. Finder’s Fee. The Company agrees that it shall be responsible for the payment of any placement agent’s fees, financial advisory fees, or brokers’ commissions (other than for Persons engaged by Purchaser) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold each Purchaser harmless against, any liability, loss or expense (including, without limitation, attorney’s fees and out-of-pocket expenses) arising in connection with any claim for any such fees or commissions.



9.11. Expenses. Each party will bear its own costs and expenses in connection with this Agreement.

9.12. Further Assurances. The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

9.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other party. Facsimile signatures shall be deemed originals for all purposes hereunder.

9.14. Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with obligations of each other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement or any other Transaction Agreements. The decision of each Purchaser to purchase Securities pursuant to this Agreement has been made by such Purchaser independently of any other Purchaser and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company or any of its subsidiaries which may have been made or given by any other Purchaser or by any agent or employee of any other Purchaser, and no Purchaser or any of its agents or employees shall have any liability to any other Purchaser (or any other Person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any ancillary document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Agreement. Each Purchaser acknowledges that no other Purchaser has or will be acting as agent of such Purchaser in enforcing its rights under this Agreement or any other Transaction Agreements. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

9.15. Amendments and Waivers. This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by each of the parties. No waiver by any of the parties of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver by any of the parties of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party sought to be charged with such waiver. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the

exercise of any other right, power or remedy.

*[Signature pages follows]*

This Securities Purchase Agreement is hereby confirmed and accepted by the Company as of August 8, 2013.

**AMYRIS, INC.**

By: /s/ John Melo  
Name: John Melo  
Title: Chief  
Executive Officer

This Securities Purchase Agreement is hereby confirmed and accepted by the Purchasers as of the date first written above.

**PURCHASERS:**

**Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS)**

By: /s/ Jean Francois Arrighi de Casanova  
(signature)

Name: Jean Francois Arrighi de Casanova  
(printed name)

Title: Attorney in Fact

Address: 24 Cours Michelet  
92800 Puteaux, France

Facsimile No: +331 4744 8178

E-mail Address: [bernard.clement@total.com](mailto:bernard.clement@total.com)

This Securities Purchase Agreement is hereby confirmed and accepted by the Purchasers as of the date first written above.

**PURCHASERS:**

**PURCHASERS:**

**Maxwell (Mauritius) Pte Ltd**

By: /s/ Chia Song Hwee  
(signature)

Name: Chia Song Hwee  
(printed name)

Title: Managing Member

Address: 60B Orchard Road #06-18  
Tower 2, The Atrium @ Orchard  
Singapore 238891

Facsimile No: (65) 6821 1188

E-mail Address: enquiry@temasek.com.sg



**Schedule I****Schedule of Purchasers**

| Purchaser  | Tranche I<br>Closing Amount | Tranche I<br>Cancellation of<br>Indebtedness | Tranche II<br>Closing<br>Percentage | Maximum<br>Tranche II<br>Closing Amount | Maximum<br>Tranche II<br>Cancellation of<br>Indebtedness | Tranche I Total<br>Purchase Price | Tranche II Total<br>Purchase Price |
|--|-----------------------------|--|-------------------------------------|---|--|-----------------------------------|------------------------------------|
| Maxwell<br>(Mauritius)<br>Pte Ltd<br>("Temasek")             | \$35,000,000.00             |  | 82.13 %                             | \$25,000,000.00                         |  | \$35,000,000.00                   |                                    |
| Total<br>Energies<br>Nouvelles<br>Activités<br>USA ("Total") | \$7,616,618.57              | \$7,616,618.57                               | 17.87 %                             | \$5,440,441.84                          | \$5,440,441.84   | \$7,616,618.57                    |                                    |
| <b>TOTAL</b>   | <b>\$42,616,618.57</b>      | <b>\$7,616,618.57</b>                        | <b>100.00 %</b>                     | <b>\$30,440,441.84</b>                  |  | <b>\$42,616,618.57</b>            |                                    |

**Schedule 2.3(b)**

**Payment commitment letter**

**Exhibit A**

**FORM OF TRANCHE I NOTE**

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**Exhibit B**

**FORM OF TRANCHE II NOTE**

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**Exhibit C**

**RIGHTS AGREEMENT AMENDMENT**

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**Exhibit D**

**FORM OF Opinion of Company Counsel**

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**Annex B**

**Form of Tranche I Note**

TRANCHE I SENIOR CONVERTIBLE NOTE

U.S.\$ \_\_\_\_\_ [Insert Date of Issuance]

THE SECURITIES REPRESENTED BY THIS NOTE AND THE SECURITIES ISSUABLE UPON ITS CONVERSION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE ACT OR SUCH LAWS AND, IF REASONABLY REQUESTED BY THE COMPANY, UPON DELIVERY OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT THE PROPOSED TRANSFER IS EXEMPT FROM THE ACT OR SUCH LAWS.

FOR VALUE RECEIVED, the undersigned, Amyris, Inc., a Delaware corporation (the “*Company*”), promises to pay to [Investor Name], or its assigns (the “*Investor*”), in lawful money of the United States and in immediately available funds (or in shares of Common Stock as provided in Section 3), U.S. \$[•] (the “*Face Amount*”), together with any interest accrued thereon or premiums due in respect thereof, all in accordance with the provisions of this Note. The “Issue Date” of this Note is [Insert Date of Issuance].

This Note was issued pursuant to the Securities Purchase Agreement, dated as of August 7, 2013 (as amended from time to time, the “*Agreement*”), among the Company and the other parties thereto. Unless the context otherwise requires, as used herein, “*Note*” means any of the Tranche I Notes (as defined in the Agreement) issued pursuant to the Agreement and any other similar convertible notes issued by the Company in exchange for, or to effect a transfer of, any Note, and “*Notes*” means all such Notes in the aggregate.

1. Definitions. For purposes of this Note, the following definitions shall be applicable:

“*Affiliate*” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person; for purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise.

“*Bankruptcy Law*” means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.



***“Board of Directors”*** means the board of directors of the Company.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

**“Capital Lease Obligation”** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

**“Certificate of Incorporation”** means the Company’s Restated Certificate of Incorporation, as amended and as in effect on the date hereof.

**“Change of Control”** shall mean the occurrence of any of the following: (i) the consolidation of the Company with, or the merger of the Company with or into, another “person” (as such term is used in Rule 13d-3 and Rule 13d-5 of the Exchange Act), or the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, or the consolidation of another “person” with, or the merger of another “person” into, the Company, other than in each case pursuant to a transaction in which the “persons” that “beneficially owned” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, the Voting Shares of the Company immediately prior to the transaction “beneficially own”, directly or indirectly, Voting Shares representing at least a majority of the total voting power of all outstanding classes of voting stock of the surviving or transferee person; (ii) the adoption by the Company of a plan relating to the liquidation or dissolution of the Company; (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” becomes the “beneficial owner” directly or indirectly, of more than 50% of the Voting Shares of the Company (measured by voting power rather than number of shares); or (iv) the first day on which a majority of the members of the Board of Directors does not consist of Continuing Directors.

**“Closing Price”** of the shares of Common Stock on any day means the last reported sale price regular way on such day or, in the case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way of the shares of Common Stock, in each case as quoted on The NASDAQ Stock Market or such other principal securities exchange or inter-dealer quotation system on which the shares of Common Stock are then traded.

**“Common Stock”** means the Company’s common stock, \$0.0001 par value per share (or such other security into which such Common Stock is exchanged for (or becomes) pursuant to the consummation of a Capital Reorganization).

**“Continuing Director”** shall mean, as of any date of determination, any member of the Board of Directors who (i) was a member of the Board of Directors on the Issue Date or was appointed pursuant to the Agreement or (ii) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors

who were members of the Board of Directors at the time of such nomination or election and who voted with respect to such nomination or election; provided that a majority of the members of the Board of Directors voting with respect thereto shall at the time have been Continuing Directors.

**“Debt”** shall mean, with respect to any person, any indebtedness of such person, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or banker’s acceptances or representing Capital Lease Obligations or the balance deferred and unpaid of the purchase price of any property or representing any Hedging Obligations, except any such balance that constitutes an accrued expense or trade payable, if and to the extent any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP, as well as all Debt of others secured by a Lien on any asset of such Person (whether or not such Debt is assumed by such Person) and Lease Debt and, to the extent not otherwise included, the Guarantee by such Person of any Debt of any other Person. The amount of any Debt outstanding as of any date shall be (i) the accreted value thereof, in the case of any Debt that does not require current payments of interest or (ii) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Debt.

**“Default”** means any event that is or with the passage of time or the giving of notice or both would be an Event of Default.

**“Disqualified Stock”** means any capital stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. The amount of Disqualified Stock deemed to be outstanding at any time will be the maximum amount that the Company and its Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“GAAP”** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession in the United States, which are in effect from time to time.

**“Guarantee”** means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, by way of a pledge of assets, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Debt.

**“Hedging Obligations”** means, with respect to any person, the obligations of such person under (i) currency exchange or interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (ii) other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency exchange rates.

**“Highest Lawful Rate”** means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received or collected by Holder in connection with this Note under applicable law.

**“Holder”** means the Person in whose name this Note is registered in the Company’s Note Register and **“Holders”** means, collectively, the Persons in whose names all the Notes are registered in the Company’s Note Register.

**“Lease Debt”** means, with respect to any Person, (i) the amount of any accrued and unpaid obligations of such Person arising under any lease or related document (including a purchase agreement, conditional sale or other title retention agreement) in connection with the lease of real property or improvement thereon (or any personal property included as part of any such lease) which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed upon residual value of the leased property to the lessor (whether or not such lease transaction is characterized as an operating lease or a capitalized lease in accordance with GAAP) and (ii) the guarantee, direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of any of the amounts set forth in (i) above.

**“Lien”** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

**“Master Framework Agreement”** means that certain Master Framework Agreement dated as of July 30, 2012, by and among the Company and Total.

**“Person”** means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Registration Rights Agreement”** means that certain Amended and Restated Investors’ Rights Agreement dated June 21, 2010, by and among the Company and the parties listed on Exhibits A through G thereof, as amended by Amendment No. 1 to Amended and Restated Investors’ Rights Agreement dated February 23, 2012, as further amended by Amendment No. 2 to Amended and Restated Investors’ Rights Agreement dated December 24, 2012, as further amended by Amendment No. 3 to Amended and Restated Investors’ Rights Agreement dated March 27, 2013, and as further amended by Amendment No. 4 to Amended and Restated Investors’ Rights Agreement dated August [•], 2013.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Subsidiary*” means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

**“Total”** means Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS).

**“Total Notes”** means the Securities as defined in the Total Purchase Agreement.

**“Total Purchase Agreement”** means that certain securities purchase agreement dated as of July 30, 2012 by and among the Company and Total with respect to the Total Notes.

**“Trading Day”** means, with respect to the Common Stock, each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which securities are not generally traded on The NASDAQ Stock Market (or its successor) or such other principal securities exchange or inter-dealer quotation system on which the shares of Common Stock are then traded.

**“Tranche I Milestones”** means the achievement of both of the following milestones: (i) the fermentation plant owned and operated by Paraíso Bioenergia S.A. in Brotas, Sao Paulo State, in Brazil achieves a total production of 1,000,000 liters within a run period of forty-five (45) days, and (ii) the Company achieves gross margins from product sales for a fiscal quarter of at least five percent (5%), calculated on a cash basis (which, for clarity, shall mean, for such fiscal quarter, GAAP gross margin from product sales, excluding depreciation).

**“Voting Shares”** of any person means capital shares or capital stock of such Person which ordinarily has voting power for the election of directors (or persons performing similar functions) of such person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.



**2. Interest; Payment of Principal of Note. Interest.** This Note shall bear interest on the Face Amount and any compounded interest hereunder at a rate per six months equal to 5.00% (subject to Section 5(c)). Interest shall begin to accrue on the Issue Date and shall continue to accrue on the outstanding principal until the entire Face Amount and all accrued and unpaid interest, including any interest that is added to the principal pursuant to this Section 2, under this Note (the “*Balance*”) are paid (or converted, as provided in Section 3 hereof), and shall be computed based on the actual number of days elapsed and on a year of three hundred sixty (360) days and a six-month period of one hundred eighty (180) days (which results in more interest being paid than if computed on the basis of a 365-day year). Interest shall be compounded on a semi-annual basis and accordingly shall be added to the Balance under this Note on a semi-annual basis and interest shall accrue on such resulting Balance thereafter. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, this Note shall bear interest on the Face Amount plus any previously compounded interest in respect thereof at a rate per six months equal to 6.5% (as may be further adjusted pursuant to Section 5(c)). Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges and other payments which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate, then the Company shall not be obligated to pay, and Holder shall not be entitled to charge, collect, receive, reserve or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate.

(b) **Scheduled Payment of Principal and Interest.** Unless paid earlier in accordance with the terms hereof, including by conversion into shares of Common Stock, the Company shall deliver to the Holder of this Note, on the five-year anniversary of the Issue Date (the “*Final Maturity Date*”), an amount in cash equal to the then applicable Balance. Notwithstanding the foregoing, on the thirty (30) month anniversary of the Issue Date and at the end of each six (6) month period thereafter until the Final Maturity Date (each such date, an “*Interest Payment Date*”), the Company shall pay either (i) in cash or (ii) in kind by increasing the Face Amount by the amount of interest payable to Holder all of the accrued interest of this Note as of each such Interest Payment Date, the form of such payment to be determined by the Company in its sole discretion.

(c) **Prepayment.** Subject to Section 2(d) hereof, the Company may prepay in cash all, or any portion, of the then applicable Balance (including any accrued interest as of such date of prepayment) on the thirty (30) month anniversary of the Issue Date and at the end of each six (6) month period thereafter and upon five (5) business days’ prior written notice to the Holders of the Notes, which notice shall set forth the amount of the then applicable Balance to be prepaid (the “*Prepayment Amount*”). Upon receipt of such notice but no later than four (4) business days thereafter, each Holder shall send to the Company their respective Note or Notes. Any Notes subject to prepayment pursuant to the provisions of this Section 2(c) shall be retired and cancelled upon receipt by the Holder in cash of the applicable Prepayment Amount regardless of whether such Holder shall have delivered such Holder’s Note or Notes or Lost Note Documentation (as defined in Section 14(b) herein) in respect thereof to the Company by such date; provided, however, that if the Balance on the date of prepayment is greater than the Prepayment Amount, then the Company shall execute and make available for delivery to the Holder of such Note without service charge, but only upon receipt by the Company of the Note or Notes subject to prepayment or Lost Note Documentation in respect thereof, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the portion of the Balance of such Holder’s Note or Notes that have not been prepaid by the Company.

(d) **Pro Rata Payment.** The Company agrees that any payments to the Holders of the Notes (including, without limitation, upon acceleration pursuant to Section 5) shall be made pro rata among all such Holders based upon the aggregate principal amount of the Notes held by each such Holder. If any Holder of a Note obtains any payment (whether voluntary, involuntary, by application of offset or otherwise) on such Note in excess of such Holder’s pro rata share of payments obtained by all Holders of the Notes, such Holder shall make payments to the other Holders of the Notes based on such participation in the Notes held by them as is necessary to cause such Holders to share the excess payment ratably among each of them as provided in this Section 2(d).

3. Conversion Rights; Adjustments. The Holders of the Notes shall have conversion rights as follows (the “*Conversion Rights*”):

(a) **Holder’s Right to Convert.** Holder shall have the option to convert this Note as follows:

(i) At any time after the eighteen (18) month anniversary of the date of the Agreement and prior to the fifth Trading Day prior to the Final Maturity Date, Holder shall have the right to convert the Face Amount of this Note, in whole or in part, at the option of the Holder hereof, at any time within the period specified above and from time to time into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Face Amount proposed to be converted at such date by (y) the then effective Conversion Price (as defined below) on the Conversion Date (as defined below) (each such conversion, an “*Optional 18-Month Conversion*”);

(ii) At any time if a Change of Control occurs prior to the Final Maturity Date, then the Company shall provide Holder written notice of such Change of Control at least twenty (20) days prior to the consummation of such Change of Control and Holder shall have the right to convert the Face Amount of this Note, in whole or in part, at the option of Holder, at any time and from time to time until the fifteenth (15th) day following receipt of such notice of such Change of Control, into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Face Amount proposed to be converted at such date by (y) the then effective Conversion Price on the Conversion Date (such conversion, an “*Optional COC Conversion*”); or

(iii) At any time if an Event of Default has occurred and is continuing, subject to Section 5(c) hereof, Holder shall have the right to convert the Face Amount of this Note, in whole or in part, at the option of Holder, at any time and from time to time while such Event of Default is continuing, into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Face Amount proposed to be converted at such date by (y) the then effective Conversion Price on the Conversion Date (such conversion, an “*Optional EOD Conversion*”, and together with an Optional 18-Month Conversion and an Optional COC Conversion, “*Holder’s Optional Conversion*”).

In the event of a Holder’s Optional Conversion, all accrued interest in respect of the Face Amount converted in connection with such Holder’s Optional Conversion shall be cancelled without any obligation of payment by the Company.

(b) **Conversion Price.** The “Conversion Price” at which Common Stock shall be deliverable upon conversion of the Notes (the “*Conversion Price*”) shall initially be US\$2.44. Such initial Conversion Price shall be subject to adjustment as provided below.



(c) **Mechanics of Conversion.**

(i) In order to exercise its rights pursuant to a Holder's Optional Conversion, the Holder shall deliver written notice in the form of Exhibit 1 to the Company stating that such Holder elects to convert all or part of the then outstanding Balance of this Note. Such notice shall state the portion of the Balance of this Note which the Holder seeks to convert and shall be accompanied within one (1) Trading Day by the Note or Notes subject to conversion. The date contained in the notice (which date shall be no earlier than the Trading Day immediately following the date of the notice) shall be the date of conversion of the Note (such date of conversion, the "**Conversion Date**") and the Holder shall be deemed to be the beneficial owner of the underlying Common Stock as of such date.

(ii) The Holder of this Note shall be deemed to beneficially own the Common Stock underlying this Note as of the applicable Conversion Date. Not later than three (3) Trading Days following the Conversion Date, the Company shall promptly issue and deliver to each Holder a certificate or certificates for the number of shares of Common Stock to which such Holder is entitled and, in the case where only part of a Note is converted, the Company shall execute and deliver (at its own expense) a new Note of any authorized denomination as requested by a Holder in an aggregate principal amount equal to and in exchange for the unconverted portion of the Balance of the Note so surrendered. In lieu of delivering physical certificates representing the shares of Common Stock issuable upon conversion of Notes, provided the Company's transfer agent is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer program, upon request of the Holder, the Company may, at its election (and shall, if practicable and upon the reasonable request of any Holder after the date six months after the initial issuance of this Note, and if the Holder is not an "affiliate" of the Company (as defined under the Securities Act of 1933, as amended), cause its transfer agent to electronically transmit the shares of Common Stock issuable upon conversion of this Note to the Holder, by crediting the account of Holder's prime broker with DTC through its Deposit Withdrawal Agent Commission ("**DWAC**") system, if such DWAC system is available for the issuance of such shares of Common Stock under the terms of this Note and the Agreement. The time periods for delivery described above shall apply to the electronic transmittals through the DWAC system. The parties agree to coordinate with DTC to accomplish this objective. The conversions pursuant to this Section 3 shall be deemed to have been made immediately prior to the opening of business on the applicable Conversion Date. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated as the beneficial owner of such shares of Common Stock at the opening of business on the applicable Conversion Date.

(iii) The Company shall at all times during which the Notes shall be outstanding, have and keep available out of its authorized but unissued shares, for the purpose of effecting the conversion of the Notes, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Notes. In no event shall the Conversion Price be reduced to an amount less than the then par value of the Common Stock.

(iv) No fractional shares of Common Stock shall be issued upon any conversion of the Notes pursuant to this Section 3. In lieu of fractional shares, the Company shall pay cash equal to such fraction multiplied by the Closing Price of the Common Stock on the Conversion Date.



(v) All Notes (or the portions thereof) which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such Notes, except only the right of the Holders thereof to receive (A) shares of Common Stock in exchange therefor, (B) any accrued and unpaid interest, if applicable, as described in Section 5(c), and (C) if applicable, cash for any fractional shares of Common Stock. Any Notes, to the extent so converted, shall be retired and canceled.

(vi) If any conversion pursuant to this Section 3 is in connection with an underwritten offering of securities registered pursuant to the Securities Act or a Change of Control, the conversion may, at the option of any Holder tendering Notes for conversion, be conditioned upon the closing with the underwriter of the sale of the shares of Common Stock issuable to such Holder in connection with such conversion pursuant to such offering, or the closing of such Change of Control, as applicable, in which event the Holders entitled to receive the shares of Common Stock issuable upon such conversion of the Notes shall not be deemed to have converted such Notes until immediately prior to the closing of the sale of securities or consummation of the Change of Control, as applicable.

(d) **Adjustment for Failure to Achieve Tranche I Milestones.** Following completion of the Tranche I Milestones by the Company, the Company shall submit to the Holders written notice of completion of the Tranche I Milestones. Such written notice shall include evidence of the completion of the Tranche I Milestones and the Holders shall have the right to examine and verify such evidence, including with input from outside advisors who are approved by the Company, which approval shall not be unreasonably withheld and who agree to be bound by the confidentiality obligations contained in Section 9.6.4 of the Agreement. If the Holders dispute the completion of such Tranche I Milestones then such dispute shall be resolved as promptly as practicable in accordance with the dispute resolution provisions set forth in Section 9.6 of the Agreement. If the Tranche I Milestones have not been achieved prior to June 30, 2014, then the Conversion Price in effect on and after June 30, 2014 shall be reduced to (i) if a Total Note Price Reduction has not occurred, US\$2.15, or (ii) if a Total Note Price Reduction has occurred, US\$1.87.

(e) **Adjustment for Reduction in Total Notes Conversion Price.** If prior to the repayment or conversion of this Note and following the date hereof, the Company shall reduce the conversion price of the Total Notes issued by the Company at the Initial Closing (as defined in the Total Purchase Agreement) other than in accordance with the terms of the Total Notes as in effect on the date hereof (a "**Total Note Price Reduction**"), then the Conversion Price in effect on the date of such reduction shall be reduced to (i) if no reduction in the Conversion Price has occurred pursuant to Section 3(d) above on such date, US\$2.15, or (ii) if there has been a prior reduction in the Conversion Price in accordance with clause (i) of Section 3(d) above as of such date, US\$1.87.

(f) **Adjustment for Dilutive Issuances.** If prior to the repayment or conversion of this Note the Company shall sell, in a bona fide capital raising transaction for cash consideration (including cancellation of pre-existing Debt as payment of consideration), any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class or series of the Company's capital stock (the "**Securities**") at a per share purchase price (including any applicable conversion or exercise price) equal to an amount less than the effective Conversion Price on the date of such issuance, then such Conversion Price in effect immediately prior to such issuance of Securities shall be reduced, concurrently with such issuance, to the consideration per share received by the Company for such issue or the deemed issue of the Securities. If such per share consideration is not a cash amount, then the value of such per share consideration shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(g) **Adjustment for Issuances to Total.** If the Company shall permit Total to exchange Total Notes in connection with any future issuance by the Company of Securities (other than the issuance of Total Notes or shares of Common Stock issuable upon conversion thereof pursuant to the Total Purchase Agreement or the issuance of Notes, Tranche II Notes (as defined in the Agreement) or shares of Common Stock issuable upon conversion thereof pursuant to the Agreement), whereby the Company shall issue to Total in exchange for such Total Notes a number of Securities in excess of Total's Pro Rata Share (as defined in the Master Framework Agreement), then the then effective Conversion Price of this Note, any other Note and any Tranche II Note held by Holder as of immediately prior to such exchange (collectively, the "**Holder Notes**") shall be adjusted pro rata based on the principal amount of each such Holder Note, such that the Holder Notes then outstanding shall be convertible in aggregate into an additional number of shares of Common Stock equal to the difference between (i) the actual number of Securities issued to Total in exchange for such Total Notes and (ii) Total's Pro Rata Share of such Securities. Notwithstanding the foregoing, no adjustment under this Section 3(g) will apply to any Note or Tranche II Note held by Total.

(h) **Adjustment for Share Splits and Combinations.** If the Company shall at any time or from time to time after the Issue Date effect a subdivision of the outstanding shares of Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Company shall at any time or from time to time after the Issue Date combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(i) **Adjustment for Certain Dividends and Distributions.** In the event the Company at any time or from time to time after the Issue Date shall make or issue a dividend or other distribution payable in (x) additional shares of Common Stock, then and in each such event the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such issuance and the denominator of which shall be the total number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such additional shares of Common Stock issuable in payment of such dividend or distribution; (y) in cash, then and in each such event, the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution minus the amount in cash per share of Common Stock that the Company dividends or distributes, and the denominator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and



distribution; (z) shares of capital stock of the Company, evidences of indebtedness, or any other asset (collectively, the “**Distributed Property**”), then and in each such event, the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution minus the fair market value (as determined in good faith by the Board of Directors) of the Distributed Property distributed with respect to each share of Common Stock, and the denominator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution.

(j) **Adjustment for Reclassification, Exchange or Substitution.** If the shares of Common Stock issuable upon the conversion of the Notes shall be changed into the same or a different number of shares of any class or classes of shares, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares, share dividend or reorganization, reclassification, merger, consolidation or asset sale provided for elsewhere in this Section 3), then and in each such event the Holder of each Note (whether then outstanding or thereafter issued) shall have the right thereafter to convert such Note into the kind and amount of shares and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which all such Notes might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(k) **Reorganizations, Mergers, Consolidations or Asset Sales.** If at any time after the Issue Date there is a tender offer, exchange offer, merger, consolidation, recapitalization, sale of all or substantially all of the Company's assets or reorganization involving the shares of Common Stock (collectively, a "**Capital Reorganization**") (other than a merger, consolidation, sale of assets, recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 3), as part of such Capital Reorganization, provision shall be made so that the Holders of Notes will thereafter be entitled to receive upon conversion of the Notes the number of shares or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion immediately prior to such Capital Reorganization would have been entitled on such Capital Reorganization, subject to adjustment in respect to such shares or securities by the terms thereof. In any such case, appropriate adjustment will be made in the application of the provisions of this Section 3 with respect to the rights of the Holders of Notes after the Capital Reorganization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Notes) and the provisions of the Agreement and the Registration Rights Agreement will be applicable after that event and be as nearly equivalent as practicable. In the event that the Company is not the surviving entity of any such Capital Reorganization, each Note shall become Notes of such surviving entity, with the same powers, rights and preferences as provided herein.

(l) **No Impairment.** The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders of the Notes against impairment to the extent required hereunder.

(m) **Certificate as to Adjustments or Distributions.** Upon the occurrence of each adjustment of the Conversion Price or distribution to holders pursuant to this Section 3, the Company at its expense shall promptly compute such adjustment or distribution in accordance with the terms hereof and furnish to each Holder, if any, of Notes outstanding a certificate setting forth the terms of such adjustment or distribution and showing in detail the facts upon which such adjustment or distribution are based and shall file a copy of such certificate with its corporate records.

(n) **Notice of Record Date.** In the event:

(i) that the Company declares a dividend (or any other distribution) on its Common Stock payable in shares of Common Stock, securities, or other assets, rights or properties;

(ii) that the Company subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the shares of Common Stock (other than a subdivision or combination of the Company's outstanding shares of Common Stock or a share dividend or share distribution thereon);

(iv) of any Capital Reorganization; or

(v) of the involuntary or voluntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at its principal office, and shall cause to be mailed to the Holders of the Notes at their last addresses as shown on the records of the Company, at least ten (10) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, a notice stating:

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, Capital Reorganization, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, Capital Reorganization, dissolution or winding up

(o) **Notice of Adjustment to Conversion Price.** The Company will provide notice to each Holder upon the occurrence of any adjustment to the Conversion Price.

**4. Repurchase Right Upon a Change of Control.** Upon the occurrence of a Change of Control prior to the Final Maturity Date, each Holder of Notes will have the right to require the Company to repurchase all or any part of its Notes pursuant to an offer as provided in this Section 4 (the “**Change of Control Offer**”) at an offer price in cash equal to 101% of the Balance of its Notes as of the Change of Control Payment Date (as defined in Section 4(b)(i)) (the “**Change of Control Payment**”).

(b) On or before the earlier of fifteen (15) days prior to the Final Maturity Date (if a Change of Control will occur prior to the Final Maturity Date), and thirty (30) days following the consummation of a Change of Control, the Company shall give to all Holders of Notes notice (the “**Change of Control Notice**”) of the occurrence of the Change of Control and of the Holder’s right to receive the Change of Control Payment arising as a result thereof. Each notice of the Holder’s right to participate in the Change of Control Offer (the “**Change of Control Repurchase Right**”) shall be mailed to the Holders of the Notes at their last address as shown in the Note Register and shall state:

(i) the date on which the Notes shall be repurchased (the “**Change of Control Payment Date**”), which date shall be no earlier than fifteen (15) days and no later than sixty (60) days from the date of the Company’s delivery of the Change of Control Notice;

(ii) the date by which the Change of Control Repurchase Right must be exercised, which date shall be no earlier than the close of business on the Trading Day immediately prior to the Change of Control Payment Date;

(iii) the amount of the Change of Control Payment;

(iv) a description of the procedure which a Holder must follow to exercise the Change of Control Repurchase Right, and the place or places where the Notes are to be surrendered for payment of the Change of Control Payment; and

(v) the Conversion Price then in effect and the place where such Notes may be surrendered for conversion.

No failure by the Company to give the Change of Control Notice and no defect in any Change of Control Notice shall limit any Holder's right to exercise its Change of Control Repurchase Right or affect the validity of the proceedings for the repurchase of Notes.

If any of the foregoing provisions or other provisions of this Section 4 are inconsistent with applicable law, such law shall govern.

(c) To exercise the Change of Control Repurchase Right, a Holder shall deliver to the Company, on or before the Trading Day immediately prior to the Change of Control Payment Date, (i) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the Balance of Notes held by such Holder to be repurchased, and a statement that an election to exercise the Change of Control Repurchase Right is being made thereby, and (ii) the Notes with respect to which the Change of Control Repurchase Right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Notes shall continue until midnight (Eastern Time) on the Trading Day immediately preceding the Change of Control Repurchase Date.

(d) On the Change of Control Payment Date, the Company will (i) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer and (ii) deliver cash in the amount of the Change of Control Payment to each Holder in respect of all Notes or portions thereof so tendered. All Notes repurchased by the Company shall be canceled immediately by the Company.

(e) The Company shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(f) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control.

(g) Any Note which is to be repurchased only in part shall be surrendered to the Company and the Company shall execute and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered. Any Notes surrendered to the Company pursuant to the provisions of this Section 4 shall be retired and cancelled.

