EX-10 2 ex1014to10qsb05959\_03312005.htm EX-10.14

Exhibit 10.14

MANUFACTURE AND SUPPLY AGREEMENT

Agreement made this 11th day of April, 2005, between Seller with

Manufacturer and Buyer, each as identified below.

Manufacturer shall manufacture and Seller shall sell and deliver to Buyer,

and Buyer shall purchase from Seller, the Product identified below, upon the

terms set forth below, in the attached Terms and Conditions of Sale ("Terms"),

and in each Rider, if any, all attached hereto and made a part hereof.

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A. BUYER Ceptor Corporation

200 International Circle

Suite 5100

Hunt Valley, Maryland 21030

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B. SELLER Peninsula Laboratories

305 Old Country Road

San Carlos, California 94070

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C. MANUFACTURER Bachem AG

Hauptstrasse 144

4416 Bubendorf, Switzerland

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D. PRODUCT C-101 active pharmaceutical ingredient, in

accordance with agreed upon and approved

specifications.

Buyer shall purchase separately from a third

party, and provide to Seller to incorporate

into the Product, L-aminocarnitine of a

quality reasonably acceptable to the

parties.

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E. TERRITORY Worldwide

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F. TERM OF AGREEMENT Commencement Date: April 11, 2005

Termination Date: April 11, 2015, but at

least five years after market authorization

in the U.S. and/or EU

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G. CURRENT AGREED UPON Buyer agrees to purchase the following

QUANTITIES AND DELIVERY quantities (which are not cumulative)from

DATES Seller:

NON-GMP:

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90g - already delivered

600g - by April 15, 2005

975g - by July 31, 2005

GMP:

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300g - by September 15, 2005

1600g - by November 30, 2005

1600g - by December 31, 2005

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1

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H. PRICING First 1.2kg (non-GMP) @ $1750/g

Next 465g (non-GMP) @$750/g

Next 3.5kg (GMP) @$750/g

All other developmental GMP @$500/g All

commercial material: target price $250/g to

be confirmed after successful process

validation, but if more than $250/g, will be

subject to royalty renegotiations. These

prices do not include L-aminocarnitine as

mentioned under D.

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I. PAYMENT TERMS 1st year - the lesser of 5% of Net Sales or

$10 million;

2nd year - the lesser of 5% of Net Sales or

$15 million;

3rd year and beyond - the lesser of 5% of

Net Sales or $25 million.

"Net Sales" shall mean Buyer's gross sales

(the gross invoice amount billed customers)

of Product, less (i) all discounts and

allowances actually given and (ii) any bona

fide returns. The royalty shall be

calculated on a [quarterly] basis and shall

be payable no later than [30] days after the

termination of such royalty period.]

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CEPTOR CORPORATION BACHEM AG

By: /s/ William H. Pursley By: /s/ Thomas Fruh

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Name: William H. Pursley Name: Thomas Fruh

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Title: Chairman & CEO Title: Executive Vice President & COO

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Date: April 18, 2005 Date: April 8, 2005

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PENINSULA LABORATORIES, INC. BACHEM AMERICAS

By: /s/ Damir Vidovic By: /s/ Joe Dechastonay

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Name: Damir Vidovic Name: Joe Dechastonay

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Title: President & COO Title: President

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Date: April 14, 2005 Date: April 14, 2005

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3

TERMS AND CONDITIONS OF SALE

1. GENERAL. These Terms and Buyer, with all freight and insurance

Conditions of Sale ("Terms") are made prepaid by Seller [and added as a

part of the Manufacture and Supply separate item to the invoice delivered

Agreement (the "Supply Agreement"), by Seller].

between Ceptor Corporation, a Delaware

Corporation, with offices located at 11. TITLE AND RISK OF LOSS. Title to

200 International Circle, Suite 5100, the Product shall vest in Buyer upon

Hunt Valley, Maryland ("Buyer") and delivery to the location specified by

Peninsula Laboratories, Inc., 305 Old Buyer. Seller shall assume the risk of

County Road, San Carlos, California in-transit loss or damage for all

("Seller") with Bachem AG Hauptstrasse Product hereunder until delivery to

144, 4416 Bubendorf, Switzerland Buyer. Buyer shall notify Seller

("Manufacturer"). promptly of any claim and shall

cooperate with Seller in every

2. DEFINITIONS. Unless otherwise set reasonable way to facilitate

forth in these Terms, the capitalized disposition of any such claim.

terms contained herein shall have the

meaning ascribed thereto in the Supply 12. SPECIFICATIONS. Manufacturer and

Agreement. Buyer agree that Product

specifications and any changes in

3. QUANTITY AND PRICE. Manuafacturer specifications must be mutually agreed

agrees to manufacture and Seller upon.

