

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **1998-01-05** | Period of Report: **1997-12-19**
SEC Accession No. **0001047469-98-000096**

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FILER

DURA PHARMACEUTICALS INC/CA

CIK: **882098** | IRS No.: **953645543** | State of Incorpor.: **DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-19809** | Film No.: **98500892**
SIC: **2834** Pharmaceutical preparations

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

December 19, 1997
(Date of Report - earliest event reported)

DURA PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

DELAWARE (State or other jurisdiction of incorporation)	000-19809 (Commission File Number)	95-3645543 (I.R.S. Employer Identification No.)
7475 LUSK BOULEVARD, SAN DIEGO, CALIFORNIA (Address of principal executive offices)		92121 (Zip Code)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE IS (619) 457-2553

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Item 2. Acquisition or Disposition of Assets

On December 19, 1997, Dura Pharmaceuticals, Inc. (the "Company" or "Dura") acquired all of the outstanding shares of callable common stock of Spiros Development Corporation ("Spiros Corp."), a separate, private company. Spiros Corp. was formed in December 1995 to fund the development of a proprietary pulmonary drug delivery system, Spiros-TM-, for use with currently marketed asthma drugs. Dura acquired all of the outstanding shares of Spiros Corp. by giving notice of exercise the purchase option for the Spiros Corp. callable common stock on November 6, 1997. The purchase option was originally acquired in 1995 from Spiros Corp.'s shareholders in exchange for the issuance to such shareholders of warrants to purchase Dura's common stock. The purchase price of \$45,707,000 for the outstanding securities of Spiros Corp., consisting of callable common stock and options, was paid by the issuance of 896,606 shares of Dura common stock valued at \$43,755,000 and a cash payment of \$1,952,000 from Dura's existing cash and cash equivalents. Dura filed a registration statement on Form S-3 with respect to the resale of the shares of Dura common stock issued in payment of the option exercise, which was declared effective on December 18, 1997.

The acquisition was consummated based on the terms set forth in (i) Section 9 of the Purchase Agreement dated December 29, 1995 between Dura, Spiros Corp. and the Spiros Corp. shareholders, (ii) Article IV of the Restated Certificate of Incorporation of Spiros Corp. and (iii) the Agreement and Plan of Merger dated December 18, 1997 between Dura, Spiros Corp. and SDC Acquisition Corp. ("SDC Acquisition"), a Delaware corporation. The acquisition was effected through the merger of Spiros Corp. with SDC Acquisition, a wholly-owned subsidiary of Dura, which was effective on December 19, 1997. As a result of the acquisition, Spiros Corp. is now a wholly-owned subsidiary of Dura.

The acquisition has been treated as a purchase for accounting purposes and, accordingly, the Company has allocated the purchase price to the fair value of the net assets acquired. The net assets acquired consisted of approximately \$1.0 million in cash; accordingly, the excess purchase price over the fair value of the net assets acquired was \$44.7 million. This amount was allocated to in-process technology and was expensed by Dura as a one-time non-cash charge in December 1997.

Spiros Corp.'s activities prior to the acquisition consisted of developing Spiros-TM- for use with three existing asthma drugs licensed from Dura. The development activities of Spiros Corp. were being performed and managed under a contract with Dura. Two directors of Spiros Corp. are officers and directors of Dura.

In December 1997, Dura and Spiros Corp. licensed certain rights to specified compounds for use with Spiros-TM- to Spiros Development Corporation II, Inc. ("Spiros Corp. II"), a separate, newly-formed corporation (see Item 5 herein).

The foregoing description of the acquisition is qualified in its entirety by

reference to the exhibits attached hereto and incorporated herein by reference.

Item 5. Other Events

On December 22, 1997, Dura contributed \$75.0 million in cash to Spiros Corp. II, and Dura and Spiros Corp. II completed a Public offering of 6,325,000 Units. Each Unit consisted of one share of callable common stock of Spiros Corp. II and one warrant to purchase one-fourth of one share of common stock of Dura. As a result of the offering, warrants to purchase an aggregate of 1,581,250 shares of Dura common stock at \$54.84 per share were issued to Spiros Corp. II shareholders. Dura has the right, through December 31, 2002, to purchase all of the shares of Spiros Corp. II callable common stock at predetermined prices, beginning at \$24.01 per share, or an aggregate of \$151.9 million,

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through December 31, 1999 and increasing on a quarterly basis thereafter to a maximum of \$45.95 per share, or an aggregate of \$290.6 million, on December 31, 2002. The purchase option exercise price may be paid in cash or shares of Dura common stock, or any combination of the foregoing, at Dura's sole discretion. In addition, Dura has the option, through specified dates, to acquire Spiros Corp. II's exclusive rights for the use of Spiros with (i) the asthma drug albuterol and (ii) a second asthma drug being developed by Spiros Corp. II, to be selected by Dura. A one-time purchase option expense of \$75.0 million, representing the cash contributed to Spiros Corp. II, was recorded by Dura in December 1997. The Company will also record a warrant subscription receivable and a corresponding increase to paid-in capital for the estimated fair value of the warrants issued.

Dura and Spiros Corp. II have entered into certain technology license, development, manufacturing and marketing, and services agreements, under which Spiros Corp. II will contract with Dura for the ongoing development of Spiros with specified asthma drugs. Future payments to be received by Dura from Spiros Corp. II for the development of Spiros will be prorated between contract revenue and the warrant subscription receivable.

The description of the events set forth above is qualified in its entirety by reference to the exhibits which are attached hereto and incorporated herein by reference.

Item 7. Financial Statements and Exhibits

Listed below are the financial statements and pro forma financial information filed as part of this report on Form 8-K.

a. Financial Statements of Spiros Development Corporation (a development stage enterprise):

Independent Auditors' Report

Balance Sheets as of December 31, 1995 and 1996 and September 30, 1997 (unaudited).

Statements of Operations for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996, the period December 5, 1995 to December 31, 1996, the nine months ended September 30, 1996 and 1997 (unaudited), and the period December 5, 1995 to September 30, 1997 (unaudited).

Statements of Cash Flows for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996, the period December 5, 1995 to December 31, 1996, the nine months ended September 30, 1996 and 1997 (unaudited), and the period December 5, 1995 to September 30, 1997 (unaudited).

Statements of Shareholders' Equity for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996, and the nine months ended September 30, 1997

Notes to Financial Statements.

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b. Pro Forma Financial Information:

The following unaudited pro forma condensed consolidated balance sheet as of September 30, 1997 and the unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 1996 and for the nine months ended September 30, 1997 give effect to

the acquisition of Spiros Corp. as if it occurred as of September 30, 1997 for the condensed consolidated balance sheet and as of January 1, 1996 for the condensed consolidated statements of operations. These pro forma condensed consolidated financial statements have been prepared by management of Dura based on historical financial statements of Dura and Spiros Corp. and on the assumptions and adjustments as discussed in the accompanying notes to the pro forma condensed consolidated financial statements. The acquisition has been accounted for as a purchase and the pro forma financial information gives effect to the preliminary allocation of the purchase price to the acquired assets of Spiros Corp. The final purchase price allocation will be made at a future date, which may result in adjustments to the preliminary allocation.

In the opinion of management, all pro forma adjustments necessary to state fairly such pro forma financial information have been made. The unaudited pro forma condensed consolidated financial statements are not necessarily indicative of what actual results of operations would have been for the periods had the acquisition occurred on the date indicated. In addition, such pro forma financial statements do not purport to indicate the results of future operations or financial position of the Company from the acquisition date forward.

c. Exhibits:

<TABLE>
<CAPTION>

EXHIBIT NO. -----	DESCRIPTION -----
<S>	<C>
1.1 (a)	U.S. Purchase Agreement dated December 16, 1997 between Dura Pharmaceuticals, Inc. ("Dura"), Spiros Development Corporation II, Inc. ("Spiros Corp. II"), and the underwriters listed on Schedule A thereto.
1.2 (a)	International Purchase Agreement dated December 16, 1997 between Dura, Spiros Corp. II, and the managers listed on Schedule A thereto.
2.1 (b)	Purchase Agreement dated December 29, 1995 between Dura, Spiros Development Corporation ("Spiros Corp."), and the entities listed on the schedule of purchasers attached thereto.
2.2	Agreement and Plan of Merger dated December 18, 1995 between Dura, Spiros Corp. and SDC Acquisition Corp.
4.1(a)	Amended and Restated Certificate of Incorporation of Spiros Corp. II, filed December 19, 1997 with the Delaware Secretary of State.
4.2(c)	By-laws of Spiros Corp. II.
4.3	Purchase Option (included in Exhibit 4.1)
4.4	Warrant Agreement dated December 22, 1997 between Dura and ChaseMellon Shareholder Services L.L.C., as warrant agent, including form of Warrant.
4.5	Form of Warrant (included in Exhibit 4.4).
4.6	Specimen Unit Certificate.
4.7	Specimen Certificate of Spiros Corp. II Callable Common Stock.
4.8	Stock Certificate of SDC II Special Shares.
23.1	Consent of Deloitte & Touche LLP, Independent Auditors.
99.1	Technology License Agreement dated December 22, 1997 between Dura, Dura Delivery Systems, Inc., Spiros Corp. and Spiros Corp. II.
99.2	Development Agreement dated December 22, 1997 between Dura and Spiros Corp. II.
99.3	Albuterol and Product Option Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
99.4	Manufacturing and Marketing Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
99.5	Services Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
99.6	Press Release dated October 10, 1997.

- (a) Incorporated by reference to Schedule 13D filed by Dura on January 2, 1998.
- (b) Incorporated by reference to the Company's Current Report on Form 8-K dated December 29, 1995, as filed on January 9, 1996.
- (c) Incorporated by reference to the Company's Registration Statement on Forms S-1/S-3, filed October 10, 1997, as amended.

</TABLE>

INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of
Spiros Development Corporation:

We have audited the accompanying balance sheets of Spiros Development Corporation (a development stage enterprise) (the "Company") as of December 31, 1995 and 1996, the related statements of operations, shareholders' equity and cash flows for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996 and for the period from December 5, 1995 (date of incorporation) to December 31, 1996. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 1995 and 1996, and the results of its operations and its cash flows for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996, and for the period from December 5, 1995 (date of incorporation) to December 31, 1996 in conformity with generally accepted accounting principles.

The Company is in the development stage as of December 31, 1996. As discussed in Note 1 to the financial statements, the Company has yet to complete product development, obtain required regulatory approvals, or verify the market acceptance and demand for its products. As discussed in Note 7 to the financial statements, on December 19, 1997 Dura Pharmaceuticals, Inc. acquired all of the callable common stock of the Company.

/s/ DELOITTE & TOUCHE LLP

San Diego, California
March 21, 1997 (December 19, 1997 as to Note 7)

SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

BALANCE SHEETS

<TABLE>
<CAPTION>

	DECEMBER 31,		
	1995	1996	SEPTEMBER 30, 1997
	-----	-----	-----
			(UNAUDITED)
<S>	<C>	<C>	<C>
ASSETS			
CURRENT ASSETS:			
Cash and cash equivalents.....	\$ 26,966,535	\$ 10,628,486	\$ 718,250
Short-term investments.....	8,040,807	13,188,559	4,132,341
	-----	-----	-----

Total assets.....	\$ 35,007,342	\$ 23,817,045	\$ 4,850,591
LIABILITIES AND SHAREHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Account payable to Dura Pharmaceuticals, Inc.....	\$ 413,078	\$ 2,234,293	\$ 2,325,013
Accrued liabilities.....	400,000	8,153	8,153
Total liabilities.....	813,078	2,242,446	2,333,166
SHAREHOLDERS' EQUITY:			
Callable common stock, \$.001 par value, authorized-- 1,073,334 shares; issued and outstanding--933,334 shares.....	933	933	933
Additional paid-in capital.....	40,423,656	40,641,121	40,641,121
Callable common stock subscription receivable.....	(6,000,000)		
Unrealized gain (loss) on short-term investments.....	(1,866)	14,507	1,461
Deficit accumulated during the development stage.....	(228,459)	(19,081,962)	(38,126,090)
Total shareholders' equity.....	34,194,264	21,574,599	2,517,425
Total liabilities and shareholders' equity	\$ 35,007,342	\$ 23,817,045	\$ 4,850,591

</TABLE>

See accompanying notes to financial statements.

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SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF OPERATIONS

	DECEMBER 5, 1995 (DATE OF INCORPORATION) TO DECEMBER 31, 1995		DECEMBER 5, 1995 (DATE OF INCORPORATION) TO DECEMBER 31, 1996		NINE MONTHS ENDED SEPTEMBER 30, 1996		DECEMBER 5, 1995 (DATE OF INCORPORATION) TO SEPTEMBER 30, 1997	
	YEAR ENDED DECEMBER 31, 1996		YEAR ENDED DECEMBER 31, 1996		(Unaudited) <C>	(Unaudited) <C>	(Unaudited) <C>	(Unaudited) <C>
REVENUES:								
Contract.....		\$ 200,000		\$ 200,000				\$ 200,000
Interest.....	\$ 9,188	1,788,419		1,797,607	\$ 1,444,098	\$ 687,954		2,485,561
Total revenues.....	9,188	1,988,419		1,997,607	1,444,098	687,954		2,685,561
EXPENSES:								
Research and development.....	237,647	16,173,971		16,411,618	11,535,823	14,862,718		31,274,336
General and administrative.....		4,666,292		4,666,292	2,510,807	4,869,364		9,535,656
Income taxes.....		1,659		1,659				1,659
Total expenses.....	237,647	20,841,922		21,079,569	14,046,630	19,732,082		40,811,651
NET LOSS.....	\$ (228,459)	\$ (18,853,503)		\$ (19,081,962)	\$ (12,602,532)	\$ (19,044,128)		\$ (38,126,090)

</TABLE>

See accompanying notes to financial statements.