(h) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4 applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

**5. Events of Default. Definitions.** For purposes of this Note, the following events shall constitute an "*Event of Default*":

- (i) default in payment when due (whether at the Final Maturity Date or upon an earlier repurchase) of the then applicable Balance on this Note;
  
- (ii) failure by the Company for thirty (30) days after notice from the Holders of at least 50% in principal amount of the then outstanding Notes to comply with the provisions of Section 4 or Section 6 of this Note;



(iii) failure by the Company for sixty (60) days after notice from the Holders of at least 50% in principal amount of the then outstanding Notes to comply with any of its other agreements in this Note or the Agreement (other than Section 8.6(a) of the Agreement);

(iv) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Debt for money borrowed by the Company (or the payment of which is guaranteed by the Company, whether such Debt or guarantee now exists, or is created after the date of the Issue Date, which default (a) is caused by a failure to pay principal of or premium, if any, or interest on such Debt prior to the expiration of the grace period provided in such Debt on the date of such default or (b) results in the acceleration of such Debt prior to its express maturity and, in each case in clause (a) or (b), the principal amount of any such Debt, together with the principal amount of any other such Debt that has not been paid when due, or the maturity of which has been so accelerated, aggregates \$10,000,000 or more;

(v) failure by the Company to pay final judgments aggregating in excess of \$10,000,000, which judgments are not paid, discharged or stayed for a period of sixty (60) days;

(vi) the Company:

(A) commences a voluntary case under any Bankruptcy Law,

(B) consents to the entry of an order for relief against it in an involuntary case under any Bankruptcy Law,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) is unable to pay its debts as they become due; or

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (A) is for relief against the Company;
  
- (B) appoints a custodian of the Company or any of its Significant Subsidiaries or for all or substantially all of the property of the Company; or
  
- (C) orders the liquidation of the Company; and the order or decree remains unstayed and in effect for sixty (60) consecutive days; or
  
- (viii) failure by the Company to deliver when due the consideration deliverable upon conversion of this Note, which failure shall continue for a period of five days.

(b) **Notice of Compliance.** The Company shall be required to deliver to the Holders annually a statement regarding compliance with this Note, and the Company shall be required within five (5) days of becoming aware of any Default or Event of Default to deliver to the Holders a statement specifying such Default or Event of Default.

(c) **Acceleration.** If any Event of Default occurs and is continuing, the Holders of at least 50% of the then applicable Balance of the then outstanding Notes may declare all the Notes to be due and payable immediately, which Notes shall then be immediately payable in, at the election of each Holder, either cash or shares of Common Stock in accordance with Section 3(a)(iii) hereof. Notwithstanding the foregoing, in the case of an Event of Default described in Section 5(vi) or (vii) with respect to the Company, all outstanding notes will become due and payable without further action or notice. The Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal that has become due solely because of the acceleration) have been cured or waived. Notwithstanding the foregoing (or anything to the contrary in the Agreement), the sole remedy of the Holders for a failure by the Company to comply with Section 8.6 of the Agreement shall, for the first 365 days after the occurrence of such failure, be the right, by notice to the Company by holders of a majority in aggregate principal amount of the Notes then outstanding, to increase the six-month rate of interest on this Note to the lower of (i) the Highest Lawful Rate, and (ii) 6.5% for the first 180 days of such failure, and 8% thereafter (which increased interest shall constitute liquidated damages for such failure).

(d) **Waiver of Past Defaults.** The Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may, on behalf of the Holders of all of the Notes, waive any existing Default or Event of Default and its consequences under this Note except a continuing Default or Event of Default in the payment of the Balance of the Notes and/or any applicable premium required in connection with a Change of Control Payment. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Note, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(e) **Control by Majority.** Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available upon an Event of Default.

(f) **Rights of Holders of Notes to Receive Payment.** Notwithstanding any other provision of this Note, the right of the Holder of this Note to receive payment of the Balance of this Note, any interest required in connection with Section 5(c), and/or any applicable premium required in connection with a Change of Control Payment, on or after the respective due dates expressed in this Note (including in connection with a redemption or an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.



6. Limitation on Debt and Liens. The Company will not, and will not permit its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to any Debt, and the Company will not issue any Disqualified Stock and the Company will not permit its Subsidiaries to issue shares of preferred stock except for:

(a) Debt in an amount outstanding at any time not to exceed the greater of (i) \$200 million in aggregate principal amount or (ii) 50% of the Company's total consolidated assets (as set forth on its most recent balance sheet prepared in accordance with GAAP and filed with the Securities and Exchange Commission after giving effect to any reductions or additions to assets in accordance with GAAP since the date of such balance sheet) (and provided that Debt incurred pursuant to this clause (a) that is secured by a Lien on assets of the Company shall not exceed the greater of (i) \$125 million in aggregate principal amount or (ii) 30% of the Company's total consolidated assets (as set forth on its most recent balance sheet prepared in accordance with GAAP);

(b) Debt in existence on the Issue Date or which as of the Issue Date the Company is obligated to issue thereafter, including Total Notes pursuant to the Total Purchase Agreement;

(c) the incurrence by the Company or any of its Subsidiaries of Debt represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Subsidiaries;

(d) Debt of the Company that is (i) contractually subordinated in right of payment to the Notes, (ii) matures 91 days after the Notes and (iii) is less than \$50 million in aggregate principal amount at any one time outstanding;

(e) Debt of the Company (A) in respect of performance, surety or appeal bonds or letters of credit in the ordinary course of business, or (B) under interest rate, currency, commodity or similar hedges, swaps and other derivatives entered into with one or more financial institutions that is designed to protect the Company against fluctuations in interest rates or currency exchange rates, commodity prices or other market fluctuations and is not entered into for speculative purposes; and

(f) Debt which is exchanged for or the proceeds of which are used to refinance or refund, or any extension or renewal of (each a "refinancing"), (1) the Notes or (2) Debt incurred pursuant to clause (b) of this paragraph, and (3) Debt incurred pursuant to clause (c) of this paragraph, in each case in an aggregate principal amount not to exceed the principal amount of the Debt so refinanced (together with any accrued interest and any premium and other payment required to be made with respect to the Debt being refinanced or refunded, and any fees, costs, expenses, underwriting discounts or commissions and other payments paid or payable with respect to the Debt incurred pursuant

to this clause (f)); provided, however, that (A) Debt, the proceeds of which are used to refinance the Notes, or Debt which is pari passu with or subordinate in right of payment to the Notes, shall only be permitted if (x) in the case of any refinancing of the Notes or Debt which is pari passu to the Notes, the refinancing Debt is Incurred by the Company and made pari passu to the Notes or subordinated to the Notes, and (y) in the case of any refinancing of Debt which is subordinated to the Notes, the refinancing Debt is incurred by the Company and is subordinated to the Notes in a manner that is at least as favorable to the Holders as that of the Debt refinanced; (B) refinancing Debt with respect to Debt incurred pursuant to clause (c) of this paragraph shall not be secured by a Lien on any assets other than the assets securing the Debt so refinanced, and any improvements or additions thereto, and (C) the refinancing Debt by its terms, or by the terms of any agreement or instrument pursuant to which such Debt is issued, does not have a final maturity prior to the final maturity of the Debt being refinanced.

For purposes of determining compliance with this Section 6, in the event that an item of Debt meets the criteria of more than one of the types of Debt described in the above clauses the Company, in its sole discretion, shall classify, and from time to time may reclassify, such item of Debt.

The Company will not create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except for (a) the Liens described in Section 6(a) and 6(c) (including the refinancing of Liens described in Section 6(c) pursuant to Section 6(f)), (b) Permitted Liens, and (c) any Liens in existence on the Issue Date (including the refinancing thereof pursuant to Section 6(f)).

As used herein, “*Permitted Liens*” means the following: (a) Liens for taxes, assessments and governmental charges or levies that are not overdue for a period of more than thirty (30) days or which are being contested in good faith; (b) Liens imposed by law, such as materialmen’s, mechanics’, carriers’, workmen’s and repairmen’s Liens and other similar Liens securing obligations that are not overdue for a period of more than thirty (30) days or that are being contested in good faith; (c) pledges or deposits to secure obligations under workers’ compensation laws or similar legislation or to secure public or statutory obligations; (d) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes; (e) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature; (f) landlords’ Liens under leases; (g) Liens consisting of leases, subleases, licenses or sublicenses granted to others and not interfering in any material respect with the business of the Company and its Subsidiaries, taken as a whole, and any interest or title of a lessor or licensor under any lease or license, as applicable; (h) Liens arising solely by virtue of any statutory or common law provision relating to banker’s Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; and (i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 5(v) or securing appeal or other surety bonds related to such judgments.

**7. Successors. Merger, Consolidation or Sale of Assets or Purchase of Assets.** The Company shall not consolidate or merge with or into (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to another corporation, Person or entity unless:

(i) the entity or Person formed by or surviving any such consolidation or merger (if other than the Company), or the parent company thereof, or the entity or Person to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made assumes all the obligations of the Company under the Notes and the Agreement; and

(ii) immediately after such transaction no Default or Event of Default exists.

(b) **Successor Corporation Substituted.** Upon any consolidation or merger or any transfer of all or substantially all of the assets of the Company in accordance with Section 7(a) hereof, the successor Person formed by such consolidation or into which the Company is merged, or the parent company thereof, or to which such transfer is made shall succeed to and (except in the case of a lease) be substituted for (so that from and after the date of such consolidation, merger or transfer, the provisions of this Note, the Agreement and the Registration Rights Agreement referring to the “Company” shall refer instead to the successor Person and not to the Company), and may exercise every right and power of, the Company under this Note and the Agreement with the same effect as if such successor Person had been named herein as the Company, and (except in the case of a lease) the Company shall be released from the obligations under the Notes and the Agreement except with respect to any obligations that arise from, or are related to, such transaction.

(c) **Purchase of Substantial Assets.** The Company will not, and will not permit its subsidiaries to, without the prior written consent of the holders of a majority of the then outstanding Notes and Tranche II Notes, purchase assets in one transaction or a series of related transactions in an amount greater than \$20,000,000.

8. **Amendment and Waiver.** Except as otherwise expressly provided herein, the provisions of this Note may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holders of at least a majority of the aggregate principal amount then outstanding of the Notes; provided that no such action shall change (i) the amount of Notes whose Holders must consent to an amendment, (ii) reduce the amount of or any provision relating to the scheduled payment of principal of the Notes, (iii) change the time at which any Note must be repurchased or amend the conversion rights as set forth under Sections 3 or 4, (iv) make any Note payable in any money or at any place other than as stated in the Note, (v) impair the right of any Holder to receive payments of the Balance of such Holder’s Notes, any interest required in connection with Section 5(c), and, if applicable, any premium required in connection with a Change of Control Payment, on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes, or (vi) make any change in the amendment provisions which



require each Holder's consent or in the waiver provisions, in each such case without the consent of the applicable Holder if such change is adverse to such Holder.

9. **Seniority of Notes.** The Company acknowledges, agrees and covenants that the Notes and the Tranche II Notes shall be its senior obligations, ranking senior in right of payment to Common Stock and to future issuances of Debt other than (i) Debt that is permitted to be secured in accordance with the limitations on Debt in Section 6 hereof under Sections 6(a)(ii)(a) or (c), and (ii) for the avoidance of doubt, the Total Notes, which Total Notes shall be *pari passu* with the Notes and Tranche II Notes except as provided in the MOU (as defined in the Agreement).

10. **Place of Payment.** Payments of the Balance of the Notes, any interest required in connection with Section 5(c), and, if applicable, any premium required in connection with a Change of Control Payment, deliverable upon repayment or conversion of this Note (unless otherwise specified in the conversion notice or any other notice delivered by Holder pursuant to the terms hereof) and all notices and other communications to the Investor hereunder or with respect hereto are to be delivered to the Investor at the address identified in the Agreement or to such other address or to the attention of such other person as specified by prior written notice to the Company, including any transferee of this Note.

11. **Costs of Collection.** In the event that the Company fails to (a) pay when due (including, without limitation upon acceleration in connection with an Event of Default) the full amount of the Balance hereunder, any interest required in connection with Section 5(c), and, if applicable, any premium required in connection with a Change of Control Payment hereunder or (b) deliver when due the consideration deliverable upon conversion of this Note, the Company shall indemnify and hold harmless the Holder of any portion of this Note from and against all reasonable costs and expenses incurred in connection with the enforcement of this provision or collection of such principal, interest, premium and/or consideration, including, without limitation, reasonable attorneys' fees and expenses.

12. **Waivers.** The Company hereby waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note.

13. **Benefits of the Agreement.** The Investor and all transferees of this Note (to the extent such transfer is permitted by the Agreement) shall be entitled to the rights and benefits granted to them in the Agreement.

14. **Registration of Transfer and Exchange Generally.**

(a) **Registration, Registration of Transfer and Exchange Generally.** The Company shall keep at its principal executive offices a register (the register maintained in such being herein sometimes collectively referred to as the "**Note Register**") in which the Company shall provide for the registration of Notes and of transfers and exchanges of Notes.



Subject to the provisions of the Agreement regarding restrictions on transfer and provided the transferee agrees to be bound by the terms of the Agreement, upon surrender for registration of transfer of any Note at its principal executive office, the Company shall execute and deliver, in the name of the designated transferee or transferees, one or more new Notes in denominations requested by the transferee (which denominations shall not be less than \$1,000,000 per Note (unless the transferor holds a lesser denomination, in which case no such restriction shall apply)), of a like aggregate principal amount and bearing such restrictive legends as may be required by law.

At the option of a Holder, Notes may be exchanged for other Notes of any authorized denominations, of a like aggregate principal amount and bearing such restrictive legends as may be required by law upon surrender of the Notes to be exchanged at the Company's principal executive offices. Whenever any Notes are so surrendered for exchange, the Company shall execute and make available for delivery the Notes that the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Notes.

(b) **Mutilated, Destroyed, Lost and Stolen Notes.** If any mutilated Note is surrendered to the Company, the Company shall execute and make available for delivery in exchange therefor a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company (i) evidence to its reasonable satisfaction of the destruction, loss or theft of any Note and (ii) such indemnity as may be reasonably requested by the Company to save itself harmless (clauses (i) or (ii) referred to herein as "**Lost Note Documentation**"), then, in the absence of notice to the Company that such Note has been acquired by a protected purchaser, the Company shall execute and make available for delivery, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

Every new Note issued pursuant to this Section 14 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone.

The provisions of this Section 14 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

15. Antitrust. Holder and the Company hereto agree to (i) file any notifications required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “*HSR Act*”) with respect to the conversion of this Note not more than 35 days prior to the date of conversion or at such other time as agreed by Holder and the Company, (ii) supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act, and (iii) use its commercially reasonable efforts to take or cause to be taken all other actions necessary, proper, or advisable consistent with this Section 15(a) to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable.

16. Governing Law.

(a) This Note, and the provisions, rights, obligations, and conditions set forth herein, and the legal relations between the parties hereto, including all disputes and claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to its conflict of law provisions.

(b) Any and all disputes arising out of, or in connection with, the interpretation, performance, or nonperformance of this Note or any and all disputes arising out of, or in connection with, transactions in any way related to this Note and/or the relationship between the parties shall be resolved pursuant to Section 9.6 of the Agreement.

17. Notices. All notices, requests, and other communications hereunder shall be in writing and will be deemed to have been duly given and received (a) when personally delivered, (b) when sent by facsimile upon confirmation of receipt, (c) one business day after the day on which the same has been delivered prepaid to a nationally recognized courier service, or (d) five business days after the deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, in each case addressed to Amyris, Inc., 5885 Hollis Street, Suite 100, Emeryville, CA 94608, Attn: General Counsel, facsimile number: (510) 740-7416, with a copy to Fenwick & West LLP, 801 California Street, Mountain View, CA 94041, Attn: Dan Winnike, Esq., facsimile number: (650) 938-5200, and as to the Investor at the address and facsimile number set forth in the Agreement. Any party hereto from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto. Each Investor and the Company may each agree in writing to accept notices and other communications to it hereunder by electronic communications pursuant to procedures reasonably approved by it; provided that approval of such procedures may be limited to particular notices or communications.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed and delivered this Note on [•], 2013.

**AMYRIS,  
INC.**

By:  
Name:  
Title:

EXHIBIT 1

**(To be Executed by Registered Holder in order to Convert Note)**

CONVERSION NOTICE  
FOR  
TRANCHE I SENIOR CONVERTIBLE NOTE

The undersigned, as Holder of the Tranche I Senior Convertible Note of **AMYRIS, INC.**, (the “*Company*”), in the outstanding principal amount of U.S. \$\_\_\_\_\_ (the “*Note*”), hereby elects to convert that portion of the outstanding Balance of the Note shown on the next page into shares of the Company’s common stock, \$0.0001 par value per share (the “*Common Stock*”), of the Company, in accordance with and in compliance with the conditions of the Note, as of the date written below. The undersigned hereby requests that share certificates for the shares of Common Stock to be issued to the undersigned pursuant to this Conversion Notice be issued in the name of, and delivered to, the undersigned or its designee as indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holder for any conversion, except for transfer taxes, if any.

Conversion Information: **NAME OF  
HOLDER:**

By:  
Print Name:  
Print Title:

Print  
Address of  
Holder

Issue Common Stock:

at:

Electronically transmit and credit Common  
Stock to at:



Date of  
Conversion

Applicable  
Conversion  
Price

THE COMPUTATION OF THE NUMBER OF SHARES OF COMMON STOCK TO  
BE RECEIVED IS SET FORTH ON THE ATTACHED PAGE

Page 2 to Conversion Notice for:

(Name of Holder)

COMPUTATION OF NUMBER OF COMMON SHARES TO BE RECEIVED

Face Amount converted: \$

Conversion Price \$

Number of shares of Common Stock =  $\frac{\text{Total dollar amount converted}}{\text{Conversion Price}}$  =\$

Number of shares of Common Stock =

If the conversion is not being settled by DTC, please issue and deliver \_\_\_ certificate(s) for shares of Common Stock in the following amount(s):

Please issue and deliver \_\_\_\_\_ new Note(s) in the following amounts:

**ANNEX C**

**FORM OF TRANCHE II NOTE**

TRANCHE II SENIOR CONVERTIBLE NOTE

U.S.\$ \_\_\_\_\_ [Insert Date of Issuance]

THE SECURITIES REPRESENTED BY THIS NOTE AND THE SECURITIES ISSUABLE UPON ITS CONVERSION HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE ACT OR SUCH LAWS AND, IF REASONABLY REQUESTED BY THE COMPANY, UPON DELIVERY OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT THE PROPOSED TRANSFER IS EXEMPT FROM THE ACT OR SUCH LAWS.

FOR VALUE RECEIVED, the undersigned, Amyris, Inc., a Delaware corporation (the “*Company*”), promises to pay to [Investor Name], or its assigns (the “*Investor*”), in lawful money of the United States and in immediately available funds (or in shares of Common Stock as provided in Section 3), U.S. \$[•] (the “*Face Amount*”), together with any interest accrued thereon or premiums due in respect thereof, all in accordance with the provisions of this Note. The “Issue Date” of this Note is [Insert Date of Issuance].

This Note was issued pursuant to the Securities Purchase Agreement, dated as of August 7, 2013 (as amended from time to time, the “*Agreement*”), among the Company and the other parties thereto. Unless the context otherwise requires, as used herein, “*Note*” means any of the Tranche II Notes (as defined in the Agreement) issued pursuant to the Agreement and any other similar convertible notes issued by the Company in exchange for, or to effect a transfer of, any Note, and “Notes” means all such Notes in the aggregate.

1. Definitions. For purposes of this Note, the following definitions shall be applicable:

“*Affiliate*” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person; for purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise.

***“Bankruptcy Law”*** means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

***“Board of Directors”*** means the board of directors of the Company.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

**“Capital Lease Obligation”** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

**“Certificate of Incorporation”** means the Company’s Restated Certificate of Incorporation, as amended and as in effect on the date hereof.

**“Change of Control”** shall mean the occurrence of any of the following: (i) the consolidation of the Company with, or the merger of the Company with or into, another “person” (as such term is used in Rule 13d-3 and Rule 13d-5 of the Exchange Act), or the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, or the consolidation of another “person” with, or the merger of another “person” into, the Company, other than in each case pursuant to a transaction in which the “persons” that “beneficially owned” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, the Voting Shares of the Company immediately prior to the transaction “beneficially own”, directly or indirectly, Voting Shares representing at least a majority of the total voting power of all outstanding classes of voting stock of the surviving or transferee person; (ii) the adoption by the Company of a plan relating to the liquidation or dissolution of the Company; (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” becomes the “beneficial owner” directly or indirectly, of more than 50% of the Voting Shares of the Company (measured by voting power rather than number of shares); or (iv) the first day on which a majority of the members of the Board of Directors does not consist of Continuing Directors.

**“Closing Price”** of the shares of Common Stock on any day means the last reported sale price regular way on such day or, in the case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way of the shares of Common Stock, in each case as quoted on The NASDAQ Stock Market or such other principal securities exchange or inter-dealer quotation system on which the shares of Common Stock are then traded.

**“Common Stock”** means the Company’s common stock, \$0.0001 par value per share (or such other security into which such Common Stock is exchanged for (or becomes) pursuant to the consummation of a Capital Reorganization).

**“Continuing Director”** shall mean, as of any date of determination, any member of the Board of Directors who (i) was a member of the Board of Directors on the Issue Date or was appointed pursuant to the Agreement or (ii) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors

who were members of the Board of Directors at the time of such nomination or election and who voted with respect to such nomination or election; provided that a majority of the members of the Board of Directors voting with respect thereto shall at the time have been Continuing Directors.

**“Debt”** shall mean, with respect to any person, any indebtedness of such person, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or banker’s acceptances or representing Capital Lease Obligations or the balance deferred and unpaid of the purchase price of any property or representing any Hedging Obligations, except any such balance that constitutes an accrued expense or trade payable, if and to the extent any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP, as well as all Debt of others secured by a Lien on any asset of such Person (whether or not such Debt is assumed by such Person) and Lease Debt and, to the extent not otherwise included, the Guarantee by such Person of any Debt of any other Person. The amount of any Debt outstanding as of any date shall be (i) the accreted value thereof, in the case of any Debt that does not require current payments of interest or (ii) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Debt.

**“Default”** means any event that is or with the passage of time or the giving of notice or both would be an Event of Default.

**“Disqualified Stock”** means any capital stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. The amount of Disqualified Stock deemed to be outstanding at any time will be the maximum amount that the Company and its Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

**“GAAP”** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession in the United States, which are in effect from time to time.

**“Guarantee”** means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, by way of a pledge of assets, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Debt.



***“Hedging Obligations”*** means, with respect to any person, the obligations of such person under (i) currency exchange or interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (ii) other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency exchange rates.

**“Highest Lawful Rate”** means the maximum non-usurious rate of interest, as in effect from time to time, which may be charged, contracted for, reserved, received or collected by Holder in connection with this Note under applicable law.

**“Holder”** means the Person in whose name this Note is registered in the Company’s Note Register and **“Holders”** means, collectively, the Persons in whose names all the Notes are registered in the Company’s Note Register.

**“Lease Debt”** means, with respect to any Person, (i) the amount of any accrued and unpaid obligations of such Person arising under any lease or related document (including a purchase agreement, conditional sale or other title retention agreement) in connection with the lease of real property or improvement thereon (or any personal property included as part of any such lease) which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property or pay an agreed upon residual value of the leased property to the lessor (whether or not such lease transaction is characterized as an operating lease or a capitalized lease in accordance with GAAP) and (ii) the guarantee, direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of any of the amounts set forth in (i) above.

**“Lien”** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction).

**“Master Framework Agreement”** means that certain Master Framework Agreement dated as of July 30, 2012, by and among the Company and Total.

**“Person”** means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Registration Rights Agreement”** means that certain Amended and Restated Investors’ Rights Agreement dated June 21, 2010, by and among the Company and the parties listed on Exhibits A through G thereof, as amended by Amendment No. 1 to Amended and Restated Investors’ Rights Agreement dated February 23, 2012, as further amended by Amendment No. 2 to Amended and Restated Investors’ Rights Agreement dated December 24, 2012, as further amended by Amendment No. 3 to Amended and Restated Investors’ Rights Agreement dated March 27, 2013, and as further amended by Amendment No. 4 to Amended and Restated Investors’ Rights Agreement dated August [•], 2013.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Subsidiary*” means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“**Total**” means Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS).

“**Total Notes**” means the Securities as defined in the Total Purchase Agreement.

“**Total Purchase Agreement**” means that certain securities purchase agreement dated as of July 30, 2012 by and among the Company and Total with respect to the Total Notes.

“**Trading Day**” means, with respect to the Common Stock, each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which securities are not generally traded on The NASDAQ Stock Market (or its successor) or such other principal securities exchange or inter-dealer quotation system on which the shares of Common Stock are then traded.

“**Voting Shares**” of any person means capital shares or capital stock of such Person which ordinarily has voting power for the election of directors (or persons performing similar functions) of such person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

**2. Interest; Payment of Principal of Note.** Interest. This Note shall bear interest on the Face Amount and any compounded interest hereunder at a rate per annum equal to 10.00% (subject to Section 5(c)). Interest shall begin to accrue on the Issue Date and shall continue to accrue on the outstanding principal until the entire Face Amount and all accrued and unpaid interest, including any interest that is added to the principal pursuant to this Section 2, under this Note (the “*Balance*”) are paid (or converted, as provided in Section 3 hereof), and shall be computed based on the actual number of days elapsed and on a year of three hundred sixty (360) days (which results in more interest being paid than if computed on the basis of a 365-day year). Interest shall be compounded on an annual basis and accordingly shall be added to the Balance under this Note on an annual basis and interest shall accrue on such resulting Balance thereafter.

Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, this Note shall bear interest on the Face Amount plus any previously compounded interest in respect thereof at a rate per annum equal to 12% (as may be further adjusted pursuant to Section 5(c)). Anything herein to the contrary notwithstanding, if during any period for which interest is computed hereunder, the amount of interest computed on the basis provided for in this Note, together with all fees, charges and other payments which are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, would exceed the amount of such interest computed on the basis of the Highest Lawful Rate, then the Company shall not be obligated to pay, and Holder shall not be entitled to charge, collect, receive, reserve or take, interest in excess of the Highest Lawful Rate, and during any such period the interest payable hereunder shall be computed on the basis of the Highest Lawful Rate.

(b) **Scheduled Payment of Principal and Interest.** Unless paid earlier in accordance with the terms hereof, including by conversion into shares of Common Stock, the Company shall deliver to the Holder of this Note, on the five-year anniversary of the date that a Note is first issued to a Holder pursuant to the terms of the Agreement (the “*Final Maturity Date*”), an amount in cash equal to the then applicable Balance. Notwithstanding the foregoing, on the twelve (12) month anniversary of the Issue Date for each of the first three years after the Issue Date (each such date, an “*Interest Payment Date*”), the Company shall pay accrued interest of this Note in kind by increasing the Face Amount by the amount of interest payable to Holder as of each such Interest Payment Date, and on each Interest Payment Date thereafter, the Company shall pay accrued interest of this Note either, in the Company’s sole discretion, (i) in cash or (ii) in kind by increasing the Face Amount by the amount of interest payable to Holder as of each such Interest Payment Date.

(c) [INTENTIONALLY OMITTED]

(d) **Pro Rata Payment.** The Company agrees that any payments to the Holders of the Notes (including, without limitation, upon acceleration pursuant to Section 5) shall be made pro rata among all such Holders based upon the aggregate principal amount of the Notes held by each such Holder. If any Holder of a Note obtains any payment (whether voluntary, involuntary, by application of offset or otherwise) on such Note in excess of such Holder’s pro rata share of payments obtained by all Holders of the Notes, such Holder shall make payments to the other Holders of the Notes based on such participation in the Notes held by them as is necessary to cause such Holders to share the excess payment ratably among each of them as provided in this Section 2(d).

**3. Conversion Rights; Adjustments.** The Holders of the Notes shall have conversion rights as follows (the “*Conversion Rights*”):

(a) **Holder’s Right to Convert.** Holder shall have the option to convert this Note as follows:

(i) At any time after the twelve (12) month anniversary of the Issue Date and prior to the fifth Trading Day prior to the Final Maturity Date, Holder shall have the right to convert the then applicable Balance of this Note, in whole or in part, at the option of the Holder hereof, at any time within the period specified above and from time to time into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Balance proposed to be converted at such date by (y) the then effective Conversion Price (as defined below) on the Conversion Date (as defined below) (each such conversion, an “*Optional 12-Month Conversion*”);

(ii) At any time if a Change of Control occurs prior to the Final Maturity Date, then the Company shall provide Holder written notice of such Change of Control at least twenty (20) days prior to the consummation of such Change of Control and Holder shall have the right to convert the then applicable Balance of this Note, in whole or in part, at the option of Holder, at any time and from time to time until the fifteenth (15th) day following receipt of such notice of such Change of Control, into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Balance proposed to be converted at such date by (y) the then effective Conversion Price on the Conversion Date (such conversion, an “**Optional COC Conversion**”); or

(iii) At any time if an Event of Default has occurred and is continuing, subject to Section 5(c) hereof, Holder shall have the right to convert the then applicable Balance of this Note, in whole or in part, at the option of Holder, at any time and from time to time while such Event of Default is continuing, into a number of fully paid, nonassessable and authorized but unissued shares of Common Stock determined by dividing (x) the Balance proposed to be converted at such date by (y) the then effective Conversion Price on the Conversion Date (such conversion, an “**Optional EOD Conversion**”, and together with an Optional 12-Month Conversion and an Optional COC Conversion, “**Holder’s Optional Conversion**”).

(b) **Conversion Price.** The “Conversion Price” at which Common Stock shall be deliverable upon conversion of the Notes (the “**Conversion Price**”) shall initially be the US\$2.87. Such initial Conversion Price shall be subject to adjustment as provided below.

(c) **Mechanics of Conversion.**

(i) In order to exercise its rights pursuant to a Holder’s Optional Conversion, the Holder shall deliver written notice in the form of Exhibit 1 to the Company stating that such Holder elects to convert all or part of the then outstanding Balance of this Note. Such notice shall state the portion of the Balance of this Note which the Holder seeks to convert and shall be accompanied within one (1) Trading Day by the Note or Notes subject to conversion. The date contained in the notice (which date shall be no earlier than the Trading Day immediately following the date of the notice) shall be the date of conversion of the Note (such date of conversion, the “**Conversion Date**”) and the Holder shall be deemed to be the beneficial owner of the underlying Common Stock as of such date.

(ii) The Holder of this Note shall be deemed to beneficially own the Common Stock underlying this Note as of the applicable Conversion Date. Not later than three (3) Trading Days following the Conversion Date, the Company shall promptly issue and deliver to each Holder a certificate or certificates for the number of shares of Common Stock to which such Holder is entitled and, in the case where only part of a Note is converted, the Company shall execute and deliver (at its own expense) a new Note of any authorized denomination as requested by a Holder in an aggregate principal amount equal to and in exchange for the unconverted portion of the Balance of the Note so surrendered. In lieu of delivering physical certificates representing the shares of Common Stock issuable upon conversion of Notes, provided the Company’s transfer agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated

Securities Transfer program, upon request of the Holder, the Company may, at its election (and shall, if practicable and upon the reasonable request of any Holder after the date six months after the initial issuance of this Note, and if the Holder is not an “affiliate” of the Company (as defined under the Securities Act of 1933, as amended), cause its transfer agent to electronically transmit the shares of Common Stock issuable upon conversion of this Note to the Holder, by crediting the account of Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission (“*DWAC*”) system, if such *DWAC* system is available for the issuance of such shares of Common Stock under the terms of this Note and the Agreement. The time periods for delivery described above shall apply to the electronic transmittals through the *DWAC* system. The parties agree to coordinate with DTC to accomplish this objective. The conversions pursuant to this Section 3 shall be deemed to have been made immediately prior to the opening of business on the applicable Conversion Date. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated as the beneficial owner of such shares of Common Stock at the opening of business on the applicable Conversion Date



(iii) The Company shall at all times during which the Notes shall be outstanding, have and keep available out of its authorized but unissued shares, for the purpose of effecting the conversion of the Notes, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Notes. In no event shall the Conversion Price be reduced to an amount less than the then par value of the Common Stock.