agrees to sell to Buyer, and Buyer

hereby agrees to purchase from Seller, 13. TESTING. Manufacturer will, at its

subject to the terms of the Supply sole cost and expense, undertake and

Agreement, the amount of Product and conduct such tests as shall reasonably

at the prices set forth in the Supply be appropriate to ensure that the

Agreement. Product meets its specifications and

will provide the results of such tests

4. ROYALTIES. In consideration for to Buyer.

the manufacture and sale of the

Product, Buyer agrees to pay 14. COMPLIANCE. All parties shall

Manufacturer, pursuant to the terms of comply with all applicable

the Supply Agreement, a royalty in the international, national, regional and

amount set forth in the Supply local laws and regulations governing

Agreement. their respective performances

hereunder, and the manufacture, use,

5. PURCHASE ORDERS. For all Product handling, sale and disposal of

orders, Buyer agrees to submit a firm Product, as well as the importation

purchase order to Seller. and exporting of Product.

6. PAYMENT TERMS. The payment terms 15. WARRANTIES. Manufacturer

shall be as set forth in the Supply represents and warrants to Buyer that

Agreement. at the time of delivery of the Product

to Buyer, (i) the Product conforms to

7. SHIPMENT TERMS. All parties agree the agreed upon specifications, and

that the shipment terms are to be (ii) the Product has been manufactured

mutually agreed upon with each according to GMP guidelines and

purchase order. applicable laws. This section shall

survive the termination or expiration

8. EXCLUSIVITY. It is expressly of the Agreement.

understood that the Supply Agreement

requires Manufacturer to manufacture 16. REPORTING. Each party shall

and Seller to sell the Product promptly report to the other any

exclusively for and to Buyer and that customer complaints, recalls,

Buyer shall purchase the Product regulatory and customer inquiries, or

exclusively from Seller. Manufacturer other adverse events arising from or

shall not manufacture and Seller shall relating to the manufacture, supply,

not sell or deliver Product to any import, export, sale and use of the

other person, directly or indirectly, Product.

nor use the Product for itself,

without the prior written consent of 17. PRODUCT LIABILITY INSURANCE.

Buyer. Buyer shall be relieved of its During the term of this Agreement,

obligations during any time that Manufacturer agrees that the Product

Seller is unable to satisfy Seller's and Buyer (as it relates to the

obligations hereunder. Product) shall be covered under its

worldwide insurance policy, which

9. CONFIDENTIALITY. Manufacturer and policy shall not be for less than $2

Seller acknowledge that the Product million.

contains and/or embodies various

valuable proprietary information of 18. BUYER INDEMNIFICATION. Except to

Buyer. Any proprietary information of the extent any cost, claim, suit,

Buyer shall be kept confidential by expense or damage arises out of or

Manufacturer and Seller and shall be results from Manufacturer's gross

used only in connection with negligence or willful misconduct,

Manufacturer and Seller's performance Buyer shall indemnify, defend and hold

hereunder, or for such other purposes Manufacturer and each of its officers,

and upon such terms as may be agreed directors, employees, agents and

upon between the parties in writing. consultants (each a "Manufacturer

This section shall survive the Indemnitee") harmless from and against

termination or expiration of this all third party costs, claims, suits,

relationship. expenses (including reasonable

attorney's fees) and damages arising

10. DELIVERY. Product will ultimately out of or resulting from any

be shipped to the location specified allegation that the Product infringes

by Buyer, using a carrier agreeable to the patent rights of any third party,

Ceptor \_\_\_\_\_ Bachem \_\_\_\_\_

provided that the Manufacturer non-defaulting party by law or in

Indemnitee gives reasonable notice to equity. Notwithstanding anything to

Buyer of any such claim or action, the contrary contained in this

tenders the defense of such claim or Agreement, in the event Manufacturer

action to Buyer and assists Buyer at fails to supply development phase

Buyer's expense in defending such Product in the agreed upon quantities

claim or action and does not by the agreed upon delivery dates,

compromise or settle such claim or then in addition to all other rights

action without Buyer's prior written and remedies at law or equity or

consent. otherwise, Buyer and Manufacturer

shall have the right to extend such

19. SELLER INDEMNIFICATION. Except to delivery date to a mutually agreed

the extent any cost, claim, suit, upon later date through good faith

expense or damage arises out of or negotiations (subject to the right to

results from Buyer's gross negligence terminate if not delivered by such

or willful misconduct, Manufacturer extended date). In the event

shall indemnify, defend and hold Buyer Manufacturer fails to supply

and each of its officers, directors, commercial Product in the agreed upon

employees, agents and consultants quantities by the agreed upon delivery

(each a "Buyer Indemnitee") harmless dates, then in addition to all other

from and against all third party rights and remedies at law or equity

costs, claims, suits, expenses or otherwise, Buyer shall have the

(including reasonable attorney's fees) right to (i) terminate such purchase

and damages to the extent arising out order, (ii) extend such delivery date

of or resulting from an allegation to a mutually agreed upon later date

that the process to produce Product as (subject to the right to terminate if

sold to Buyer infringe a third party not delivered by such extended date),

patent, provided that such Buyer or (iii) order such amount of said

Indemnitee gives reasonable notice to purchase order from a backup supplier.