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SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF CASH FLOWS

	DECEMBER 5, 1995	DECEMBER 5, 1995	NINE MONTHS ENDED	DECEMBER 5, 1995 (DATE OF
--	------------------	------------------	-------------------	------------------------------

	(DATE OF INCORPORATION) TO	YEAR ENDED	(DATE OF INCORPORATION) TO	SEPTEMBER 30,		INCORPORATION)
	DECEMBER 31, 1995	DECEMBER 31, 1996	DECEMBER 31, 1996	1996	1997	TO SEPTEMBER 30, 1997
				(UNAUDITED)	(UNAUDITED)	(UNAUDITED)
<S>	<C>	<C>	<C>	<C>	<C>	<C>
OPERATING ACTIVITIES:						
Net loss.....	\$ (228,459)	\$ (18,853,503)	\$ (19,081,962)	\$ (12,602,532)	\$ (19,044,128)	\$ (38,126,090)
Adjustments to reconcile net loss to net cash provided by (used for) operating activities:						
Compensation expense--stock options.....		242,075	242,075	242,075		242,075
Changes in assets and liabilities:						
Account payable.....	237,647	1,996,646	2,234,293	1,478,831	90,719	2,325,012
Accrued liabilities.....		8,153	8,153	10,118		8,153
Net cash provided by (used for) operating activities.....	9,188	(16,606,629)	(16,597,441)	(10,871,508)	(18,953,409)	(35,550,850)
INVESTING ACTIVITIES:						
Purchases of short-term investments.....	(8,042,673)	(31,068,586)	(39,111,259)	(25,068,590)	(3,177,612)	(42,288,871)
Sales and maturities of short-term investments.....		25,937,207	25,937,207	16,820,942	12,220,785	38,157,992
Net cash provided by (used for) investing activities.....	(8,042,673)	(5,131,379)	(13,174,052)	(8,247,648)	9,043,173	(4,130,879)
FINANCING ACTIVITIES:						
Net proceeds from issuance of callable common stock.....	21,424,589	5,975,390	27,399,979	5,975,390		27,399,979
Increase (decrease) in accrued issuance costs.....	575,431	(575,431)		(575,431)		
Contributions from Dura Pharmaceuticals, Inc.....	13,000,000		13,000,000			13,000,000
Net cash provided by financing activities.....	35,000,020	5,399,959	40,399,979	5,399,959	--	40,399,979
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS.....	26,966,535	(16,338,049)	10,628,486	(13,719,197)	(9,910,236)	718,250
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD.....	--	26,966,535	--	26,966,535	10,628,486	--
CASH AND CASH EQUIVALENTS, END OF PERIOD.....	\$26,966,535	\$ 10,628,486	\$10,628,486	\$13,247,338	\$ 718,250	\$ 718,250

</TABLE>

See accompanying notes to financial statements.

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SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF SHAREHOLDERS' EQUITY

	CALLABLE COMMON STOCK		ADDITIONAL PAID-IN CAPITAL	CALLABLE COMMON STOCK SUBSCRIPTION RECEIVABLE	UNREALIZED GAIN (LOSS) ON INVESTMENTS	DEFICIT ACCUMULATED DURING THE DEVELOPMENT STAGE	TOTAL
	SHARES	AMOUNT					
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
BALANCE, DECEMBER 5, 1995 (Date of Incorporation).....							
Issuance of callable common stock, net.....	933,334	\$ 933	\$27,423,656	\$ (6,000,000)			\$21,424,589
Contribution from Dura Pharmaceuticals, Inc.....			13,000,000				13,000,000
Unrealized loss on available-for-sale short-term investments.....					\$ (1,866)		(1,866)
Net loss.....						\$ (228,459)	(228,459)

BALANCE, DECEMBER 31, 1995.....	933,334	933	40,423,656	(6,000,000)	(1,866)	(228,459)	34,194,264
Collection of callable common stock subscription receivable.....				6,000,000			6,000,000
Additional issuance costs incurred during 1996.....			(24,610)				(24,610)
Unrealized gain on available-for-sale short-term investments.....					16,373		16,373
Compensation expense--stock options.....			242,075				242,075
Net loss.....						(18,853,503)	(18,853,503)

BALANCE, DECEMBER 31, 1996.....	933,334	933	40,641,121	--	14,507	(19,081,962)	21,574,599
UNAUDITED:							
Unrealized loss on available-for-sale short-term investments.....					(13,046)		(13,046)
Net loss.....						(19,044,128)	(19,044,128)

BALANCE, SEPTEMBER 30, 1997.....	933,334	\$ 933	\$40,641,121	\$ --	\$ 1,461	(\$38,126,090)	\$ 2,517,425

</TABLE>

See accompanying notes to financial statements.

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SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS

1. THE COMPANY AND ITS SIGNIFICANT ACCOUNTING POLICIES

THE COMPANY--Spiros Development Corporation (the "Company") was incorporated on December 5, 1995 for the purpose of funding the development of Spiros, a proprietary drug delivery system licensed to the Company from Dura Pharmaceuticals, Inc. ("Dura"). Through a series of license, development, and management agreements with Dura, the Company is developing Spiros and the use of Spiros with three leading asthma drugs: albuterol, beclomethasone, and ipratropium (the "Compounds") (see Notes 3 and 4). Two members of the Company's board of directors are officers of Dura.

BASIS OF ACCOUNTING--The Company is currently engaged in the development of Spiros products and has yet to complete product development, obtain required regulatory approvals, or verify the market acceptance and demand for its products. Accordingly, its activities have been accounted for as those of a "development stage enterprise" as set forth in Statement of Financial Accounting Standards ("SFAS") No. 7, "Accounting and Reporting by Development Stage Enterprises." Among the disclosures required by SFAS 7 are that the Company's financial statements be identified as those of a "development stage enterprise" and that the Statements of Operations, Shareholders' Equity, and Cash Flows disclose activities since the date of the Company's inception.

At December 31, 1996, the Company had working capital of \$21.6 million. The Company estimates that these funds will be sufficient to fund product development through 1997. However, completion of the Company's planned development of Spiros with the Compounds will require additional funding.

CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS--The Company considers cash equivalents to include only highly liquid securities with an original maturity of three months or less. Short-term investments consist of government securities, corporate bonds, and commercial paper which management has classified as available-for-sale in the accompanying financial statements (Note 2). Such investments are carried at fair value, with unrealized gains and losses reported as a separate component of shareholders' equity.

CONCENTRATION OF CREDIT RISK--The Company invests its excess cash in U.S. Government securities and debt instruments of financial institutions and corporations with strong credit ratings. The Company has established guidelines relative to diversification of its cash investments and their maturities, which are designed to maintain safety and liquidity. These guidelines are periodically reviewed and modified to take advantage of trends in yields and interest rates. The Company has not experienced any significant losses on its cash equivalents or short-term investments.

USE OF ESTIMATES--The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect amounts reported in the financial statements and related notes. Changes in those estimates may affect amounts reported in future periods.

ACCOUNTING FOR STOCK-BASED COMPENSATION--In 1996, the Company elected to adopt only the disclosure provisions of the Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation." Therefore, the

adoption of this standard did not have an effect on the Company's financial position or results of operations (see Note 5).

INTERIM FINANCIAL INFORMATION--The financial statements as of September 30, 1997, for the nine months ended September 30, 1996 and 1997, and for the period from December 5, 1995 (date of incorporation) to September 30, 1997 are unaudited. These financial statements reflect all adjustments, consisting only of normal recurring adjustments which, in the opinion of management, are necessary to fairly present the Company's financial position as of September 30, 1997, the results of its operations for the nine months ended September 30, 1996 and 1997, and the results of operations from December 5, 1995 (date of incorporation) to September 30, 1997. The results of operations for the nine months ended September 30, 1997 are not necessarily indicative of the results to be expected for the year ending December 31, 1997.

SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

2. SHORT-TERM INVESTMENTS

The following is a summary of short-term investments:

<TABLE>

<CAPTION>

	COST	UNREALIZED GAINS (LOSSES)	ESTIMATED FAIR VALUE
<S>	----- <C>	----- <C>	----- <C>
DECEMBER 31, 1995:			
Corporate obligations.....	\$ 8,042,673	\$ (1,866)	\$ 8,040,807
DECEMBER 31, 1996:			
Corporate obligations.....	\$ 13,174,052	\$ 14,507	\$ 13,188,559

</TABLE>

At December 31, 1996, all short-term investments mature within one year.

3. SHAREHOLDERS' EQUITY

On December 29, 1995, the Company completed a private placement of 933,334 units. Each unit sold for \$30 and consisted of 1 share of the Company's callable common stock and a Series S warrant to purchase 2.4 shares of Dura's common stock. Net proceeds to the Company totaled \$27.4 million. The Company also received a \$13 million contribution from Dura. In exchange for this contribution and the Series S warrants, Dura has the right ("Spiros Purchase Option") through December 31, 1999, to purchase all of the outstanding shares of the Company's callable common stock at predetermined prices. The purchase price is \$46.88 per share through December 31, 1997 and increases on a quarterly basis thereafter to a maximum of \$76.17 per share on December 31, 1999. Based on shares outstanding and shares reserved for options outstanding at December 31, 1996, the aggregate purchase price would be \$49.8 million through December 31, 1997 to a maximum of \$80.8 million on December 31, 1999. The purchase price may be paid, at Dura's discretion, in cash, shares of Dura common stock, or a combination thereof. Dura has no legal obligation to exercise the Spiros Purchase Option.

In addition, Dura has the option through specific dates to acquire the Company's exclusive rights for the use of albuterol with the cassette version of Spiros ("Albuterol Purchase Option") for a minimum purchase price of \$15 million. If Dura exercises the Albuterol Purchase Option and does not exercise its Spiros Purchase Option, Dura will pay a royalty to the Company on net sales of such product. (See Note 7.)

4. LICENSE, ROYALTY AND DEVELOPMENT AGREEMENTS

DURA PHARMACEUTICALS, INC.--In connection with the December 29, 1995 private placement, the Company also entered into certain other agreements with Dura which are summarized as follows:

TECHNOLOGY LICENSE AGREEMENT--Under this agreement, Dura granted to the Company, subject to existing agreements with Mitsubishi Chemical Corporation, a royalty-bearing, perpetual, exclusive license to use Spiros in connection with the Compounds, certain off-patent proteins and compounds, and certain non-exclusive rights to other compounds. This agreement expires upon exercise by Dura of the Spiros Purchase Option and prior to such expiration, Dura may exercise the Albuterol Purchase Option under terms set forth in the agreement.

INTERIM MANUFACTURING AND MARKETING AGREEMENT--Under this agreement, the Company granted to Dura an exclusive license to manufacture and market Spiros Corp. products in the U.S. in exchange for a royalty of 10.0% on net product sales, as defined. Such agreement expires upon exercise or termination of the Spiros Purchase Option.

SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

4. LICENSE, ROYALTY AND DEVELOPMENT AGREEMENTS (CONTINUED)

DEVELOPMENT AND MANAGEMENT AGREEMENT--Under this agreement, the Company has engaged Dura to develop the Company's products and provide general management services to the Company. The Company reimburses Dura for (1) all direct development costs plus a fee equal to 25% of all such costs and (2) indirect development costs plus a fee equal to 15% of such costs. The Agreement requires the Company to make payments to Dura for costs made on behalf of the Company within 15 days after the month end in which the costs were incurred. Fees paid to Dura for development of products and general management services were \$237,647, \$20,598,188 and \$20,835,835 for the period December 5, 1995 (date of incorporation) to December 31, 1995, the year ended December 31, 1996, and the period from December 5, 1995 (date of incorporation) through December 31, 1996, respectively.

MITSUBISHI CHEMICAL CORPORATION ("MCC")--The Company has entered into a license and supply agreement with MCC whereby MCC was granted a license to use and sell Spiros with certain compounds in defined territories located in Asia. Under the agreement, the Company is developing formulations of the compounds for use with Spiros, as well as a process to manufacture such products. The Company is entitled to development payments upon achieving specified milestones. Contract revenue under the agreement is recognized as performance requirements are met. Contract revenue of \$200,000 was recorded during the year ended December 31, 1996.

5. STOCK OPTION PLAN

Under the 1996 Stock Option Plan (the "Plan"), the Company may grant options to purchase up to 140,000 shares of the Company's callable common stock to employees, directors, and consultants who provide services to the Company at prices not less than 85% of the fair value of a share of callable common stock. These options generally expire ten years from the date of the grant. Unexercised options generally terminate upon the execution of a corporate transaction, as defined in the plan agreement. Shares issued upon the exercise of options are subject to certain restrictions regarding their disposition.

No options were granted during the period ended December 31, 1995. During the year ended December 31, 1996, options to purchase 128,000 shares were granted at a weighted average exercise price of \$31.52, all of which remained outstanding at December 31, 1996. Each of the options was fully exercisable upon the date of the grant. The options granted have exercise prices ranging from \$30.00 to \$33.87 and had a weighted average remaining contractual life of 9.25 years at December 31, 1996. In accordance with Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), the Company applies Accounting Principles Board Opinion No. 25 and related interpretations in accounting for stock options granted to employees and, accordingly, no compensation cost has been recognized for stock options granted to employees. In accordance with SFAS 123, options granted to non-employees are accounted for based on their estimated fair value at grant date. During the year ended December 31, 1996, 73,000 options were granted to non-employees for which the Company recorded compensation expense of \$242,075. If the Company had elected to recognize compensation cost for options granted to employees based on the fair value of the options granted at the grant date, net loss for the year ended December 31, 1996 would have been increased by \$193,935. The estimated weighted average fair value at grant date for options granted during 1996 was \$3.41. The fair value of options at the date of grant was estimated using the Black-Scholes option-pricing model with the following assumptions:

SPIROS DEVELOPMENT CORPORATION
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

<TABLE>	
<S>	<C>
Expected dividend yield.....	None
Risk-free interest rate.....	5.8%
Expected life of options.....	2 years

</TABLE>

6. INCOME TAXES

Deferred taxes represent the net tax effects of temporary differences between the carrying value of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's net deferred tax assets at December 31, 1996 are as follows:

<TABLE>	
<S>	
<C>	
Net operating loss carryforwards.....	\$6,281,973
Research costs capitalized for tax purposes.....	977,897
Research credit carryforwards.....	603,720

Total deferred tax assets.....	7,863,590
Valuation allowance for deferred tax assets.....	(7,863,590)

Net deferred tax assets.....	\$ 0

</TABLE>

The Company has provided a valuation allowance against deferred tax assets due to uncertainties as to their ultimate realization. At December 31, 1996, the Company had federal net operating loss carryforwards totaling approximately \$18.2 million which begin to expire in 2010.

7. EXERCISE OF SPIROS PURCHASE OPTION BY DURA PHARMACEUTICALS, INC.
(UNAUDITED)

On December 19, 1997, Dura acquired all of the Company's callable common stock. The purchase price of \$45.7 million was paid through the issuance of 896,606 shares of Dura common stock valued at \$43.8 million and \$1.9 million in cash.

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DURA PHARMACEUTICALS, INC.

PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET (UNAUDITED)
SEPTEMBER 30, 1997
IN THOUSANDS

<TABLE>
<CAPTION>

ASSETS	Dura	Spiros Corp.	Purchase Adjustments	Pro Forma Consolidated
<S>	<C>	<C>	<C>	<C>
Current Assets:				
Cash, cash equivalents, and short-term investments	\$ 454,710	\$ 4,851	\$ (1,952) (2b)	\$ 457,609
Other current assets	43,707		(2,325) (2a)	41,382
	-----	-----	-----	-----
Total current assets	498,417	4,851	(4,277)	498,991
Property	44,148			44,148
License Agreements and Product Rights	248,743			248,743
Other Non-Current Assets	29,797			29,797
	-----	-----	-----	-----
Total	\$ 821,105	\$ 4,851	\$ (4,277)	\$ 821,679
	-----	-----	-----	-----
LIABILITIES AND SHAREHOLDERS' EQUITY				
Current Liabilities:				
Accounts payable and accrued liabilities	\$ 38,193	\$ 2,333	\$ (2,325) (2a)	\$ 38,201
Current portion of long-term obligations	2,948			2,948
	-----	-----	-----	-----
Total current liabilities	41,141	2,333	(2,325)	41,149
Convertible Subordinated Notes	287,500			287,500
Other Non-Current Liabilities	10,167			10,167
	-----	-----	-----	-----
Total liabilities	338,808	2,333	(2,325)	338,816
	-----	-----	-----	-----

Shareholders' Equity:					
Common stock	44	1	-	(2b)	45
Additional paid-in capital	533,003	40,641	3,113	(2b)	576,757
Accumulated deficit	(49,597)	(38,126)	(6,411)	(2b,c)	(94,134)
Unrealized gain on investments	195	2	(2)	(2b)	195
Warrant subscriptions receivable	(1,348)		1,348	(2c)	
	-----	-----	-----		-----
Total shareholders' equity	482,297	2,518	(1,952)		482,863
	-----	-----	-----		-----
Total	\$ 821,105	\$ 4,851	\$ (4,277)		\$ 821,679
	-----	-----	-----		-----

</TABLE>

See accompanying notes to pro forma condensed consolidated financial statements.

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DURA PHARMACEUTICALS, INC.

PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS (UNAUDITED)
FOR THE YEAR ENDED DECEMBER 31, 1996
IN THOUSANDS, EXCEPT PER SHARE DATA

<TABLE>
<CAPTION>

	Dura	Spiros Corp.	Purchase Adjustments	Pro Forma Consolidated
<S>	<C>	<C>	<C>	<C>
REVENUES:				
Sales	\$ 79,563			\$ 79,563
Contract	24,556	\$ 200	\$ (19,138) (3a)	5,618
	-----	-----	-----	-----
Total revenues	104,119	200	(19,138)	85,181
	-----	-----	-----	-----
OPERATING COSTS AND EXPENSES:				
Cost of sales	21,301			21,301
Clinical, development and regulatory	18,540	16,174	(16,174) (3b)	18,540
Selling, general and administrative	42,631	4,666	(4,666) (3b)	42,631
	-----	-----	-----	-----
Total operating costs and expenses	82,472	20,840	(20,840)	82,472
	-----	-----	-----	-----
OPERATING INCOME (LOSS)	21,647	(20,640)	1,702	2,709
	-----	-----	-----	-----
OTHER:				
Interest income	6,897	1,788		8,685
Interest expense	(677)			(677)
	-----	-----	-----	-----
Total other	6,220	1,788		8,008
	-----	-----	-----	-----
INCOME (LOSS) BEFORE INCOME TAXES	27,867	(18,852)	1,702	10,717
PROVISION FOR INCOME TAXES	3,539	2	(2,625) (3c)	916
	-----	-----	-----	-----
NET INCOME (LOSS)	\$ 24,328	\$ (18,854)	\$ 4,327	\$ 9,801
	-----	-----	-----	-----
NET INCOME PER SHARE	\$ 0.60			\$ 0.24
	-----	-----	-----	-----
WEIGHTED AVERAGE NUMBER OF COMMON AND COMMON EQUIVALENT SHARES				
	40,479			41,376
	-----	-----	-----	-----

</TABLE>

See accompanying notes to pro forma condensed consolidated financial statements.

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DURA PHARMACEUTICALS, INC.

PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS (UNAUDITED)

<TABLE>
 <CAPTION>

	Dura	Spiros Corp.	Purchase Adjustments	Pro Forma As Adjusted
<S>	<C>	<C>	<C>	<C>
REVENUES:				
Sales	\$ 105,437			\$ 105,437
Contract	22,430		\$ (18,331) (3a)	4,099
Total revenues	127,867	-	(18,331)	109,536
OPERATING COSTS AND EXPENSES:				
Cost of sales	23,373			23,373
Clinical, development and regulatory	18,160	\$ 14,863	(14,863) (3b)	18,160
Selling, general and administrative	49,485	4,869	(4,869) (3b)	49,485
Total operating costs and expenses	91,018	19,732	(19,732)	91,018
OPERATING INCOME (LOSS)	36,849	(19,732)	1,401	18,518
OTHER:				
Interest income	11,434	688		12,122
Interest expense	(2,531)			(2,531)
Total other	8,903	688	-	9,591
INCOME (LOSS) BEFORE INCOME TAXES	45,752	(19,044)	1,401	28,109
PROVISION FOR INCOME TAXES	16,357		(7,057) (3c)	9,300
NET INCOME (LOSS)	\$ 29,395	\$ (19,044)	\$ 8,458	\$ 18,809
NET INCOME PER SHARE	\$ 0.62			\$ 0.39
WEIGHTED AVERAGE NUMBER OF COMMON AND COMMON EQUIVALENT SHARES	47,392			48,289

</TABLE>

See accompanying notes to pro forma condensed consolidated financial statements.

Dura Pharmaceuticals, Inc.
 Notes to Pro Forma Condensed Consolidated Financial Statements (Unaudited)

1. On December 19, 1997, Dura Pharmaceuticals, Inc. (the "Company" or "Dura") acquired all of the outstanding shares of callable common stock of Spiros Development Corporation ("Spiros Corp") for an aggregate purchase price of \$45,707,000. The purchase price was paid through the issuance of 896,606 shares of Dura common stock and a cash payment of \$1,952,000. The acquisition has been accounted for as a purchase business combination. Dura has initially assigned the estimated aggregate excess of cost over the fair value of net assets acquired to in-process technology. The charge to earnings for in-process technology has not been reflected in the pro forma condensed consolidated statements of operations as it is non-recurring, but is reflected in the pro forma condensed consolidated balance sheet.

2. The pro forma condensed consolidated balance sheet includes the adjustments necessary as if the purchase of Spiros Corp. had occurred on September 30, 1997. The adjustments are summarized as follows (dollars in thousands):

(a) To eliminate intercompany accounts payable and receivable.

Accounts payable and accrued liabilities	\$ 2,325	
Other current assets		\$ 2,325

(b) To record the issuance of 896,606 shares of the Company's common stock valued at \$43,755 and a cash payment of \$1,952 for the acquisition of Spiros Corp., the elimination of Spiros Corp.'s equity accounts, and a charge to earnings resulting from the allocation of acquisition cost to in-process technology.

Accumulated deficit	\$ 43,189
Additional paid-in capital	40,641
Common stock	1
Unrealized gain on investments	2

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Cash	\$ 1,952
Additional paid-in capital	43,754
Common stock	1
Accumulated deficit	38,126

(c) To eliminate warrant subscriptions receivable.

Accumulated deficit	\$ 1,348
Warrant subscriptions receivable	\$ 1,348

3. The pro forma condensed consolidated statements of operations include the adjustments necessary to reflect the purchase of Spiros Corp. as if it had occurred on January 1, 1996. The pro forma adjustments are summarized as follows (dollars in thousands):

For the year ended December 31, 1996:

(a) To eliminate contract revenue recognized by the Company related to activities conducted on behalf of Spiros Corp. Because a pro rata portion of the amounts paid by Spiros Corp. to the Company is allocated to warrant subscriptions receivable, the contract revenue recognized by the Company does not equal the total research and development and general and administrative expenses recorded by Spiros Corp. \$ 19,138

(b) To eliminate research and development and general and administrative expenses recognized by Spiros Corp. related to activities conducted by the Company.

Clinical, development and regulatory	\$ 16,174
General and administrative	4,666

(c) To record the reduction in the provision for income taxes related to the decrease in income before income taxes resulting from the combination of the Company and Spiros Corp. (see further discussion below). \$ 2,625

For the nine months ended September 30, 1997:

(a) To eliminate contract revenue recognized by the Company related to activities conducted on behalf of Spiros Corp. Because a pro rata portion of the amounts paid by Spiros Corp. to the Company is allocated to warrant subscriptions receivable, the contract revenue recognized by the Company does not equal the total research and development and general and administrative expenses recorded by Spiros Corp. \$ 18,331

(b) To eliminate research and development and general and administrative expenses recognized by Spiros Corp. related to activities conducted by the Company.

Clinical, development and regulatory	\$ 14,863
General and administrative	4,869

(c) To record the reduction in the provision for income taxes related to the decrease in income before income taxes resulting from the combination of the Company and Spiros Corp. (see further discussion below). \$ 7,057

No income tax benefit was recognized by Spiros Corp. in its historical financial statements for the increase in its deferred tax assets due to the uncertainty regarding its ability to realize those assets. Accordingly, the pro forma adjustments for the provision for income taxes for the year ended December 31, 1996 and the nine months ended September 30, 1997 were determined by combining the results of operations of Spiros Corp. with those of the Company for the respective periods and calculating the provision for income taxes as if the Company had acquired Spiros Corp. on January 1, 1996.

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The weighted average number of shares used to calculate pro forma net income per share for the year ended December 31, 1996 and the nine months ended September 30, 1997 is based on the historical weighted average shares outstanding for the Company for the respective periods adjusted to reflect as of January 1, 1996 the assumed issuance of 896,606 shares of the Company's common stock as discussed in Note 1.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

DURA PHARMACEUTICALS, INC.

Date: January 5, 1998

/s/ Mitchell R. Woodbury

Sr. Vice President and General Counsel

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DURA PHARMACEUTICALS, INC.
FORM 8-K
EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----
1.1 (a)	U.S. Purchase Agreement dated December 16, 1997 between Dura Pharmaceuticals, Inc. ("Dura"), Spiros Development Corporation II, Inc. ("Spiros Corp. II"), and the underwriters listed on Schedule A thereto.
1.2 (a)	International Purchase Agreement dated December 16, 1997 between Dura, Spiros Corp. II, and the managers listed on Schedule A thereto.
2.1 (b)	Purchase Agreement dated December 29, 1995 between Dura, Spiros Development Corporation ("Spiros Corp."), and the entities listed on the schedule of purchasers attached thereto.
2.2	Agreement and Plan of Merger dated December 18, 1995 between Dura, Spiros Corp. and SDC Acquisition Corp.
4.1(a)	Amended and Restated Certificate of Incorporation of Spiros Corp. II, filed December 19, 1997 with the Delaware Secretary of State.
4.2(c)	By-laws of Spiros Corp. II.
4.3	Purchase Option (included in Exhibit 4.1)
4.4	Warrant Agreement dated December 22, 1997 between Dura and ChaseMellon Shareholder Services L.L.C., as warrant agent, including form of Warrant.
4.5	Form of Warrant (included in Exhibit 4.4).
4.6	Specimen Unit Certificate.
4.7	Specimen Certificate of Spiros Corp. II Callable Common Stock.
4.8	Stock Certificate of SDC II Special Shares.
23.1	Consent of Deloitte & Touche LLP, Independent Auditors.
99.1	Technology License Agreement dated December 22, 1997 between Dura, Dura Delivery Systems, Inc., Spiros Corp. and Spiros Corp. II
99.2	Development Agreement dated December 22, 1997 between Dura and Spiros Corp. II.

- 99.3 Albuterol and Product Option Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
- 99.4 Manufacturing and Marketing Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
- 99.5 Services Agreement dated December 22, 1997, between Dura and Spiros Corp. II.
- 99.6 Press Release dated October 10, 1997.
- 99.7 Press Release dated December 17, 1997.
- (a) Incorporated by reference to Schedule 13D filed by Dura on January 2, 1998.
- (b) Incorporated by reference to the Company's Current Report on Form 8-K dated December 29, 1995, as filed on January 9, 1996.
- (c) Incorporated by reference to the Company's Registration Statement on Forms S-1/S-3, filed October 10, 1997, as amended.

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger, dated as of the 18th day of December, 1997 (the "Agreement"), by and among Dura Pharmaceuticals, Inc., a Delaware corporation ("DURA"), SDC Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of DURA ("SUB"), and Spiros Development Corporation, a Delaware corporation ("SDC").

RECITALS

WHEREAS, subject to and in accordance with the terms and conditions of this Agreement, the respective Boards of Directors of DURA, SUB and SDC, the stockholders of SDC and DURA as sole stockholder of SUB have each approved the merger of SDC with SUB (the "Merger"), whereby all rights of each holder of any issued and outstanding shares of callable common stock, par value \$.001 per share, of SDC ("SDC Common Stock") arising from such holder's ownership of such SDC Common Stock will be converted into the right to receive the number of shares of DURA common stock, par value \$.001 per share ("DURA Common Stock") and cash in lieu of fractional shares, if any set forth opposite such holder's name on SCHEDULE A attached hereto, and the rights of each outstanding option to acquire shares of SDC Common Stock shall by virtue of the Merger and, without any action on the part of the holders thereof, be converted into the right to receive cash payments pursuant to Section 1.7(b) hereof and be canceled and no longer be outstanding;

WHEREAS, following the consummation of the transactions contemplated by the Merger, DURA intends to merge SDC with and into itself, whereupon the separate existence of SDC shall cease;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, conditions, representations and warranties contained herein, the parties hereto hereby agree as follows:

ARTICLE I

THE MERGER

1.1 THE MERGER. Subject to and in accordance with the terms and conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), at the Effective Time (as defined in Section 1.3), SDC shall be merged with SUB. As a result of the Merger, the separate corporate existence of SUB shall cease and SDC shall continue as the surviving corporation (sometimes referred to herein as the "Surviving Corporation"), and all the properties, rights, privileges, powers and franchises of SDC and SUB shall vest in the Surviving Corporation, without any transfer or assignment

having occurred, and all debts, liabilities and duties of SDC and SUB shall attach to the Surviving Corporation, all in accordance with the DGCL.

1.2 CLOSING DATE. The closing of the transactions contemplated by this Agreement shall take place at the offices of Brobeck, Phleger & Harrison, 550 West "C" Street, Suite 1200, San Diego, California 92101, on December 19, 1997 (the "Closing Date").

1.3 CONSUMMATION OF THE MERGER. As soon as practicable on or after the Closing Date, the parties hereto will cause the Merger to be consummated by filing with the Secretary of State of Delaware a certificate of merger in such form as required by, and executed in accordance with, the relevant provisions of the DGCL. The "Effective Time" of the Merger as that term is used in this Agreement shall mean such time as the certificate of merger is duly filed with the Secretary of State of Delaware.

1.4 EFFECTS OF THE MERGER. The Merger shall have the effects set forth in the applicable provisions of the DGCL.

1.5 CERTIFICATE OF INCORPORATION; BYLAWS. The Certificate of Incorporation and Bylaws of SDC, as amended by the Amended and Restated Certificate of Incorporation of Spiros Development Corporation attached hereto as SCHEDULE B and the Bylaws, as amended, of Spiros Development Corporation attached hereto as SCHEDULE C, respectively, shall be the Certificate of Incorporation and Bylaws, respectively, of the Surviving Corporation and thereafter shall continue to be its Certificate of Incorporation and Bylaws until amended as provided therein and under the DGCL.