(iv) No fractional shares of Common Stock shall be issued upon any conversion of the Notes pursuant to this Section 3. In lieu of fractional shares, the Company shall pay cash equal to such fraction multiplied by the Closing Price of the Common Stock on the Conversion Date.

(v) All Notes (or the portions thereof) which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such Notes, except only the right of the Holders thereof to receive (A) shares of Common Stock in exchange therefor, (B) any accrued and unpaid interest, if applicable, as described in Section 5(c), and (C) if applicable, cash for any fractional shares of Common Stock. Any Notes, to the extent so converted, shall be retired and canceled.

(vi) If any conversion pursuant to this Section 3 is in connection with an underwritten offering of securities registered pursuant to the Securities Act or a Change of Control, the conversion may, at the option of any Holder tendering Notes for conversion, be conditioned upon the closing with the underwriter of the sale of the shares of Common Stock issuable to such Holder in connection with such conversion pursuant to such offering, or the closing of such Change of Control, as applicable, in which event the Holders entitled to receive the shares of Common Stock issuable upon such conversion of the Notes shall not be deemed to have converted such Notes until immediately prior to the closing of the sale of securities or consummation of the Change of Control, as applicable.

(d) **Adjustment for Dilutive Issuances.** If prior to the repayment or conversion of this Note the Company shall sell, in a bona fide capital raising transaction for cash consideration (including cancellation of pre-existing Debt as payment of consideration), any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class or series of the Company's capital stock (the "**Securities**") at a per share purchase price (including any applicable conversion or exercise price) equal to an amount less than the effective Conversion Price on the date of such issuance, then such Conversion Price in effect immediately prior to such issuance of Securities shall be reduced, concurrently with such issuance, to the consideration per share received by the Company for such issue or the deemed issue of the Securities. If such per share consideration is not a cash amount, then the value of such per share consideration shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(e) **Adjustment for Issuances to Total.** If the Company shall permit Total to exchange Total Notes in connection with any future issuance by the Company of Securities (other than the issuance of Total Notes or shares of Common Stock issuable upon conversion thereof pursuant to the Total Purchase Agreement or the issuance of Notes or Tranche I Notes (as defined in the Agreement) or shares of Common Stock issuable upon conversion thereof pursuant to the Agreement), whereby the Company shall issue to Total in exchange for such Total Notes a number of Securities in excess of Total's Pro Rata Share (as defined in the Master Framework Agreement), then the then effective Conversion Price of this Note, any other Note and any Tranche I Note held by Holder as of immediately prior to such exchange (collectively, the "**Holder Notes**") shall be adjusted pro rata based on the principal amount of each such Holder Note, such that the Holder Notes then outstanding shall be convertible in aggregate into an additional number of shares of Common Stock equal to the difference between (i) the actual number of Securities issued to Total in exchange for such Total Notes and (ii) Total's Pro Rata Share of such Securities. Notwithstanding the foregoing, no adjustment under this Section 3(e) will apply to any Note or Tranche I Note held by Total.

(f) **Adjustment for Share Splits and Combinations.** If the Company shall at any time or from time to time after the Issue Date effect a subdivision of the outstanding shares of Common Stock, the Conversion Price then in effect immediately before that subdivision shall be proportionately decreased. If the Company shall at any time or from time to time after the Issue Date combine the outstanding shares of Common Stock, the Conversion Price then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) **Adjustment for Certain Dividends and Distributions.** In the event the Company at any time or from time to time after the Issue Date shall make or issue a dividend or other distribution payable in (x) additional shares of Common Stock, then and in each such event the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to such issuance and the denominator of which shall be the total number of shares of Common Stock outstanding immediately prior to such issuance plus the number of such additional shares of Common Stock issuable in payment of such dividend or distribution; (y) in cash, then and in each such event, the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution minus the amount in cash per share of Common Stock that the Company dividends or distributes, and the denominator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and

distribution; (z) shares of capital stock of the Company, evidences of indebtedness, or any other asset (collectively, the “**Distributed Property**”), then and in each such event, the Conversion Price shall be decreased as of the time of such issuance, by multiplying such Conversion Price by a fraction, the numerator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution minus the fair market value (as determined in good faith by the Board of Directors) of the Distributed Property distributed with respect to each share of Common Stock, and the denominator of which shall be the Closing Price of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend and distribution.

(h) **Adjustment for Reclassification, Exchange or Substitution.** If the shares of Common Stock issuable upon the conversion of the Notes shall be changed into the same or a different number of shares of any class or classes of shares, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares, share dividend or reorganization, reclassification, merger, consolidation or asset sale provided for elsewhere in this Section 3), then and in each such event the Holder of each Note (whether then outstanding or thereafter issued) shall have the right thereafter to convert such Note into the kind and amount of shares and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which all such Notes might have been converted immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(i) **Reorganizations, Mergers, Consolidations or Asset Sales.** If at any time after the Issue Date there is a tender offer, exchange offer, merger, consolidation, recapitalization, sale of all or substantially all of the Company's assets or reorganization involving the shares of Common Stock (collectively, a "**Capital Reorganization**") (other than a merger, consolidation, sale of assets, recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 3), as part of such Capital Reorganization, provision shall be made so that the Holders of Notes will thereafter be entitled to receive upon conversion of the Notes the number of shares or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion immediately prior to such Capital Reorganization would have been entitled on such Capital Reorganization, subject to adjustment in respect to such shares or securities by the terms thereof. In any such case, appropriate adjustment will be made in the application of the provisions of this Section 3 with respect to the rights of the Holders of Notes after the Capital Reorganization to the end that the provisions of this Section 3 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon conversion of the Notes) and the provisions of the Agreement and the Registration Rights Agreement will be applicable after that event and be as nearly equivalent as practicable. In the event that the Company is not the surviving entity of any such Capital Reorganization, each Note shall become Notes of such surviving entity, with the same powers, rights and preferences as provided herein.

(j) **No Impairment.** The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the Holders of the Notes against impairment to the extent required hereunder.

(k) **Certificate as to Adjustments or Distributions.** Upon the occurrence of each adjustment of the Conversion Price or distribution to holders pursuant to this Section 3, the Company at its expense shall promptly compute such adjustment or distribution in accordance with the terms hereof and furnish to each Holder, if any, of Notes outstanding a certificate setting forth the terms of such adjustment or distribution and showing in detail the facts upon which such adjustment or distribution are based and shall file a copy of such certificate with its corporate records.

(l) **Notice of Record Date.** In the event:

(i) that the Company declares a dividend (or any other distribution) on its Common Stock payable in shares of Common Stock, securities, or other assets, rights or properties;

(ii) that the Company subdivides or combines its outstanding shares of Common Stock;

(iii) of any reclassification of the shares of Common Stock (other than a subdivision or combination of the Company's outstanding shares of Common Stock or a share dividend or share distribution thereon);

(iv) of any Capital Reorganization; or

(v) of the involuntary or voluntary dissolution, liquidation or winding up of the Company;

then the Company shall cause to be filed at its principal office, and shall cause to be mailed to the Holders of the Notes at their last addresses as shown on the records of the Company, at least ten (10) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, a notice stating:

(A) the record date of such dividend, distribution, subdivision or combination, or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record to be entitled to such dividend, distribution, subdivision or combination are to be determined, or

(B) the date on which such reclassification, Capital Reorganization, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, Capital Reorganization, dissolution or winding up

(m) **Notice of Adjustment to Conversion Price.** The Company will provide notice to each Holder upon the occurrence of any adjustment to the Conversion Price.

**4. Repurchase Right Upon a Change of Control.** Upon the occurrence of a Change of Control prior to the Final Maturity Date, each Holder of Notes will have the right to require the Company to repurchase all or any part of its Notes pursuant to an offer as provided in this Section 4 (the “*Change of Control Offer*”) at an offer price in cash equal to 101% of the Balance of its Notes as of the Change of Control Payment Date (as defined in Section 4(b)(i)) (the “*Change of Control Payment*”).

(b) On or before the earlier of fifteen (15) days prior to the Final Maturity Date (if a Change of Control will occur prior to the Final Maturity Date), and thirty (30) days following the consummation of a Change of Control, the Company shall give to all Holders of Notes notice (the “*Change of Control Notice*”) of the occurrence of the Change of Control and of the Holder’s right to receive the Change of Control Payment arising as a result thereof. Each notice of the Holder’s right to participate in the Change of Control Offer (the “*Change of Control Repurchase Right*”) shall be mailed to the Holders of the Notes at their last address as shown in the Note Register and shall state:

(i) the date on which the Notes shall be repurchased (the “*Change of Control Payment Date*”), which date shall be no earlier than fifteen (15) days and no later than sixty (60) days from the date of the Company’s delivery of the Change of Control Notice;

(ii) the date by which the Change of Control Repurchase Right must be exercised, which date shall be no earlier than the close of business on the Trading Day immediately prior to the Change of Control Payment Date;

(iii) the amount of the Change of Control Payment;

(iv) a description of the procedure which a Holder must follow to exercise the Change of Control Repurchase Right, and the place or places where the Notes are to be surrendered for payment of the Change of Control Payment; and

(v) the Conversion Price then in effect and the place where such Notes may be surrendered for conversion.

No failure by the Company to give the Change of Control Notice and no defect in any Change of Control Notice shall limit any Holder's right to exercise its Change of Control Repurchase Right or affect the validity of the proceedings for the repurchase of Notes.

If any of the foregoing provisions or other provisions of this Section 4 are inconsistent with applicable law, such law shall govern.



(c) To exercise the Change of Control Repurchase Right, a Holder shall deliver to the Company, on or before the Trading Day immediately prior to the Change of Control Payment Date, (i) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the Balance of Notes held by such Holder to be repurchased, and a statement that an election to exercise the Change of Control Repurchase Right is being made thereby, and (ii) the Notes with respect to which the Change of Control Repurchase Right is being exercised. Such written notice shall be irrevocable, except that the right of the Holder to convert the Notes shall continue until midnight (Eastern Time) on the Trading Day immediately preceding the Change of Control Repurchase Date.

(d) On the Change of Control Payment Date, the Company will (i) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer and (ii) deliver cash in the amount of the Change of Control Payment to each Holder in respect of all Notes or portions thereof so tendered. All Notes repurchased by the Company shall be canceled immediately by the Company.

(e) The Company shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(f) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control.

(g) Any Note which is to be repurchased only in part shall be surrendered to the Company and the Company shall execute and make available for delivery to the Holder of such Note without service charge, a new Note or Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Note so surrendered. Any Notes surrendered to the Company pursuant to the provisions of this Section 4 shall be retired and cancelled.

(h) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4 applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

**5.** Events of Default. Definitions. For purposes of this Note, the following events shall constitute an “*Event of Default*”:

- (i) default in payment when due (whether at the Final Maturity Date or upon an earlier repurchase) of the then applicable Balance on this Note;
  
- (ii) failure by the Company for thirty (30) days after notice from the Holders of at least 50% in principal amount of the then outstanding Notes to comply with the provisions of Section 4 or Section 6 of this Note;
  
- (iii) failure by the Company for sixty (60) days after notice from the Holders of at least 50% in principal amount of the then outstanding Notes to comply with any of its other agreements in this Note or the Agreement (other than Section 8.6(a) of the Agreement);

(iv) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Debt for money borrowed by the Company (or the payment of which is guaranteed by the Company, whether such Debt or guarantee now exists, or is created after the date of the Issue Date, which default (a) is caused by a failure to pay principal of or premium, if any, or interest on such Debt prior to the expiration of the grace period provided in such Debt on the date of such default or (b) results in the acceleration of such Debt prior to its express maturity and, in each case in clause (a) or (b), the principal amount of any such Debt, together with the principal amount of any other such Debt that has not been paid when due, or the maturity of which has been so accelerated, aggregates \$10,000,000 or more;

(v) failure by the Company to pay final judgments aggregating in excess of \$10,000,000, which judgments are not paid, discharged or stayed for a period of sixty (60) days;

(vi) the Company:

(A) commences a voluntary case under any Bankruptcy Law,

(B) consents to the entry of an order for relief against it in an involuntary case under any Bankruptcy Law,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) is unable to pay its debts as they become due; or

(vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company;

(B) appoints a custodian of the Company or any of its Significant Subsidiaries or for all or substantially all of the property of the Company; or

(C) orders the liquidation of the Company; and the order or decree remains unstayed and in effect for sixty (60) consecutive days; or

(viii) failure by the Company to deliver when due the consideration deliverable upon conversion of this Note, which failure shall continue for a period of five days.

(b) **Notice of Compliance.** The Company shall be required to deliver to the Holders annually a statement regarding compliance with this Note, and the Company shall be required within five (5) days of becoming aware of any Default or Event of Default to deliver to the Holders a statement specifying such Default or Event of Default.

(c) **Acceleration.** If any Event of Default occurs and is continuing, the Holders of at least 50% of the then applicable Balance of the then outstanding Notes may declare all the Notes to be due and payable immediately, which Notes shall then be immediately payable in, at the election of each Holder, either cash or shares of Common Stock in accordance with Section 3(a)(iii) hereof. Notwithstanding the foregoing, in the case of an Event of Default described in Section 5(vi) or (vii) with respect to the Company, all outstanding notes will become due and payable without further action or notice. The Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may on behalf of all of the Holders rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal that has become due solely because of the acceleration) have been cured or waived. Notwithstanding the foregoing (or anything to the contrary in the Agreement), the sole remedy of the Holders for a failure by the Company to comply with Section 8.6 of the Agreement shall, for the first 365 days after the occurrence of such failure, be the right, by notice to the Company by holders of a majority in aggregate principal amount of the Notes then outstanding, to increase the rate of interest on this Note to the lower of (i) the Highest Lawful Rate, and (ii) 13% for the first 180 days of such failure, and 16% thereafter (which increased interest shall constitute liquidated damages for such failure).

(d) **Waiver of Past Defaults.** The Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may, on behalf of the Holders of all of the Notes, waive any existing Default or Event of Default and its consequences under this Note except a continuing Default or Event of Default in the payment of the Balance of the Notes and/or any applicable premium required in connection with a Change of Control Payment. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Note, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(e) **Control by Majority.** Holders of a majority in aggregate of the then applicable Balance of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available upon an Event of Default.

(f) **Rights of Holders of Notes to Receive Payment.** Notwithstanding any other provision of this Note, the right of the Holder of this Note to receive payment of the Balance of this Note, any interest required in connection with Section 5(c), and/or any applicable premium required in connection with a Change of Control Payment, on or after the respective due dates expressed in this Note (including in connection with a redemption or an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

**6. Limitation on Debt and Liens.** The Company will not, and will not permit its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to any Debt, and the Company will not issue any Disqualified Stock and the Company will not permit its Subsidiaries to issue shares of preferred stock except for:



(a) Debt in an amount outstanding at any time not to exceed the greater of (i) \$200 million in aggregate principal amount or (ii) 50% of the Company's total consolidated assets (as set forth on its most recent balance sheet prepared in accordance with GAAP and filed with the Securities and Exchange Commission after giving effect to any reductions or additions to assets in accordance with GAAP since the date of such balance sheet) (and provided that Debt incurred pursuant to this clause (a) that is secured by a Lien on assets of the Company shall not exceed the greater of (i) \$125 million in aggregate principal amount or (ii) 30% of the Company's total consolidated assets (as set forth on its most recent balance sheet prepared in accordance with GAAP);

(b) Debt in existence on the Issue Date or which as of the Issue Date the Company is obligated to issue thereafter, including Total Notes pursuant to the Total Purchase Agreement;

(c) the incurrence by the Company or any of its Subsidiaries of Debt represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Subsidiaries;

(d) Debt of the Company that is (i) contractually subordinated in right of payment to the Notes, (ii) matures 91 days after the Notes and (iii) is less than \$50 million in aggregate principal amount at any one time outstanding;

(e) Debt of the Company (A) in respect of performance, surety or appeal bonds or letters of credit in the ordinary course of business, or (B) under interest rate, currency, commodity or similar hedges, swaps and other derivatives entered into with one or more financial institutions that is designed to protect the Company against fluctuations in interest rates or currency exchange rates, commodity prices or other market fluctuations and is not entered into for speculative purposes; and

(f) Debt which is exchanged for or the proceeds of which are used to refinance or refund, or any extension or renewal of (each a "refinancing"), (1) the Notes or (2) debt incurred pursuant to clause (b) of this paragraph, and (3) Debt incurred pursuant to clause (c) of this paragraph, in each case in an aggregate principal amount not to exceed the principal amount of the Debt so refinanced (together with any accrued interest and any premium and other payment required to be made with respect to the Debt being refinanced or refunded, and any fees, costs, expenses, underwriting discounts or commissions and other payments paid or payable with respect to the Debt incurred pursuant to this clause (f)); provided, however, that (A) Debt, the proceeds of which are used to refinance the Notes, or Debt which is pari passu with or subordinate in right of payment to the Notes, shall only be permitted if (x) in the case of any refinancing of the Notes or Debt which is pari passu to the Notes, the refinancing Debt is Incurred by the Company and made pari passu to the Notes or subordinated to the Notes, and (y) in the case of any refinancing of Debt which is subordinated to the Notes, the refinancing Debt is incurred by the Company and is subordinated to the Notes in a manner that is at least as favorable to the Holders as that of the Debt refinanced; (B) refinancing Debt with respect to Debt incurred pursuant to clause (c) of this paragraph shall not be secured by a Lien on any assets other than

the assets securing the Debt so refinanced, and any improvements or additions thereto, and (C) the refinancing Debt by its terms, or by the terms of any agreement or instrument pursuant to which such Debt is issued, does not have a final maturity prior to the final maturity of the Debt being refinanced.



For purposes of determining compliance with this Section 6, in the event that an item of Debt meets the criteria of more than one of the types of Debt described in the above clauses the Company, in its sole discretion, shall classify, and from time to time may reclassify, such item of Debt.

The Company will not create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except for (a) the Liens described in Section 6(a) and 6(c) (including the refinancing of Liens described in Section 6(c) pursuant to Section 6(f)), (b) Permitted Liens, and (c) any Liens in existence on the Issue Date (including the refinancing thereof pursuant to Section 6(f)).

As used herein, "Permitted Liens" means the following: (a) Liens for taxes, assessments and governmental charges or levies that are not overdue for a period of more than thirty (30) days or which are being contested in good faith; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens securing obligations that are not overdue for a period of more than thirty (30) days or that are being contested in good faith; (c) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations; (d) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes; (e) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature; (f) landlords' Liens under leases; (g) Liens consisting of leases, subleases, licenses or sublicenses granted to others and not interfering in any material respect with the business of the Company and its Subsidiaries, taken as a whole, and any interest or title of a lessor or licensor under any lease or license, as applicable; (h) Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; and (i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 5(v) or securing appeal or other surety bonds related to such judgments.

**7. Successors. Merger, Consolidation or Sale of Assets or Purchase of Assets.** The Company shall not consolidate or merge with or into (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to another corporation, Person or entity unless:

(i) the entity or Person formed by or surviving any such consolidation or merger (if other than the Company), or the parent company thereof, or the entity or Person to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made assumes all the obligations of the Company under the Notes and the Agreement; and

(ii) immediately after such transaction no Default or Event of Default exists.

(b) **Successor Corporation Substituted.** Upon any consolidation or merger or any transfer of all or substantially all of the assets of the Company in accordance with Section 7(a) hereof, the successor Person formed by such consolidation or into which the Company is merged, or the parent company thereof, or to which such transfer is made shall succeed to and (except in the case of a lease) be substituted for (so that from and after the date of such consolidation, merger or transfer, the provisions of this Note, the Agreement and the Registration Rights Agreement referring to the “Company” shall refer instead to the successor Person and not to the Company), and may exercise every right and power of, the Company under this Note and the Agreement with the same effect as if such successor Person had been named herein as the Company, and (except in the case of a lease) the Company shall be released from the obligations under the Notes and the Agreement except with respect to any obligations that arise from, or are related to, such transaction.

(c) **Purchase of Substantial Assets.** The Company will not, and will not permit its subsidiaries to, without the prior written consent of the holders of a majority of the then outstanding Notes and Tranche I Notes, purchase assets in one transaction or a series of related transactions in an amount greater than \$20,000,000.

**8. Amendment and Waiver.** Except as otherwise expressly provided herein, the provisions of this Note may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holders of at least a majority of the aggregate principal amount then outstanding of the Notes; provided that no such action shall change (i) the amount of Notes whose Holders must consent to an amendment, (ii) reduce the amount of or any provision relating to the scheduled payment of principal of the Notes, (iii) change the time at which any Note must be repurchased or amend the conversion rights as set forth under Sections 3 or 4, (iv) make any Note payable in any money or at any place other than as stated in the Note, (v) impair the right of any Holder to receive payments of the Balance of such Holder’s Notes, any interest required in connection with Section 5(c), and, if applicable any premium required in connection with a Change of Control Payment, on or after the due dates therefore or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes, or (vi) make any change in the amendment provisions which require each Holder’s consent or in the waiver provisions, in each such case without the consent of the applicable Holder if such change is adverse to such Holder.

**9. Seniority of Notes.** The Company acknowledges, agrees and covenants that the Notes and the Tranche I Notes shall be its senior obligations, ranking senior in right of payment to Common Stock and to future issuances of Debt other than (i) Debt that is permitted to be secured in accordance with the limitations on Debt in Section 6 hereof under Sections 6(a)(ii)(a) or (c), and (ii) for the avoidance of doubt, the Total Notes, which Total Notes shall be *pari passu* with the Notes and Tranche I Notes except as provided in the MOU (as defined in the Agreement).

**10. Place of Payment.** Payments of the Balance of the Notes, any interest required in connection with Section 5(c), and, if applicable any premium required in connection with a Change of Control Payment, deliverable upon repayment or conversion of this Note (unless otherwise specified in the conversion notice or any other notice delivered by Holder pursuant to the terms hereof) and all notices and other communications to the Investor hereunder or with respect hereto are to be delivered to the Investor at the address identified in the Agreement or to such other address or to the attention of such other person as specified by prior written notice to the Company, including any transferee of this Note.

**11. Costs of Collection.** In the event that the Company fails to (a) pay when due (including, without limitation upon acceleration in connection with an Event of Default) the full amount of the Balance hereunder, any interest required in connection with Section 5(c), and, if applicable any premium required in connection with a Change of Control Payment hereunder or (b) deliver when due the consideration deliverable upon conversion of this Note, the Company shall indemnify and hold harmless the Holder of any portion of this Note from and against all reasonable costs and expenses incurred in connection with the enforcement of this provision or collection of such principal, interest, premium and/or consideration, including, without limitation, reasonable attorneys' fees and expenses.

**12. Waivers.** The Company hereby waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note.

**13. Benefits of the Agreement.** The Investor and all transferees of this Note (to the extent such transfer is permitted by the Agreement) shall be entitled to the rights and benefits granted to them in the Agreement.

**14. Registration of Transfer and Exchange Generally.**

(a) **Registration, Registration of Transfer and Exchange Generally.** The Company shall keep at its principal executive offices a register (the register maintained in such being herein sometimes collectively referred to as the "**Note Register**") in which the Company shall provide for the registration of Notes and of transfers and exchanges of Notes.

Subject to the provisions of the Agreement regarding restrictions on transfer and provided the transferee agrees to be bound by the terms of the Agreement, upon surrender for registration of transfer of any Note at its principal executive office, the Company shall execute and deliver, in the name of the designated transferee or transferees, one or more new Notes in denominations requested by the transferee (which denominations shall not be less than \$1,000,000 per Note (unless the transferor holds a lesser denomination, in which case no such restriction shall apply)), of a like aggregate principal amount and bearing such restrictive legends as may be required by law.

At the option of a Holder, Notes may be exchanged for other Notes of any authorized denominations, of a like aggregate principal amount and bearing such restrictive legends as may be required by law upon surrender of the Notes to be exchanged at the Company's principal executive offices. Whenever any Notes are so surrendered for exchange, the Company shall execute and make available for delivery the Notes that the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Notes.

(b) **Mutilated, Destroyed, Lost and Stolen Notes.** If any mutilated Note is surrendered to the Company, the Company shall execute and make available for delivery in exchange therefor a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company (i) evidence to its reasonable satisfaction of the destruction, loss or theft of any Note and (ii) such indemnity as may be reasonably requested by the Company to save itself harmless (clauses (i) or (ii) referred to herein as “*Lost Note Documentation*”), then, in the absence of notice to the Company that such Note has been acquired by a protected purchaser, the Company shall execute and make available for delivery, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

Every new Note issued pursuant to this Section 13 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone.

The provisions of this Section 13 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**15.** Antitrust. Holder and the Company hereto agree to (i) file any notifications required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “*HSR Act*”) with respect to the conversion of this Note not more than 35 days prior to the date of conversion or at such other time as agreed by Holder and the Company, (ii) supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act, and (iii) use its commercially reasonable efforts to take or cause to be taken all other actions necessary, proper, or advisable consistent with this Section 14(a) to cause the expiration or

termination of the applicable waiting periods under the HSR Act as soon as practicable.

**16.** Governing Law.

(a) This Note, and the provisions, rights, obligations, and conditions set forth herein, and the legal relations between the parties hereto, including all disputes and claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to its conflict of law provisions.

(b) Any and all disputes arising out of, or in connection with, the interpretation, performance, or nonperformance of this Note or any and all disputes arising out of, or in connection with, transactions in any way related to this Note and/or the relationship between the parties shall be resolved pursuant to Section 9.6 of the Agreement.

**17.** Notices. All notices, requests, and other communications hereunder shall be in writing and will be deemed to have been duly given and received (a) when personally delivered, (b) when sent by facsimile upon confirmation of receipt, (c) one business day after the day on which the same has been delivered prepaid to a nationally recognized courier service, or (d) five business days after the deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, in each case addressed to Amyris, Inc., 5885 Hollis Street, Suite 100, Emeryville, CA 94608, Attn: General Counsel, facsimile number: (510) 740-7416, with a copy to Fenwick & West LLP, 801 California Street, Mountain View, CA 94041, Attn: Dan Winnike, Esq., facsimile number: (650) 938-5200, and as to the Investor at the address and facsimile number set forth in the Agreement. Any party hereto from time to time may change its address, facsimile number, or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto. Each Investor and the Company may each agree in writing to accept notices and other communications to it hereunder by electronic communications pursuant to procedures reasonably approved by it; provided that approval of such procedures may be limited to particular notices or communications.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed and delivered this Note on \_\_\_\_\_.

**AMYRIS,  
INC.**

By:  
Name:  
Title:



EXHIBIT 1

**(To be Executed by Registered Holder in order to Convert Note)**

CONVERSION NOTICE  
FOR  
TRANCHE II SENIOR CONVERTIBLE NOTE

The undersigned, as Holder of the Tranche II Senior Convertible Note of **AMYRIS, INC.**, (the “*Company*”), in the outstanding principal amount of U.S. \$\_\_\_\_\_ (the “*Note*”), hereby elects to convert that portion of the outstanding Balance of the Note shown on the next page into shares of the Company’s common stock, \$0.0001 par value per share (the “*Common Stock*”), of the Company, in accordance with and in compliance with the conditions of the Note, as of the date written below. The undersigned hereby requests that share certificates for the shares of Common Stock to be issued to the undersigned pursuant to this Conversion Notice be issued in the name of, and delivered to, the undersigned or its designee as indicated below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holder for any conversion, except for transfer taxes, if any.

Conversion Information: **NAME OF  
HOLDER:**

By:

Print

Name:

Print

Title:

Print

Address of

Holder

Issue Common Stock:

at:

Electronically  
transmit and  
credit  
Common  
Stock to at:

Date of  
Conversion

Applicable  
Conversion  
Price

THE COMPUTATION OF THE NUMBER OF SHARES OF COMMON STOCK TO  
BE RECEIVED IS SET FORTH ON THE ATTACHED PAGE

Page 2 to Conversion Notice for:

(Name of Holder)

COMPUTATION OF NUMBER OF COMMON SHARES TO BE RECEIVED

Face Amount converted: \$

Conversion Price \$

Number of shares of Common Stock =  $\frac{\text{Total dollar amount converted}}{\text{Conversion Price}}$  = \$

Number of shares of Common Stock =

If the conversion is not being settled by DTC, please issue and deliver \_\_\_ certificate(s) for shares of Common Stock in the following amount(s):

Please issue and deliver \_\_\_\_\_ new Note(s) in the following amounts:

**ANNEX D**

**FINANCIAL INFORMATION**

**Amyris, Inc.**

**Financial Information**

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**Amyris, Inc.****Condensed Consolidated Balance Sheets****(In Thousands, Except Share and Per Share Amounts)****(Unaudited)**

|  | June 30,<br>2013 | December 31,<br>2012 |
|--|------------------|----------------------|
| Assets   |                  |                      |
| Current assets:  |                  |                      |
| Cash and cash equivalents  | \$ 11,503        | \$ 30,592            |
| Short-term investments   | 1,412            | 97                   |
| Accounts receivable, net of allowance of \$481 as of June 30, 2013 and December 31, 2012       | 7,268            | 3,846                |
| Inventories, net   | 4,065            | 6,034                |
| Prepaid expenses and other current assets  | 7,136            | 8,925                |
| Total current assets   | 31,384           | 49,494               |
| Property, plant and equipment, net   | 144,141          | 163,121              |
| Restricted cash  | 956              | 955                  |
| Other assets   | 17,234           | 20,112               |
| Goodwill and intangible assets   | 9,120            | 9,152                |
| Total assets   | \$202,835        | \$ 242,834           |
| Liabilities and Equity   |                  |                      |
| Current liabilities:   |                  |                      |
| Accounts payable   | \$8,889          | \$ 15,392            |
| Deferred revenue   | 7,637            | 1,333                |
| Accrued and other current liabilities  | 22,745           | 24,410               |
| Capital lease obligation, current portion  | 1,014            | 1,366                |
| Debt, current portion  | 4,959            | 3,325                |
| Total current liabilities  | 45,244           | 45,826               |
| Capital lease obligation, net of current portion   | 728              | 1,244                |
| Long-term debt, net of current portion   | 56,651           | 61,806               |
| Related party debt   | 45,572           | 39,033               |
| Deferred rent, net of current portion  | 9,976            | 8,508                |
| Deferred revenue, net of current portion   | 6,500            | 4,255                |
| Other liabilities  | 17,889           | 15,933               |
| Total liabilities  | 182,560          | 176,605              |
| Commitments and contingencies (Note 5)   |                  |                      |
| Stockholders' equity:  |                  |                      |
| Preferred stock - \$0.0001 par value, 5,000,000 shares authorized, none issued and outstanding | —                | —                    |
|  | 8                | 7                    |

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Common stock - \$0.0001 par value, 200,000,000 and 100,000,000 shares authorized as of June 30, 2013 and December 31, 2012, respectively; 76,177,691 and 68,709,660 shares issued and outstanding as of June 30, 2013 and December 31, 2012, respectively

|  |           |            |
|--|-----------|------------|
| Additional paid-in capital                 | 695,538   | 666,233    |
| Accumulated other comprehensive loss       | (16,892 ) | (12,807 )  |
| Accumulated deficit                        | (657,817) | (586,327 ) |
| Total Amyris, Inc. stockholders' equity    | 20,837    | 67,106     |
| Noncontrolling interest                    | (562 )    | (877 )     |
| Total stockholders' equity                 | 20,275    | 66,229     |
| Total liabilities and stockholders' equity | \$202,835 | \$ 242,834 |

See the accompanying notes to the unaudited condensed consolidated financial statements.