Manufacturer of any such claims or If the Manufacturer repeatedly is

action, tenders the defense of such unable to supply to Buyer the required

claim or action to Manufacturer and amount of Product, the Buyer shall

assists Manufacturer at Manufacturer's have the right to terminate the Supply

expense in defending such claim or Agreement with three months written

action and does not compromise or notice.

settle such claim or action without

Manufacturer's prior written consent. 23. FORCE MAJEURE. No party shall be

held liable for any delay or failure

20. INDEPENDENT CONTRACTOR. It is in performance of any part of this

understood and agreed that Agreement caused by fires, strikes,

Manufacturer and Seller are embargoes, explosions, power

independent contractors and are not blackouts, computer malfunctions,

agents or representatives of Buyer. earthquakes, volcanic action, floods,

Manufacturer and Seller shall not have wars, water, the elements, labor

any right or authority to act for, disputes, civil disturbances,

incur, assume or create any obligation government requirements, civil or

or liability on behalf of Buyer or to military authorities, acts of God or

bind Buyer in any way whatsoever. the public enemy, inability to secure

Additionally, all personnel employed raw materials, inability to secure

or retained by Manufacturer to perform product of outside vendors, terrorist

the services hereunder shall at all acts, transportation facilities, acts

times be deemed the agents, servants or omissions of carriers or other

and employees of Manufacturer and causes beyond its control, whether or

Seller, and Buyer shall incur no not similar to the foregoing

obligation or liability other than as conditions (collectively "Force

specified in the Supply Agreement, Majeure Event"), provided that the

express or implied, by virtue of or hindered party (i) notifies the other

with respect to the conduct of any of parties of such cause, (ii) exercises

Manufacturer's and Seller's personnel reasonable efforts to cure such delay

in carrying out their obligations and or failure and resume performance.

duties for or on behalf of

Manufacturer and Seller. 24. NOTICES. All notices given

pursuant to the Supply Agreement shall

21. PUBLICITY. Each party agrees to be in writing, referencing the Supply

submit to the other party all Agreement, and shall be sent by hand

advertising, sales promotion, press delivery with a signed receipt,

releases and other publicity matters certified mail, return receipt

relating to the Product or the requested, or by a reputable overnight

services performed under the Supply courier, and directed as set forth in

Agreement. Such materials may not be the Supply Agreement. Such notices

publicized, used or distributed shall be deemed to have been given or

without the prior written consent of made when delivered (if sent by had

the other party, which consent may not delivery), 10 business days after

be unreasonably withheld. deposited in the mail, or 3 business

days after deposited with an overnight

22. TERMINATION. Any party may cancel courier. Such addresses may be changed

or terminate the Supply Agreement in at any time by giving 10 days' prior

the event any other party fails to written notice as provided above.

comply with any of its material

obligations contained in these Terms 25. ASSIGNMENTS. Neither the Supply

or in the Supply Agreement and fails Agreement nor any rights or interests

to correct the default within ninety thereunder shall be assignable by

(90) days of being notified thereof by either party by operation of law or

the non-defaulting party, or upon the otherwise, without the prior written

bankruptcy of the other party. consent of the other party; provided,

Manufacturer and Seller shall have the however, either party may assign the

right to terminate the Supply Supply Agreement to any affiliate or

Agreement upon 18 months prior written to any successor by merger or sale of

notice. Termination or cancellation all or substantially all of its

shall be without prejudice to any assets. The Supply Agreement shall be

other rights and in addition to any binding upon the successors and

other remedies available to the permitted assigns of the parties.

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26. ENTIRE AGREEMENT; AMENDMENTS.

These Terms and the Supply Agreement,

and its riders, if any, constitute and

contain the entire understanding and

agreement of the parties respecting

the subject matter hereof. No waiver,

modification or amendment of these

Terms or the Supply Agreement can be

made except by way of written

agreement, signed by both parties

hereto.

27. MISCELLANEOUS. This agreement

shall be governed by, construed under

and interpreted in accordance with the

laws of the State of Maryland. In the

event that any provision contained

herein shall be determined to be

unenforceable, all other provisions

shall remain in full force and effect

and the affected provision shall be

construed as to be enforceable to the

maximum extent permissible by

applicable law. Any actions to be

brought in relation to this Agreement

shall be filed in the appropriate

courts in Maryland.

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