1.6 DIRECTORS AND OFFICERS. The directors of SDC immediately prior to the Effective Time shall be the directors of the Surviving Corporation at and after the Effective Time, each to hold office in accordance with the Certificate of

Incorporation and Bylaws of the Surviving Corporation, and the officers of SDC immediately prior to the Effective Time shall be the officers of the Surviving Corporation at and after the Effective Time, in each case until their respective successors are duly elected or appointed and qualified.

1.7 CONVERSION OF SECURITIES. Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of DURA, SDC, SUB or any of their respective stockholders:

(a) All rights of each holder of any shares of SDC Common Stock issued and outstanding immediately prior to the Effective Time (the "Shares") arising from such holder's ownership of such Shares shall be converted into the right to receive the number of shares of DURA Common Stock set forth opposite such holder's name on SCHEDULE A attached hereto; PROVIDED, HOWEVER, that no fractional shares of DURA Common Stock shall be issued, and, in lieu thereof, a cash payment shall be made in accordance with subsection 1.8(e) hereof.

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(b) All rights of each option to acquire shares of Callable Common Stock of SDC outstanding immediately prior to the Effective Time shall in full satisfaction of any of the rights thereto (i) be converted as of the Closing Date into the right to receive upon surrender of the respective Option a cash payment equal to Forty Six Dollars and Eighty Eight Cents (\$46.88) (the exercise price for Dura's Purchase Option for all of the outstanding SDC Common Stock) multiplied by the number of shares of SDC Common Stock otherwise issuable upon the exercise of the respective holder's option(s) less the exercise price per share of SDC Common Stock multiplied by the number of shares of SDC Common Stock for which the respective option is being exercised and (ii) be automatically canceled and be no longer outstanding, as of the Closing Date, regardless of whether the respective Option has been surrendered.

(c) Each issued and outstanding share of capital stock of SUB issued and outstanding immediately prior to the Effective Time shall continue to be issued and outstanding and shall be converted into one share of validly issued, fully paid and non-assessable Common Stock of the Surviving Corporation. Each stock certificate of SUB evidencing ownership of any such shares shall continue to evidence ownership of such shares of Common Stock of the Surviving Corporation.

1.8 EXCHANGE OF CERTIFICATES; FRACTIONAL SHARES.

(a) Prior to the Effective Time, DURA shall appoint a bank, transfer agent or similar entity to act as the payment agent (the "Payment Agent") in the Merger and shall make available for exchange, in accordance with this Section 1.8, the shares of Dura Common Stock issuable pursuant to this Section 1.8 (and cash to be paid pursuant to subsection 1.8(e)) in exchange for the Shares.

(b) As soon as practicable after the Effective Time, each holder of a certificate that prior thereto represented Shares shall be entitled, upon surrender thereof to the Payment Agent, to receive in exchange therefor, a certificate or certificates representing the number of whole shares of DURA Common Stock into which the shares of SDC Common Stock so surrendered shall have been converted as aforesaid, in such denominations and registered in such names as such holder may request. Each certificate so surrendered shall forthwith be canceled. Each holder of shares of SDC Common Stock who would otherwise be entitled to a fraction of a share of DURA Common Stock shall, upon surrender of the certificates representing such shares held by such holder to the Payment Agent, be paid an amount in cash in accordance with the provisions of subsection 1.8(e) hereof. Until so surrendered and exchanged, each certificate that prior to the Effective Time represented Shares shall represent solely the right to receive DURA Common Stock and cash in lieu of fractional shares, if any. Unless and until any such certificates shall be so surrendered and exchanged, no dividends or other distributions payable to the holders of DURA Common Stock, as of any time on or after the Effective Time, shall be paid to the holders of such

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certificates that prior to the Effective Time represented Shares; PROVIDED, HOWEVER, that, upon any such surrender and exchange of such certificates, there shall be paid to the record holders of the certificates issued and exchanged therefor the amount, without interest thereon, of dividends and other distributions, if any, that theretofore were declared and became payable after the Effective Time and respect to the number of whole shares of DURA Common Stock issued to such holder.

(c) All shares of DURA Common Stock issued upon the surrender for exchange of certificates that prior to the Effective Time represented Shares in accordance with the terms hereof (including any cash paid pursuant to subsection 1.8(e)) shall be deemed to have been issued in full satisfaction of all rights pertaining to such Shares. At and after the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, certificates which prior to the Effective Time represented Shares are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Article I.

(d) If any certificate for shares of DURA Common Stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of the issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange shall have paid to DURA or its transfer agent any transfer or other taxes required by reason of the issuance of a certificate for shares of DURA Common Stock in any name other than that of the registered holder of the certificate surrendered, or established to the satisfaction of DURA or its transfer agent that such tax has been paid or is not payable.

(e) No fraction of a share of DURA Common Stock shall be issued, but in lieu thereof each holder of SDC Common Stock who would otherwise be entitled to a fraction of a share of DURA Common Stock shall, upon surrender of the certificate formerly representing SDC Common Stock held by such holder to the Payment Agent, be paid an amount in cash equal to the amount set forth opposite such holder's name on SCHEDULE A attached hereto under the heading "Fractional Share Payment." No interest shall be paid on such amount. All shares of SDC Common Stock held by a record holder shall be aggregated for purposes of computing the number of shares of DURA Common Stock to be issued pursuant to this Article I and cash in lieu of fractional shares payable hereunder.

(f) None of DURA, SUB, SDC, the Surviving Corporation, their transfer agents or the Payment Agent shall be liable to a holder of the Shares for any amount properly paid to a public official pursuant to applicable property, escheat or similar laws.

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1.9 TAKING OF NECESSARY ACTION; FURTHER ACTION. The parties hereto shall take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of SDC or SUB, such parties shall direct their respective officers and directors to take all such lawful and necessary action.

ARTICLE II

MISCELLANEOUS

2.1 TERMINATION. This Agreement may be terminated and the Merger and the other transactions contemplated herein may be abandoned by any party at any time prior to the Effective Time.

2.2 AMENDMENTS AND WAIVERS. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), by the party that is, or whose stockholders are, entitled to the benefits thereof. This Agreement may not be amended or supplemented at any time, except by an instrument in writing signed on behalf of each party hereto and then only as may be permitted by applicable provisions of the DGCL. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any securities purchased under this Agreement at the time outstanding (including securities into which such securities are convertible), each future holder of all such securities, and each of the parties hereto.

2.3 SEVERABILITY. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

2.4 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

2.5 TITLES AND SUBTITLES. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

2.6 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and no party shall be liable or bound to any other party in any manner by any warranties, representations, or covenants except as specifically set forth herein or therein.

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2.7 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, as applied to agreements among Delaware residents to be performed entirely within the State of Delaware.

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

DURA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Cam L. Garner

Cam L. Garner, Chairman, President and
Chief Executive Officer

ATTEST:

/s/ Mitchell R. Woodbury

Mitchell R. Woodbury, Secretary

SDC ACQUISITION CORP.,
a Delaware corporation

By: /s/ David S. Kabakoff

David S. Kabakoff, President

ATTEST:

/s/ Mitchell R. Woodbury

Mitchell R. Woodbury, Secretary

SPIROS DEVELOPMENT
CORPORATION, a Delaware corporation

By: /s/ David S. Kabakoff

David S. Kabakoff, President

ATTEST:

/s/ Mitchell R. Woodbury

Mitchell R. Woodbury, Secretary

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SCHEDULE "A"

<TABLE>
<CAPTION>

Record Name of Holder of SDC Callable Common Stock -----	SDC Callable Common Stock Certificate Number -----	Number of Shares of SDC Callable Common Stock Held -----	Number of Shares of Dura Common Stock to Be Issued in Merger -----	Cash in Lieu of Fractional Share Payment -----
<S> PIRATE SHIP & CO., AS NOMINEE FOR THE GLOBAL HEALTH SCIENCES FUND	<C> CC-1	<C> 66,667	<C> 64,044	<C> \$ 1.76

OLD COURT LIMITED, AS NOMINEE FOR BIOTECHNOLOGY INVESTMENTS LTD.	CC-2	100,000	96,065	\$ 28.00
THE CHARLES SCHWAB TRUST COMPANY, TRUSTEE FOR THE DURA PHARMACEUTICALS, INC. DEFERRED COMPENSATION PLAN	CC-3	16,667	16,011	\$ 12.16
ELAN INTERNATIONAL SERVICES LIMITED	CC-4	333,333	320,218	\$ 12.64
H&Q HEALTHCARE INVESTORS	CC-6	45,833	44,029	\$ 35.84
H&Q LIFE SCIENCES INVESTORS	CC-7	37,500	36,024	\$ 28.80
NEW ENTERPRISE ASSOCIATES VI, LIMITED PARTNERSHIP	CC-8	66,667	64,044	\$ 1.76
S-E BANKENS LAKEMEDELSEFONDEN, STOCKHOLM	CC-9	36,500	35,063	\$ 45.60
WPG LIFE SCIENCES FUND L.P.	CC-11	10,000	9,606	\$ 27.20
WPG INSTITUTIONAL LIFE SCIENCES FUND L.P.	CC-12	6,667	6,404	\$ 33.76
ABYDOS & CO., AS NOMINEE FOR G.T. GLOBAL HEALTH CARE FUND	CC-13	100,000	96,065	\$ 28.00
DOMAIN PARTNERS III, L.P.	CC-14	96,656	92,853	\$ 6.88
DP III ASSOCIATES, L.P.	CC-15	3,344	3,212	\$ 21.12
RUSH & CO., AS NOMINEE FOR S-E BANKEN LUXEMBOURG S.A.	CC-16	13,500	12,968	\$ 41.60
TOTAL:		933,334	896,606	\$ 325.12
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</TABLE>

SCHEDULE B

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SPIROS DEVELOPMENT CORPORATION a Delaware corporation

Spiros Development Corporation, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Spiros Development Corporation. The original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on December 5, 1995 and was amended pursuant to a Restated Certificate of Incorporation filed with the Secretary of State of the State of Delaware on December 29, 1995.

2. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, the Amended and Restated Certificate of Incorporation was adopted by the corporation's Board of Directors and stockholders, the stockholders of the corporation having approved the Amended and Restated Certificate of Incorporation by the written consent of the holders of at least a majority of the outstanding shares in accordance with Section 228 thereof, and written notice having been given in accordance with the requirements of such Section. The Amended and Restated Certificate of Incorporation restates, integrates and amends the provisions of the Certificate of Incorporation of this corporation.

3. The text of the Certificate of Incorporation as heretofore amended or restated is hereby restated and further amended to read in its entirety as follows:

ARTICLE I

The name of this corporation is Spiros Development Corporation.

ARTICLE II

The address of this corporation's registered office in the State of Delaware is 30 Old Rudnick Lane, City of Dover, County of Kent 19901. The name of its registered agent at such address is CorpAmerica, Inc.

ARTICLE III

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may now or hereafter be organized under the Delaware General Corporation Law.

ARTICLE IV

Effective at the time of the Corporation's filing with the Secretary of the State of Delaware of this Amended and Restated Certificate of Incorporation (the "Effective Time"), the Corporation shall be authorized to issue one class of stock to be designated "Common Stock", with a par value of \$.001 per share which renames the previously designated "Callable Common Stock" with the same par value. As a result, as of the Effective Time the total number of shares of all classes of stock that the Corporation shall have authority to issue is 1,073,334 shares of Common Stock.

ARTICLE V

The corporation is to have a perpetual existence.

ARTICLE VI

The Board of Directors of the corporation is expressly authorized to make, alter or repeal bylaws of the corporation, but the stockholders may make additional bylaws and may alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VII

(A) EXCULPATION. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter amended to further reduce or to authorize, with the approval of the corporation's stockholders, further reductions in the liability of the corporation's directors for breach of fiduciary duty, then a director of the corporation shall not be liable for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended.

(B) INDEMNIFICATION. To the extent permitted by applicable law, this corporation is also authorized to provide indemnification of (and advancement of expenses to) such agents (and any other persons to which Delaware law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the corporation, its stockholders, and others.

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(C) EFFECT OF REPEAL OR MODIFICATION. Any repeal or modification of any of the foregoing provisions of this Article V shall be prospective and shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any director of the corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE VIII

Elections of directors need not be by written ballot except and to the extent provided in the Bylaws of the corporation.

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IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been signed under the seal of the corporation as of this 18 day of December, 1997.

SPIROS DEVELOPMENT CORPORATION,
a Delaware corporation

By: /s/ David S. Kabakoff

David S. Kabakoff, President

ATTEST:

/s/ Mitchell R. Woodbury

Mitchell R. Woodbury, Secretary

SCHEDULE C

BYLAWS

OF

SPIROS DEVELOPMENT CORPORATION

I.

OFFICES

Section 1. The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

II.

MEETINGS OF STOCKHOLDERS

Section 1. All meetings of the stockholders for the election of directors shall be held in the City of San Diego, State of California, at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual meetings of stockholders, commencing with the year 1995, shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect by a

plurality vote a board of directors, and transact such other business as may properly be brought before the meeting.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the

date of the meeting.

Section 4. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

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Section 6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 7. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 9. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation, a different vote is

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required, in which case such express provision shall govern and control the decision of such question.

Section 10. Unless otherwise provided in the certificate of incorporation each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

Section 11. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those

stockholders who have not consented in writing.

III.

DIRECTORS

Section 1. The number of directors which shall constitute the whole board shall be five (5). The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified. Directors need not be stockholders.

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Section 2. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. The business of the corporation shall be managed by or under the direction of its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD OF DIRECTORS

Section 4. The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of

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the failure of the stockholders to fix the time or place of such first meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 6. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

Section 7. Special meetings of the board may be called by the President on four (4) days' notice to each director by mail or 48 hours' notice to each director either personally or by telegram; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two directors unless the board consists of only one director, in which case special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of the sole director.

Section 8. At all meetings of the board a majority of the directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Unless otherwise restricted by the certificate of

incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or

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committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 10. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

COMMITTEES OF DIRECTORS

Section 11. The Board of Directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation,

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adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Section 12. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

COMPENSATION OF DIRECTORS

Section 13. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

REMOVAL OF DIRECTORS

Section 14. Unless otherwise restricted by the certificate of incorporation or bylaw, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of shares entitled to vote at an election of directors.

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IV.

NOTICES

Section 1. Whenever, under the provisions of the statutes or of the certificate of incorporation or of these bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

V.