**Amyris, Inc.****Condensed Consolidated Statements of Operations****(In Thousands, Except Share and Per Share Amounts)****(Unaudited)**

|   | Three Months Ended June 30, |             | Six Months Ended June 30, |            |
|---|-----------------------------|-------------|---------------------------|------------|
|   | 2013                        | 2012        | 2013                      | 2012       |
| Revenues  |                             |             |                           |            |
| Product sales   | \$ 4,185                    | \$ 15,580   | \$ 7,168                  | \$ 41,887  |
| Grants and collaborations revenue   | 6,664                       | 3,683       | 11,550                    | 6,845      |
| Total revenues  | 10,849                      | 19,263      | 18,718                    | 48,732     |
| Cost and operating expenses   |                             |             |                           |            |
| Cost of products sold   | 8,853                       | 23,636      | 17,813                    | 67,447     |
| Loss on purchase commitments and write off of production assets   | 8,423                       | —           | 8,423                     | 36,652     |
| Research and development  | 13,992                      | 18,500      | 29,746                    | 39,844     |
| Sales, general and administrative   | 14,718                      | 22,231      | 29,545                    | 43,946     |
| Total cost and operating expenses   | 45,986                      | 64,367      | 85,527                    | 187,889    |
| Loss from operations  | (35,137 )                   | (45,104 )   | (66,809 )                 | (139,157 ) |
| Other income (expense):   |                             |             |                           |            |
| Interest income   | 57                          | 503         | 93                        | 1,109      |
| Interest expense  | (1,558 )                    | (1,260 )    | (3,120 )                  | (2,314 )   |
| Other expense, net  | (2,030 )                    | (1,025 )    | (911 )                    | (1,176 )   |
| Total other expense   | (3,531 )                    | (1,782 )    | (3,938 )                  | (2,381 )   |
| Loss before income taxes  | (38,668 )                   | (46,886 )   | (70,747 )                 | (141,538 ) |
| Provision for income taxes  | (246 )                      | (249 )      | (482 )                    | (493 )     |
| Net loss  | \$(38,914 )                 | \$(47,135 ) | (71,229 )                 | (142,031 ) |
| Net (income) loss attributable to noncontrolling interest   | 38                          | 329         | (261 )                    | 677        |
| Net loss attributable to Amyris, Inc. common stockholders   | \$(38,876 )                 | \$(46,806 ) | (71,490 )                 | (141,354 ) |
| Net loss per share attributable to common stockholders, basic and diluted   | \$(0.51 )                   | \$(0.81 )   | (0.96 )                   | (2.63 )    |
| Weighted-average shares of common stock outstanding used in computing net loss per share of common stock, basic and diluted | 75,959,228                  | 57,442,834  | 74,640,314                | 53,828,541 |

See the accompanying notes to the unaudited condensed consolidated financial statements.



**Amyris, Inc.****Condensed Consolidated Statements of Comprehensive Loss****(In Thousands)****(Unaudited)**

|   | Three Months Ended June<br>30, |              | Six Months Ended June<br>30, |               |
|---|--------------------------------|--------------|------------------------------|---------------|
|   | 2013                           | 2012         | 2013                         | 2012          |
| Comprehensive loss:   |                                |              |                              |               |
| Net loss  | \$ (38,914 )                   | \$ (47,135 ) | \$ (71,229 )                 | \$ (142,031 ) |
| Foreign currency translation adjustment, net of tax                             | (4,742 )                       | (7,407 )     | (4,031 )                     | (5,936 )      |
| Total comprehensive loss  | (43,656 )                      | (54,542 )    | (75,260 )                    | (147,967 )    |
| Loss (income) attributable to noncontrolling interest                           | 38                             | 329          | (261 )                       | 677           |
| Foreign currency translation adjustment attributable to noncontrolling interest | (62 )                          | (81 )        | (54 )                        | (168 )        |
| Comprehensive loss attributable to Amyris, Inc.                                 | \$ (43,680 )                   | \$ (54,294 ) | \$ (75,575 )                 | \$ (147,458 ) |

See the accompanying notes to the unaudited condensed consolidated financial statements.

## Amyris, Inc.

## Condensed Consolidated Statements of Stockholders' Equity

(In Thousands, Except Share and Per Share Amounts)

(Unaudited)

|  | Common Stock |        | Additional<br>Paid-in | Accumulated<br>Deficit | Accumulated<br>Other<br>Comprehensive<br>Income (Loss) | Noncontrolling<br>Interest | Total Equity |
|--|--------------|--------|-----------------------|------------------------|--|----------------------------|--------------|
|  | Shares       | Amount | Capital               |                        |  |                            |              |
| December 31, 2012  | 68,709,660   | \$ 7   | \$ 666,233            | \$ (586,327 )          | \$ (12,807 )   | \$ (877 )                  | \$ 66,229    |
| Issuance of common stock upon exercise of stock options, net of restricted stock | 475,907      | —      | 736                   | —                      | —  | —                          | 736          |
| Issuance of common stock in a private placement, net of issuance cost of \$39    | 6,567,299    | 1      | 19,960                | —                      | —  | —                          | 19,961       |
| Shares issued from restricted stock unit settlement                              | 424,825      | —      | (569 )                | —                      | —  | —                          | (569 )       |
| Stock-based compensation   | —            | —      | 9,178                 | —                      | —  | —                          | 9,178        |
| Foreign currency translation adjustment, net of tax                              | —            | —      | —                     | —                      | (4,085 )   | 54                         | (4,031 )     |
| Net income (loss)  | —            | —      | —                     | (71,490 )              | —  | 261                        | (71,229 )    |
| June 30, 2013  | 76,177,691   | \$ 8   | \$ 695,538            | \$ (657,817 )          | \$ (16,892 )   | \$ (562 )                  | \$ 20,275    |

See the accompanying notes to the unaudited condensed consolidated financial statements.

**Amyris, Inc.****Condensed Consolidated Statements of Cash Flows****(In Thousands)****(Unaudited)**

|  | Six Months Ended June 30,<br>2013 | 2012          |
|--|-----------------------------------|---------------|
| Operating activities   |                                   |               |
| Net loss   | \$ (71,229 )                      | \$ (142,031 ) |
| Adjustments to<br>reconcile net loss to<br>net cash used in<br>operating activities: |                                   |               |
| Depreciation and<br>amortization   | 8,491                             | 7,507         |
| Loss (gain) on<br>disposal of property,<br>plant and equipment                       | (38 )                             | 181           |
| Stock-based<br>compensation  | 9,178                             | 15,435        |
| Amortization of debt<br>discount   | 1,061                             | —             |
| Provision for<br>doubtful accounts   | —                                 | 236           |
| Loss on purchase<br>commitments and<br>write-off of<br>production assets             | 8,423                             | 36,652        |
| Change in fair value<br>of derivative<br>instruments                                 | (719 )                            | 1,215         |
| Other noncash<br>expenses  | 213                               | 185           |
| Changes in assets and<br>liabilities:  |                                   |               |
| Accounts receivable  | (3,467 )                          | 3,221         |
| Inventories, net   | 1,150                             | 130           |
| Prepaid expenses and<br>other assets   | 1,098                             | (3,168 )      |
| Accounts payable   | (1,912 )                          | (9,074 )      |
|  | (5,619 )                          | (1,220 )      |

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|   |         |   |         |   |
|---|---------|---|---------|---|
| Accrued and other long-term liabilities and restructuring                           |         |   |         |   |
| Deferred revenue  | 8,549   |   | (271    | ) |
| Deferred rent   | (447    | ) | (608    | ) |
| Net cash used in operating activities   | (45,268 | ) | (91,610 | ) |
| Investing activities  |         |   |         |   |
| Purchase of short-term investments  | (1,763  | ) | (8,239  | ) |
| Maturities of short-term investments  | 334     |   | —       |   |
| Sales of short-term investments   | —       |   | 16,449  |   |
| Change in restricted cash   | (1      | ) | (953    | ) |
| Purchase of property, plant and equipment, net of disposals                         | (3,711  | ) | (43,277 | ) |
| Deposits on property, plant and equipment   | —       |   | (2,088  | ) |
| Net cash used in investing activities   | (5,141  | ) | (38,108 | ) |
| Financing activities  |         |   |         |   |
| Proceeds from issuance of common stock, net of repurchases                          | 167     |   | 487     |   |
| Proceeds from issuance of common stock in private placements, net of issuance costs | 19,980  |   | 62,582  |   |
| Principal payments on capital leases  | (867    | ) | (2,076  | ) |
| Proceeds from debt issued   | 2,645   |   | 50,656  |   |
| Proceeds from debt issued to related party  | 10,000  |   | —       |   |
| Principal payments on debt  | (1,902  | ) | (9,458  | ) |
| Net cash provided by financing activities   | 30,023  |   | 102,191 |   |
| Effect of exchange rate changes on cash and cash equivalents                        | 1,297   |   | (1,112  | ) |
| Net decrease in cash and cash equivalents   | (19,089 | ) | (28,639 | ) |
|   | 30,592  |   | 95,703  |   |

Cash and cash  
equivalents at  
beginning of period  
Cash and cash  
equivalents at end of  
period

|    |        |    |        |
|----|--------|----|--------|
| \$ | 11,503 | \$ | 67,064 |
|----|--------|----|--------|

**Amyris, Inc.****Condensed Consolidated Statements of Cash Flows—(Continued)****(In Thousands)****(Unaudited)**

|  | Six Months Ended June<br>30, |           |
|--|------------------------------|-----------|
|  | 2013                         | 2012      |
| Supplemental disclosures of cash flow information:   |                              |           |
| Cash paid for interest   | \$ 1,004                     | \$ 1,760  |
| Cash paid for income taxes, net of refunds   | \$ —                         | \$ —      |
| Supplemental disclosures of noncash investing and financing activities:                                      |                              |           |
| Acquisitions of property, plant and equipment within accounts payable, accrued liabilities and notes payable | \$ 307                       | \$ 5,096  |
| Financing of insurance premium under notes payable   | \$ 147                       | \$ —      |
| Accrued offering cost of common stock in private placement   | \$ (19                       | ) \$ 92   |
| Accrued issuance cost of convertible notes   | \$ —                         | \$ 40     |
| Long-term deposits used for purchase of property, plant and equipment  | \$ —                         | \$ 11,052 |

See the accompanying notes to the unaudited condensed consolidated financial statements.



**Amyris, Inc.**

**Notes to Unaudited Condensed Consolidated Financial Statements**

**1. The Company**

Amyris, Inc. (the “Company”) was incorporated in California on July 17, 2003 and reincorporated in Delaware on June 10, 2010 for the purpose of leveraging breakthroughs in synthetic biology to develop and provide renewable compounds for a variety of markets. The Company is currently building and applying its industrial synthetic biology platform to provide alternatives to select petroleum-sourced products used in specialty chemical and transportation fuel markets worldwide. The Company's first commercialization efforts have been focused on a renewable hydrocarbon molecule called farnesene (Biofene®), which forms the basis for a wide range of products varying from specialty chemical applications to transportation fuels, such as diesel. While the Company's platform is able to use a wide variety of feedstocks, the Company is focused initially on Brazilian sugarcane. In addition, the Company has entered into various contract manufacturing agreements to support commercial production. The Company has established two principal operating subsidiaries, Amyris Brasil Ltda. (formerly Amyris Brasil S.A., “Amyris Brasil”) for production in Brazil, and Amyris Fuels, LLC (“Amyris Fuels”). Nearly all of the Company's revenues through 2012 came from the sale of ethanol and reformulated ethanol-blended gasoline with substantially all of the remaining revenues coming from collaborations, government grants and sales of renewable products. In the third quarter of 2012, the Company transitioned out of the ethanol and reformulated ethanol-blended gasoline business. The Company does not expect to be able to replace much of the revenue lost in the near term as a result of this transition, particularly in 2013, while it continues its efforts to establish a renewable products business.

Beginning in March 2012, the Company initiated a plan to shift a portion of its production capacity from contract manufacturing facilities to a Company-owned plant that was then under construction. As a result, the Company evaluated its contract manufacturing agreements and recorded a loss of \$30.4 million related to adverse purchase commitments, \$10.0 million related to the write-off of facility modification costs and \$5.5 million related to Company-owned equipment at contract manufacturing facilities in the year ended December 31, 2012. During the three and six months ended June 30, 2013, the Company recorded an additional loss of \$8.4 million, which is included in the loss on purchase commitments and write-off of production assets related to a termination and settlement of an existing agreement with one of its contract manufacturers (see Note 8 Significant Agreements). The Company regularly monitors its plan related to production capacity, sales requirements and related cost structure. Changes to this plan may result in additional losses and impairment charges.

The Company's renewable products business strategy is to focus on the commercialization of specialty products while moving established commodity products into joint venture arrangements with leading industry partners. To commercialize its products, the Company must be successful in using its technology to manufacture its products at commercial scale and on an economically viable basis (i.e., low per unit production costs). The Company is building

its experience producing renewable products at commercial scale. The Company's prospects are subject to risks, expenses and uncertainties frequently encountered by companies in this stage of development.

The Company expects to fund its operations for the foreseeable future with cash and investments currently on hand, with cash inflows from collaboration and grant funding, cash contributions from product sales, and with new debt and equity financing. The Company's planned 2013 working capital needs and its planned operating and capital expenditures for 2013 are dependent on significant inflows of cash from existing collaboration partners, as well as additional funding from new collaborations, and a pending convertible debt offering, and may also require additional funding from credit facilities or loans. The Company will continue to need to fund its research and development and related activities and to provide working capital to fund production, storage, distribution and other aspects of its business. The Company's operating plan contemplates capital expenditures of approximately \$10.0 million in 2013 and the Company expects to continue to incur costs in connection with its existing contract manufacturing arrangements (see Note 6 Debt and Note 10 Stockholders' Equity).

### *Liquidity*

The Company has incurred significant losses in each year since its inception and believes that it will continue to incur losses and negative cash flow from operations into at least 2014. As of June 30, 2013, the Company had an accumulated deficit of \$657.8 million and had cash, cash equivalents and short term investments of \$12.9 million. The Company has significant outstanding debt and contractual obligations related to purchase commitments, as well as capital and operating leases. As of June 30, 2013, the Company's debt, net of debt discount, totaled \$107.2 million, of which \$5.0 million matures within the next twelve months. In addition, the Company's debt agreements contain various covenants, including restrictions on the Company's business that could cause the Company to be at risk of defaults. Please refer to Note 5 Commitments and Contingencies and Note 6 Debt for further details regarding the Company's obligations and commitments.

In March 2013, the Company signed a collaboration agreement with Firmenich that included an annual collaboration funding component, and obtained a commitment letter from an existing stockholder with respect to additional convertible note funding of which \$10.0 million was received in the second quarter of 2013 (see Note 8 Significant Agreements and Note 6 Debt), and the Company expects to use amounts received under these arrangements to fund its operations. The Company also received \$20.0 million in funding through the sale of a convertible note in private placement under an existing funding agreement with a related party in July 2013 (see Note 17 Subsequent Events). Furthermore, the Company is expecting additional funding in 2013 from collaborations, a pending convertible debt offering, and potentially, other sources. In August 2013, the Company entered into an agreement with certain investors to sell up to \$73.1 million in convertible promissory notes in private placements over a period of up to 24 months from the date of signing. This convertible note financing requires the Company to satisfy various conditions before the funding is available, and the offering is divided into two tranches (one for \$42.6 million and one for \$30.4 million), each with differing closing conditions. Of the total possible purchase price in the financing, \$60.0 million would be paid in the form of cash (\$35.0 million in the first tranche and up to \$25.0 million in the second tranche) and \$13.1 million would be paid by cancellation of outstanding promissory notes by an existing stockholder in connection with its exercise of pro rata rights (\$7.6 million in the first tranche and \$5.4 million in the second tranche). The financing is subject to timing and completion risks, including a requirement that the Company meet certain production milestones before the second tranche is available, and a requirement that the Company obtain stockholder approval prior to completing any closings in the transaction.

Though the Company expects to close its pending convertible note financing in September 2013, if there is any significant delay in such closing, it would likely need to secure additional short-term funding in September 2013. Such short-term funding may not be available on reasonable terms or at all. For example, in order to raise sufficient additional funds, we could be forced to issue further preferred and discounted equity, agree to onerous covenants, grant security interests in our assets, enter into collaboration and licensing arrangements that require us to relinquish commercial rights or grant licenses on terms that are not favorable to us, or any or all of these. If we are unable to secure sufficient short-term funding to bridge our operations to a delayed closing or fail to complete the pending convertible debt financing within the period covered by any such short-term funding, and fail to secure alternative funding to finance our operations, we would be forced to curtail our operations and cease most of our cash expenditures, which would have a material adverse effect on our ability to continue with our business plans and our status as a going concern.

## **2. Summary of Significant Accounting Policies**

### ***Basis of Presentation***

The accompanying interim condensed consolidated financial statements have been prepared in accordance with the accounting principles generally accepted in the United States of America (“GAAP”) and with the instructions for Form 10-Q and Regulation S-X. Accordingly, they do not include all of the information and notes required for complete financial statements. These interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company’s Form 10-K filed with the Securities

and Exchange Commission (“SEC”) on March 28, 2013. The unaudited condensed consolidated financial statements include the accounts of the Company and its consolidated subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

### *Use of Estimates*

In preparing the unaudited condensed consolidated financial statements, management must make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the unaudited condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

### *Unaudited Interim Financial Information*

The accompanying interim condensed consolidated financial statements and related disclosures are unaudited, have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair statement of the results of operations for the periods presented. The year-end condensed balance sheet data was derived from audited financial statements, but does not include all disclosures required by U.S. GAAP. The condensed consolidated results of operations for any interim period are not necessarily indicative of the results to be expected for the full year or for any other future year or interim period.

### *Recent Accounting Pronouncements*

In December 2011, the International Accounting Standards Board ("IASB") and the Financial Accounting Standards Board ("FASB") issued common disclosure requirements that are intended to enhance comparability between financial statements prepared on the basis of U.S. GAAP and those prepared in accordance with International Financial Reporting Standards ("IFRS"). In January 2013, the FASB issued an accounting standard update to limit the scope of the new balance sheet offsetting disclosures to derivative instruments, repurchase agreements, and securities lending transactions to the extent that they are offset in the financial statement or subject to an enforceable master netting arrangement or similar arrangement. While this guidance does not change existing offsetting criteria in U.S. GAAP or the permitted balance sheet presentation for items meeting the criteria, it requires an entity to disclose both net and gross information about assets and liabilities that have been offset and the related arrangements. Required disclosures under this new guidance should be provided retrospectively for all comparative periods presented. This new guidance is effective for fiscal years beginning on or after January 1, 2013, and interim periods within those years, which was the Company's first quarter of fiscal 2013. The adoption of this guidance did not have a material effect on the Company's consolidated financial statements.

In July 2012, the FASB issued an amended accounting standard update to simplify how entities test indefinite-lived intangible assets for impairment which improve consistency in impairment testing requirements among long-lived asset categories. The amended guidance permits an assessment of qualitative factors to determine whether it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying value. For assets in which this assessment concludes it is more likely than not that the fair value is more than its carrying value, then the amended guidance eliminates the requirement to perform quantitative impairment testing as outlined in the previously issued standards. The amended guidance is effective for fiscal years beginning after September 15, 2012; however, early adoption is permitted. This amended guidance did not have an impact on the Company's consolidated financial statements.

In February 2013, in connection with the accounting standard related to the presentation of the Statement of Comprehensive Income, the FASB issued an accounting standard update to improve the reporting of reclassifications out of accumulated other comprehensive income of various components. This guidance requires companies to present either parenthetically on the face of the financial statements or in the notes, significant amounts reclassified from each component of accumulated other comprehensive income and the income statement line items affected by the reclassification. This standard is effective for interim periods and fiscal years beginning after December 15, 2012, which was the Company's first quarter of fiscal 2013. The adoption of this guidance did not have a material effect on the Company's consolidated financial statements.

In July 2013, the FASB issued a new accounting standard update on the financial statement presentation of unrecognized tax benefits. The new guidance provides that a liability related to an unrecognized tax benefit would be presented as a reduction of a deferred tax asset for a net operating loss carryforward, a similar tax loss or a tax credit carryforward if such settlement is required or expected in the event the uncertain tax position is disallowed. The new guidance becomes effective for the Company on January 1, 2014 and will be applied prospectively to unrecognized

tax benefits that exist at the effective date with retrospective applications permitted. The Company is currently assessing the impact of this new guidance.

### **3. Fair Value of Financial Instruments**

The inputs to the valuation techniques used to measure fair value are classified into the following categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

As of June 30, 2013, the Company's financial assets and financial liabilities are presented below at fair value and were classified within the fair value hierarchy as follows (in thousands):

|  | Level 1  | Level 2   | Level 3   | Balance as of<br>June 30, 2013 |
|--|----------|-----------|-----------|--------------------------------|
| <b>Financial Assets</b>                          |          |           |           |                                |
| Money market funds                               | \$ 1,797 | \$—       | \$—       | \$ 1,797                       |
| Certificates of deposit                          | 1,412    | —         | —         | 1,412                          |
| Total financial assets                           | \$ 3,209 | \$—       | \$—       | \$ 3,209                       |
| <b>Financial Liabilities</b>                     |          |           |           |                                |
| Loans payable <sup>(1)</sup>                     | \$—      | \$ 19,841 | \$—       | \$ 19,841                      |
| Credit facilities <sup>(1)</sup>                 | —        | 9,124     | —         | 9,124                          |
| Convertible notes <sup>(1)</sup>                 | —        | —         | 70,185    | 70,185                         |
| Compound embedded derivative liability           | —        | —         | 10,012    | 10,012                         |
| Currency interest rate swap derivative liability | —        | 2,937     | —         | 2,937                          |
| Total financial liabilities                      | \$—      | \$ 31,902 | \$ 80,197 | \$ 112,099                     |

<sup>(1)</sup> These liabilities are carried on the consolidated balance sheet on a historical cost basis.

The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability. The fair values of money market funds are based on fair values of identical assets. The fair values of the loans payable, convertible notes, credit facilities and currency interest rate swaps are based on the present value of expected future cash flows and assumptions about current interest rates and the creditworthiness of the Company. Market risk associated with fixed and variable rate long-term debt relates to the potential reduction in fair value and negative impact to future earnings, respectively, from an increase in interest rates.

The carrying amounts of certain financial instruments, such as cash equivalents, accounts receivable, accounts payable, accrued liabilities and notes payable, approximate fair value due to their relatively short maturities, and low market interest rates, if applicable. The fair values of the loans payable, convertible notes and credit facilities are based on the present value of expected future cash flows and assumptions about current interest rates and the creditworthiness of the Company.

The following table provides a reconciliation of the beginning and ending balances for the compound embedded derivative liability measured at fair value using significant unobservable inputs (Level 3) (in thousands):

|   | Compound Embedded Derivative<br>Liability |
|---|---|
| Balance at December 31, 2012                                | \$ 7,894                                  |
| Transfers in to Level 3                                     | 4,521                                     |
| Total (gain) losses included in other income (expense), net | (2,403 )                                  |
| Balance at June 30, 2013                                    | \$ 10,012                                 |

The compound embedded derivative liability, which is included in other liabilities, represents the fair value of the equity conversion option and a "make-whole" provision relating to the outstanding senior unsecured convertible promissory notes issued to Total Energies Nouvelles Activites USA (f.k.a. Total Gas & Power USA SAS) ("Total") (see Note 6 Debt). There is no current observable market for this type of derivative and, as such, the Company determined the fair value of the embedded derivative using a Black-Scholes valuation model that combines expected cash outflows with market-based assumptions regarding risk-adjusted yields, stock price volatility, probability of a change of control and the trading information of the Company's common stock into which the notes are convertible. The Company marks the embedded derivative to market due to the conversion price not being indexed to the Company's own stock. Except for the "make-whole interest" provision included in the conversion option, which is only required to be settled in cash upon a change of control at the noteholder's option, the embedded derivative will be settled in either cash or shares. As of June 30, 2013, the Company had sufficient common shares to settle the conversion option in shares.



The Company's financial assets and financial liabilities as of December 31, 2012 are presented below their fair value and were classified within the fair value hierarchy as follows (in thousands):

|  | Level 1         | Level 2         | Level 3         | Balance as of<br>December 31, 2012 |
|--|-----------------|-----------------|-----------------|------------------------------------|
| <b>Financial Assets</b>                          |                 |                 |                 |                                    |
| Money market funds                               | \$15,847        | \$—             | \$—             | \$ 15,847                          |
| Certificates of deposit                          | 757             | —               | —               | 757                                |
| <b>Total financial assets</b>                    | <b>\$16,604</b> | <b>\$—</b>      | <b>\$—</b>      | <b>\$ 16,604</b>                   |
| <b>Financial Liabilities</b>                     |                 |                 |                 |                                    |
| Notes payable <sup>(1)</sup>                     | \$—             | \$1,676         | \$—             | \$ 1,676                           |
| Loans payable <sup>(1)</sup>                     | —               | 20,707          | —               | 20,707                             |
| Credit facilities <sup>(1)</sup>                 | —               | 11,503          | —               | 11,503                             |
| Convertible notes <sup>(1)</sup>                 | —               | —               | 62,522          | 62,522                             |
| Compound embedded derivative liability           | —               | —               | 7,894           | 7,894                              |
| Currency interest rate swap derivative liability | —               | 1,367           | —               | 1,367                              |
| <b>Total financial liabilities</b>               | <b>\$—</b>      | <b>\$35,253</b> | <b>\$70,416</b> | <b>\$ 105,669</b>                  |

<sup>(1)</sup> These liabilities are carried on the consolidated balance sheet on a historical cost basis.

### ***Derivative Instruments***

The Company's derivative instruments included Chicago Board of Trade (CBOT) ethanol futures and Reformulated Blendstock for Oxygenate Blending (RBOB) gasoline futures. All derivative commodity instruments were recorded at fair value on the consolidated balance sheets. None of the Company's derivative instruments were designated as a hedging instrument. Changes in the fair value of these non-designated hedging instruments were recognized in cost of products sold in the consolidated statements of operations. As of June 30, 2013, the Company had no outstanding derivative commodity instruments resulting from the Company's transition out of its ethanol and ethanol-blended gasoline business in the quarter ended September 30, 2012.

In June 2012, the Company entered into a loan agreement with Banco Pine S.A. under which the bank provided the Company with a short term loan of R\$52.0 million (approximately US\$25.6 million based on the exchange rate as of September 30, 2012, the time of the loan repayment) (the "Bridge Loan"). At the time of the Bridge Loan, the Company also entered into a currency interest rate swap arrangement with Banco Pine with respect to the repayment of R\$22.0 million (approximately US\$9.9 million based on the exchange rate of as of June 30, 2013). The swap arrangement exchanges the principal and interest payments under the Banco Pine loan of R\$22.0 million entered into in July 2012

for alternative principal and interest payments that are subject to adjustment based on fluctuations in the foreign exchange rate between the U.S. dollar and Brazilian real. The swap has a fixed interest rate of 3.94%. Changes in the fair value of the swap are recognized in other income (expense), net in the consolidated statements of operations.

As of June 30, 2013, included in Other Liabilities is the Company's compound embedded derivative liability of \$10.0 million and represents the fair value of the equity conversion option and a "make-whole" provision relating to the outstanding senior unsecured convertible promissory notes issued to Total (see Note 6 Debt).

Derivative instruments measured at fair value as of June 30, 2013 and December 31, 2012, and their classification on the consolidated balance sheets and consolidated statements of operations, are presented in the following tables (in thousands except contract amounts):

| Type of Derivative Contract   | Asset/Liability as of                  |  |
|---|--|--|
|   | June 30, 2013                          | December 31, 2012                      |
|   | Quantity of<br>Fair Value<br>Contracts | Quantity of<br>Fair Value<br>Contracts |
| Currency interest rate swap, included as net liability in other long term liability | 1 \$ 2,937                             | 1 \$ 1,367                             |

| Type of Derivative Contract             | Income Statement Classification | Three Months Ended<br>June 30, |             | Six Months Ended June<br>30, |           |
|---|---------------------------------|--------------------------------|-------------|------------------------------|-----------|
|   |                                 | 2013                           | 2012        | 2013                         | 2012      |
| Regulated fixed price futures contracts | Cost of products sold           | \$ —                           | \$ 462      | \$ —                         | \$ (258 ) |
| Currency interest rate swap             | Other income (expense), net     | \$ (1,505 )                    | \$ (1,215 ) | \$ (1,570 )                  | (1,215 )  |

#### 4. Balance Sheet Components

##### *Inventories*

Inventories are stated at the lower of cost or market and consist of the following (in thousands):

|                  | June<br>30,<br>2013 | December<br>31,<br>2012 |
|------------------|---------------------|-------------------------|
| Raw materials    | \$ 1,143            | \$ 1,574                |
| Work-in-process  | 1,374               | 1,771                   |
| Finished goods   | 1,548               | 2,689                   |
| Inventories, net | \$ 4,065            | \$ 6,034                |

The Company evaluates the recoverability of its inventories based on assumptions about expected demand and net realizable value. If the Company determines that the cost of inventories exceeds its estimated net realizable value, the Company records a write-down equal to the difference between the cost of inventories and the estimated net realizable value. Cost is computed on a first-in, first-out basis. Inventory costs include transportation costs incurred in bringing the inventory to its existing location. The Company also evaluates the terms of its agreements with its suppliers and establishes accruals for estimated adverse purchase commitments as necessary, applying the same lower of cost or market approach that is used to value inventory.

##### *Property, Plant and Equipment, net*

Property, plant and equipment, net is comprised of the following (in thousands):

|   |   | June 30,<br>2013 | December 31,<br>2012 |
|---|---|------------------|----------------------|
|   | Useful Life                                   |                  |                      |
| Leasehold improvements                          | Lesser of remaining useful life or lease term | \$39,118         | \$ 39,290            |
| Machinery and equipment                         | 7 - 15 Years                                  | 98,039           | 105,162              |
| Computers and software                          | 3 - 5 Years                                   | 8,442            | 8,232                |
| Furniture and office equipment                  | 5 years                                       | 2,458            | 2,467                |
| Buildings                                       | 15 Years                                      | 6,789            | 5,888                |
| Vehicles  | 5 years                                       | 499              | 575                  |
| Construction in progress                        |   | 43,055           | 45,372               |
|   |   | \$198,400        | 206,986              |
| Less: accumulated depreciation and amortization |   | (54,259 )        | (43,865 )            |
| Property, plant and equipment, net              |   | \$144,141        | \$ 163,121           |

The Company's first, purpose-built, large-scale Biofene production plant in southeastern Brazil commenced operations in December 2012. This plant is in Brotas in the state of São Paulo and is adjacent to an existing sugar and ethanol mill, Paraíso Bioenergia. The Company's construction in progress consists primarily of the upfront plant design and the initial construction of a second large-scale production plant in Brazil, located at the Usina São Martinho sugar and ethanol mill (also in the state of São Paulo).

Property, plant and equipment, net includes \$3.4 million and \$9.1 million of machinery and equipment and furniture and office equipment under capital leases as of June 30, 2013 and December 31, 2012, respectively. Accumulated amortization of assets under capital leases totaled \$1.1 million and \$4.1 million as of June 30, 2013 and December 31, 2012, respectively.