OFFICERS

Section 1. The officers of the corporation shall be elected by the Board of Directors and shall include a President and a Secretary. The Board of Directors may elect from among its members a Chairman of the Board and a Vice Chairman of the Board. The Board of Directors may also elect a Treasurer and/or one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

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Section 2. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect a President and a Secretary and may also elect Vice Presidents and a Treasurer.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 4. The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 5. The officers of the corporation shall hold office until their successors are chosen and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

THE CHAIRMAN OF THE BOARD

Section 6. The Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he shall be present. He shall have and may exercise such powers as are, from time to time, assigned to him by the Board and as may be provided by law.

Section 7. In the absence of the Chairman of the Board, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors and of the stockholders at which he shall be present. He shall have and may exercise such powers as are, from time to time, assigned to him by the Board and as may be provided by law.

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THE PRESIDENT AND VICE PRESIDENT

Section 8. The President shall be the chief executive officer of the corporation; and in the absence of the Chairman and Vice Chairman of the Board he shall preside at all meetings of the stockholders and the Board of Directors. He shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect.

Section 9. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the corporation.

Section 10. In the absence of the President or in the event of his

inability or refusal to act, the Vice President, if any, (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE SECRETARY AND ASSISTANT SECRETARY

Section 11. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of

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Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 12. The Assistant Secretary, or, if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

THE TREASURER AND ASSISTANT TREASURERS

Section 13. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors.

Section 14. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors

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so requires, an account of all his transactions as Treasurer and of the financial condition of the corporation.

Section 15. If required by the Board of Directors, he shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 16. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election) shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

VI.

CERTIFICATE OF STOCK

Section 1. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares owned by

him in the corporation.

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Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

LOST CERTIFICATES

Section 3. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation

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alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

TRANSFER OF STOCK

Section 4. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

FIXING RECORD DATE

Section 5. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of

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stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

REGISTERED STOCKHOLDERS

Section 6. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

VII.

GENERAL PROVISIONS

DIVIDENDS

Section 1. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors shall think conducive to the interest of

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the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

CHECKS

Section 3. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

FISCAL YEAR

Section 4. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

SEAL

Section 5. The Board of Directors may adopt a corporate seal having inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

INDEMNIFICATION

Section 6. The corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify any director made, or threatened to be made, a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director of the corporation or a predecessor corporation or, at the corporation's request, a director or officer of another corporation, provided, however, that the corporation shall indemnify any such agent in connection with a proceeding initiated by such agent only if such proceeding was authorized by the Board of Directors of the corporation. The indemnification provided for in

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this Section 6 shall: (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under the corporation's certificate of incorporation, any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office, (ii) continue as to a person who has ceased to be a director, and (iii) inure to the benefit of the heirs, executors and administrators of such a person. The corporation's obligation to provide indemnification under this Section 6 shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other

person.

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Expenses incurred by a director of the corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director of the corporation (or was serving at the corporation's request as a director or officer of another corporation) shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by relevant sections of the General Corporation Law of Delaware. Notwithstanding the foregoing, the corporation shall not be required to advance such expenses to an agent who is a party to an action, suit or proceeding brought by the corporation and approved by a majority of the Board of Directors of the corporation which alleges willful misappropriation of corporate assets by such agent, disclosure of confidential information in violation of such agent's fiduciary or contractual obligations to the corporation or any other willful and deliberate breach in bad faith of such agent's duty to the corporation or its stockholders.

The foregoing provisions of this Section 6 shall be deemed to be a contract between the corporation and each director who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

The Board of Directors in its discretion shall have power on behalf of the corporation to indemnify any person, other than a director, made a party to any action, suit or

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proceeding by reason of the fact that he, his testator or intestate, is or was an officer or employee of the corporation.

To assure indemnification under this Section 6 of all directors, officers and employees who are determined by the corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the corporation which may exist from time to time, Section 145 of the General Corporation Law of Delaware shall, for the purposes of this Section 6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the corporation which is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines."

Section 7. The corporation shall indemnify its directors to the fullest extent not prohibited by the California General Corporation Law; PROVIDED, HOWEVER, that the corporation shall not be required to indemnify any director in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the board of directors of the corporation or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the California General Corporation Law.

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The corporation shall have power to indemnify its officers, employees and other agents as set forth in the California General Corporation Law.

Promptly after receipt of a request for indemnification hereunder (and in any event within 90 days thereof) a reasonable, good faith determination as to whether indemnification of the director is proper under the circumstances because each director has met the applicable standard of care shall be made by: (i) a majority vote of a quorum consisting of directors who are not parties to such proceeding; (ii) if such quorum is not obtainable, by independent legal counsel in a written opinion; or (iii) approval or ratification by the affirmative vote of a majority of the shares of this corporation represented and

voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) or by written consent of a majority of the outstanding shares entitled to vote; where in each case the shares owned by the person to be indemnified shall not be considered entitled to vote thereon.

For purposes of any determination under this bylaw, a director shall be deemed to have acted in good faith and in a manner he reasonably believed to be in the best interests of the corporation and its stockholders, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that his conduct was unlawful, if his action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by: (i) one or more officers or employees of the corporation whom the director believed to be reliable and competent in the matters presented; (ii) counsel, independent accountants or other persons as to matters which the director believed to be within such person's professional competence; and (iii) a committee of the Board upon which such director does not serve, as to matters within such committee's

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designated authority, which committee the director believes to merit confidence; so long as, in each case, the director acts without knowledge that would cause such reliance to be unwarranted.

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the corporation and its stockholders or that he had reasonable cause to believe that his conduct was unlawful.

The provisions of the preceding two paragraphs shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the California General Corporation Law.

The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any director in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it shall be determined ultimately that such person is not entitled to be indemnified under this bylaw or otherwise.

Without the necessity of entering into an express contract, all rights to indemnification and advances to directors under this bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director. Any right to indemnification or advances granted by this bylaw to a director shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for

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indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any proceeding in advance of its final disposition when the required undertaking has been tendered to the corporation) that the claimant has not met the standards of conduct that make it permissible under the California General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its board of directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the California General Corporation Law, nor an actual determination by the corporation (including its board of directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

To the fullest extent permitted by the corporation's Certificate of Incorporation and the California General Corporation Law, the rights conferred on any person by this bylaw shall not be exclusive of any other right which such

person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers,

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employees or agents respecting indemnification and advances, to the fullest extent permitted by the California General Corporation Law and the corporation's Certificate of Incorporation.

The rights conferred on any person by this bylaw shall continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such a person.

The corporation, upon approval by the board of directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this bylaw. The corporation's obligation to provide indemnification under this Section 7 shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other person.

Any repeal or modification of this bylaw shall only be prospective and shall not affect the rights under this bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

The corporation shall indemnify the directors and officers of the corporation who serve at the request of the corporation as trustees, investment managers or other fiduciaries of employee benefit plans to the fullest extent permitted by the California General Corporation Law.

If this bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director to the fullest extent permitted by any applicable portion of this bylaw that shall not have been invalidated, or by any other applicable law.

For the purposes of this bylaw, the following definitions shall apply:

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(i) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

(ii) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding, including expenses of establishing a right to indemnification under this bylaw or any applicable law.

(iii) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a "director," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

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Section 8. In the event of any inconsistency between Section 6 and Section 7 of this Article VII, the controlling Section as to any particular issue with regard to any particular matter, shall be the one which authorizes for the benefit of the agent or the other person in question the provision of the fullest, promptest, most certain or otherwise most favorable indemnification and/or advancement.

VIII.

AMENDMENT

Section 1. These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the certificate of incorporation at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal bylaws is conferred upon the Board of Directors by the certificate of incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal bylaws.

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CERTIFICATE OF SECRETARY

AMENDMENT TO BYLAWS
OF SPIROS DEVELOPMENT CORPORATION

The undersigned hereby certifies that:

I am the duly qualified and acting Secretary of Spiros Development Corporation, a duly organized and existing Delaware corporation.

The following is a true copy of a resolution duly adopted by the written consent of the stockholders of the Corporation on December 19, 1997, which appears in the minute book of the Corporation:

NOW, THEREFORE, BE IT RESOLVED, that Article III, Section 1, of the Corporation's Bylaws is hereby amended in its entirety to read as follows:

"Section 1. The number of directors which shall constitute the whole board shall be three (3). The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his or her successor is elected and qualified. Directors need not be stockholders."

The foregoing resolution is in conformity with the Restated Certificate of Incorporation and Bylaws of the Corporation, has never been modified or repealed, and is now in full force and effect.

IN WITNESS WHEREOF, I have executed this Certificate of Secretary and affixed the seal of the Corporation on December 19, 1997.

/s/ Mitchell R. Woodbury

Mitchell R. Woodbury, Secretary

WARRANT AGREEMENT

WARRANT AGREEMENT, dated as of December 22, 1997, between DURA PHARMACEUTICALS, INC., a Delaware corporation ("Dura"), and CHASEMELLON SHAREHOLDER SERVICES L.L.C., as warrant agent (the "Warrant Agent"), in favor of each person who acquires from time to time warrants (the "Warrants") to purchase shares of Dura's Common Stock, \$.001 par value per share (the "Warrant Shares"), issued in the offering of units (the "Units"), each Unit consisting of one share of common stock, \$.001 par value per share ("Spiros II Common Stock"), of SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp. II"), and one Warrant, made pursuant to a registration statement on Forms S-1/S-3 (Nos. 333-37673 and 333-37673-01) (the "Registration Statement") filed by Dura and Spiros Corp. II with the Securities and Exchange Commission (the "Commission").

Section 1. APPOINTMENT OF WARRANT AGENT. Dura hereby appoints the Warrant Agent to act as agent for Dura in accordance with the instructions set forth herein, and the Warrant Agent hereby accepts such appointment, upon the terms and conditions hereinafter set forth.

Section 2. CERTAIN DEFINITIONS. As used herein, the following terms shall have the following meanings:

"ACCELERATION DATE" means the first date upon which an Acceleration Event occurs; PROVIDED, HOWEVER, that, if approval of the stockholders of Dura is required in connection with such Acceleration Event, Acceleration Date means the date of such stockholder approval.

"ACCELERATION EVENT" means the occurrence of, or the execution of a definitive agreement by Dura with respect to, any of the following events: (i) any capital reorganization of Dura or reclassification of the Common Stock (other than a subdivision, combination or reclassification of the outstanding Common Stock for which adjustment is provided in paragraphs (i), (ii), (iv) and (v) of Section 13(a) hereof and other than a change in the par value of the Common Stock or an increase in the authorized capital stock of Dura not involving the issuance of any shares thereof), (ii) any consolidation of Dura with, or merger of Dura with or into, any other person (including any individual, partnership, joint venture, corporation, trust or group thereof) other than (a) a consolidation or merger pursuant to which the stockholders of Dura immediately prior to such consolidation or merger own more than 50% of the outstanding securities having power to vote in the election of directors after such consolidation or merger or (b) a consolidation or merger by Dura with a subsidiary of Dura in which Dura is the continuing corporation for which adjustment is provided in Section 13 hereof, (iii) any sale, lease, transfer or conveyance of all or substantially all of the assets of Dura (other than a sale, lease, transfer or conveyance of such assets to an Affiliate (within the meaning of the Securities Act)) or (iv) the announcement or commencement by any "person" or "group" (within the meaning of Section 13 (d) and Section 14(d) of the Exchange Act) other than with respect to a consolidation or merger pursuant to clause (ii) above, of a BONAFIDE tender offer or exchange offer in accordance with the rules and

regulations of the Exchange Act to purchase, or the acquisition of securities of Dura, such that after such acquisition or proposed purchase, the acquiror "beneficially owns" or would "beneficially own" (as defined in Rule 13d-3 under the Exchange Act) securities of Dura representing 30% percent or more of the combined voting power of Dura's then outstanding securities having power to vote in the election of directors.

"CLOSING PRICE" means the closing price per share of Common Stock on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if not listed or traded on any such exchange, on the Nasdaq National Market or if not listed or traded on any such exchange or the Nasdaq National Market, the average of the last bid and asked prices per share on the Nasdaq over-the-counter system or, if such quotations are not available, the fair market value as reasonably determined by the Board of Directors of Dura or any committee of such Board.

"COMMON STOCK" means (i) the class of stock designated as the Common Stock, \$.001 par value per share, of Dura on the date hereof or (ii) any other class of stock resulting from successive changes or reclassifications of such shares consisting solely of changes in par value, or from par value to no par value, or from no par value to par value. Unless the context requires otherwise, all references to Common Stock and Warrant Shares in this Agreement and in the Warrant Certificates shall, in the event of an adjustment pursuant to Section 13 hereof, be deemed to refer also to any other securities or property then issuable upon exercise of the Warrants as a result of such adjustment.

"ELIGIBLE INSTITUTION" shall have the meaning set forth in Section 8(c) hereof.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

"EXERCISE PRICE" shall have the meaning set forth in Section 5(b) hereof.

"EXERCISE PERIOD" means the period during which the Warrants may be exercised as set forth in Section 5(a) hereof.

"EXPIRATION DATE" shall have the meaning set forth in Section 5(a) hereof.

"HOLDERS" shall have the meaning set forth in Section 4(b) hereof.

"NASD" means the National Association of Securities Dealers, Inc.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SEPARATION DATE" shall have the meaning set forth in Section 5(a) hereof.

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"STOCK PURCHASE OPTION" means the option by Dura to purchase all (but not less than all) of the shares of Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"WARRANT CERTIFICATE" shall have the meaning set forth in Section 3(a) hereof.

"WARRANT REGISTER" means the books and records kept by the Warrant Agent for the registration, and the registration of transfer, of the Warrant Certificates in which shall be registered the names and addresses of Holders of Warrants evidenced by Warrant Certificates in registered form and the certificate numbers and denominations of such Warrant Certificates.

Section 3. FORM OF WARRANT CERTIFICATE: PURCHASE PRICE: SEPARATION FROM SPIROS CORP. II COMMON STOCK.

(a) The certificates evidencing the Warrants (the "Warrant Certificates"), and the forms of election to purchase Warrant Shares and of assignment to be printed on the reverse thereof, shall be substantially in the form set forth in Exhibit A hereto and may have such letters, numbers or other marks of identification or designation and such legends, summaries or endorsements printed, lithographed or engraved thereon as Dura reasonably deems appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law, any rule or regulation related thereto, or with any rule or regulation of the NASD, the Nasdaq National Market or any securities exchange on which the Warrants may from time to time be listed.

(b) Each Warrant shall entitle the Holder thereof to purchase one-fourth of a Warrant Share upon the exercise thereof at the applicable Exercise Price, subject to adjustment as provided in Section 13 hereof, during the Exercise Period; PROVIDED, HOWEVER, that the Warrants are exercisable only for whole shares; cash will be paid in lieu of fractional shares in accordance with Section 5(e) hereof. Each Warrant Certificate shall be executed on behalf of Dura by the manual or facsimile signature of the present or any future President or any officer of Dura, under its corporate seal, affixed or in facsimile, attested by the manual or facsimile signature of the present or any future Secretary or Assistant Secretary of Dura. Warrants shall be dated as of the date of their initial issue.

(c) As set forth in Section 8 hereof, until the Separation Date, a Warrant may not be divided or combined with other Warrants or exchanged, assigned or transferred apart from the share of the Spiros Corp. II Common Stock with which it was initially sold as a Unit.

Section 4. REGISTRATION AND COUNTERSIGNATURE.

(a) The Warrant Agent shall maintain the Warrant Register. The Warrant Certificates shall be countersigned by the Warrant Agent and shall not be valid for any purpose unless so

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countersigned. The Warrant Certificates shall be so countersigned, however, by the Warrant Agent and shall be delivered by the Warrant Agent, notwithstanding whether the persons whose manual or facsimile signatures appear thereon as proper officers of Dura shall have ceased to be such officers at the time of such countersignature or delivery.

(b) Prior to due presentment for registration or transfer of the Warrant Certificates, Dura and the Warrant Agent may deem and treat the registered holder (a "Holder") thereof as the absolute owner of the Warrant Certificates (notwithstanding any notation of ownership or other writing made thereon by anyone other than Dura or the Warrant Agent), for the purpose of any exercise thereof and for all other purposes, and neither Dura nor the Warrant Agent shall be affected by any notice to the contrary.

Section 5. DURATION AND EXERCISE OF WARRANTS.

(a) Warrants may be exercised at any time or from time to time on or after the earliest of (i) January 1, 2000, (ii) the exercise by Dura of the Stock Purchase Option, (iii) the termination of the Stock Purchase Option with respect to Dura and (iv) an Acceleration Date (such earliest date being referred to

herein as the "Separation Date") and will expire at 5:00 p.m., New York City time, on December 31, 2002 (the "Expiration Date"). Upon the Expiration Date, all rights evidenced by the Warrants shall cease and the Warrants shall become void.

(b) Subject to the provisions of this Agreement, the Holder of each Warrant shall have the right to purchase from Dura (and Dura shall issue and sell to such Holder) the number of fully paid and nonassessable Warrant Shares set forth on such Holder's Warrant Certificate (or such number of Warrant Shares as may result from adjustments made from time to time as provided in this Agreement) at the price of \$_____ per Warrant Share in lawful money of the United States of America (such exercise price per Warrant Share, as adjusted from time to time as provided herein, being referred to herein as the "Exercise Price"), upon (i) surrender of the Warrant Certificates to Dura at the office of the Warrant Agent designated by the Warrant Agent for such purpose with the exercise form on the reverse thereof duly completed and signed by the Holder or Holders thereof or by a duly appointed legal representative thereof or by a duly authorized attorney, such signature to be guaranteed by an Eligible Institution (as defined in Section 8(c) hereof) if such guarantee is required by the terms of the Warrant Certificate, and (ii) payment, in lawful money of the United States of America, of the Exercise Price for the Warrant Share or Warrant Shares in respect of which such Warrant is then exercised. The Exercise Price payable upon exercise of any Warrant may be paid only by certified or, at the option of the Holder, official bank check payable to the order of Dura. Upon surrender of the Warrant Certificate, and payment of the Exercise Price, Dura shall issue and cause to be delivered with all reasonable dispatch to or upon the written order of the Holder of such Warrant and in such name or names as such Holder may designate, a certificate or certificates for the number of Warrant Shares so purchased upon the exercise of such Warrants, together with cash or check,

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at Dura's option, in respect of any fraction of a Warrant Share issuable upon such surrender pursuant to Section 5(e) hereof. The Warrant Agent shall deliver on a weekly basis all funds received upon exercise of the Warrants to Dura, 7475 Lusk Boulevard, San Diego, California 92121, Attention: Senior Vice President and Chief Financial Officer.

(c) Each person in whose name any certificate for Warrant Shares is issued upon the exercise of Warrants shall for all purposes be deemed to have become the holder of record of the Warrant Shares represented thereby, and such certificate shall be dated the date upon which the Warrant Certificate evidencing such Warrants was duly surrendered and payment of the Exercise Price (and any applicable transfer taxes pursuant to Section 10 hereof) was made; PROVIDED, HOWEVER, that if the date of such surrender and payment is a date upon which the Common Stock transfer books of Dura are closed, such person shall be deemed to have become the record holder of such Warrant Shares on, and such certificate shall be dated, the next succeeding business day on which the Common Stock transfer books of Dura are open.

(d) In the event that, during the Exercise Period, fewer than all of the Warrants represented by a Warrant Certificate are exercised, a new Warrant Certificate, duly executed by Dura, will be issued for the remaining number of Warrants exercisable pursuant to the Warrant Certificate so surrendered, and the Warrant Agent shall countersign and deliver such new Warrant Certificate to the Holder of such unexercised Warrants pursuant to the provisions of this Section 5 and of Section 4 hereof.

(e) No fractional shares of Common Stock or scrip shall be issued to any Holder in connection with the exercise of a Warrant. Instead of any fractional

shares of Common Stock that would otherwise be issuable to such Holder, Dura shall pay to such Holder a cash adjustment in respect of such fractional interest in an amount equal to that fractional interest of the then current Closing Price on the date of exercise per share of Common Stock.

(f) The number of Warrant Shares to be received upon the exercise of a Warrant and the price to be paid for a Warrant Share are subject to adjustment from time to time as hereinafter set forth.

(g) Warrants not exercised on or prior to the Expiration Date shall become void and all rights in respect thereof shall cease as of such time.

Section 6. RESERVATION OF WARRANT SHARES; STOCK CERTIFICATES. Dura shall at all times reserve, for issuance and delivery upon exercise of the Warrants, such number of Warrant Shares or other shares of capital stock of Dura as may be issuable from time to time upon exercise of the Warrants. All such shares shall be duly authorized and, when issued upon such exercise and receipt by Dura of payment in full of the Exercise Price, shall be validly issued, fully paid and nonassessable, free and clear of all liens, security interests, charges and other encumbrances or

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restrictions on sale and free and clear of all preemptive rights. The Warrant Agent is hereby irrevocably authorized to requisition, from time to time from the transfer agent for the Common Stock, stock certificates issuable upon exercise of outstanding Warrants. Dura will supply such transfer agent with duly executed stock certificates for such purpose. All Warrant Certificates surrendered upon exercise shall be cancelled by the Warrant Agent and shall thereafter be delivered to Dura or otherwise disposed of in a manner satisfactory to Dura. Unless all Warrants shall have been exercised prior to 5:00 P.M., New York City time, on the Expiration Date, the Warrant Agent shall certify to Dura, as of the close of business on the Expiration Date, the total aggregate number of Warrants then outstanding, and thereafter no shares of Common Stock shall be subject to reservation in respect of such Warrants. Dura shall keep a copy of this Agreement on file with its transfer agent and with every transfer agent for any shares of Common Stock.

Section 7. TRANSFER AND REGISTRATION OF THE WARRANTS AND WARRANT SHARES.

(a) The Warrants and the Warrant Shares, and any interest in either, may be sold, assigned, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, only in accordance with Section 8 hereof and in compliance with applicable United States federal and state securities laws and the terms and conditions hereof.

(b) The Warrants and the Warrant Shares have been registered under the Securities Act pursuant to the Registration Statement. Dura covenants and agrees:

(i) it will prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective through the termination of the Exercise Period or until such earlier time as no Warrants remain outstanding;

(ii) as expeditiously as possible, to register or qualify the Warrants and the Warrant Shares under the securities or "Blue Sky" laws of each jurisdiction in which such registration or qualification is necessary; and

(iii) to pay all expenses incurred by Dura in complying with this Section 7(b), including, without limitation (A) all registration and filing fees, (B) all printing expenses, (C) all fees and disbursements of counsel and independent public accountants for Dura, (D) all NASD and "Blue Sky" fees and expenses (including fees and expenses of counsel in connection with any "Blue Sky" surveys) and (E) the entire expense of any special audits incident to or required in connection with any such registration.

Section 8. EXCHANGE, TRANSFER OR ASSIGNMENT OF WARRANTS.

(a) Through the Separation Date, a Warrant may not be divided or combined with other

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Warrants or exchanged, assigned or transferred apart from the share of Spiros Corp. II Common Stock with which it was initially sold as a Unit. Until the occurrence of the Separation Date, the Warrant Agent will not record an exchange, assignment or transfer of a Warrant Certificate in the Warrant Register without certification by Spiros Corp. II that the holder has transferred its Spiros Corp. II Common Stock to the assignee named on the Warrant Assignment Form printed on the reverse of the Warrant Certificate.

(b) After the Separation Date, Warrants may be exchanged, at the option of the Holder thereof, upon presentation and surrender to the Warrant Agent of the Warrant Certificate evidencing such Warrants, for other Warrant Certificates of different denominations, entitling the Holder or Holders thereof to purchase in the aggregate the same number of Warrant Shares as did such surrendered Warrant Certificate. Subject to the preceding sentence, a Warrant Certificate may be divided or combined with other Warrant Certificates that carry the same rights upon presentation thereof at the office of the Warrant Agent, together with written notice signed by the Holder or Holders thereof specifying the names and denominations in which new Warrant Certificates are to be issued.

(c) After the Separation Date, Warrants may be assigned or transferred, at the option of the Holder thereof, upon surrender of the Warrant Certificates evidencing such Warrants to the Warrant Agent, accompanied (if so required by Dura or the Warrant Agent) by a written instrument or instruments of transfer in form satisfactory to Dura and the Warrant Agent, duly executed by such Holder or by a duly authorized representative or attorney, such signature to be guaranteed by a commercial bank or trust company having an office in the United States, by a broker or a dealer that is a member of the NASD or by a member of a national securities exchange (any such entity, an "Eligible Institution"). Upon any such registration of transfer, a new Warrant Certificate shall be issued to the transferee and the surrendered Warrant Certificate shall be cancelled by the Warrant Agent. Warrant Certificates so cancelled shall be delivered by the Warrant Agent to Dura from time to time or otherwise disposed of by the Warrant Agent in a manner satisfactory to Dura.

(d) Any transfer, exchange or assignment of Warrants (including any new Warrants issued pursuant to Section 11 hereof) shall be without charge (other than the cost of any transfer tax) to the Holder and any new Warrant or Warrants issued pursuant to this Section 8 shall be dated the date hereof.

Section 9. REMOVAL OF LEGEND. Through the Separation Date, each Warrant Certificate shall bear the following legend:

UNTIL DECEMBER 31, 1999 OR SUCH EARLIER DATE ON WHICH THIS LEGEND IS REMOVED PURSUANT TO SECTION 9 OF THE WARRANT AGREEMENT, DATED AS

OF ABOUT _____, 1997, BETWEEN DURA PHARMACEUTICALS, INC. AND CHASEMELLON SHAREHOLDER SERVICES, AS WARRANT AGENT, THE WARRANTS REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED SEPARATELY, SPLIT UP, COMBINED OR EXCHANGED, BUT MAY ONLY BE TRANSFERRED, SPLIT UP, COMBINED OR EXCHANGED TOGETHER WITH THE SHARES OF CALLABLE COMMON STOCK OF SPIROS DEVELOPMENT CORPORATION II, INC. WITH WHICH SUCH WARRANTS WERE SOLD AS A UNIT.

After the Separation Date, any Holder of Warrants may surrender the Warrant Certificate evidencing such Warrants to the Warrant Agent, whereupon the Warrant Agent shall execute and deliver to such Holder a new Warrant Certificate, without the legend set forth in this Section 9, entitling such Holder to purchase the same number of Warrant Shares as provided for by such surrendered Warrant Certificate. Dura shall supply the Warrant Agent with Warrant Certificates that do not bear such legend for use after the Separation Date.

Section 10. PAYMENT OF TAXES. Dura shall pay all documentary stamp taxes attributable to the original issuance of the Warrants and of Warrant Shares; PROVIDED, HOWEVER, that Dura shall not be required to (a) pay any tax which may be payable in respect of any transfer involving the transfer and delivery of Warrant Certificates or the issuance or delivery of certificates for Warrant Shares in a name other than that of the Holder of the Warrant Certificate surrendered upon the exercise of a Warrant or (b) issue or deliver any certificate for Warrant Shares upon the exercise of any Warrants until any such tax required to be paid under clause (a) shall have been paid, all such tax being payable by the Holder of such Warrant at the time of surrender.

Section 11. MUTILATED OR MISSING WARRANT CERTIFICATES. In the event that any Warrant Certificate shall be mutilated, lost, stolen or destroyed, Dura may in its discretion issue, and the Warrant Agent may countersign and deliver, upon the request of the Holder of the Warrants evidenced by such Warrant Certificate, in exchange for and upon cancellation of any such mutilated Warrant Certificate, or in substitution for any such lost, stolen or destroyed Warrant Certificate, a new Warrant Certificate of like tenor and evidencing the same number of Warrant Shares as were evidenced by such mutilated, lost, stolen or destroyed Warrant Certificate, but only upon receipt of evidence satisfactory to the Warrant Agent of such loss, theft or destruction of such Warrant Certificate and an indemnity, if requested, reasonably satisfactory to it. An applicant for such substitute Warrant Certificate shall also comply with such other reasonable regulations and pay such other reasonable charges as Dura or the Warrant Agent may prescribe. Any such new Warrant Certificate shall constitute an original contractual obligation of Dura, whether or not the allegedly mutilated, lost, stolen or destroyed Warrant Certificate shall be enforceable by any person at any time thereafter.

Section 12. NO STOCK RIGHTS: LIMITATION OF LIABILITY. No Holder of any Warrant shall, by virtue thereof, be entitled to the rights of a stockholder of Dura, unless and until exercise of such Warrant has occurred. No provisions of any Warrant or of this Agreement, in the absence of affirmative action by the Holder of any such Warrant to exercise such Warrant, and no mere enumeration herein of the rights or privileges of such Holder, shall give rise to any liability of such Holder for the Exercise Price or as a stockholder of Dura, whether such liability is asserted by Dura or by its creditors.

Section 13. ANTIDILUTION PROVISIONS.

(a) The Exercise Price and the number of Warrant Shares that may be purchased upon the exercise of a Warrant shall be subject to change or adjustment from time to time as follows:

(i) STOCK DIVIDENDS AND STOCK SPLITS. If at any time during the Exercise Period (A) Dura shall fix a record date for the issuance of any dividend payable in shares of Common Stock or (B) the number of shares of Common Stock shall have been increased by a subdivision or split-up of shares of Common Stock, then, on the record date fixed for the determination of holders of Common Stock entitled to receive such dividend or immediately after the effective date of such subdivision or split-up, as the case may be, the number of shares to be delivered upon exercise of any Warrant will be appropriately increased so that each Holder thereafter will be entitled to receive the number of shares of Common Stock that such Holder would have owned immediately following such action had such Warrant been exercised immediately prior thereto, and the Exercise Price will be appropriately adjusted. The time of occurrence of an event giving rise to an adjustment made pursuant to this Section 13(a)(i) shall, in the case of a stock dividend, be deemed to be the record date thereof and shall, in the case of a subdivision or split-up, be deemed to be the effective date thereof.