Depreciation and amortization expense, including amortization of assets under capital leases, was \$4.1 million and \$3.7 million for the three months ended June 30, 2013 and 2012, respectively, and was \$8.5 million and \$7.3 million for the six months ended June 30, 2013 and 2012, respectively.

The Company capitalizes interest costs incurred to construct plant and equipment. The capitalized interest is recorded as part of the depreciable cost of the asset to which it relates to and is amortized over the asset's estimated useful life. Interest cost capitalized as of June 30, 2013 and December 31, 2012 was R\$1.1 million (approximately \$0.5 million and \$0.6 million based on the exchange rate as of June 30, 2013 and December 31, 2012, respectively).

#### *Accrued and Other Current Liabilities*

Accrued and other current liabilities are comprised of the following (in thousands):

|  | June 30,<br>2013 | December 31,<br>2012 |
|--|------------------|----------------------|
| Professional services                                      | \$2,903          | \$ 824               |
| Accrued vacation   | 2,481            | 2,673                |
| Payroll and related expenses                               | 4,006            | 5,809                |
| Tax-related liabilities                                    | 707              | 851                  |
| Deferred rent, current portion                             | 1,111            | 1,448                |
| Accrued interest   | 1,302            | 965                  |
| Contractual obligations to contract manufacturers, current | 9,275            | 9,952                |
| Customer advances  | 372              | 970                  |
| Other  | 588              | 918                  |
| Total accrued and other current liabilities                | \$22,745         | \$ 24,410            |

#### *Other Liabilities*

Other liabilities are comprised of the following (in thousands):

|   | June 30,<br>2013 | December 31,<br>2012 |
|---|------------------|----------------------|
| Contractual obligations to contract manufacturers, non-current      | \$2,000          | \$ 4,000             |
| Fair market value of swap obligations                               | 2,937            | 1,367                |
| Fair value of compound embedded derivative liability <sup>(1)</sup> | 10,012           | 7,894                |
| Tax-related liabilities <sup>(2)</sup>                              | 1,932            | 1,609                |
| Other <sup>(2)</sup>  | 1,008            | 1,063                |
| Total other liabilities   | \$17,889         | \$ 15,933            |

(1) The compound embedded derivative liability represents the fair value of the equity conversion feature and a "make-whole" feature related to the outstanding senior unsecured convertible promissory notes issued to Total.

(2) Certain reclassifications of prior period amounts have been made to conform to the current period presentation. Such reclassifications did not change previously reported consolidated financial statements.

## 5. Commitments and Contingencies

The Company leased certain facilities and financed certain of its equipment under operating and capital leases. Operating leases include leased facilities and capital leases included leased equipment (see Note 4 Balance Sheet Components). Rent expense under operating leases was approximately \$1.4 million and \$1.2 million respectively, for the three months ended June 30, 2013 and 2012, respectively, and was \$2.1 million and \$2.4 million for the six months ended June 30, 2013 and 2012, respectively.

On April 30, 2013, the Company entered into an amendment to its operating lease for its headquarters in Emeryville, California (the "Amendment"). The operating lease amendment provided for an extension of the lease term to May 2023, a modification of the base rent and elimination of the Company's loans and notes payable to the lessor of approximately \$1.6 million (see Note 6 Debt). In addition, per the terms of the Amendment, the Company also received a rent credit of approximately \$71,000 per month for the period June 2013 through December 2013 and a rent credit of approximately \$42,000 per month for the full year 2014.

Future minimum payments under the Company's lease obligations as of June 30, 2013, are as follows (in thousands):

| Years ending December 31:               | Capital<br>Leases | Operating<br>Leases | Total Lease<br>Obligations |
|---|-------------------|---------------------|----------------------------|
| 2013 (Six Months)                       | \$549             | \$ 3,009            | \$ 3,558                   |
| 2014                                    | 1,007             | 6,108               | 7,115                      |
| 2015                                    | 289               | 6,663               | 6,952                      |
| 2016                                    | —                 | 6,685               | 6,685                      |
| 2017                                    | —                 | 6,586               | 6,586                      |
| Thereafter                              | —                 | 39,009              | 39,009                     |
| Total future minimum lease payments     | 1,845             | \$ 68,060           | \$ 69,905                  |
| Less: amount representing interest      | (103 )            |                     |                            |
| Present value of minimum lease payments | 1,742             |                     |                            |
| Less: current portion                   | (1,014)           |                     |                            |
| Long-term portion                       | \$728             |                     |                            |

### ***Guarantor Arrangements***

The Company has agreements whereby it indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was, serving at the Company's request in such capacity. The term of the indemnification period is for the officer or director's lifetime. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that limits its exposure and enables the Company to recover a portion of any future amounts paid. As a result of its insurance policy coverage, the Company believes the estimated fair value of these indemnification agreements is minimal. Accordingly, the Company had no liabilities recorded for these agreements as of June 30, 2013 and December 31, 2012.

The Company has a credit facility ("FINEP Credit Facility") with a financial institution to finance a research and development project on sugarcane-based biodiesel (see Note 6 Debt). The FINEP Credit Facility provides for loans of up to an aggregate principal amount of R\$6.4 million (approximately US\$2.9 million based on the exchange rate as of June 30, 2013) which is guaranteed by a chattel mortgage on certain equipment of the Company. The Company's total acquisition cost for the equipment under this guarantee is approximately R\$6.0 million (approximately US\$2.7 million

based on the exchange rate as of June 30, 2013). Through December 31, 2012, the Company received all four disbursements after compliance with certain terms and conditions under the FINEP Credit Facility as described in more detail in Note 6. After the release of the first disbursement and prior to any subsequent drawdown from the FINEP Credit Facility, the Company provided bank letters of guarantee of R\$3.3 million (approximately US\$1.5 million based on the exchange rate as of June 30, 2013) through Banco ABC Brasil S.A. As of June 30, 2013, all available credit under this facility was fully drawn.

The Company has a credit facility (“BNDES Credit Facility”) with a financial institution to finance a production site in Brazil. This credit facility is collateralized by a first priority security interest in certain of the Company's equipment and other tangible assets totaling R\$24.9 million (approximately US\$11.2 million based on the exchange rate as of June 30, 2013). The Company is a parent guarantor for the payment of the outstanding balance under the BNDES Credit Facility. Additionally, the Company is required to provide a bank guarantee under the BNDES Credit Facility.

The Company has signed loan agreements and a security agreement where the Company pledged certain farnesene production assets as collateral (the fiduciary conveyance of movable goods) with each of Nossa Caixa and Banco Pine. Under the loan agreements, Banco Pine agreed to lend R\$22.0 million and Nossa Caixa agreed to lend R\$30.0 million as financing for capital expenditures relating to the Company's production facility in Brotas. The Company's total acquisition cost for the farnesene production assets pledged as collateral under these agreements is approximately R\$68.0 million (approximately US\$30.7 million based on the exchange rate as of June 30, 2013). The Company is also a parent guarantor for the payment of the outstanding balance under these loan agreements.



The Company has an export financing agreement for approximately US\$2.5 million (approximately R\$5.0 million based on exchange rate as of March 18, 2013) for a 1 year-term to fund exports through March 2014. This loan is collateralized by future exports from the Company's subsidiary in Brazil.

Under an operating lease agreement for its office facilities in Brazil, which commenced on November 15, 2011, the Company is required to maintain restricted cash or letters of credit equal to 3 months of rent of approximately R\$0.2 million (approximately US\$0.1 million based on the exchange rate as of June 30, 2013) in the aggregate as a guarantee that the Company will meet its performance obligations under such operating lease agreement.

### ***Purchase Obligations***

As of June 30, 2013, the Company had \$11.6 million in purchase obligations which included \$10.9 million in non-cancelable contractual obligations and construction commitments, of which \$4.0 million have been accrued as loss on purchase commitments.

On June 25, 2013, the Company and Tate & Lyle Ingredients Americas LLC (“Tate & Lyle”) entered into a Settlement Agreement, Termination Agreement and Mutual Release (the “Termination Agreement”) to terminate the parties’ November 2010 contract manufacturing agreement. Under the Termination Agreement, no further payments will be owed for the remaining term of the Contract Manufacturing Agreement (i.e., through 2016). As of June 30, 2013 the Company has an outstanding liability of \$8.8 million pertaining to its obligation under the Termination Agreement. In July 2013, the Company paid \$3.6 million of its obligation pertaining to the Termination Agreement.

### ***Other Matters***

Certain conditions may exist as of the date the financial statements are issued which may result in a loss to the Company but will only be recorded when one or more future events occur or fail to occur. The Company's management assesses such contingent liabilities, and such assessment inherently involves an exercise of judgment. In assessing loss contingencies related to legal proceedings that are pending against and by the Company or unasserted claims that may result in such proceedings, the Company's management evaluates the perceived merits of any legal proceedings or unasserted claims as well as the perceived merits of the amount of relief sought or expected to be sought.

If the assessment of a contingency indicates that it is probable that a material loss has been incurred and the amount of the liability can be estimated, then the estimated liability would be accrued in the Company's financial statements. If

the assessment indicates that a potential material loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, then the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material would be disclosed. Loss contingencies considered to be remote by management are generally not disclosed unless they involve guarantees, in which case the guarantee would be disclosed.

In May 2013, a securities class action complaint was filed against the Company and its CEO, John G. Melo, in the U.S. District Court for the Northern District of California. The complaint seeks unspecified damages on behalf of a purported class that would comprise all individuals who acquired the Company's common stock between April 29, 2011 and February 8, 2012. The complaint alleges securities law violations based on the Company's commercial projections during that period. The Company believes the complaint lacks merit, and intends to defend itself vigorously. Because the case is at a very early stage and no specific monetary demand has been made, it is not possible for us to estimate the potential loss or range of potential losses for the case.

The Company is subject to disputes and claims that arise or have arisen in the ordinary course of business and that have not resulted in legal proceedings or have not been fully adjudicated. Such matters that may arise in the ordinary course of business are subject to many uncertainties and outcomes are not predictable with assurance. Therefore, if one or more of these legal disputes or claims resulted in settlements or legal proceedings that were resolved against the Company for amounts in excess of management's expectations, the Company's consolidated financial statements for the relevant reporting period could be materially adversely affected.

## 6. Debt

Debt is comprised of the following (in thousands):

|                                 | June 30,<br>2013 | December 31,<br>2012 |
|---------------------------------|------------------|----------------------|
| Credit facilities               | \$ 10,357        | \$ 12,409            |
| Notes payable                   | —                | 1,572                |
| Convertible notes               | 25,000           | 25,000               |
| Related party convertible notes | 45,572           | 39,033               |
| Loans payable                   | 26,253           | 26,150               |
| Total debt                      | 107,182          | 104,164              |
| Less: current portion           | (4,959 )         | (3,325 )             |
| Long-term debt                  | \$ 102,223       | \$ 100,839           |

### *FINEP Credit Facility*

In November 2010, the Company entered into a credit facility with Financiadora de Estudos e Projetos (“FINEP”), a state-owned company subordinated to the Brazilian Ministry of Science and Technology. This FINEP Credit Facility was extended to partially fund expenses related to the Company’s research and development project on sugarcane-based biodiesel (“FINEP Project”) and provides for loans of up to an aggregate principal amount of R\$6.4 million (approximately US\$2.9 million based on the exchange rate as of June 30, 2013) which is secured by a chattel mortgage on certain equipment of the Company as well as by bank letters of guarantee. As of December 31, 2012, all available credit under this facility was fully drawn.

Interest on loans drawn under this credit facility is fixed at 5% per annum. In case of default under or non-compliance with the terms of the agreement, the interest on loans will be dependent on the long-term interest rate as published by the Central Bank of Brazil (“TJLP”). If the TJLP at the time of default is greater than 6%, then the interest will be 5% plus a TJLP adjustment factor, otherwise the interest will be at 11% per annum. In addition, a fine of up to 10% shall apply to the amount of any obligation in default. Interest on late balances will be 1% interest per month, levied on the overdue amount. Payment of the outstanding loan balance is being made in 81 monthly installments, which commenced in July 2012 and extends through March 2019. Interest on loans drawn and other charges are paid on a monthly basis and commenced in March 2011. As of June 30, 2013 and December 31, 2012, the total outstanding loan balance under this credit facility was R\$5.8 million (approximately US\$2.6 million based on exchange rate as of June 30, 2013) and R\$6.4 million (approximately US\$3.1 million based on exchange rate as of December 31, 2012), respectively.

The FINEP Credit Facility contains the following significant terms and conditions:

- The Company would share with FINEP the costs associated with the FINEP Project. At a minimum, the Company would contribute from its own funds approximately R\$14.5 million (approximately US\$7.1 million based on the exchange rate as of December 31, 2012) of which R\$11.1 million was to be contributed prior to the release of the second disbursement. As of December 31, 2012, all four disbursements were completed and for its part, the Company has fulfilled all of its cost sharing obligations;
- After the release of the first disbursement, prior to any subsequent drawdown from the FINEP Credit Facility, the Company was required to provide bank letters of guarantee of up to R\$3.3 million in aggregate (approximately US\$1.5 million based on the exchange rate as of June 30, 2013). On December 17, 2012 and prior to release of the second disbursement on December 26, 2012, the Company obtained the required bank letter of guarantees from Banco ABC Brasil, S.A.
- Amounts released from the FINEP Credit Facility must be completely used by the Company towards the FINEP Project within 30 months after the contract execution.

#### ***BNDES Credit Facility***

In December 2011, the Company entered into a credit facility ("BNDES Credit Facility") in the amount of R\$22.4 million (approximately US\$10.1 million based on the exchange rate at June 30, 2013) with Banco Nacional de Desenvolvimento Econômico e Social ("BNDES"), a government owned bank headquartered in Brazil. This BNDES facility was extended as project financing for a production site in Brazil. The credit line is divided into an initial tranche for up to approximately R\$19.1 million (approximately US\$8.6 million based on the exchange rate at June 30, 2013) and an additional tranche of approximately R\$3.3 million (approximately US\$1.5 million based on the exchange rate at June 30, 2013) that becomes available upon delivery of additional guarantees. The credit line is available for 12 months from the date of the Credit Facility, subject to extension by the lender.

The principal of the loans under the BNDES Credit Facility is required to be repaid in 60 monthly installments, with the first installment due in January 2013 and the last due in December 2017. Interest was due initially on a quarterly basis with the first installment due in March 2012. From and after January 2013, interest payments are due on a monthly basis together with principal payments. The loaned amounts carry interest of 7% per annum. Additionally, there is a credit reserve charge of 0.1% on the unused balance from each credit installment from the day immediately after it is made available through its date of use, when it is paid.

The BNDES Credit Facility is collateralized by a first priority security interest in certain of the Company's equipment and other tangible assets totaling R\$24.9 million (approximately US\$11.2 million based on the exchange rate as of June 30, 2013). The Company is a parent guarantor for the payment of the outstanding balance under the BNDES Credit Facility. Additionally, the Company is required to provide a bank guarantee equal to 10.0% of the total approved amount (R\$22.4 million in total debt) available under this Credit Facility. For advances of the second tranche (above R\$19.1 million), the Company is required to provide additional bank guarantees equal to 90.0% of each such advance, plus additional Company guarantees equal to at least 130.0% of such advance. The BNDES Credit Facility contains customary events of default, including payment failures, failure to satisfy other obligations under this credit facility or related documents, defaults in respect of other indebtedness, bankruptcy, insolvency and inability to pay debts when due, material judgments, and changes in control of Amyris Brasil. If any event of default occurs, the Lender may terminate its commitments and declare immediately due all borrowings under the facility. As of June 30, 2013 and December 31, 2012 the Company had R\$17.2 million (approximately US\$7.8 million based on the exchange rate as of June 30, 2013) and R\$19.1 million (approximately US\$9.3 million based on the exchange rate as of December 31, 2012) in outstanding advances under the BNDES Credit Facility.

### *Notes Payable*

During the period between May 2008 and October 2008, the Company entered into notes payable agreements with the lessor of its headquarters under which it borrowed a total of \$3.3 million for the purchase of tenant improvements, bearing an interest rate of 9.5% per annum and to be repaid over a period of 55 to 120 months. As of June 30, 2013 and December 31, 2012, a principal amount of zero and \$1.6 million, respectively, was outstanding under these notes payable. During the three months ended June 30, 2013, as part of the Amendment entered into on April 30, 2013 to the Company's operating lease for its headquarters, the Company recorded the elimination of these notes payable as a lease incentive and recorded approximately \$1.4 million to deferred rent liability in the consolidated balance sheet.

### *Convertible Notes*

In February 2012, the Company completed the sale of senior unsecured convertible promissory notes in an aggregate principal amount of \$25.0 million pursuant to a Securities Purchase Agreement, between the Company and certain investment funds affiliated with Fidelity Investments Institutional Services Company, Inc. The offering consisted of the sale of 3.0% senior unsecured convertible promissory notes with a March 1, 2017 maturity date and an initial

conversion price equal to \$7.0682 per share of the Company's common stock, subject to adjustment for proportional adjustments to outstanding common stock and anti-dilution provisions in case of dividends and distributions. As of June 30, 2013, the notes were convertible into an aggregate of up to 3,536,968 shares of common stock. The note holders have a right to require repayment of 101% of the principal amount of the notes in an acquisition of the Company, and the notes provide for payment of unpaid interest on conversion following such an acquisition if the note holders do not require such repayment. The securities purchase agreement and notes include covenants regarding payment of interest, maintaining the Company's listing status, limitations on debt, maintenance of corporate existence, and filing of SEC reports. The notes include standard events of default resulting in acceleration of indebtedness, including failure to pay, bankruptcy and insolvency, cross-defaults, material adverse effect clauses and breaches of the covenants in the securities purchase agreement and notes, with default interest rates and associated cure periods applicable to the covenant regarding SEC reporting. Furthermore, the senior unsecured convertible notes include restrictions on the amount of debt the Company is permitted to incur. The Company's total outstanding debt at any time cannot exceed the greater of \$200.0 million or 50% of its consolidated total assets and its secured debt cannot exceed the greater of \$125 million or 30% of its consolidated total assets. As of June 30, 2013 and December 31, 2012, a principal amount of \$25.0 million and \$25.0 million, respectively, was outstanding under these notes payable.

#### ***Related Party Convertible Notes***

In July 2012, the Company entered into a further amendment of the collaboration agreement with Total that expanded Total's investment in the biofene collaboration, incorporated the development of certain joint venture products for use in diesel and jet fuel into the scope of the collaboration, provided a new structure for the research and development program and formation of the joint venture (the "Fuels JV") to commercialize the products encompassed by the diesel and jet fuel research and development program (the "Program") and changed the structure of the funding from Total to include a convertible debt mechanism.

The purchase agreement for the notes related to the funding from Total provides for the sale of an aggregate of \$105.0 million in notes as follows:

- As part of an initial closing under the purchase agreement (which initial closing was completed in two installments), (i) on July 30, 2012, the Company sold a 1.5% Senior Unsecured Convertible Note Due 2017 to Total in the face amount of \$38.3 million, including \$15.0 million in new funds and \$23.3 million in previously-provided diesel research and development funding by Total, and (ii) on September 14, 2012, the Company sold another note (in the same form) for \$15.0 million in new funds from Total.
- The purchase agreement provides that additional notes may be sold in subsequent closings in July 2013 (for cash proceeds to the Company of \$30.0 million) and July 2014 (for cash proceeds to the Company of \$21.7 million, which would be settled in an initial installment of \$10.85 million payable at such closing and a second installment of \$10.85 million payable in January 2015).

The notes each have a March 1, 2017 maturity date and an initial conversion price equal to \$7.0682 per share of the Company's common stock. The notes bear interest of 1.5% per annum (with a default rate of 2.5%), accruing from the date of funding and payable at maturity or on conversion or a change of control where Total exercises the right to require the Company to repay the notes. Accrued interest is canceled if the notes are canceled based on a "Go" decision. The agreements contemplate that the research and development efforts under the Program may extend through 2016, with a series of "Go/No Go" decisions by Total through such date tied to funding by Total.

The notes become convertible into the Company's common stock (i) within 10 trading days prior to maturity (if they are not canceled as described above prior to their maturity date), (ii) on a change of control of the Company, (iii) if Total is no longer the largest stockholder of the Company following a "No-Go" decision (subject to a six-month lock-up with respect to any shares of common stock issued upon conversion), and (iv) on a default by the Company. If Total makes a final "Go" decision, then the notes will be exchanged by Total for equity interests in the Fuels JV, after which the notes will not be convertible and any obligation to pay principal or interest on the notes will be extinguished. If Total makes a "No-Go" decision, outstanding notes will remain outstanding and become payable at maturity.

In connection with the Private Placement that occurred on December 24, 2012, Total elected to participate in the Private Placement by exchanging approximately \$5.0 million of its \$53.3 million in senior unsecured convertible promissory notes then outstanding for 1,677,852 of the Company's common stock at \$2.98 per share. As such, \$5.0 million of the outstanding \$53.3 million in senior unsecured convertible promissory notes was cancelled. The cancellation of the debt was treated as an extinguishment of debt in accordance with the guidance outlined in ASC 470-50.

On March 24, 2013, the Company entered into a letter agreement with Total under which Total agreed to waive its right to cease its participation in the parties' fuels collaboration at the July 2013 decision point and committed to proceed with the July 2013 funding tranche of \$30.0 million (subject to the Company's satisfaction of the relevant closing conditions for such funding in the securities purchase agreement). As consideration for this waiver and commitment, the Company agreed to:

- Reduce the conversion price for the senior unsecured convertible promissory notes to be issued in connection with such funding from \$7.0682 per share to a price per share equal to the greater of (i) the consolidated closing bid price of the Company's common stock on the date of the letter agreement, plus \$0.01, and (ii) \$3.08 per share, provided that the conversion price will not be reduced by more than the maximum possible amount permitted under the NASDAQ rules such that the new conversion price would require the Company to obtain stockholder consent; and
- Grant Total a senior security interest in the Company's intellectual property, subject to certain exclusions and subject to release by Total when the Company and Total enter into final documentation regarding the establishment of the Fuels JV.

In addition to the waiver by Total described above, Total also agreed that, at the Company's request and contingent upon the Company meeting its obligations described above, it would pay advance installments of the amounts otherwise payable at the July 2013 closing. Specifically, if the Company requested such advance installments, subject to certain closing conditions and delivery of certifications regarding the Company's cash levels, Total was obligated to fund \$10.0 million no later than May 15, 2013, and an additional \$10.0 million no later than June 15, 2013, with the remainder to be funded on the original July 2013 closing date.

On June 6, 2013, the Company sold and issued a 1.5% Senior Unsecured Convertible Note to Total in an aggregate principal amount of \$10.0 million with a March 1, 2017 maturity date pursuant to the July 30, 2012 purchase agreement as discussed above. In accordance with the Letter Agreement dated March 24, 2013 this convertible note has a conversion price equal to \$3.08 per share of the Company's common stock. The Company did not request the initial \$10.0 million advance, due no later than May 15, 2013, but did request the June advance (as described above), under which this convertible note was issued.



The conversion price of the notes is subject to adjustment for proportional adjustments to outstanding common stock and under anti-dilution provisions in case of certain dividends and distributions. Total has a right to require repayment of 101% of the principal amount of the notes in the event of a change of control of the Company and the notes provide for payment of unpaid interest on conversion following such a change of control if Total does not require such repayment. The purchase agreement and notes include covenants regarding payment of interest, maintenance of the Company's listing status, limitations on debt, maintenance of corporate existence, and filing of SEC reports. The notes include standard events of default resulting in acceleration of indebtedness, including failure to pay, bankruptcy and insolvency, cross-defaults, and breaches of the covenants in the purchase agreement and notes, with added default interest rates and associated cure periods applicable to the covenant regarding SEC reporting. Furthermore, the senior unsecured convertible notes include restrictions on the amount of debt the Company is permitted to incur. The Company's total outstanding debt at any time cannot exceed the greater of \$200.0 million or 50% of its consolidated total assets and its secured debt cannot exceed the greater of \$125.0 million or 30% of its consolidated total assets. As of June 30, 2013 and December 31, 2012, \$45.6 million and \$39.0 million, respectively, was outstanding under these convertible notes, net of debt discount of \$12.7 million and \$9.3 million, respectively.

### *Loans Payable*

In December 2009, the Company entered into a loans payable agreement with the lessor of its Emeryville pilot plant under which it borrowed a total of \$250,000, bearing an interest rate of 10.0% per annum and to be repaid over a period of 96 months. As of June 30, 2013 and December 31, 2012, a principal amount of zero and \$177,000, respectively, was outstanding under the loan. During the three months ended June 30, 2013, as part of the Amendment entered into on April 30, 2013 to the Company's operating lease for its headquarters, the Company recorded the elimination of this loan payable as a lease incentive and recorded approximately \$168,000 to deferred rent liability in the consolidated balance sheet.

In June 2012, the Company entered into a loan agreement with Banco Pine under which Banco Pine provided the Company with a short-term bridge loan of R\$52.0 million (approximately US\$25.6 million based on the exchange rate as of September 30, 2012, the time of loan repayment). The interest rate for the bridge loan was 0.4472% monthly (approximately 5.5% on an annualized basis). The principal and interest due under the bridge loan matured and were required to be repaid on September 19, 2012, subject to extension by Banco Pine. At the time of this bridge loan, the Company entered into a currency interest rate swap arrangement with the lender for R\$22.0 million (approximately US\$9.9 million based on the exchange rate as of June 30, 2013). The interest rate swap arrangement exchanged the principal and interest payments under the Banco Pine loan of R\$22.0 million entered into in July 2012 for alternative principal and interest payments that were subject to adjustment based on fluctuations in the foreign exchange rate between the U.S. dollar and Brazilian real. The swap had a fixed interest rate of 3.94%. In July 2012, the Company repaid the outstanding bridge loan of R\$52.0 million from Banco Pine.

In July 2012, the Company entered into a Note of Bank Credit and a Fiduciary Conveyance of Movable Goods agreements with each of Nossa Caixa and Banco Pine. Under these agreements, the Company's total acquisition cost for the farnesene production assets pledged as collateral was approximately R\$68.0 million (approximately US\$30.7

million based on the exchange rate as of June 30, 2013). The Company is also a parent guarantor for the payment of the outstanding balance under these loan agreements. Under such instruments, the Company could borrow an aggregate of R\$52.0 million (approximately US\$23.5 million based on the exchange rate as of June 30, 2013) as financing for capital expenditures relating to the Company's manufacturing facility in Brotas. Under the loan agreements, Banco Pine, agreed to lend R\$22.0 million and Nossa Caixa agreed to lend R\$30.0 million. The funds for the loans are provided by Banco Nacional de Desenvolvimento Econômico e Social ("BNDES"), but are guaranteed by the lenders. The loans have a final maturity date of July 15, 2022 and bear a fixed interest rate of 5.5% per year. The loans are also subject to early maturity and delinquency charges upon occurrence of certain events including interruption of manufacturing activities at Brotas for more than 30 days, except during sugarcane off-season. For the first two years that the loans are outstanding, the Company is required to pay interest only on a quarterly basis. After August 15, 2014, the Company is required to pay equal monthly installments of both principal and interest for the remainder of the term of the loans. As of June 30, 2013 and December 31, 2012, a principal amount of \$23.5 million and \$25.4 million, respectively, was outstanding under these loan agreements.

In October 2012, the Company entered into a loan payable agreement with a lender under which it borrowed \$0.6 million to pay the insurance premiums of certain policies. The loan is payable in nine monthly installments of principal and interest. Interest accrues at a rate of 3.24% per annum. As of June 30, 2013 and December 31, 2012, the outstanding unpaid loan balance was zero and \$0.4 million, respectively.

On March 18, 2013, the Company entered into an export financing agreement with Banco ABC Brasil S.A. ("ABC Bank") for approximately US\$2.5 million (approximately R\$5.0 million based on exchange rate as of March 18, 2013) for a 1 year-term to fund exports through March 2014. This loan is collateralized by future exports from the Company's subsidiary in Brazil. As of June 30, 2013, the principal amount outstanding was US\$2.5 million.

**Letters of Credit**

In June 2012, the Company entered into a letter of credit agreement for \$1.0 million under which it provided a letter of credit to the landlord for its headquarters in Emeryville, California in order to cover the security deposit on the lease. The letter of credit is secured by a certificate of deposit. Accordingly, the Company has \$1.0 million as restricted cash as of June 30, 2013 and December 31, 2012.

Future minimum payments under the debt agreements as of June 30, 2013 are as follows (in thousands):

| Years ending December 31:              | Related Party<br>Convertible Debt | Convertible<br>Debt | Loans Payable | Credit Facility |
|--|-----------------------------------|---------------------|---------------|-----------------|
| 2013 (Six Months)                      | \$ —                              | \$ 383              | \$ 921        | \$ 1,403        |
| 2014                                   | —                                 | 760                 | 5,287         | 2,698           |
| 2015                                   | —                                 | 765                 | 4,069         | 2,559           |
| 2016                                   | —                                 | 761                 | 3,912         | 2,419           |
| 2017                                   | 62,187                            | 25,125              | 3,750         | 2,279           |
| Thereafter                             | —                                 | —                   | 15,150        | 583             |
| Total future minimum payments          | 62,187                            | 27,794              | 33,089        | 11,941          |
| Less: amount representing interest     | (16,615)                          | ) (2,794)           | ) (6,836)     | ) (1,584)       |
| Present value of minimum debt payments | 45,572                            | 25,000              | 26,253        | 10,357          |
| Less: current portion                  | —                                 | —                   | ) (2,783)     | ) (2,176)       |
| Noncurrent portion of debt             | \$ 45,572                         | \$ 25,000           | \$ 23,470     | \$ 8,181        |

**7. Joint Ventures and Noncontrolling Interest*****SMA Indústria Química***

On April 14, 2010, the Company established SMA Indústria Química ("SMA"), a joint venture with Usina São Martinho, to build the first facility in Brazil fully dedicated to the production of Amyris renewable products. The new company is located at the Usina São Martinho mill in Pradópolis, São Paulo state. SMA has a 20 year initial term.

SMA is managed by a three member executive committee, of which the Company appoints two members, one of whom is the plant manager who is the most senior executive responsible for managing the construction and operation of the facility. SMA is governed by a four member board of directors, of which the Company and Usina São Martinho

each appoint two members. The board of directors has certain protective rights which include final approval of the engineering designs and project work plan developed and recommended by the executive committee.

The joint venture agreements require the Company to fund the construction costs of the new facility and Usina São Martinho would reimburse the Company up to R\$61.8 million (approximately US\$27.9 million based on the exchange rate as of June 30, 2013) of the construction costs after SMA commences production. Post commercialization, the Company would market and distribute Amyris renewable products and Usina São Martinho would sell feedstock and provide certain other services to SMA. The cost of the feedstock to SMA would be a price that is based on the average return that Usina São Martinho could receive from the production of its current products, sugar and ethanol. The Company would be required to purchase the output of SMA for the first four years at a price that guarantees the return of Usina São Martinho's investment plus a fixed interest rate. After this four year period, the price would be set to guarantee a break-even price to SMA plus an agreed upon return.

Under the terms of the joint venture agreements, if the Company becomes controlled, directly or indirectly, by a competitor of Usina São Martinho, then Usina São Martinho has the right to acquire the Company's interest in SMA. If Usina São Martinho becomes controlled, directly or indirectly, by a competitor of the Company, then the Company has the right to sell its interest in SMA to Usina São Martinho. In either case, the purchase price shall be determined in accordance with the joint venture agreements, and the Company would continue to have the obligation to acquire products produced by SMA for the remainder of the term of the supply agreement then in effect even though the Company would no longer be involved in SMA's management.