(ii) COMBINATION OF STOCK. If the number of shares of Common Stock outstanding at any time during the Exercise Period is decreased by a combination of the outstanding shares of Common Stock, then, immediately after the effective date of such combination, the number of shares of Common Stock to be delivered upon exercise of any Warrant shall be appropriately decreased so that the Holder of such Warrant thereafter will be entitled to receive the number of shares of Common Stock that such Holder would have owned immediately following such action had such Warrant been exercised immediately prior thereto, and the Exercise Price shall be appropriately adjusted.

(iii) REORGANIZATION. If, at any time during the Exercise Period, any capital reorganization of Dura, or any reclassification of the Common Stock, or any consolidation of Dura with, or merger of Dura with or into, any other person or any sale, lease or other transfer of all or substantially all of the assets of Dura to any other person (including any individual, partnership, joint venture, corporation, trust or group thereof) shall be effected in such a way that

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upon consummation of such transaction the holders of the Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, upon exercise of any Warrant in accordance with the terms of this Agreement and the Warrant Certificate, the Holder of such Warrant shall have the right to receive the kind and amount of stock, securities or assets receivable upon such reorganization, reclassification, consolidation, merger or sale, lease or other transfer by a holder of the number of shares of Common Stock that such Holder would have been entitled to receive upon exercise of such Warrant pursuant to Section 3 hereof had such Warrant been exercised immediately prior to such reorganization, reclassification, consolidation, merger or sale, lease or other transfer, subject to additional adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 13(a).

(iv) SPECIAL DIVIDENDS. If, at any time during the Exercise Period (other than in a dissolution or liquidation), Dura shall distribute to holders of Common Stock evidences of indebtedness of Dura, securities or other assets (other than cash dividends payable out of retained earnings) by way of a dividend on outstanding shares of Common Stock, then the Exercise Price shall be

adjusted so that immediately after the date fixed by Dura as the record date in respect of such distribution, such Exercise Price shall equal the price determined by multiplying the Exercise Price in effect immediately prior to the close of business on the record date for the determination of the stockholders entitled to receive such distribution by a fraction, (A) the numerator of which shall be the Closing Price on such record date less the then fair market value as determined reasonably and in good faith by the Board of Directors of Dura of the portion of the securities or other assets distributed applicable to one share of Common Stock and (B) the denominator of which shall be such Closing Price. Such adjustment shall become effective on such record date. In such case, no adjustment shall be made to the number of Warrant Shares to be received upon the exercise of a Warrant.

(v) RIGHTS OFFERING. If, at any time during the Exercise Period, Dura shall issue or sell or fix a record date for the issuance of rights, options, warrants or convertible or exchangeable securities to all holders of Common Stock entitling the holders thereof to subscribe for or purchase Common Stock (or securities convertible into or exchangeable for Common Stock), in any such case, at a price per share (or having a conversion price per share) that, together with the value (if for consideration other than cash, as reasonably determined in good faith by the Board of Directors of Dura) of any consideration paid for any such rights, options, warrants or convertible or exchangeable securities, is greater than the Exercise Price and less than the Closing Price on the date of such issuance or sale or on such record date, as the case may be, then, immediately after the date of such issuance or sale or on such record date, the number of shares to be delivered upon exercise of the Warrants shall be appropriately increased so that the Holder, thereafter during the Exercise Period, shall be entitled to receive the number of shares of Common Stock determined by multiplying the number of shares such Holder would have been entitled to receive immediately before the date of such issuance or sale or such record date by

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a fraction, (A) the numerator of which shall be the number of shares of Common Stock outstanding on such date plus the number of additional shares of Common Stock offered for subscription or purchase (or into which the convertible or exchangeable securities so offered are initially convertible or exchangeable) and (B) the denominator of which shall be the number of shares of Common Stock outstanding on such date plus the number of shares of Common Stock that the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate initial conversion price of the convertible securities so offered) would purchase at such Closing Price, and the Exercise Price shall be appropriately adjusted. The time of occurrence of an event giving rise to an adjustment pursuant to this Section 13(v) shall, in the case of a dividend, be the record date and shall, in the case of an issuance or sale, be the date of such issuance or sale.

(vi) NO ADJUSTMENTS TO EXERCISE PRICE. No adjustment of the Exercise Price in accordance with the provisions of paragraph (i), (ii), (iii), (iv) or (v) above shall be made in an amount of less than \$.01; PROVIDED, HOWEVER, that the amount by which any adjustment is not made by reason of the provisions of this Section shall be carried forward and taken into account at the time of any subsequent adjustment in the Exercise Price.

(vii) READJUSTMENTS, ETC. If an adjustment is made under paragraph (i), (ii), (iii), (iv) or (v) above, and the event to which the adjustment relates does not occur, then any adjustments in the Exercise Price or Warrant Shares that were made in accordance with such paragraphs shall be adjusted back to the Exercise Price and the number of Warrant Shares that were in effect

immediately prior to the record date for such event.

(b) NO IMPAIRMENT, CERTAIN EVENTS.

(i) Dura shall not, by amendment of its Certificate of Incorporation or through any reorganization, reclassification, consolidation, merger, sale, lease or transfer of assets, issuance or sale of securities or any other action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 13 by Dura, but will at all times in good faith assist in the carrying out of all the provisions of this Section 13 and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holders against impairment.

(ii) If any event occurs as to which the provisions of paragraph (a) of this Section 13 are not strictly applicable but with respect to which, in the reasonable, good faith opinion of Dura, an adjustment of the Exercise Price, and the number of Warrant Shares issuable upon the exercise of a Warrant, would fairly protect the exercise rights of the Holders in accordance with the basic intent and principles of such provisions or as to which an adjustment pursuant to such provisions, if strictly applied, would not fairly protect the purchase rights of the Holders in accordance with the basic intent and principles of such provisions, then Dura shall make any

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computation required under this Section 13(b) (ii) with respect to any such adjustment on a basis consistent with the basic intent and principles established by the provisions of this Section 13, necessary to preserve, without dilution, the exercise rights of the Holders. Dura shall appoint a firm of independent certified public accountants (which may be the regular auditors of Dura) of recognized national standing, which firm shall review the computation of Dura prepared pursuant to this Section 13(b) (ii) and prepare a report signed by such firm, which shall be provided to Dura and which shall acknowledge that the adjustment calculation prepared by Dura is arithmetically correct. Such report shall be conclusive evidence of the correctness of the computation made under this Section 13(b) (ii). Upon receipt of such report, Dura shall forthwith cause to be made, or shall act to prevent, the adjustments described in such calculation.

Section 14. OFFICER'S CERTIFICATE. Whenever the number of Warrant Shares that may be purchased upon exercise of the Warrant is adjusted as required by the provisions of this Agreement, Dura shall file forthwith with the Warrant Agent and with its Secretary or Assistant Secretary at its principal office an officer's certificate indicating the adjusted number of Warrant Shares that may be purchased upon exercise of a Warrant and the adjusted Exercise Price, determined as herein provided, and setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officer's certificate shall be made available at all reasonable times for inspection by the Holders. Dura shall, forthwith after each such adjustment, cause a copy of such officer's certificate to be mailed to the Holders. The Warrant Agent may rely on such certificate without further inquiry and shall not be deemed to have knowledge of any adjustment unless and until it shall have received such certificate.

Section 15. NOTICE OF CERTAIN EVENTS. In the event that, at any time during the period commencing on the Separation Date and ending on the last day of the Exercise Period:

(a) Dura shall pay any dividend on Common Stock that is payable in stock, or make any distribution (other than regular cash dividends) to the holders of

Common Stock;

(b) Dura authorizes the issuance to all holders of Common Stock of rights or warrants to subscribe for or purchase shares of Common Stock or any other subscription rights or warrants;

(c) Dura authorizes the distribution to all holders of Common Stock of any of Dura's assets, including evidences of its indebtedness or assets (other than cash dividends payable out of retained earnings);

(d) there shall be any capital reorganization or reclassification of the capital stock of Dura or consolidation or merger of Dura with another person (other than a consolidation or merger of Dura with a subsidiary of Dura in which Dura is the surviving or continuing corporation and there is no change with respect to the Common Stock), or sale, conveyance or transfer of all or substantially all of Dura's property and assets (other than a sale, conveyance or transfer of such

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assets to an Affiliate (within the meaning of the Securities Act));

(e) there shall be a voluntary or involuntary dissolution, liquidation, bankruptcy, assignment for the benefit of creditors or winding up of Dura; or

(f) Dura shall propose to take any other action, or any other event occurs, that would require an adjustment pursuant to Section 13 hereof of the Exercise Price or the number of Warrant Shares that may be purchased upon the exercise of a Warrant;

then Dura will cause to be mailed to the Holder by first-class mail addressed to such Holder at the address appearing in the Warrant Register, at least twenty (20) days (or ten (10) days in any case specified in clauses (a), (b) or (c) above) before the applicable record or effective date hereinafter specified, a notice stating (A) the date as of which the holders of Common Stock of record entitled to receive any such dividends, rights, warrants or distributions are to be determined or (B) the date on which any such consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for securities or other property, if any, deliverable upon such reorganization, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up.

Section 16. ACCELERATION EVENT. In case of any Acceleration Event, Dura shall, as a condition precedent to the consummation of the transaction constituting, or announced as, such Acceleration Event, cause effective provisions to be made so that the Holder of a Warrant shall have the right immediately thereafter, by exercising such Warrant, to purchase during the Exercise Period the aggregate amount and kind of shares of stock and other securities and property that were receivable upon such Acceleration Event by a holder of the number of shares of Common Stock that would have been received immediately prior to such Acceleration Event upon exercise of such Warrant. Any such provisions shall require adjustments in respect of such shares of stock and other securities and assets and other property that shall be as nearly equivalent as may be practicable to the adjustments provided for in such Warrant. The foregoing provisions of this Section 16 shall similarly apply to successive Acceleration Events. Dura shall, at least twenty (20) days prior to the Acceleration Date relating to any Acceleration Event (or if such Acceleration Event was beyond the control of Dura, and Dura did not have

knowledge thereof twenty (20) days prior to such Acceleration Date, as soon as practicable thereafter), cause to be mailed to the Holders a notice describing in reasonable detail such Acceleration Event and informing the Holders of the date the Exercise Period will commence and that the Holders may exercise Warrants at any time during the Exercise Period.

Section 17. LISTING ON SECURITIES EXCHANGES. Dura will list on each national securities exchange or, if not so listed, will list for quotation on the Nasdaq National Market, or such other

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over-the-counter quotation system on which any Common Stock may at any time be listed, all shares of the Common Stock from time to time issuable upon the exercise of the Warrants, and will maintain such listing so long as any other shares of Common Stock are so listed; and Dura shall so list on each national securities exchange or the Nasdaq National Market, or such other over-the-counter quotation system, and shall maintain such listing of, any other shares of capital stock of Dura issuable upon the exercise of the Warrants if and so long as any shares of capital stock of the same class are listed on such national securities exchange or are traded on the Nasdaq National Market or such over-the-counter quotation system. Any such listing or quotation will be at Dura's expense.

Section 18. AVAILABILITY OF INFORMATION. Dura will comply with all applicable periodic public information reporting requirements of the Commission to which it may from time to time be subject.

Section 19. WARRANT AGENT.

(a) MERGER, CONSOLIDATION OR CHANGE OF NAME OF WARRANT AGENT.

(i) Any corporation into which the Warrant Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any corporation succeeding to the corporate trust business of the Warrant Agent, shall be the successor to the Warrant Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; PROVIDED, HOWEVER, that such successor corporation must be otherwise eligible for appointment as a Warrant Agent hereunder. In the event that at the time such successor to the Warrant Agent shall succeed to the agency created by this Agreement any of the Warrant Certificates shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of such predecessor Warrant Agent and deliver such Warrant Certificates so countersigned; and in the event that at the time of such succession any of the Warrant Certificates shall not have been countersigned, any such successor to the Warrant Agent may countersign such Warrant Certificates either in the name of such predecessor Warrant Agent or in the name of such successor Warrant Agent; and in any event, all such Warrant Certificates shall have the full force and effect provided in such Warrant Certificates and in this Agreement.

(ii) In the case that at any time the name of the Warrant Agent shall be changed and at such time one or more of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrant Certificates so countersigned; in the event that at that time one or more of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force

Agreement.

(b) DUTIES OF WARRANT AGENT. The Warrant Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by which the Holders, by their acceptance of Warrants, and Dura, shall be bound:

(i) The Warrant Agent shall not be responsible for any failure of Dura to comply with any of the covenants to be complied with by Dura that are contained in this Agreement or in the Warrant Certificates.

(ii) The Warrant Agent may consult at any time with counsel satisfactory thereto, and the Warrant Agent shall incur no liability or responsibility to Dura or to any Holder in respect of any action taken, suffered or omitted by the Warrant Agent hereunder in good faith and in accordance with the opinion or the advice of such counsel, provided that the Warrant Agent shall have exercised reasonable care in the selection and continued employment of such counsel.

(iii) The Warrant Agent shall incur no liability or responsibility to Dura or to any Holder for any action taken in reliance on any notice, resolution, waiver, consent, order, certificate or other paper, document or instrument believed by the Warrant Agent to be genuine and to have been signed, sent or presented by the party or parties thereto.

(iv) Dura shall (A) pay to the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent in the execution of this Agreement, (B) reimburse the Warrant Agent for all expenses, taxes (other than taxes based on such Warrant Agent's net income), governmental charges, and other charges of any kind and nature, incurred by the Warrant Agent in the performance of this Agreement, (C) advance to the Warrant Agent, upon request, funds to pay cash in lieu of fractional shares of Common Stock issuable upon exercise of Warrants and (D) indemnify the Warrant Agent and save it harmless against any and all losses, expenses or liabilities, including judgments, costs and counsel fees, arising out of or in connection with its agency under this Agreement, except as a result of its negligence or bad faith. In no case shall the Warrant Agent be liable for special, indirect, incidental or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), unless such loss or damages arise as a result of the Warrant Agent's gross negligence or intentional misconduct.

(v) The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve the incurrence by the Warrant Agent of expenses unless Dura or one or more Holders shall have furnished the Warrant Agent with reasonable security and indemnity for any costs and expenses which may be incurred. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as Warrant Agent, and any recovery of judgment shall be for the ratable benefit of the Holders, as their respective rights or interests may appear.

(vi) The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of Dura, or become pecuniarily interested in any transaction in which Dura may be interested or contract with or lend money or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for Dura or for any other legal entity.