The Company has a 50% ownership interest in SMA. The Company has identified SMA as a variable interest entity ("VIE") pursuant to the accounting guidance for consolidating VIEs because the amount of total equity investment at risk is not sufficient to permit SMA to finance its activities without additional subordinated financial support, as well as because the related commercialization agreement provides a substantive minimum price guarantee. Under the terms of the joint venture agreement, the Company directs the design and construction activities, as well as production and distribution. In addition, the Company has the obligation to fund the design and construction activities until commercialization is achieved. Subsequent to the construction phase, both parties equally fund SMA for the term of the joint venture. Based on those factors, the Company was determined to have the power to direct the activities that most significantly impact SMA's economic performance and the obligation to absorb losses and the right to receive benefits. Accordingly, the financial results of SMA are included in the Company's consolidated financial statements and amounts pertaining to Usina São Martinho's interest in SMA are reported as noncontrolling interests in subsidiaries.

### *Novvi*

In June 2011, the Company entered into joint venture agreements with Cosan Combustíveis e Lubrificantes S.A. and Cosan S.A. Industria e Comércio (such Cosan entities, collectively or individually, "Cosan"), related to the formation of a joint venture to focus on the worldwide development, production and commercialization of base oils made from Biofene for the automotive, commercial and industrial lubricants markets (the "Original JV Agreement"). The parties originally envisioned operating their joint venture through Novvi S.A., a Brazilian entity jointly owned by Cosan and Amyris Brasil.

Under the Original JV Agreement and related agreements, the Company and Cosan each owned 50% of Novvi S.A. and each party would share equally any costs and any profits ultimately realized by Novvi S.A. The joint venture agreement had an initial term of 20 years from the date of the Original JV Agreement, subject to earlier termination by mutual written consent or by a non-defaulting party in the event of specified defaults by the other party. The Shareholders' Agreement had an initial term of 10 years from the date of the agreement, subject to earlier termination if either the Company or Cosan ceases to own at least 10% of the voting stock of Novvi S.A. Since its formation, the Novvi S.A. had minimal operating activities while the Company and Cosan continued to determine and finalize the strategy and operating activities of Novvi S.A. Upon determination by the Company and Cosan that the joint venture be operated out of a US entity, the operating activities of Novvi S.A. ceased. The Company has identified that Novvi S.A. is a VIE and determined that the power to direct activities, which most significantly impact the economic success of the joint venture, is equally shared between the Company and Cosan. Accordingly, the Company is not the primary beneficiary and therefore accounts for its investment in Novvi S.A. under the equity method of accounting.

On March 26, 2013, the Company, Amyris Brasil and Cosan entered into a termination agreement to terminate the Original JV Agreement. In addition, Amyris Brasil agreed to sell, its 50% ownership in Novvi S.A. for approximately R\$22,000 which represented the current value of its 50% equity ownership in Novvi S.A., a now-dormant company, to Cosan. Upon the consummation of the transaction with the shares transferring from Amyris Brasil to Cosan, the Shareholders Agreement of Novvi S.A. dated June 3, 2011 automatically terminated.

In September 2011, the Company and Cosan US, Inc. (“Cosan U.S.”) formed Novvi LLC, a U.S. entity that is jointly owned by the Company and Cosan U.S. On March 26, 2013 the Company and Cosan U.S. entered into agreements to (i) expand their base oils joint venture to also include additives and lubricants and (ii) operate their joint venture exclusively through Novvi LLC (“Novvi”). Specifically, the parties entered into an Amended and Restated Operating Agreement for Novvi, which sets forth the governance procedures for Novvi and the joint venture and the parties' initial contribution. The Company also entered into an IP License Agreement with Novvi under which the Company granted Novvi (i) an exclusive (subject to certain limited exceptions for the Company), worldwide, royalty-free license to develop, produce and commercialize base oils, additives, and lubricants derived from Biofene for use in automotive and industrial lubricants markets and (ii) a non-exclusive, royalty free license, subject to certain conditions, to manufacture Biofene solely for its own products. In addition, both the Company and Cosan U.S. granted Novvi certain rights of first refusal with respect to alternative base oil and additive technologies that may be acquired by the Company or Cosan U.S. during the term of the IP License Agreement. Under these agreements, the Company and Cosan U.S. will each own 50% of Novvi and each party will share equally in any costs and any profits ultimately realized by the joint venture. Novvi is governed by a six member Board of Managers, three from each investor who will appoint the Officers of Novvi who will be responsible for carrying out the daily operating activities of Novvi as directed by the Board of Managers. The IP License Agreement has an initial term of 20 years from the date of the agreement, subject to standard early termination provisions such as uncured material breach or a party's insolvency. Under the terms of the Amended and Restated Operating Agreement for initial contribution, Cosan U.S. is obligated to fund its 50% ownership share of Novvi in cash in the amount of \$10.0 million and the Company is obligated to fund its 50% ownership share of Novvi through the granting of an IP License to develop, produce and commercialize base oils, additives, and lubricants derived from Biofene for use in the automotive, commercial and industrial lubricants markets which has been agreed upon by Cosan U.S. and Amyris valued at \$10.0 million. On March 26, 2013, the Company measured its initial contribution of IP to Novvi at the Company's carrying value of the licenses granted under the IP License Agreement, which was zero. Additional funding requirements to finance the ongoing operations of Novvi are expected to happen through revolving credit or other loan facilities provided by unrelated parties (i.e. such as financial institutions); cash advances or other credit or loan facilities provided by the Company and Cosan U.S. or their affiliates; or additional capital contributions by the Company and Cosan U.S.

The Company has identified Novvi as a VIE and determined that the power to direct activities, which most significantly impact the economic success of the joint venture (i.e. continuing research and development, marketing, sales, distribution and manufacturing of Novvi products), is equally shared between the Company and Cosan. Accordingly, the Company is not the primary beneficiary and therefore accounts for its investment in Novvi under the equity method of accounting. The Company will continue to reassess its primary beneficiary analysis of Novvi if there are changes in events and circumstances impacting the power to direct activities that most significantly affect Novvi's economic success. Under the equity method, the Company's share of profits and losses are to be included in "Income (loss) from equity method investments, net" in the consolidated statements of operations. During the three and six months ended June 30, 2013, the Company recorded no amounts for its share of Novvi's net loss as the carrying amount of the Company's investment in Novvi was zero and losses in excess of the carrying amount are offset by the accretion of the Company's share in the basis difference resulted from the parties' initial contribution. For the three months ended June 30, 2013 and 2012, the Company recorded \$0.1 million and \$0.9 million, respectively, and \$2.6 million and \$0.9 million for the six months ended June 30, 2013 and 2012, respectively, of revenue from the research and development activities that it has performed on behalf of Novvi.

### *Glycotech*

In January 2011, the Company entered into a production service agreement ("Agreement") with Glycotech, whereby Glycotech is to provide process development and production services for the manufacturing of various Company products at its leased facility in Leland, North Carolina. The Company products to be manufactured by Glycotech will be owned and distributed by the Company. Pursuant to the terms of the agreement, the Company is required to pay the manufacturing and operating costs of the Glycotech facility which is dedicated solely to the manufacture of Amyris products. The initial term of the agreement is for a two year period commencing on February 1, 2011 and will renew automatically for successive one-year terms, unless terminated by the Company. On the same date as the production service agreement, the Company also entered into a right of first refusal agreement with the lessor of the facility and site leased by Glycotech covering a two year period commencing in January 2011. Per the terms of the right of first refusal agreement, the lessor agreed not to sell the facility and site leased by Glycotech during the term of the production service agreement. In the event that the lessor is presented with an offer to sell or decides to sell an adjacent parcel, the Company has the right of first refusal to acquire it.

The Company has determined that the arrangement with Glycotech qualifies as a VIE. The Company determined that it is the primary beneficiary of this arrangement since it has the power through the management committee over which it has majority control to direct the activities that most significantly impact Glycotech's economic performance. In addition, the Company is required to fund 100% of Glycotech's actual operating costs for providing services each month while the facility is in operation under the production service agreement. Accordingly, the Company consolidates the financial results of Glycotech. As of June 30, 2013, the carrying amounts of the consolidated VIE's assets and liabilities were not material to the Company's consolidated financial statements.

The table below reflects the carrying amount of the assets and liabilities of the two consolidated VIEs for which the Company is the primary beneficiary. As of June 30, 2013, the assets include \$22.8 million in property, plant and

equipment and \$4.1 million in other assets, and \$0.5 million in current assets. The liabilities include \$0.2 million in accounts payable and accrued current liabilities and \$0.2 million in loan obligations by Glycotech to its shareholders that are non-recourse to the Company. The creditors of each consolidated VIE have recourse only to the assets of that VIE.

|                | June 30, | December 31, |
|----------------|----------|--------------|
| (In thousands) | 2013     | 2012         |
| Assets         | \$27,405 | \$ 29,564    |
| Liabilities    | \$477    | \$ 355       |



The change in noncontrolling interest for the six months ended June 30, 2013 and 2012 is summarized below (in thousands):

|   | 2013    | 2012    |
|---|---------|---------|
| Balance at January 1                                | \$(877) | \$(240) |
| Foreign currency translation adjustment             | 54      | 168     |
| Gain (loss) attributable to noncontrolling interest | 261     | (677)   |
| Balance at June 30                                  | \$(562) | \$(749) |

## 8. Significant Agreements

### *Tate & Lyle Termination Agreement*

On June 25, 2013, the Company and Tate & Lyle entered into a Settlement Agreement, Termination Agreement and Mutual Release (the "Termination Agreement") to terminate the parties' November 2010 contract manufacturing agreement (the "Contract Manufacturing Agreement"). The Termination Agreement resolves all outstanding issues that had arisen in connection with the Company's relationship with Tate & Lyle.

The Contract Manufacturing Agreement had secured manufacturing capacity for farnesene through 2016 at Tate & Lyle's facility in Decatur, Illinois. The Contract Manufacturing Agreement included a base monthly payment regardless of level of production at Tate & Lyle's facility in addition to a variable amount based on volume. With the Company's commencement of production at its farnesene facility located in Brazil, the Company determined that maintaining the Contract Manufacturing Agreement was no longer desired from a cost and operational perspective. The Company had no production at the Tate & Lyle facility since the first quarter of 2013.

Pursuant to the Termination Agreement, the Company is required to make four payments to Tate & Lyle, totaling approximately \$8.8 million, of which \$3.6 million is to satisfy outstanding obligations and \$5.2 million is in lieu of additional payments otherwise owed under the Contract Manufacturing Agreement. These four payments are due under the Termination Agreement between July 17, 2013 and December 16, 2013, and such payments are deemed to be in full satisfaction of all amounts otherwise owed under the Contract Manufacturing Agreement. Under the Termination Agreement, no further payments will be owed for the remaining term of the Contract Manufacturing Agreement (i.e., through 2016). As a result, the Company recorded a loss of \$8.4 million which is included in the loss on purchase commitments and write-off of production assets and consisted of an impairment charge of \$6.7 million relating to Company-owned equipment at Tate & Lyle, a \$2.7 million write-off of an unamortized portion of equipment costs funded by the Company for Tate & Lyle, offset by a reversal of \$1.0 million provision for loss on fixed purchase commitments. As of June 30, 2013 the Company has an outstanding liability of \$8.8 million pertaining

to its obligation under the Termination Agreement. In July 2013, the Company paid \$3.6 million of its obligation pertaining to the Termination Agreement (see Note 17 Subsequent Events).

*IFF Joint Development and License Agreement*

On April 23, 2013, the Company entered into a joint development and license agreement with International Flavors & Fragrances Inc. ("IFF"). Under the terms of the multi-year agreement, IFF and the Company will jointly develop certain fragrance ingredients. IFF will have exclusive rights to these fragrance ingredients for applications in the flavors and fragrances field, and the Company will have exclusive rights in other fields. IFF and the Company will share in the economic value derived from these ingredients. The joint development and license agreement provides for up to \$6.0 million in funding by IFF to the Company during the first phase of the collaboration, of which \$4.5 million is based on achievement of certain milestones. As of June 30, 2013 the Company has recorded deferred revenue of \$1.5 million pertaining to this agreement.

*Firmenich Master Collaboration Agreement*

On March 13, 2013, the Company entered into a Master Collaboration Agreement (the "Agreement") with Firmenich to establish a collaboration for the development and commercialization of multiple renewable flavors and fragrances ("F&F") compounds. Under this Agreement, except for rights granted under preexisting collaboration relationships, the Company is granting Firmenich exclusive access for such compounds to specified Company intellectual property for the development and commercialization of F&F products in exchange for research and development funding and a profit sharing arrangement. The Agreement supersedes and expands a prior collaboration agreement between the Company and Firmenich.

The Agreement provides annual, up-front funding to the Company by Firmenich of \$10.0 million for each of the first three years of the collaboration. The initial payment of \$10.0 million was received by the Company on March 27, 2013 of which \$2.9 million was recognized as revenue for the three and six months ended June 30, 2013. The Agreement contemplates additional funding by Firmenich on a discretionary basis and up to \$5.0 million over three milestone payments from Firmenich to the Company. Under the Company's revenue recognition policy for milestone payments, for arrangements that include milestones that are determined to be substantive and at risk at the inception of the arrangement, revenue is recognized upon achievement of the milestone and is limited to those amounts whereby collectability is reasonably assured. As these milestones are defined or modified after the initial contract date, they could possibly still be substantive milestones and accounted for under the milestone method assuming that they meet all of the criteria.

In addition, the Agreement contemplates that the parties will mutually agree on a supply price for each compound and share product margins from sales of each compound on a 70/30 basis (70% for Firmenich) until Firmenich receives \$15.0 million more than the Company in the aggregate, after which the parties will share 50/50 in the product margins on all compounds. The Company also agreed to pay a one-time success bonus of up to \$2.5 million to Firmenich for outperforming certain commercialization targets. Firmenich's eligibility to receive the one-time success bonus commences upon the first sale of the first Firmenich product.

The Agreement does not impose any specific research and development commitments on either party after year six, but if the parties mutually agree to perform development after year six, the Agreement provides that the parties will fund it equally.

Under the Agreement, the parties jointly select target compounds, subject to final approval of compound specifications by Firmenich. During the development phase, the Company is required to provide labor, intellectual property and technology infrastructure and Firmenich is required to contribute downstream polishing expertise and market access. The Agreement provides that the Company will own research and development and strain engineering intellectual property, and Firmenich will own blending and, if applicable, chemical conversion intellectual property. Under certain circumstances such as the Company's insolvency, Firmenich gains expanded access to the Company's intellectual property. Following development of F&F compounds under the Agreement, the Agreement contemplates that the Company will manufacture the initial target molecules for the compounds and Firmenich will perform any required downstream polishing and distribution, sales and marketing.

## **9. Goodwill and Intangible Assets**

The following table presents the components of the Company's intangible assets (in thousands):

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|                                     | Useful Life in Years | June 30, 2013         |                          |                    | December 31, 2012     |                          |                    |
|-------------------------------------|----------------------|-----------------------|--------------------------|--------------------|-----------------------|--------------------------|--------------------|
|                                     |                      | Gross Carrying Amount | Accumulated Amortization | Net Carrying Value | Gross Carrying Amount | Accumulated Amortization | Net Carrying Value |
| In-process research and development | Indefinite           | \$8,560               | \$ —                     | \$ 8,560           | \$8,560               | \$ —                     | \$ 8,560           |
| Acquired licenses and permits       | 2                    | 772                   | (772 )                   | —                  | 772                   | (740 )                   | 32                 |
| Goodwill                            | Indefinite           | 560                   | —                        | 560                | 560                   | —                        | 560                |
|                                     |                      | \$9,892               | \$ (772 )                | \$ 9,120           | \$9,892               | \$ (740 )                | \$ 9,152           |

The following table presents the activity of intangible assets for the six months ended June 30, 2013 (in thousands):

|                                     | December 31, 2012  |           |             |              | June 30, 2013      |  |
|-------------------------------------|--------------------|-----------|-------------|--------------|--------------------|--|
|                                     | Net Carrying Value | Additions | Adjustments | Amortization | Net Carrying Value |  |
| In-process research and development | \$ 8,560           | \$ —      | \$ —        | \$ —         | \$ 8,560           |  |
| Acquired licenses and permits       | 32                 | —         | —           | (32 )        | —                  |  |
| Goodwill                            | 560                | —         | —           | —            | 560                |  |
|                                     | \$ 9,152           | \$ —      | \$ —        | \$ (32 )     | \$ 9,120           |  |

The intangible assets acquired through the Draths Corporation acquisition on October 6, 2011 of in process research and development of \$8.6 million and goodwill of \$0.6 million are treated as indefinite lived intangible assets until completion or abandonment of the projects, at which time the assets will be amortized over the remaining useful life or written-off, as appropriate. If the carrying amount of the assets is greater than the measures of fair value, impairment is considered to have occurred and a write-down of the asset is recorded. Any finding that the value of its intangible assets has been impaired would require the Company to write-down the impaired portion, which could reduce the value of its assets and reduce (increase) its net income (loss) for the year in which the related impairment charges occur.

Acquired licenses and permits are amortized using a straight-line method over its estimated useful life. Amortization expense for this intangible was zero and \$97,000 for the three months ended June 30, 2013 and 2012, respectively and was \$32,000 and \$193,000 for the six months ended June 30, 2013 and 2012, respectively. As of June 30, 2013, acquired licenses and permits were fully amortized.

## **10. Stockholders' Equity**

### *February 2012 Private Placement*

In February 2012, the Company completed a private placement of 10,160,325 shares of its common stock at a price of \$5.78 per share for aggregate proceeds of \$58.7 million. In connection with this private placement, the Company entered into an agreement with an investor to purchase additional shares of the Company's common stock for an additional \$15.0 million by March 2013 upon satisfaction by the Company of criteria associated with the commissioning of the Company's production plant in Brotas. This was satisfied by the investor through a \$10.0 million investment in a private placement completed by the Company in December 2012 and subsequently, through a \$5.0 million investment in a private placement completed by the Company in March 2013.

### *May 2012 Private Placement*

In May 2012, the Company completed a private placement of 1,736,100 shares of its common stock at a price of \$2.36 per share for aggregate proceeds of \$4.1 million.

### *December 2012 Private Placement*

In December 2012, the Company completed a private placement of its common stock for the issuance of 14,177,849 shares of its common stock at a price of \$2.98 per share for aggregate proceeds of \$37.2 million and the cancellation of \$5.0 million worth of outstanding senior unsecured convertible promissory notes previously issued by the Company. Shares totaling 1,677,852 were issued to Total in exchange for this cancellation. Net cash received for this private placement as of December 31, 2012 was \$22.2 million and the remaining \$15.0 million of proceeds was received in January 2013. In connection with this private placement, the Company entered into a Letter of Agreement, dated December 24, 2012 with an investor under which the Company acknowledged that the investor's initial investment of \$10.0 million in December 2012 represented partial satisfaction of the investor's preexisting contractual obligation to fund \$15.0 million by March 31, 2013 upon satisfaction by the Company of criteria associated with the commissioning of the Company's production plant in Brotas.

In January 2013, the Company received \$15.0 million in proceeds from a private placement offering that closed in December 2012. Consequently, the Company issued 5,033,557 shares of the 14,177,849 shares of the Company's common stock.

*Biolding Follow-on Investment*

In March 2013, the Company completed a private placement of 1,533,742 shares of its common stock at a price of \$3.26 per share for aggregate proceeds of \$5.0 million. This private placement represented the final tranche of Biolding's preexisting contractual obligation to fund \$15.0 million upon satisfaction by the Company of certain criteria associated with the commissioning of a production plant in Brazil.

*Evergreen Shares for 2010 Equity Plan and 2010 ESPP*

On January 23, 2013, the Company's Board of Directors approved the additional shares which will be available for issuance under the 2010 Equity Plan and the 2010 ESPP. These shares represent an automatic increase in the number of shares available for issuance under the 2010 Equity Plan and the 2010 ESPP of 3,435,483 and 687,096, respectively, equal to 5% and 1%, respectively of 68,709,660 shares, the total outstanding shares of the Company's common stock as of December 31, 2012. This automatic increase was effective as of January 1, 2013. Shares available for issuance under the 2010 Equity Plan and 2010 ESPP were initially registered on a registration statement on Form S-8 filed with the Securities and Exchange Commission on October 1, 2010 (Registration No. 333-169715). The Company filed registration statements on Form S-8 on March 28, 2013 and May 20, 2013 with respect to the shares added by the automatic increase on January 1, 2013.

**11. Stock-Based Compensation**

The Company's stock option activity and related information for the six months ended June 30, 2013 was as follows:

|   | Number<br>Outstanding | Weighted -<br>Average<br>Exercise<br>Price | Weighted -<br>Average<br>Remaining<br>Contractual<br>Life (Years) | Aggregate<br>Intrinsic<br>Value<br><br>(in thousands) |
|---|-----------------------|--|---|---|
| Outstanding - December 31, 2012                 | 8,946,592             | \$ 9.07                                    | 7.5   | \$ 954  |
| Options granted                                 | 1,616,105             | \$ 2.87                                    |   |   |
| Options exercised                               | (158,966 )            | \$ 0.98                                    |   |   |
| Options cancelled                               | (1,600,431 )          | \$ 9.59                                    |   |   |
| Outstanding - June 30, 2013                     | 8,803,300             | \$ 7.99                                    | 7.45  | \$ 388  |
| Vested and expected to vest after June 30, 2013 | 8,162,316             | \$ 8.19                                    | 7.31  | \$ 364  |
| Exercisable at June 30, 2013                    | 4,121,741             | \$ 9.98                                    | 5.81  | \$ 228  |

The aggregate intrinsic value of options exercised under all option plans was \$0.1 million and \$0.1 million for the three months ended June 30, 2013 and 2012, respectively and was \$0.3 million and \$0.7 million for the six months ended June 30, 2013 and 2012, respectively, determined as of the date of option exercise.

The Company's restricted stock units ("RSUs") and restricted stock activity and related information for the six months ended June 30, 2013 was as follows:

|                                      | RSUs       | Weighted Average<br>Grant-Date Fair<br>Value | Weighted Average<br>Remaining<br>Contractual Life<br>(Years) |
|--------------------------------------|------------|--|--|
| Outstanding - December 31, 2012      | 2,550,799  | \$ 7.92                                      | 1.3  |
| Awarded                              | 1,016,000  | \$ 2.85                                      | —  |
| Vested                               | (613,619 ) | \$ 6.06                                      | —  |
| Forfeited                            | (182,664 ) | \$ 4.23                                      | —  |
| Outstanding - June 30, 2013          | 2,770,516  | \$ 4.20                                      | 1.26   |
| Expected to vest after June 30, 2013 | 2,414,032  | \$ 4.20                                      | 1.21   |



The following table summarizes information about stock options outstanding as of June 30, 2013:

| Exercise Price  | Options Outstanding |   |                                 | Options Exercisable |                                 |
|-----------------|---------------------|---|---------------------------------|---------------------|---------------------------------|
|                 | Number of Options   | Weighted - Average Remaining Contractual Life (Years) | Weighted Average Exercise Price | Number of Options   | Weighted Average Exercise Price |
| \$0.10—\$2.76   | 1,053,612           | 8.52  | \$ 2.54                         | 250,328             | \$ 1.98                         |
| \$2.81—\$2.83   | 26,800              | 9.80  | \$ 2.83                         | —                   | \$ —                            |
| \$2.87—\$2.87   | 962,000             | 9.93  | \$ 2.87                         | —                   | \$ —                            |
| \$2.89—\$3.05   | 921,948             | 9.51  | \$ 2.99                         | 153,339             | \$ 3.04                         |
| \$3.12—\$3.83   | 237,025             | 8.30  | \$ 3.29                         | 40,388              | \$ 3.21                         |
| \$3.86—\$3.86   | 1,157,506           | 8.12  | \$ 3.86                         | 391,969             | \$ 3.86                         |
| \$3.93—\$3.93   | 893,923             | 4.20  | \$ 3.93                         | 893,923             | \$ 3.93                         |
| \$4.06—\$9.32   | 1,145,195           | 5.94  | \$ 6.08                         | 840,954             | \$ 6.22                         |
| \$10.44—\$16.00 | 1,086,335           | 6.32  | \$ 15.29                        | 673,675             | \$ 15.38                        |
| \$16.50—\$30.17 | 1,318,956           | 6.98  | \$ 22.51                        | 877,165             | \$ 22.15                        |
| \$0.10—\$30.17  | 8,803,300           | 7.45  | \$ 7.99                         | 4,121,741           | \$ 9.98                         |

### *Stock-Based Compensation Expense*

Stock-based compensation expense related to options and restricted stock units granted to employees and nonemployees was allocated to research and development expense and sales, general and administrative expense as follows (in thousands):

|  | Three Months Ended June 30, |          | Six Months Ended June 30, |           |
|--|-----------------------------|----------|---------------------------|-----------|
|  | 2013                        | 2012     | 2013                      | 2012      |
| Research and development               | \$ 1,049                    | \$ 1,558 | \$ 2,296                  | \$ 3,071  |
| Sales, general and administrative      | 3,936                       | 7,356    | 6,882                     | 12,364    |
| Total stock-based compensation expense | \$ 4,985                    | \$ 8,914 | \$ 9,178                  | \$ 15,435 |

As of June 30, 2013, there were unrecognized compensation costs of \$19.8 million related to stock options, and the Company expects to recognize those costs over a weighted average period of 2.91 years. As of June 30, 2013, there were unrecognized compensation costs of \$6.6 million related to RSUs, and the Company expects to recognize those costs over a weighted average period of 1.83 years.

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Stock-based compensation cost for RSUs is measured based on the closing fair market value of the Company's common stock on the date of grant. Stock-based compensation cost for stock options and employee stock purchase plan rights is estimated at the grant date and offering date, respectively, based on the fair-value using the Black-Scholes option pricing model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the following weighted-average assumptions:

|                          | Three Months Ended June 30, |      | Six Months Ended June 30, |      |     |   |     |   |
|--------------------------|-----------------------------|------|---------------------------|------|-----|---|-----|---|
|                          | 2013                        | 2012 | 2013                      | 2012 |     |   |     |   |
| Expected dividend yield  | —                           | %    | —                         | %    | —   | % | —   | % |
| Risk-free interest rate  | 1.2                         | %    | 1.1                       | %    | 1.2 | % | 1.1 | % |
| Expected term (in years) | 6.1                         |      | 6.0                       |      | 6.1 |   | 6.0 |   |
| Expected volatility      | 82                          | %    | 76                        | %    | 82  | % | 76  | % |

The fair value of nonemployee stock options was estimated using the following weighted-average assumptions:

|                          | Three Months Ended June 30, |      | Six Months Ended June 30, |      |     |   |     |   |
|--------------------------|-----------------------------|------|---------------------------|------|-----|---|-----|---|
|                          | 2013                        | 2012 | 2013                      | 2012 |     |   |     |   |
| Expected dividend yield  | —                           | %    | —                         | %    | —   | % | —   | % |
| Risk-free interest rate  | 1.7                         | %    | 1.4                       | %    | 1.5 | % | 1.6 | % |
| Expected term (in years) | 6.1                         |      | 7.2                       |      | 6.4 |   | 7.2 |   |
| Expected volatility      | 82                          | %    | 76                        | %    | 83  | % | 76  | % |

## 12. Related Party Transactions

### *February 2012 Private Placement*

In February 2012, the Company completed a private placement of 10,160,325 shares of its common stock at a price of \$5.78 per share for aggregate proceeds of \$58.7 million pursuant to a securities purchase agreement, among the Company and existing certain investors, including Total and Maxwell (Mauritius) Pte Ltd, each a beneficial owner of more than 5% of the Company's existing common stock at the time of the transaction. In addition, members of the Company's Board of Directors and certain parties related to such directors participated in the offering.

### *May 2012 Private Placement*

In May 2012, the Company completed a private placement of 1,736,100 shares of its common stock at a price of \$2.36 per share for aggregate proceeds of \$4.1 million pursuant to a series of Common Stock Purchase Agreements, among the Company and members of the Company's Board of Directors and certain parties related to such directors.

### *Biolding Follow-on Investment*

In March 2013, the Company completed a private placement of 1,533,742 shares of its common stock to an existing stockholder, Biolding Investment SA ("Biolding"), at a price of \$3.26 per share for aggregate proceeds of \$5.0

million. This private placement represented the final tranche of Biolding's preexisting contractual obligation to fund \$15.0 million upon satisfaction by the Company of certain criteria associated with the commissioning of a production plant in Brazil.

*Letter Agreement with Total*

As of March 24, 2013, the Company entered into a letter agreement with Total under which Total agreed to waive its right to cease its participation in our fuels collaboration at the July 2013 decision point and committed to proceed with the July 2013 funding tranche of \$30.0 million (subject to the Company's satisfaction of the relevant closing conditions for such funding in the securities purchase agreement). As consideration for this waiver and commitment, the Company agreed to:

- Reduce the conversion price for the senior unsecured convertible promissory notes to be issued in connection with such funding from \$7.0682 per share to a price per share equal to the greater of (i) the consolidated closing bid price of the Company's common stock on the date of the letter agreement, plus \$0.01, and (ii) \$3.08 per share, provided that the conversion price will not be reduced by more than the maximum possible amount permitted under the NASDAQ rules such that the new conversion price would require the Company to obtain stockholder consent; and
- Grant Total a senior security interest in the Company's intellectual property, subject to certain exclusions and subject to release by Total when the Company and Total enter into final documentation regarding the establishment of the Fuels JV.

In addition to the waiver by Total described above, Total also agreed that, at the Company's request and contingent upon the Company meeting its obligations described above, it would pay advance installments of the amounts otherwise payable at the July 2013 closing. Specifically, if the Company requests such advance installments, subject to certain closing conditions and delivery of certifications regarding the Company's cash levels, Total is obligated to fund \$10.0 million no later than May 15, 2013, and an additional \$10.0 million no later than June 15, 2013, with the remainder to be funded on the original July 2013 closing date.

On June 6, 2013, the Company sold and issued a 1.5% Senior Unsecured Convertible Note to Total in an aggregate principal amount of \$10.0 million with a March 1, 2017 maturity date pursuant to the July 30, 2012 purchase agreement as discussed above. In accordance with the Letter Agreement dated March 24, 2013 this convertible note has a conversion price equal to \$3.08 per share of the Company's common stock. The Company did not request the initial \$10.0 million advance, due no later than May 15, 2013, but did request the June advance (as described above), under which this convertible note was issued.

### **13. Income Taxes**

For the three months ended June 30, 2013 and 2012, the Company recorded a provision for income taxes of \$246,000 and \$249,000, respectively, and a provision for income taxes of \$482,000 and \$493,000, respectively, for the six months ended June 30, 2013 and 2012. The provision for income taxes for the six months ended June 30, 2013 and 2012 consisted of an accrual of Brazilian withholding tax on an intercompany interest liability. Other than the above mentioned provision for income tax, no additional provision for income taxes has been made, net of the valuation allowance, due to cumulative losses since the commencement of operations.

As of June 30, 2013, the US Internal Revenue Service has completed its audit of the Company for tax year 2008 which concluded that there were no adjustments resulting from the audit. While the statutes are closed for tax year 2008, the US federal tax carryforwards (net operating losses and tax credits) may be adjusted by the Internal Revenue Service in the year in which the carryforward is utilized.

On January 2, 2013, the President signed into law the American Taxpayer Relief Act of 2012, or ATRA. Under prior law, a taxpayer was entitled to a research tax credit for qualifying amounts incurred through December 31, 2011. The ATRA extends the research credit for two years for qualified research expenditures incurred through the end of 2013. The extension of the research credit is retroactive and includes amounts incurred after 2011. The benefit of the reinstated credit did not impact the income statement in the period of enactment, which is the first quarter of 2013, as the research and development credit carryforwards are offset by a full valuation allowance.

### **14. Segment Information**

The chief operating decision maker for the Company is the chief executive officer. The chief executive officer reviews financial information presented on a consolidated basis, accompanied by information about revenue by geographic region, for purposes of allocating resources and evaluating financial performance. The Company has one business activity comprised of research and development and sales of fuels and farnesene-derived products and there are no segment managers who are held accountable for operations, operating results or plans for levels or components below the consolidated unit level. Accordingly, the Company has determined that it has a single reportable segment and operating segment structure.

Revenues by geography are based on the location of the customer. The following tables set forth revenue and long-lived assets by geographic area (in thousands):

**Revenues**

|               | Three Months Ended June 30, |           | Six Months Ended June 30, |           |
|---------------|-----------------------------|-----------|---------------------------|-----------|
|               | 2013                        | 2012      | 2013                      | 2012      |
| United States | \$ 4,458                    | \$ 16,596 | \$ 10,022                 | \$ 42,902 |
| Brazil        | 1,259                       | 813       | 2,077                     | 1,688     |
| Europe        | 4,005                       | 1,395     | 4,230                     | 3,333     |
| Asia          | 1,127                       | 459       | 2,389                     | 809       |
| Total         | \$ 10,849                   | \$ 19,263 | \$ 18,718                 | \$ 48,732 |

**Long-Lived Assets**

|               | June 30,<br>2013 | December 31,<br>2012 |
|---------------|------------------|----------------------|
| United States | \$58,562         | \$ 70,273            |
| Brazil        | 83,794           | 90,982               |
| Europe        | 1,785            | 1,866                |
| Total         | \$144,141        | \$ 163,121           |

**15. Comprehensive Income (Loss)**

Comprehensive income (loss) represents all changes in stockholders' equity except those resulting from investments or contributions by stockholders. The Company's foreign currency translation adjustments represent the components of comprehensive income (loss) excluded from the Company's net loss and have been disclosed in the consolidated statements of comprehensive loss for all periods presented.

The components of accumulated other comprehensive loss are as follows (in thousands):

|   | June 30, 2013 | December 31, 2012 |
|---|---------------|-------------------|
| Foreign currency translation adjustment, net of tax | \$ (16,892 )  | \$ (12,807 )      |
| Total accumulated other comprehensive loss          | \$ (16,892 )  | \$ (12,807 )      |

**16. Net Loss Attributable to Common Stockholders and Net Loss per Share**

The Company computes net loss per share in accordance with ASC 260, "Earnings per Share." Basic net loss per share of common stock is computed by dividing the Company's net loss attributable to Amyris, Inc. common stockholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share of common stock is computed by giving effect to all potentially dilutive securities, including stock options, restricted stock units, common stock warrants, using the treasury stock method or the as converted method, as applicable. For all periods presented, basic net loss per share was the same as diluted net loss per share because the inclusion of all potentially dilutive securities outstanding was anti-dilutive. As such, the numerator and the denominator used in computing both basic and diluted net loss are the same for each period presented.

The following table presents the calculation of basic and diluted net loss per share of common stock attributable to Amyris, Inc. common stockholders (in thousands, except share and per share amounts):

|   | Three Months Ended June 30,<br>2013 | 2012         | Six Months Ended June 30,<br>2013 | 2012          |
|---|-------------------------------------|--------------|-----------------------------------|---------------|
| Numerator:  |                                     |              |                                   |               |
| Net loss attributable to Amyris, Inc. common stockholders | \$ (38,876 )                        | \$ (46,806 ) | \$ (71,490 )                      | \$ (141,354 ) |
| Denominator:  |                                     |              |                                   |               |

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|   |            |            |            |            |
|---|------------|------------|------------|------------|
| Weighted-average shares of common stock outstanding used in computing net loss per share of common stock, basic and diluted | 75,959,228 | 57,442,834 | 74,640,314 | 53,828,541 |
| Net loss per share attributable to common stockholders, basic and diluted   | \$(0.51)   | ) \$(0.81) | ) \$(0.96) | ) \$(2.63) |

The following outstanding shares of potentially dilutive securities were excluded from the computation of diluted net loss per share of common stock for the periods presented because including them would have been anti-dilutive:

|   | Three and Six Months Ended June 30, |            |
|---|-------------------------------------|------------|
|   | 2013                                | 2012       |
| Period-end stock options to purchase common stock | 8,803,300                           | 9,190,218  |
| Convertible promissory notes                      | 13,617,144                          | 3,536,968  |
| Period-end common stock subject to repurchase     | 1                                   | 793        |
| Period-end common stock warrants                  | 21,087                              | 23,339     |
| Period-end restricted stock units                 | 2,770,516                           | 1,657,231  |
| Total   | 25,212,048                          | 14,408,549 |



## 17. Subsequent Events

### *Related Party Convertible Debt Financings*

On July 26, 2013, the Company sold and issued a 1.5% Senior Unsecured Convertible Note to Total in an aggregate principal amount of \$20.0 million with a March 1, 2017 maturity date pursuant to the July 30, 2012 purchase agreement described in Note 6 Debt. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013. In accordance with the Letter Agreement dated March 23, 2013 this convertible note has a conversion price equal to \$3.08 per share of Company common stock.

In August 2013, the Company entered into an agreement with certain investors to sell up to \$73.1 million in convertible promissory notes in private placements over a period of up to 24 months from the date of signing. This convertible note financing requires the Company to satisfy various conditions before the funding is available, and the offering is divided into two tranches (one for \$42.6 million and one for \$30.4 million), each with differing closing conditions. Of the total possible purchase price in the financing, \$60.0 million would be paid in the form of cash (\$35.0 million in the first tranche and up to \$25.0 million in the second tranche) and \$13.1 million would be paid by cancellation of outstanding promissory notes by an existing stockholder in connection with its exercise of pro rata rights (\$7.6 million in the first tranche and \$5.4 million in the second tranche). The financing is subject to timing and completion risks, including a requirements that the Company meets certain production milestones before the second tranche is available, obtain stockholder approval prior to completing any closings in the transaction, and issues a warrant to one of the purchasers to purchase 1,000,000 shares of the Company's common stock at an exercise price of \$0.01 per share, exercisable only if another of the purchasers in the financing converts preexisting promissory notes with a certain per share conversion price.

### *Tate & Lyle Termination Agreement*

Pursuant to the Termination Agreement described in Note 8 Significant Agreements, the Company is required to make four payments to Tate & Lyle, totaling approximately \$8.8 million due between July 17, 2013 and December 16, 2013. In July 2013, the Company paid \$3.6 million of its total \$8.8 million obligation pursuant to the Termination Agreement.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### *Forward-Looking Statements*

*The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and the related notes that appear elsewhere in this Form 10-Q. These discussions contain forward-looking statements reflecting our current expectations that involve risks and uncertainties which are subject to safe harbors under the Securities Act of 1933, as amended, or the Securities Act, and the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements include, but are not limited to, statements concerning our strategy, future production capacity and other aspects of our future operations, ability to improve our production efficiencies, future financial position, future revenues, projected costs, expectations regarding demand and acceptance for our technologies, growth opportunities and trends in the market in which we operate, prospects and plans and objectives of management. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part II, Item 1A, "Risk Factors," in this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission. We do not assume any obligation to update any forward-looking statements.*

### *Trademarks*

*Amyris<sup>®</sup>, the Amyris logo, Biofene<sup>®</sup> and No Compromise<sup>®</sup> are trademarks or registered trademarks of Amyris, Inc. This report also contains trademarks and trade names of other businesses that are the property of their respective holders.*

### *Overview*

Amyris is a renewable products company focused on providing sustainable alternatives to a broad range of petroleum-sourced products. We developed innovative microbial engineering and screening technologies that modify the way microorganisms process sugars. We are using our proprietary synthetic biology platform to design microbes, primarily yeast, and use them as living factories in established fermentation processes to convert plant-sourced sugars into renewable hydrocarbons. We are developing, and, in some cases, already commercializing, products from these

hydrocarbons in several target industry sectors, including cosmetics, lubricants, flavors and fragrances, polymers and specialty materials, and transportation fuels. We call these No Compromise products because we design them to perform comparably to or better than currently available products.

We have been applying our industrial synthetic biology platform to provide alternatives to a broad range of petroleum-sourced products. We have focused our development efforts on the production of Biofene, our brand of renewable farnesene, a long-chain, branched liquid hydrocarbon molecule. Using Biofene as a first commercial building block molecule, we are developing a wide range of renewable products for our target markets.

While our platform is able to utilize a wide variety of feedstocks, we are focusing our large-scale production plans primarily on the use of Brazilian sugarcane as our feedstock because of its renewability, low cost and relative price stability. We have also been able to produce Biofene through the use of other feedstocks such as sugar beets, corn dextrose, sweet sorghum and cellulosic sugars.

Our first purpose-built, large-scale Biofene production plant commenced operations in southeastern Brazil in December 2012. This plant in Brotas, in the state of São Paulo, is adjacent to an existing sugar and ethanol mill, Paraiso Bionergia. We have also commenced initial construction of a second large-scale production plant in Brazil, located at the Usina São Martinho sugar and ethanol mill also in the state of São Paulo, which we intend to complete the construction when market development support the start-up of that plant.

Our business strategy is focused on our commercialization efforts on specialty products while moving established commodity products, including our fuels and base oil lubricants products, into joint venture arrangements with established industry leaders. We believe this approach will permit access to the capital and resources necessary to support large-scale production and global distribution for our ubiquitous products. Our initial renewable products efforts have been focused on products for the cosmetics, niche fuel opportunities, fragrance oils, and liquid polymer sectors.

*Total Relationship*

In June 2010, we entered into a collaboration agreement with Total. This agreement provided for joint collaboration on the development of products through the use of our synthetic biology platform. In connection with this agreement, Total invested \$133.2 million in our equity. In November 2011, we entered into an amendment of the collaboration agreement with Total with respect to development and commercialization of Biofene for diesel. This represented an expansion of the initial collaboration with Total, and established a global, exclusive collaboration for the development of Biofene for diesel and a framework for the creation of a joint venture to manufacture and commercialize Biofene for diesel. In addition, a limited number of other potential products were subject to development for the joint venture on a non-exclusive basis. In July 2012, we entered into a further amendment of the collaboration agreement with Total that expanded Total's investment in the Biofene collaboration, incorporated the development of certain joint venture products for use in diesel and jet fuel into the scope of the collaboration, and changed the structure of the funding from Total to include a convertible debt mechanism. Under the new agreements, we issued senior unsecured convertible notes to Total for an aggregate of \$30.0 million in new cash in the third quarter of 2012 and an additional \$30.0 million in 2013. Total may decide to provide further funding in 2014. Upon completion of the research and development program, we and Total would form a joint venture company that would have exclusive rights to produce and market renewable diesel and/or jet fuel. Should Total decide not to pursue commercialization, under certain conditions, it is eligible to recover up to \$100.0 million, payable in March 2017, in the form of cash or in the form of common stock at a conversion price of \$7.0682 per share (or, for notes issued in 2013, a lower price as determined under the March 2013 letter agreement as described below).

In connection with a private placement of our common stock that occurred in December 2012, Total elected to participate by exchanging approximately \$5.0 million of its \$53.3 million in senior unsecured convertible debt outstanding for 1,677,852 shares at the purchase price in this private placement of \$2.98 per share. As such, \$5.0 million of the outstanding \$53.3 million in senior unsecured convertible debt was cancelled.

In March 2013, we entered into a letter agreement with Total under which Total agreed to waive its right to cease its participation in our fuels collaboration at the July 2013 decision point referenced above and committed to proceed with the July 2013 funding tranche of \$30.0 million (subject to our satisfaction of the relevant closing conditions for such funding in the securities purchase agreement). As consideration for this waiver and commitment, we agreed to:

- Reduce the conversion price for the senior unsecured convertible promissory notes to be issued in connection with such funding from \$7.0682 per share to a price per share equal to the greater of (i) the consolidated closing bid price of our common stock on the date of the letter agreement, plus \$0.01, and (ii) \$3.08 per share; and
- Grant Total a senior security interest in our intellectual property, subject to certain exclusions and subject to release by Total when we and Total enter into final documentation regarding the establishment of the Fuels JV.

In addition to the waiver by Total described above, Total also agreed that, at our request and contingent upon us meeting our obligations described above, it would pay advance installments of the amounts otherwise payable at the July 2013 closing. Specifically, if we requested such advance installments, subject to certain closing conditions and delivery of certifications regarding our cash levels, Total was obligated to fund \$10.0 million no later than May 15, 2013, and an additional \$10.0 million no later than June 15, 2013, with the remainder to be funded on the original July 2013 closing date.

In June 2013, we sold and issued a 1.5% Senior Unsecured Convertible Note to Total in an aggregate principal amount of \$10.0 million with a maturity date of March 1, 2017 pursuant to the July 2012 purchase agreement. This convertible note has a conversion price of \$3.08 per share in accordance with the March 2013 Letter Agreement as discussed above. We did not request the initial advance described above, but did request the June advance, under which this convertible note was issued. Subsequently, in July 2013, we sold a \$20.0 million senior unsecured convertible note to Total with the same conversion price as the note in the June 2013 sale. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013. We expect that Total will cancel an additional portion of its outstanding convertible promissory notes in connection with its exercise of pro rata rights in our pending August 2013 convertible debt financing (with the final amount of such cancellation to be determined based on the final size of the closing in such offering).

### *Manufacturing*

Beginning in March 2012, we initiated a plan to shift production capacity from contract manufacturing facilities to Amyris-owned plants that were then under construction. As a result, we evaluated our contract manufacturing agreements and recorded a loss of \$31.2 million related to \$10.0 million in facility modification costs and \$21.2 million of fixed purchase commitments in the first quarter of 2012. We recognized additional charges of \$1.4 million and \$7.8 million, respectively, in the third and fourth quarter of 2012 associated with losses on fixed purchase commitments. We computed the loss on facility modification costs and fixed purchase commitments using the same lower of cost or market approach that is used to value inventory. The computation of the loss on firm purchase commitments is subject to several estimates, including cost to complete and the ultimate selling price of any of our products manufactured at the relevant production facilities, and is therefore inherently uncertain. We also recorded a loss on write-off of production assets of \$5.5 million related to Amyris-owned production equipment at contract manufacturing facilities in the three months ended March 31, 2012.

### Tate & Lyle

On June 25, 2013, we entered into a Termination Agreement with Tate & Lyle to terminate the parties' November 2010 Contract Manufacturing Agreement. The Termination Agreement resolves all outstanding issues that had arisen in connection with our relationship with Tate & Lyle.

The Contract Manufacturing Agreement had secured manufacturing capacity for farnesene through 2016 at Tate & Lyle's facility in Decatur, Illinois. The Contract Manufacturing Agreement included a base monthly payment regardless of level of production at Tate & Lyle's facility in addition to a variable amount based on volume. With the commencement of production at our farnesene facility located in Brazil, we determined that maintaining the Contract Manufacturing Agreement was no longer desired from a cost and operational perspective. We had no production at the Tate & Lyle facility since the first quarter of 2013.

Pursuant to the Termination Agreement, we are required to make four payments to Tate & Lyle, totaling approximately \$8.8 million, of which \$3.6 million is to satisfy outstanding obligations and \$5.2 million is in lieu of additional payments otherwise owed under the Contract Manufacturing Agreement. These four payments are due under the Termination Agreement between July 17, 2013 and December 16, 2013, and such payments are deemed to be in full satisfaction of all amounts otherwise owed under the Contract Manufacturing Agreement. Under the Termination Agreement, no further payments will be owed for the remaining term of the Contract Manufacturing Agreement (i.e., through 2016). Additionally, we recorded a loss on purchase commitments and write-off of production assets of \$8.4 million which consisted of an impairment charge of \$6.7 million relating to our equipment at Tate & Lyle, a \$2.7 million write-off of an unamortized portion of equipment costs funded us for Tate & Lyle, offset by a reversal of \$1.0 million provision for loss on fixed purchase commitments. As of June 30, 2013 we have an outstanding liability of \$8.8 million pertaining to our obligation under the Termination Agreement. In July 2013, we

paid \$3.6 million of our obligation pertaining to the Termination Agreement.

### *Joint Ventures*

#### Novvi

On March 26, 2013, we and Cosan entered into a termination agreement to terminate the Original JV Agreement. In addition, we agreed to sell our 50% ownership in Novvi S.A. for approximately R\$22,000 which represented the current value of our 50% equity ownership in Novvi S.A., a now-dormant company, to Cosan. Upon the consummation of the transaction with the shares transferring from Amyris Brasil to Cosan, the Shareholders Agreement of Novvi S.A. dated June 3, 2011 will automatically terminate.

In September 2011, we and Cosan US, Inc. (“Cosan U.S.”) formed Novvi LLC, a U.S. entity that is jointly owned by the Company and Cosan U.S. On March 26, 2013 we and Cosan U.S. entered into agreements to (i) expand their base oils joint venture to also include additives and lubricants and (ii) operate their joint venture exclusively through Novvi LLC (“Novvi”). Specifically, the parties entered into an Amended and Restated Operating Agreement for Novvi, which sets forth the governance procedures for Novvi and the joint venture and the parties' initial contribution. We also entered into an IP License Agreement with Novvi under which we granted Novvi (i) an exclusive (subject to certain limited exceptions for the Company), worldwide, royalty-free license to develop, produce and commercialize base oils, additives, and lubricants derived from Biofene for use in the automotive, commercial and industrial lubricants markets and (ii) a non-exclusive, royalty free license, subject to certain conditions, to manufacture Biofene solely for its own products. In addition, both we and Cosan U.S. granted Novvi certain rights of first refusal with respect to alternative base oil and additive technologies that may be acquired by us or Cosan U.S. during the term of the IP License Agreement. Under these agreements, we and Cosan U.S. will each own 50% of Novvi and each party will share equally in any costs and any profits ultimately realized by the joint venture. Novvi is governed by a six member Board of Managers, three from each investor who will appoint the Officers of Novvi who will be responsible for carrying out the daily operating activities of Novvi as directed by the Board of Managers. The IP License Agreement has an initial term of 20 years from the date of the agreement, subject to standard early termination provisions such as uncured material breach or a party's insolvency. Under the terms of the Amended and Restated Operating Agreement for initial contribution, Cosan U.S. is obligated to fund its 50% ownership share of Novvi in cash in the amount of \$10.0 million and we are obligated to fund our 50% ownership share of Novvi through the granting of an IP License to develop, produce and commercialize base oils, additives, and lubricants derived from Biofene for use in the automotive, commercial and industrial lubricants markets which has been agreed upon by Cosan U.S. and Amyris valued at \$10.0 million. On March 26, 2013, we measured our initial contribution of IP to Novvi at our carrying value of the licenses granted under the IP License Agreement, which was zero. Additional funding requirements to finance the ongoing operations of Novvi are expected to happen through revolving credit or other loan facilities provided by unrelated parties (i.e. such as financial institutions); cash advances or other credit or loan facilities provided by us and Cosan U.S. or their affiliates; or additional capital contributions us and Cosan U.S.

We have identified Novvi as a VIE and determined that the power to direct activities, which most significantly impact the economic success of the joint venture (i.e. continuing research and development, marketing, sales, distribution and manufacturing of Novvi products), is equally shared between us and Cosan. Accordingly, we are not the primary beneficiary and therefore account for our investment in Novvi under the equity method of accounting. We will continue to reassess our primary beneficiary analysis of Novvi if there are changes in events and circumstances impacting the power to direct activities that most significantly affect Novvi's economic success. Under the equity method, our share of profits and losses are to be included in "Income (loss) from equity method investments, net" in our consolidated statements of operations. During the three and six months ended June 30, 2013, we recorded no amounts for our share of Novvi's net loss as the carrying amount of our investment in Novvi was zero and losses in excess of the carrying amount are offset by the accretion of our share in the basis difference resulted from the parties' initial contribution. For the three months ended June 30, 2013 and 2012, we recorded \$0.1 million and \$0.9 million, respectively, and \$2.6 million and \$0.9 million for the six months ended June 30, 2013 and 2012, respectively, of revenue from the research and development activities performed on behalf of Novvi.

### *Sales and Revenue*

To commercialize our Biofene-derived product, squalane, in the cosmetics sector for use as an emollient, we have entered into a number of distribution agreements such as Laserson S.A. in Europe, Nikko Chemicals Co., Ltd. in Japan, and Centerchem, Inc. in the United States. As an initial step towards commercialization of Biofene-based diesel, we have entered into agreements with municipal fleet operators in São Paulo, Brazil. Our diesel fuel is supplied to BR Distribudora, a division of Petrobras, which in turn blends our product with petroleum diesel and sells to a number of bus operators including Santa Brigida, the largest bus fleet operator in São Paulo. For the industrial lubricants market, we established a joint venture with Cosan for the worldwide development, production and commercialization of renewable base oils in the lubricant sector.

We transitioned out of the ethanol and ethanol-blended business during the third quarter ended September 30, 2012. We do not expect to be able to replace prior year revenue levels in the near term as a result of this transition, particularly in 2013 while we focus our efforts to establish our renewable products business.

The following table sets forth our comparative revenue data for the periods or the periods shown (in thousands):

|                                      | Three Months<br>Ended June 30, |           | Year-to Year<br>Change | Percentage<br>Change |    |
|--------------------------------------|--------------------------------|-----------|------------------------|----------------------|----|
|                                      | 2013                           | 2012      |                        |                      |    |
|                                      | (Dollars in thousands)         |           |                        |                      |    |
| Revenues                             |                                |           |                        |                      |    |
| Ethanol and ethanol-blended gasoline | \$—                            | \$ 13,309 | \$ (13,309)            | (100)                | )% |
| Renewable products                   | 4,185                          | 2,271     | 1,914                  | 84                   | %  |



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|                        |          |          |             |     |    |
|------------------------|----------|----------|-------------|-----|----|
| Collaborations revenue | 3,090    | 1,770    | 1,320       | 75  | %  |
| Grants                 | 3,574    | 1,913    | 1,661       | 87  | %  |
| Total revenues         | \$10,849 | \$19,263 | \$ (8,414 ) | (44 | )% |

|                                      | Six Months Ended       |          | Year-to<br>Year<br>Change | Percentage |    |
|--------------------------------------|------------------------|----------|---------------------------|------------|----|
|                                      | June 30,<br>2013       | 2012     |                           | Change     |    |
|                                      | (Dollars in thousands) |          |                           |            |    |
| Revenues                             |                        |          |                           |            |    |
| Ethanol and ethanol-blended gasoline | \$—                    | \$37,178 | \$(37,178)                | (100       | )% |
| Renewable products                   | 7,168                  | 4,709    | 2,459                     | 52         | %  |
| Collaborations revenue               | 6,144                  | 2,661    | 3,483                     | 131        | %  |
| Grants                               | 5,406                  | 4,184    | 1,222                     | 29         | %  |
| Total revenues                       | \$18,718               | \$48,732 | \$(30,014)                | (62        | )% |

### *Financing*

In 2012, we completed multiple financings involving loans and convertible debt and equity offerings. In February 2012, we completed a private placement of 10.2 million shares of common stock for aggregate proceeds of \$58.7 million and raised \$25.0 million from an offering of senior unsecured convertible promissory notes. In May 2012, we completed a private placement of 1.7 million shares of common stock for aggregate proceeds of \$4.1 million. In July 2012, we completed a sale of a \$38.3 million in a senior unsecured convertible promissory note for cash proceeds of \$15.0 million and our repayment of \$23.3 million in previously-provided research and development funds and, in September 2012, we completed a sale of an additional senior unsecured convertible promissory note for additional cash proceeds of \$15.0 million. In December 2012, we completed a private placement of our common stock for the issuance of 14,177,849 shares at a price of \$2.98 per share for aggregate proceeds of \$37.2 million and the cancellation of \$5.0 million worth of outstanding senior unsecured convertible promissory notes previously issued us. Shares totaling 1,677,852 were issued to Total in exchange for this cancellation. Net cash received for this private placement as of December 31, 2012 was \$22.2 million and the remaining \$15.0 million of proceeds was received in January 2013. In connection with this private placement, we entered into a Letter of Agreement, dated December 24, 2012 with Biolding under which we acknowledged that Biolding's initial investment of \$10.0 million in December 2012 represented partial satisfaction of its preexisting contractual obligation to fund \$15.0 million by March 31, 2013 upon satisfaction by us of criteria associated with the commissioning of our production plant in Brotas.

In March 2013, we completed a private placement of our common stock to Biolding and issued 1,533,742 of our common stock at a price of \$3.26 per share resulting in aggregate proceeds of approximately \$5.0 million. This private placement represented the final tranche of Biolding's preexisting contractual obligation to fund \$15.0 million upon satisfaction by us of certain criteria associated with the commissioning of a production plant in Brazil.

Pursuant to the letter agreement discussed above under the caption "Total Relationship", we completed a sale of \$10.0 million senior unsecured convertible note to Total with a conversion price of \$3.08 per share in June 2013. Subsequently, in July 2013, we sold a \$20.0 million in senior unsecured convertible note to Total with the same conversion price as the note in the June 2013 sale. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013.

In August 2013, we signed an agreement for an additional private placement of convertible promissory notes as described in more detail in more detail below.

*Liquidity*

We have incurred significant losses in each year since our inception and believe that we will continue to incur losses and negative cash flow from operations into at least 2014. As of June 30, 2013, we had an accumulated deficit of \$657.8 million and had cash, cash equivalents and short term investments of \$12.9 million. We have significant outstanding debt and contractual obligations related to purchase commitments, as well as capital and operating leases. As of June 30, 2013, our debt totaled \$107.2 million, of which \$5.0 million matures within the next twelve months. In addition, our debt agreements contain various covenants, including restrictions on business that could cause us to be at risk of defaults.

In March 2013, we signed a collaboration agreement with Firmenich that included a collaboration funding component, and obtained a commitment letter from Total with respect to additional convertible note funding (as described above) of which we received \$10.0 million in proceeds in June 2013, and we expect to use amounts received under these arrangements to fund our operations. We also received \$20.0 million in funding through the sale of a convertible note in private placement under an existing funding agreement with Total in July 2013. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013. Furthermore, we are expecting additional funding in 2013 from collaborations, a pending convertible debt offering, and potentially, other sources. In August 2013, we entered into an agreement with certain investors to sell up to \$73.1 million in convertible promissory notes in private placements over a period of up to 24 months from the date of signing. This convertible note financing requires us to satisfy various conditions before the funding is available, and the offering is divided into two tranches (one for \$42.6 million and one for \$30.4 million), each with differing closing conditions. Of the total possible purchase price in the financing, \$60.0 million would be paid in the form of cash (\$35.0 million in the first tranche and up to \$25.0 million in the second tranche) and \$13.1 million would be paid by cancellation of outstanding promissory notes by an existing stockholder in connection with its exercise of pro rata rights (\$7.6 million in the first tranche and \$5.4 million in the second tranche). The financing is subject to timing and completion risks, including a requirement that we meet certain production milestones before the second tranche is available, and a requirement that we obtain stockholder approval prior to completing any closings in the transaction.

Though we expect to close our pending convertible note financing in September 2013, if there is any significant delay in such closing, we would likely need to secure additional short-term funding in September 2013. Such short-term funding may not be available on reasonable terms or at all. For example, in order to raise sufficient additional funds, we could be forced to issue further preferred and discounted equity, agree to onerous covenants, grant security interests in our assets, enter into collaboration and licensing arrangements that require us to relinquish commercial rights or grant licenses on terms that are not favorable to us, or any or all of these. If we are unable to secure sufficient short-term funding to bridge our operations to a delayed closing or fail to complete the pending convertible debt financing within the period covered by any such short-term funding, we would be forced to curtail our operations and cease most of our cash expenditures, which would have a material adverse effect on our ability to continue our business plans and our status as a going concern.

### *Comparison of Three Months Ended June 30, 2013 and 2012*

#### *Revenues*

|                                      | Three Months<br>Ended June 30, |          | Year-to-Year | Percentage |    |
|--------------------------------------|--------------------------------|----------|--------------|------------|----|
|                                      | 2013                           | 2012     | Change       | Change     |    |
|                                      | (Dollars in thousands)         |          |              |            |    |
| Revenues                             |                                |          |              |            |    |
| Ethanol and ethanol-blended gasoline | \$—                            | \$13,309 | \$ (13,309)  | (100       | )% |
| Renewable products                   | 4,185                          | 2,271    | 1,914        | 84         | %  |

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|                                   |          |          |           |   |     |    |
|-----------------------------------|----------|----------|-----------|---|-----|----|
| Product sales                     | 4,185    | 15,580   | (11,395   | ) | (73 | )% |
| Grants and collaborations revenue | 6,664    | 3,683    | 2,981     |   | 81  | %  |
| Total revenues                    | \$10,849 | \$19,263 | \$ (8,414 | ) | (44 | )% |

Our total revenues decreased by \$8.4 million to \$10.8 million for the three months ended June 30, 2013 as compared to the same period in the prior year, as did the revenue from product sales which decreased by \$11.4 million to \$4.2 million with such reductions resulting primarily from the transitioning out of the ethanol and ethanol-blended gasoline business during the third quarter of 2012. We do not expect to be able to replace prior year revenue levels in the near term as a result of this transition, particularly in 2013 while we focus our efforts to establish our renewable products business.

Product sales of our farnesene-derived products increased \$1.9 million in the second quarter of 2013 compared to the prior year. The increase in the second quarter of 2013 is primarily a result of sales to new distributors and diesel sales. Additionally, grants and collaborations revenue increased in the second quarter of 2013 by \$3.0 million to \$6.7 million compared to the same period in the prior year primarily due to the revenue recognized from collaboration research services with Firmenich, along with the achievement of program milestones under the DARPA Technology Investment Agreement. The increase in revenue from the DARPA milestone was partially offset by the absence of revenue from the "Integrated Bio-Refinery" grant from the U.S. Department of Energy as the project was completed in the first quarter of 2013.

*Cost and Operating Expenses*

|   | Three Months<br>Ended June 30, |          | Year-to-Year | Percentage |
|---|--------------------------------|----------|--------------|------------|
|   | 2013                           | 2012     | Change       | Change     |
|   | (Dollars in thousands)         |          |              |            |
| Cost of products sold   | \$8,853                        | \$23,636 | \$ (14,783 ) | (63 )%     |
| Loss on purchase commitments and write-off of production assets | 8,423                          | —        | 8,423        | nm         |
| Research and development  | 13,992                         | 18,500   | (4,508 )     | (24 )%     |
| Sales, general and administrative                               | 14,718                         | 22,231   | (7,513 )     | (34 )%     |
| Total cost and operating expenses                               | \$45,986                       | \$64,367 | \$ (18,381 ) | (29 )%     |

nm= not meaningful

*Cost of Products Sold*

Our cost of products sold decreased by \$14.8 million to \$8.9 million for the three months ended June 30, 2013 compared to the same period in the prior year. Our cost of products sold includes production costs of farnesene-derived products, which includes cost of raw materials, labor and overhead, amounts paid to contract manufacturers and period costs including inventory write-downs resulting from applying lower-of-cost-or-market inventory valuations. Cost of farnesene-derived products sold also includes certain costs related to the scale-up in production of such products. As of December 2012, we began operating our own large-scale Biofene production plant in Brotas, in the state of São Paulo, Brazil.

We transitioned out of the ethanol and ethanol-blended business during the third quarter of 2012 to focus our efforts to establish our renewable products business, as a result, 2013 cost of products sold do not include any such costs. Cost of products sold declined by \$13.7 million for the three months ended June 30, 2013 compared to the same period in the prior year. Production costs of farnesene-derived products sold decreased by \$1.1 million compared to the prior year as the prior year costs included higher write-downs taken from applying lower-of-cost-or-market adjustments against higher production levels as we scaled up of our renewable operations. This decrease was partly offset by current period charges for excess capacity at various manufacturing facilities.

*Cost of Products Sold Associated with Loss on Purchase Commitments and Write Off of Production Assets*

Beginning in March 2012, we initiated a plan to shift a portion of our production capacity from contract manufacturing facilities to Amyris-owned plants that were then under construction. We computed the loss on facility modification costs and fixed purchase commitments using the same approach that is used to value inventory—the lower of cost or market value. The computation of the loss on firm purchase commitments is subject to several estimates, including the ultimate selling price of any of our products manufactured at the relevant production facilities, and is therefore inherently uncertain.

During the three months ended June 30, 2013, we recorded an additional loss related to a termination and settlement of our existing agreement with Tate & Lyle, one of our contract manufacturers, of \$8.4 million which consisted of an impairment charge of \$6.7 million relating to our equipment at Tate & Lyle, a \$2.7 million write-off of an unamortized portion of equipment costs funded by us for Tate & Lyle, offset by a reversal of \$1.0 million provision for loss on fixed purchase commitments.

#### *Research and Development Expenses*

Our research and development expenses decreased by \$4.5 million for the three months ended June 30, 2013 compared to the same period in the prior year, primarily as a result of overall lower spending. The decrease was attributable to a \$1.9 million reduction in personnel-related expenses associated with a lower headcount, a \$1.6 million reduction in other overhead expenses, and a \$1.0 million reduction in consulting and professional services expenses. Research and development expenses included stock-based compensation expense of \$1.0 million and \$1.6 million during the three months ended June 30, 2013 and 2012, respectively.

*Sales, General and Administrative Expenses*

Our sales, general and administrative expenses decreased by \$7.5 million for the three months ended June 30, 2013 compared to the same period of the prior year, primarily as a result of overall lower spending. The decrease is attributed primarily to a \$5.1 million reduction in personnel-related expenses associated with lower stock-based compensation expenses and lower headcount, \$1.0 million reduction in consulting and professional service fees, and \$1.0 million reduction in other overhead expenses. Sales, general and administrative expenses included stock-based compensation expense of \$3.9 million and \$7.4 million during the three months ended June 30, 2013 and 2012, respectively.

*Other Income (Expense)*

|                         | Three Months<br>Ended June 30, |            | Year-to-Year<br>Change | Percentage |        |
|-------------------------|--------------------------------|------------|------------------------|------------|--------|
|                         | 2013                           | 2012       |                        | Change     | Change |
|                         | (Dollars in thousands)         |            |                        |            |        |
| Other income (expense): |                                |            |                        |            |        |
| Interest income         | \$ 57                          | \$ 503     | \$ (446 )              | (89 )      | %      |
| Interest expense        | (1,558 )                       | (1,260 )   | (298 )                 | 24         | %      |
| Other expense, net      | (2,030 )                       | (1,025 )   | (1,005 )               | 98         | %      |
| Total other expense     | \$(3,531 )                     | \$(1,782 ) | \$ (1,749 )            | 98         | %      |

Total other expense increased by approximately \$1.7 million to \$3.5 million for the three months ended June 30, 2013 compared to the same period of the prior year. The increase in total other expense was attributable to an increase in other expense, net of \$1.0 million, a \$0.4 million decrease in interest income due to lower cash balance compared to the same period in the prior year and an increase in interest expense of \$0.3 million associated with increased borrowings to fund our operations. The increase in other expense, net of \$1.0 million is primarily due to \$2.0 million foreign currency fluctuations related to intercompany balances and \$0.4 million change in fair value of our interest swap liability partially offset by a \$1.4 million gain from change in fair value of the compound derivative liability associated with our senior unsecured convertible promissory notes issued to Total.

*Comparison of Six Months Ended June 30, 2013 and 2012**Revenues*



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|                                      | Six Months Ended June  |          | Year-to-Year | Percentage |   |
|--------------------------------------|------------------------|----------|--------------|------------|---|
|                                      | 2013                   | 2012     | Change       | Change     |   |
|                                      | (Dollars in thousands) |          |              |            |   |
| Revenues                             |                        |          |              |            |   |
| Ethanol and ethanol-blended gasoline | \$—                    | \$37,178 | \$ (37,178 ) | (100.0 )   | % |
| Renewable products                   | 7,168                  | 4,709    | 2,459        | 52.2       | % |
| Product sales                        | \$7,168                | \$41,887 | \$ (34,719 ) | (83 )      | % |
| Grants and collaborations revenue    | 11,550                 | 6,845    | 4,705        | 69         | % |
| Total revenues                       | \$18,718               | \$48,732 | \$ (30,014 ) | (62 )      | % |

Our total revenues decreased by \$30.0 million to \$18.7 million for the six months ended June 30, 2013 as compared to the same period in the prior year, as did revenue from product sales by \$34.7 million to \$7.2 million with such reductions resulting primarily from the transitioning out of the ethanol and ethanol-blended gasoline business during the third quarter of 2012. We do not expect to be able to replace prior year revenue levels in the near term as a result of this transition, particularly in 2013 while we focus our efforts to establish our renewable products business.

Product sales of our renewable products increased by \$2.5 million to \$7.2 million for the six months ended June 30, 2013 compared to the same period in the prior year as a result of sales to new distributors and diesel sales. Additionally, grants and collaboration revenue increased in the six months ended June 30, 2013 by \$4.7 million to \$11.6 million compared to the same period in the prior year primarily due to the revenue recognized from collaboration research services with Firmenich, along with the achievement of program milestones under the DARPA Technology Investment Agreement. The increase in revenue from the DARPA milestone was partially offset by the lower of revenue from the “Integrated Bio-Refinery” grant from the U.S. Department of Energy as the project was completed in the first quarter of 2013.

*Costs and Operating Expenses*

|   | Six Months Ended June 30, |           | Year-to-Year  | Percentage |
|---|---------------------------|-----------|---------------|------------|
|   | 2013                      | 2012      | Change        | Change     |
|   | (Dollars in thousands)    |           |               |            |
| Cost of products sold   | \$17,813                  | \$67,447  | \$ (49,634 )  | (74 )%     |
| Loss on purchase commitments and write off of production assets | 8,423                     | 36,652    | (28,229 )     | (77 )%     |
| Research and development  | 29,746                    | 39,844    | (10,098 )     | (25 )%     |
| Sales, general and administrative                               | 29,545                    | 43,946    | (14,401 )     | (33 )%     |
| Total costs and operating expenses                              | \$85,527                  | \$187,889 | \$ (102,362 ) | (54 )%     |

*Cost of Products Sold*

Our cost of products sold decreased by \$49.6 million to \$17.8 million for the six months ended June 30, 2013 compared to the same period in the prior year. Our cost of products sold includes production costs of farnesene-derived products, which includes cost of raw materials, labor and overhead, amounts paid to contract manufacturers and period costs including inventory write-downs resulting from applying lower-of-cost-or-market inventory valuations. Cost of farnesene-derived products sold also includes certain costs related to the scale-up in production of such products. As of December 2012, we began operating our own large-scale Biofene production plant in Brotas, in the state of São Paulo, Brazil.

We transitioned out of our ethanol and ethanol-blended gasoline business in the quarter ended September 30, 2012, which resulted in a reduction of \$37.3 million in cost of products sold for the six months ended June 30, 2013 compared to the same period in the prior year. Production costs of farnesene-derived products sold decreased by \$12.3 million compared to the prior year as prior year costs included higher write-downs taken from applying lower-of-cost-or-market adjustments against higher production levels as we scaled up of our renewable operations. This decrease was partly offset by current period charges for excess capacity at various manufacturing facilities.

*Cost of Products Sold Associated with Loss on Purchase Commitments and Write Off of Production Assets*

Beginning in March 2012, we initiated a plan to shift a portion of our production capacity from contract manufacturing facilities to Amyris-owned plants that were then under construction. As a result, we evaluated our contract manufacturing agreements and, in the first quarter of 2012, recorded a loss of \$31.2 million related to facility modification costs and fixed purchase commitments. We also recorded an impairment charge of \$5.5 million in the three months ended March 31, 2012 related to Amyris-owned equipment at contract manufacturing facilities, based on

the excess of the carrying value of the assets over their fair value. We computed the loss on facility modification costs and fixed purchase commitments using the same approach that is used to value inventory-the lower of cost or market value. The computation of the loss on firm purchase commitments is subject to several estimates, including the ultimate selling price of any of our products manufactured at the relevant production facilities, and is therefore inherently uncertain.

During the six months ended June 30, 2013, we recorded an additional loss related to a termination and settlement of our existing agreement with Tate & Lyle, one of our contract manufacturers of \$8.4 million which consisted of an impairment charge of \$6.7 million relating to our equipment at Tate & Lyle, a \$2.7 million write-off of an unamortized portion of equipment costs funded by us for Tate & Lyle, offset by a reversal of \$1.0 million provision for loss on fixed purchase commitments.

#### *Research and Development Expenses*

Our research and development expenses decreased by \$10.1 million for the six months ended June 30, 2013 compared to the same period in the prior year, primarily as a result of overall lower spending. The decrease was attributable to a \$4.1 million reduction in personnel-related expenses associated with a lower headcount, a \$3.6 million reduction in other overhead expenses, \$2.1 million reduction in consulting and professional services, and a \$0.3 million decrease in travel-related expenses. Research and development expenses included stock-based compensation expense of \$2.3 million and \$3.1 million during the six months ended June 30, 2013 and 2012, respectively.

*Sales, General and Administrative Expenses*

Our sales, general and administrative expenses decreased by \$14.4 million for the six months ended June 30, 2013 compared to the same period of the prior year, primarily a result of overall lower spending. The decrease is attributed primarily to a \$10.3 million reduction in personnel-related expenses associated with lower stock compensation expenses and a lower headcount, \$2.2 million reduction in consulting, and professional service fees, \$1.6 million reduction in other overhead expenses, and \$0.3 million reduction in travel-related expenses. Sales, general and administrative expenses included stock-based compensation expense of \$6.9 million and \$12.4 million during the six months ended June 30, 2013 and 2012, respectively.

*Other Income (Expense)*

|                         | Six<br>Months Ended June 30,<br>2013 |           | 2012       | Year-to-Year<br>Change | Percentage<br>Change |
|-------------------------|--------------------------------------|-----------|------------|------------------------|----------------------|
|                         | (Dollars in thousands)               |           |            |                        |                      |
| Other income (expense): |                                      |           |            |                        |                      |
| Interest income         | \$93                                 | \$1,109   | \$ (1,016) | )                      | (92)%                |
| Interest expense        | (3,120)                              | (2,314)   | (806)      | )                      | 35%                  |
| Other expense, net      | (911)                                | (1,176)   | 265        | )                      | (23)%                |
| Total other expense     | \$(3,938)                            | \$(2,381) | \$ (1,557) | )                      | 65%                  |

Total other expense increased by \$1.6 million to \$3.9 million for the six months ended June 30, 2013 compared to the same period of the prior year. During the six months ended June 30, 2013, interest income decreased by \$1.0 million due to lower cash balance compared to the same period in the prior year and interest expense increased \$0.8 million due to increased borrowings to fund our operations including capital expenditures. These changes were partially offset by a decrease in other expense, net of \$0.3 million, of which \$2.4 million is due to a change in fair value of the compound embedded derivative liability associated with our senior unsecured convertible promissory notes issued to Total partially offset by a \$1.8 million foreign currency fluctuations related to intercompany balances and \$0.4 million of loss related to the change in fair value of our interest swap liability.

*Liquidity and Capital Resources*

June 30,  
2013

December 31, 2012

|  | (Dollars in thousands) |               |
|--|------------------------|---------------|
| Working capital (deficit)                            | \$(13,860 )            | \$ 3,668      |
| Cash and cash equivalents and short-term investments | \$12,915               | \$ 30,689     |
| Debt and capital lease obligations                   | \$108,924              | \$ 106,774    |
| Accumulated deficit                                  | \$(657,817)            | \$ (586,327 ) |

|   | Six Months Ended              |             |
|---|-------------------------------|-------------|
|   | June 30,                      |             |
|   | 2013                          | 2012        |
|   | <b>(Dollars in thousands)</b> |             |
| Net cash used in operating activities     | \$(45,268)                    | \$(91,610 ) |
| Net cash used in investing activities     | (5,141 )                      | (38,108 )   |
| Net cash provided by financing activities | 30,023                        | 102,191     |

*Working Capital.* Working capital (deficit) was \$(13.9) million at June 30, 2013, a decrease of \$17.5 million from working capital as of December 31, 2012. This decrease was principally attributable to a reduction in net cash and investment balances of \$17.8 million due primarily to fund our operating expenses and service our debt, a \$6.3 million increase in short-term deferred revenue, a \$2.0 million decrease in inventory, a \$1.8 million decrease in prepaid and other current assets, and an increase of \$1.6 million in short term debt balances. This decrease was offset in part by a \$3.4 million increase in accounts receivable and a reduction of \$8.2 million in accounts payable and accrued and other current liabilities.

To support production of our products in contract manufacturing and dedicated production facilities, we have incurred, and we expect to continue to incur, capital expenditures as we invest in these facilities. We plan to continue to seek external debt financing from U.S. and Brazilian sources to help fund our investments in these contract manufacturing and dedicated production facilities.

We expect to fund our operations for the foreseeable future with cash and investments currently on hand, with cash inflows from collaboration and grant funding, cash contributions from product sales, and with new debt and equity financing. Some of our existing anticipated financing sources, such as research and development collaborations and a pending convertible debt financing, are subject to risk that we cannot meet milestones or are not yet subject to definitive agreements or mandatory funding commitments and, if needed, we may not be able to secure additional types of financing in a timely manner or on reasonable terms, if at all. Our planned 2013 working capital needs and our planned operating and capital expenditures for 2013 are dependent on significant inflows of cash from existing collaboration partners, as well as additional funding from new collaborations, equity or debt offerings, credit facilities or loans, or combinations of these sources. We will continue to need to fund our research and development and related activities and to provide working capital to fund production, storage, distribution and other aspects of our business. Our operating plan contemplates capital expenditures of approximately \$10.0 million in 2013 and we expect to continue to incur costs in connection with our existing contract manufacturing arrangements.

*Liquidity.* We have incurred significant losses in each year since our inception and believe that we will continue to incur losses and negative cash flow from operations into at least 2014. As of June 30, 2013, we had an accumulated deficit of \$657.8 million and had cash, cash equivalents and short term investments of \$12.9 million. We have significant outstanding debt and contractual obligations related to purchase commitments, as well as capital and operating leases. As of June 30, 2013, our debt totaled \$107.2 million, of which \$5.0 million matures within the next twelve months. In addition, our debt agreements contain various covenants, including restrictions on business that could cause us to be at risk of defaults. In March 2013, we signed a collaboration agreement with Firmenich that included a collaboration funding component, and obtained a commitment letter from Total with respect to additional convertible note funding (as described above under "Overview-Total Relationship") of which we received \$10.0 million in proceeds in June 2013, and we expect to use amounts received under these arrangements to fund our operations. We also received \$20.0 million in funding through the sale of a convertible note in private placement under an existing funding agreement with Total in July 2013. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013. Furthermore, we are expecting additional funding in 2013 from collaborations, a pending convertible debt offering, and potentially, other sources. In August 2013, we entered into an agreement with certain investors to sell up to \$73.1 million in convertible promissory notes in private placements over a period of up to 24 months from the date of signing. This convertible note financing requires us to satisfy various conditions before the funding is available, and the offering is divided into two tranches (one for \$42.6 million and one for \$30.4 million), each with differing closing conditions. Of the total possible purchase price in the financing, \$60.0 million would be paid in the form of cash (\$35.0 million in the first tranche and up to \$25.0 million in the second tranche) and \$13.1 million would be paid by cancellation of outstanding promissory notes by an existing stockholder in connection with its exercise of pro rata rights (\$7.6 million in the first tranche and \$5.4 million in the second tranche). The financing is subject to timing and completion risks, including a requirement that we meet certain production milestones before the second tranche is available, and a requirement that we obtain stockholder approval prior to completing any closings in the transaction.

Though we expect to close our pending convertible note financing in September 2013, if there is any significant delay in such closing, we would likely need to secure additional short-term funding in September 2013. Such short-term funding may not be available on reasonable terms or at all. For example, in order to raise sufficient additional funds, we could be forced to issue further preferred and discounted equity, agree to onerous covenants, grant security interests in our assets, enter into collaboration and licensing arrangements that require us to relinquish commercial rights or grant licenses on terms that are not favorable to us, or any or all of these. If we are unable to secure sufficient

short-term funding to bridge our operations to a delayed closing or fail to complete the pending convertible debt financing within the period covered by any such short-term funding, and fail to secure alternative funding to finance our operations, we would be forced to curtail our operations and cease most of our cash expenditures, which would have a material adverse effect on our ability to continue our business plans and our status as a going concern.

*Convertible Note Offering.* In February 2012, we sold \$25.0 million in principal amount of senior unsecured convertible promissory notes due March 1, 2017. The notes have a 3.0% annual interest rate and are convertible into shares of our common stock at a conversion price of \$7.0682 per share, subject to adjustment for proportional adjustments to outstanding common stock and anti-dilution provisions in case of dividends and distributions. The note holders have a right to require repayment of 101% of the principal amount of the notes in an acquisition of Amyris, and the notes provide for payment of unpaid interest on conversion following such an acquisition if the note holders do not require such repayment. The securities purchase agreement and notes include covenants regarding payment of interest, maintaining our listing status, limitations on debt, maintenance of corporate existence, and filing of SEC reports. The notes include standard events of default resulting in acceleration of indebtedness, including failure to pay, bankruptcy and insolvency, cross-defaults, and breaches of the covenants in the securities purchase agreement and notes, with default interest rates and associated cure periods applicable to the covenant regarding SEC reporting. Furthermore, the senior unsecured convertible notes include restrictions on the amount of debt we are permitted to incur. Our total outstanding debt at any time cannot exceed the greater of \$200.0 million or 50% of our consolidated total assets and our secured debt cannot exceed the greater of \$125 million or 30% of our consolidated total assets. As of June 30, 2013 and December 31, 2012, a principal amount of \$25.0 million and \$25.0 million, respectively, was outstanding under these notes payable.

In July and September of 2012, we issued a total of \$53.3 million of senior unsecured convertible notes to Total for an aggregate of \$30.0 million in cash proceeds and our repayment of \$23.3 million in previously-provided research and development funds as described in more detail under "Overview - Total Relationship" above. As part of the December 2012 private placement, 1,677,852 shares of the Company's common stock were issued in exchange for the cancellation of \$5.0 million worth of an outstanding senior unsecured convertible promissory note held by Total. On June 6, 2013, we issued an additional \$10.0 million of senior unsecured convertible note to Total with a conversion price of \$3.08 per share. Subsequently, on July 26, 2013, we issued a \$20.0 million senior unsecured convertible note to Total with the same conversion price as the June 2013 sale. This purchase and sale completed Total's commitment to purchase \$30.0 million of such notes by July 2013.

*Common Stock Offerings.* In February 2012, we sold 10,160,325 shares of our common stock in a private placement for aggregate offering proceeds of \$58.7 million.

In May 2012, we completed a private placement of 1,736,100 shares of our common stock for aggregate cash proceeds of \$4.1 million.

In December 2012, we completed a private placement of 14,177,849 shares common stock for aggregate proceeds of \$37.2 million, of which \$22.2 million in cash was received in December 2012 and \$15.0 million in cash was received in January 2013. As part of this private placement, 1,677,852 of the 14,177,849 shares were issued to Total in exchange for the cancellation of \$5.0 million worth of an outstanding senior unsecured convertible promissory note we previously issued to Total.

In January 2013, we received \$15.0 million in proceeds from a private placement offering that closed in December 2012. Consequently, we issued 5,033,557 of the 14,177,849 shares of our common stock.

In March 2013, we completed a private placement of 1,533,742 shares of its common stock at a price of \$3.26 per share for aggregate proceeds of \$5.0 million. This private placement represented the final tranche of Biolding's preexisting contractual obligation to fund \$15.0 million upon satisfaction by us of certain criteria associated with the commissioning of a production plant in Brazil.

*Export Financing with ABC Brasil.* On March 18, 2013, we entered into an export financing agreement with Banco ABC Brasil S.A. for approximately US\$2.5 million (approximately R\$5.0 million based on exchange rate as of March 18, 2013) for a 1 year-term to fund exports through March 2014. As of June 30, 2013, the principal amount outstanding was US\$2.5 million. This loan is collateralized by future exports from our subsidiary in Brazil.



*Banco Pine/Nossa Caixa Financing.* In July 2012, we entered into a Note of Bank Credit and a Fiduciary Conveyance of Movable Goods agreement with each of Nossa Caixa and Banco Pine. Under such instruments, we borrowed an aggregate of R\$52.0 million (approximately US\$23.5 million based on the exchange rate as of June 30, 2013) as financing for capital expenditures relating to our manufacturing facility in Brotas. Under the loan agreements, Banco Pine agreed to lend R\$22.0 million and Nossa Caixa agreed to lend R\$30.0 million. The funds for these loans are provided by Banco Nacional de Desenvolvimento Econômico e Social, or BNDES, a government owned bank headquartered in Brazil, but are guaranteed by the lenders. The loans have a final maturity date of July 15, 2022 and bear a fixed interest rate of 5.5% per year. The loans are also subject to early maturity and delinquency charges upon occurrence of certain events including interruption of manufacturing activities at Brotas for more than 30 days, except during sugarcane off-season. The loans are secured by certain of our farnesene production assets at the manufacturing facility in Brotas, and we were required to provide parent guarantees to each of the lenders.

*BNDES Credit Facility.* In December 2011, we entered into a credit facility in the amount of R\$22.4 million (approximately US\$10.1 million based on the exchange rate as of June 30, 2013) with BNDES. This BNDES facility was extended as project financing for a production site in Brazil. The credit line is divided into an initial tranche for up to approximately R\$19.1 million (approximately US\$8.6 million based on the exchange rate at June 30, 2013) and an additional tranche of approximately R\$3.3 million (approximately US\$1.5 million based on the exchange rate at June 30, 2013) that becomes available upon delivery of additional guarantees. The credit line is available for 12 months from the date of the Credit Agreement, subject to extension by the lender.

The principal of loans under the BNDES credit facility is required to be repaid in 60 monthly installments, with the first installment due in January 2013 and the last due in December 2017. Interest was initially due on a quarterly basis with the first installment due in March 2012. From and after January 2013, interest payments are due on a monthly basis together with principal payments. The loaned amounts carry interest of 7% per year. Additionally, a credit reserve charge of 0.1% on the unused balance from each credit installment from the day immediately after it is made available through its date of use, is due when such credit installment is repaid.

The BNDES Credit Facility is collateralized by a first priority security interest in certain of our equipment and other tangible assets totaling R\$24.9 million (approximately US\$11.2 million on the exchange rate as of June 30, 2013). We are a parent guarantor for the payment of the outstanding balance under the BNDES Credit Facility. Additionally, we are required to provide a bank guarantee equal to 10.0% of the total approved amount (R\$22.4 million in total debt) available under the BNDES Credit Facility. For advances in the second tranche (above R\$19.1 million), we are required to provide additional bank guarantees equal to 90.0% of each such advance, plus additional Amyris guarantees equal to at least 130.0% of such advance. The BNDES Credit Facility contains customary events of default, including payment failures, failure to satisfy other obligations under the credit facility or related documents, defaults in respect of other indebtedness, bankruptcy, insolvency and inability to pay debts when due, material judgments, and changes in control of Amyris Brasil. If any event of default occurs, BNDES may terminate its commitments and declare immediately due all borrowings under the facility. As of June 30, 2013 and December 31, 2012 the Company had R\$17.2 million (approximately US\$7.8 million based on the exchange rate as of June 30, 2013) and R\$19.1 million (approximately US\$9.3 million based on the exchange rate as of December 31, 2012) in outstanding advances under the BNDES Credit Facility.

*FINEP Credit Facility.* In November 2010, we entered into a credit facility with Financiadora de Estudos e Projetos (“FINEP”), a state-owned company subordinated to the Brazilian Ministry of Science and Technology. This FINEP Credit Facility was extended to partially fund expenses related to our research and development project on sugarcane-based biodiesel (“FINEP Project”) and provides for loans of up to an aggregate principal amount of R\$6.4 million (approximately US\$2.9 million based on the exchange rate as of June 30, 2013) which is secured by a chattel mortgage on certain equipment of the Company as well as by bank letters of guarantee. As of December 31, 2012, all available credit under this facility was fully drawn.

Interest on loans drawn under this credit facility is fixed at 5.0% per annum. In case of default under, or non-compliance with, the terms of the agreement, the interest on loans will be dependent on the long-term interest rate as published by the Central Bank of Brazil, or TJLP. If the TJLP at the time of default is greater than 6%, then the interest will be 5.0% + a TJLP adjustment factor otherwise the interest will be at 11.0% per annum. In addition, a fine of up to 10.0% will apply to the amount of any obligation in default. Interest on late balances will be 1.0% interest per month, levied on the overdue amount. Payment of the outstanding loan balance will be made in 81 monthly installments, which commenced in July 2012 and extend through March 2019. Interest on loans drawn and other charges are paid on a monthly basis and commenced in March 2011. As of June 30, 2013, total outstanding loan balance under this credit facility was R\$5.8 million (approximately US\$2.6 million based on the exchange rate as of June 30, 2013).

The FINEP Credit Facility contains the following significant terms and conditions:

- We are required to share with FINEP the costs associated with the FINEP Project. At a minimum, we are required to contribute approximately R\$14.5 million (approximately US\$7.1 million based on the exchange rate as of December 31, 2012) of which R\$11.1 million was contributed prior to the release of the second disbursement. As of December 31, 2012, we have fulfilled all of our cost sharing obligations;
- After the release of the first disbursement, prior to any subsequent drawdown from the FINEP Credit Facility, we were required to provide bank letters of guarantee of up to R\$3.3 million in aggregate (approximately US\$1.5 million based on the exchange rate as of June 30, 2013) before receiving the second installment in December 2012. We obtained the bank letters of guarantee from Banco ABC Brasil, S.A.;
- Amounts released from the FINEP Credit Facility must be completely used by us towards the FINEP Project within 30 months after the contract execution.

The fair values of the notes payable, loan payable, convertible notes and credit facility are based on the present value of expected future cash flows and assumptions about current interest rates and the creditworthiness of the Company that market participants would use in pricing the debt.

*Joint Venture Agreement.* In 2010, we established SMA, a joint venture with Usina São Martinho. Under the terms of the agreement, if SMA fails to commence operations by the end of 2013, Usina São Martinho has the right to terminate the joint venture and to require us to buy Usina São Martinho's equity in SMA at its acquisition cost and transfer SMA's assets at the Usina São Martinho site to another location. In that event, we would incur significant costs beginning in mid-2014 and be required to find alternative locations for the facility. In March 2013, we met with Usina São Martinho and the parties agreed in principle to a revised business plan for the joint venture with the plant becoming operational in 2016. While we are in the process of documenting that revised business plan as an amendment to the agreement, we may not be able to reach final agreement on the revised terms. We delayed further construction of and commissioning of the SMA plant and we expect to continue to defer the project in the near term based on economic considerations and to allow us to focus on the successful implementation of our plant in Brotas.

*Government Contracts.* In 2010, we were awarded a \$24.3 million “Integrated Bio-Refinery” grant from the U.S. Department of Energy, or DOE. Under this grant, we are required to fund an additional \$10.6 million in cost sharing expenses. According to the terms of the DOE grant, we were required to maintain a cash balance of \$8.7 million, calculated as a percentage of the total project costs, to cover potential contingencies and cost overruns. As of June 30, 2013, the cash requirement is zero. These funds are not legally restricted but they must be available and unrestricted during the term of the project. Our obligation for this cost share is contingent on reimbursement for project costs incurred. the “Integrated Bio-Refinery” project from DOE was completed in the first quarter of 2013.

In August 2010, we were appointed as a subcontractor to National Renewable Energy Laboratory, or NREL, under a DOE grant awarded to NREL. We have the right to be reimbursed for up to \$3.6 million, and are required to fund an additional \$1.4 million, in cost sharing expenses. Through June 30, 2013, we had recognized \$3.0 million in revenue under this grant, of which \$0.8 million was received in cash during the six months ended June 30, 2013.

In June 2012, we entered into a Technology Investment Agreement with the Defense Advanced Research Projects Agency (DARPA), under which we will perform certain research and development activities funded in part by DARPA. The work is to be performed on a cost-share basis, where DARPA funds 90% of the work and we fund the remaining 10% (primarily by providing specified labor). Under the agreement, we could receive funding of up to approximately \$8.0 million over two years based on achievement of program milestones, and, accordingly, would be responsible for contributions equivalent to approximately \$900,000. The agreement has an initial term of one year and, at DARPA's option, may be renewed for an additional year. Through June 30, 2013, we had recognized \$3.2 million in revenue under this agreement, of which \$2.8 million was recognized during the six months ended June 30, 2013. Cash has not yet been received associated to the \$2.8 million in revenue as of June 30, 2013.

### ***Cash Flows during the Six Months Ended June 30, 2013 and 2012***

#### ***Cash Flows from Operating Activities***

Our primary uses of cash from operating activities are cost of products sold and personnel-related expenditures offset by cash received from product sales, grants and collaborative research. Cash used in operating activities was \$45.3 million and \$91.6 million for the six months ended June 30, 2013 and 2012, respectively.

The largest component of the \$45.3 million of cash used in our operations during the six months ended June 30, 2013 related to our net loss of \$71.2 million, offset by non-cash charges of \$9.2 million of stock-based compensation, \$8.5 million of depreciation and amortization expenses, an \$8.4 million of loss on purchase commitments and write off of production assets related to a termination and settlement of our existing agreement with one of our contract manufacturers, and a \$1.1 million amortization of debt discount.

Significant operating cash inflows during the six months ended June 30, 2013 were derived primarily from sales of renewable products and from collaborative research services. Operating cash inflows also included an \$8.5 million increase in deferred revenue primarily from the up-front collaboration payment from Firmenich.

Net cash used in operating activities of \$91.6 million for the six months ended June 30, 2012 reflected a net loss of \$142.0 million and a \$11.0 million net change in our operating assets and liabilities partially offset by non-cash charges of \$61.4 million. Net change in operating assets and liabilities of \$11.0 million primarily consisted of a \$9.1 million decrease in accounts payable, a \$3.2 million increase in prepaid expenses and other assets, a \$1.2 million decrease in accrued and other long term liabilities, partially offset by a \$3.2 million decrease in accounts receivable. Non-cash charges of \$61.4 million were primarily related to \$36.7 million of losses from firm purchase commitments and write off of production assets at contract manufacturers resulting from our plan to shift a portion of our production capacity from contract manufacturing facilities to Amyris-owned plants that were then under construction, \$15.4 million of stock-based compensation, and \$7.5 million of depreciation and amortization expenses.