(vii) The Warrant Agent shall act hereunder solely as agent, and its duties shall be determined solely by the provisions hereof. The Warrant Agent shall not be liable for any actions which it may take or refrain from taking, in connection with this Agreement, except as result from its own gross negligence or bad faith.

(viii) The Warrant Agent shall make copies of this Agreement available for inspection at its principal offices at _____ during normal business hours and shall provide copies to Holders upon their written request.

(c) CHANGE OF WARRANT AGENT. The Warrant Agent may resign and be discharged from its duties under this Agreement by providing both (i) written notice to Dura and (ii) written notice, sent at the Company's expense by first-class mail, postage prepaid, to each Holder at such Holder's address appearing in the Warrant Register, which notice shall specify a date when such resignation shall take effect and shall be sent at least two weeks prior to the date so specified. If the Warrant Agent shall resign or otherwise become incapable of acting, Dura shall appoint a successor thereto. If Dura shall fail to make such appointment within a period of thirty (30) days after receiving written notification of such resignation or incapacity by the Warrant Agent or by any Holder (which Holder shall, with such notice, submit Warrant Certificates held thereby for inspection by Dura), then any Holder may apply to any court of competent jurisdiction for the appointment of a successor to the Warrant Agent. Pending appointment of a successor to the Warrant Agent, either by Dura or by a court, the duties of the Warrant Agent shall be carried out by Dura. After such appointment, the successor Warrant Agent shall be vested with such powers, rights, duties and responsibilities as such Warrant Agent would have been vested had such Warrant Agent been named originally as Warrant Agent hereunder, without further act or deed. The former Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by such former Warrant Agent hereunder and shall execute and deliver any further assurance, conveyance, act or deed necessary therefor. Failure to provide any notice called for in this Section 19, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of a successor Warrant Agent.

Section 20. IDENTITY OF TRANSFER AGENT. Forthwith upon the appointment after the date hereof of any transfer agent for the Common Stock, or of any subsequent transfer agent for shares of the Common Stock, Dura will file with the Warrant Agent a statement setting forth the name

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and address of such transfer agent.

Section 21. SUCCESSORS. All the covenants and provisions of this Agreement by or for the benefit of Dura, the Warrant Agent or any of the Holders shall bind and inure to the benefit of their respective successors, assigns, heirs and personal representatives.

Section 22. TERMINATION. This Agreement shall terminate at 5:00 p.m., New

York City time, on the Expiration Date or upon such earlier date on which all Warrants have been exercised or redeemed, except that the Warrant Agent shall account to Dura for all cash held by it at 5:00 p.m., New York City time, on such Expiration Date or such other date.

Section 23. HEADINGS. The headings of sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 24. AMENDMENTS. This Agreement may be amended only by both (i) the written consent of Dura and (ii) the affirmative vote or the written consent of Holders holding not less than two-thirds in interest of the then outstanding Warrants; PROVIDED, HOWEVER, that, except as expressly provided herein, this Agreement may not be amended to change (a) the Exercise Price, (b) the Exercise Period, (c) the number or type of securities to be issued upon the exercise of the Warrants or (d) the provisions of this Section 24, without the consent of each Holder.

Section 25. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

Section 26. NOTICES.

(a) Any notice required by the provisions of this Agreement to be provided to Dura by the Warrant Agent or by any Holder shall be deemed given if deposited in the United States mail, first class postage prepaid, addressed (until another address is filed in writing by Dura with the Warrant Agent) as follows:

Dura Pharmaceuticals Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: Corporate Secretary

(b) Any notice required by the provisions of this Agreement to be provided to the Warrant Agent by Dura or by any Holder shall be deemed given if deposited in the United States mail, first class postage prepaid, addressed (until another address is filed in writing by the

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Warrant Agent with Dura or notice of the address of a successor Warrant Agent is provided pursuant to this Agreement) as follows:

ChaseMellon Shareholder Services
400 South Hope Street, 4th Floor
Los Angeles, CA 90071
Attn: _____

(c) Any notice required by the provisions of this Agreement to be provided to any Holder by Dura or by the Warrant Agent shall be deemed given if deposited in the United States mail, first class postage prepaid, addressed to such Holder at its address set forth in the Warrant Register. Any notice given in conformity with this Section 26 shall be deemed effective three (3) days after mailing.

Section 27. BENEFITS OF THIS AGREEMENT. Nothing in this Agreement shall be construed to give to any person or corporation, other than Dura, the Warrant Agent and the Holders, any legal or equitable right, remedy or claim under this

Agreement; but this Agreement shall be for the sole and exclusive benefit of Dura, the Warrant Agent and the Holders.

Section 28. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be signed by its duly authorized officers.

DURA PHARMACEUTICALS, INC.

By: /s/ Mitchell R. Woodbury

Title: Sr. VP

CHASEMELLON SHAREHOLDER SERVICES, as
Warrant Agent

By: /s/ Sharon Knepper

Title: Asst. Vice President

EXHIBIT A

FORM OF WARRANT CERTIFICATE

UNTIL THIS LEGEND IS REMOVED PURSUANT TO SECTION 9 OF THE WARRANT AGREEMENT, DATED ON OR ABOUT _____, 1997, BETWEEN DURA PHARMACEUTICALS, INC. AND CHASEMELLON SHAREHOLDER SERVICES, AS WARRANT AGENT, THE WARRANTS REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED SEPARATELY, SPLIT UP, COMBINED OR EXCHANGED, BUT MAY ONLY BE TRANSFERRED, SPLIT UP, COMBINED OR EXCHANGED TOGETHER WITH THE SHARES OF CALLABLE COMMON STOCK OF SPIROS DEVELOPMENT CORPORATION II, INC. WITH WHICH SUCH WARRANTS WERE SOLD AS A UNIT.

VOID AFTER 5:00 P.M.,
NEW YORK CITY TIME, ON
DECEMBER 31, 2002

Warrant No. _____
Warrants _____

CUSIP _____

DURA PHARMACEUTICALS, INC.
Warrants to Purchase Shares of Common Stock

THIS CERTIFIES THAT, FOR VALUE RECEIVED, _____, or registered assigns, is the registered holder of the number of Warrants (the "Warrants") set forth above. Each Warrant entitles the holder thereof to purchase from Dura Pharmaceuticals, Inc., a Delaware corporation ("Dura"), subject to the terms and conditions hereinafter set forth and in the Warrant Agreement hereinafter referred to, one fully paid and nonassessable share of Common Stock, par value \$.001 per share, of Dura (the "Common Stock"). The Warrants may be exercised at any time or from time to time on or after the first to occur of (i) January 1, 2000, (ii) the exercise by Dura of the Stock Purchase Option, (iii) the termination of the Stock Purchase Option with respect to Dura and (iv) an Acceleration Date (as defined in the Warrant Agreement) (such earliest date being referred to herein as the "Separation Date") and will expire at 5:00 p.m., New York City time, on December 31, 2002] (the "Expiration Date"). Upon the Expiration Date, all rights evidenced by the Warrants shall cease and the Warrants shall become void. Subject to the provisions of the Warrant Agreement, the holder of each Warrant shall have the right to purchase from Dura until the Expiration Date (and Dura shall issue and sell to such holder of a Warrant) one-third of one fully paid and nonassessable share of Common Stock (a "Warrant Share") at an exercise price (the "Exercise Price") of \$ _____ per share upon surrender of this Warrant Certificate to Dura at the office of the Warrant Agent (as defined in the Warrant Agreement) designated by the Warrant Agent for such purpose with the form of election to purchase appearing on this Warrant Certificate duly completed and signed, together with payment of the Exercise Price by certified or official bank

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check payable to the order of Dura.

The Exercise Price and the number of Warrant Shares that may be purchased upon the exercise of the Warrants and the number of Warrants outstanding are subject to change or adjustment upon the occurrence of certain events set forth in the Warrant Agreement.

REFERENCE IS MADE TO THE PROVISIONS OF THIS WARRANT CERTIFICATE SET FORTH ON THE REVERSE SIDE HEREOF, AND SUCH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH ON THE FRONT OF THIS CERTIFICATE.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

This Warrant Certificate shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Dura has caused this Warrant Certificate to be executed by its duly authorized officers.

Dated: _____, 1997

DURA PHARMACEUTICALS, INC.

By: _____
Title: _____

Countersigned:

By:

Authorized Signature

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[REVERSE SIDE]

DURA PHARMACEUTICALS, INC.

This Warrant Certificate is subject to all of the terms and conditions of the Warrant Agreement, dated on or about _____, 1997 (the "Warrant Agreement"), between Dura and the Warrant Agent, to all of which terms and conditions the registered holder of the Warrant consents by acceptance hereof. The Warrant Agreement is incorporated herein by reference and made a part hereof and reference is made to the Warrant Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities of the Warrant Agent, Dura and the registered holders of Warrant Certificates. Copies of the Warrant Agreement are available for inspection at the principal office of the Warrant Agent or may be obtained upon written request addressed to the Warrant Agent at its principal office in _____.

Dura shall not be required upon the exercise of the Warrants evidenced by this Warrant Certificate to issue fractional shares, but shall make adjustment therefore in cash on the basis of the current market value of any fractional interest as provided in the Warrant Agreement.

Dura has agreed to cause a registration statement under the Securities Act of 1933, as amended, covering the Warrants and Warrant Shares to be effective through the termination of the Exercise Period (as defined in the Warrant Agreement) or until such earlier time as no Warrants remain outstanding, and to register or qualify the Warrants and the Warrant Shares to be delivered upon exercise of the Warrants under the laws of each jurisdiction in which such registration or qualification is necessary.

The Warrants evidenced by this Warrant Certificate may not be divided or combined with other Warrants or exchanged, assigned or transferred apart from the shares of Spiros Development Corp. II, Inc. Callable Common Stock with which they were sold as a Unit to the public until the Separation Date. After the Separation Date, this Warrant Certificate may be exchanged, at the option of the holder upon presentation and surrender hereof to the Warrant Agent, for other Warrant Certificates of different denominations, entitling the holder hereof to purchase in the aggregate the same number of Warrant Shares, but without the legend that appears hereon. After the Separation Date, Warrants may be assigned or transferred upon surrender of this Warrant Certificate to the Warrant Agent, accompanied (if so required by Dura or the Warrant Agent) by the form of assignment appearing on this Warrant Certificate duly completed and signed, whereupon the Warrant Agent shall execute and deliver to the transferee a new Warrant Certificate entitling the transferee to purchase the same number of Warrant Shares, but without the legend that appears hereon. If the Warrants evidenced by this Warrant Certificate shall be exercised in part, the holder hereof shall be

entitled to receive upon surrender hereof another Warrant Certificate or Certificates evidencing the number of Warrants not so exercised.

The holder of this Warrant Certificate shall not, by virtue hereof, be entitled to any of the rights of a stockholder in Dura, either at law or in equity, and the rights of the holder are limited to those expressed in the Warrant Agreement.

If this Warrant Certificate shall be surrendered for exercise within any period during which the transfer books for the Common Stock are closed for any purpose, Dura shall not be required to make delivery of certificates for shares purchasable upon such transfer until the date of the reopening of said transfer books.

Each holder of this Warrant Certificate, by accepting the same, consents and agrees with Dura, the Warrant Agent and with every other holder of a Warrant Certificate that:

(a) this Warrant Certificate is transferable on the registry books of the Warrant Agent only upon the terms and conditions set forth in the Warrant Agreement; and

(b) Dura and the Warrant Agent may deem and treat the person in whose name this Warrant Certificate is registered as the absolute owner hereof (notwithstanding any notation of ownership or other writing hereon made by anyone other than Dura or the Warrant Agent) for all purposes whatever and neither Dura nor the Warrant Agent shall be affected by any notice to the contrary.

This Warrant Certificate shall not be valid or enforceable for any purpose until it shall have been countersigned by the Warrant Agent.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations.

<TABLE>
<CAPTION>

<p><S></p> <p>TEN COM - as tenants in common</p> <p>TEN ENT - as tenants by the entireties</p> <p>JT TEN - as joint tenants with right of survivorship and not as tenants in common</p>	<p><C></p> <p>UNIF GIFT MIN ACT - _____ Custodian _____ (Cust) (Minor) under Uniform Gifts to Minors Act ----- (State)</p>
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</TABLE>

Additional abbreviations may also be used though not in the above list.

ELECTION TO PURCHASE
(To be executed upon exercise of Warrant)

Dated _____, _____

The undersigned hereby irrevocably exercises this Warrant to purchase _____ shares of Common Stock and herewith makes payment of \$_____ in payment of the Exercise Price thereof on the terms and conditions specified in this Warrant Certificate, surrenders this Warrant Certificate and all right, title, and interest therein to Dura and directs that the Warrant Shares deliverable upon the exercise of such Warrants be registered in the name and at the address specified below and delivered thereto.

Name: _____
(Please Print)

Name: _____

City, State and Zip Code: _____

If such number of Warrant Shares is less than the aggregate number of Warrant Shares purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the balance of such Warrant Shares to be registered in the name and at the address specified below and delivered thereto.

Name: _____
(Please Print)

Address: _____

City, State and Zip Code: _____

Taxpayer's Identification or Social Security Number: _____

Signature(s) _____

NOTE: The above signature(s) must correspond with the name as written upon the face of this Warrant Certificate in every particular, without alteration or enlargement or any change whatsoever. If the certificate representing the Warrant Shares or any Warrant Certificate representing Warrants not exercised is to be registered in a name other than that in which this Warrant Certificate is registered, the signature of the holder hereof must be guaranteed.

Signature(s) Guaranteed: _____

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ASSIGNMENT

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers to:

Name: _____
(Please Print)

Address:

City, State and Zip Code:

Taxpayer's Identification or Social Security Number:

the right to purchase up to _____ Warrant Shares represented by this Warrant and does hereby irrevocably constitute and appoint _____ to transfer said Warrant on behalf of Dura, with full power of substitution in the premises.

Dated: _____, ____

Signature(s) of registered Holder

NOTE: The above signature(s) must correspond with the name as written upon the face of this Warrant Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature(s) Guaranteed:

SPECIMEN UNIT CERTIFICATE

THE SECURITIES OF SPIROS DEVELOPMENT CORPORATION II, INC. ARE SUBJECT TO AN OPTION BY THE HOLDER OF THE SPECIAL COMMON STOCK OF SPIROS DEVELOPMENT CORPORATION II, INC. AS DESCRIBED IN ARTICLE V OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SPIROS DEVELOPMENT CORPORATION II, INC. TO PURCHASE SUCH SECURITIES AT AN AGREED UPON PRICE EXERCISABLE BY NOTICE AT ANY TIME COMMENCING ON THE CLOSING DATE OF THE UNIT OFFERING AND ENDING ON THE EARLIER OF (i) DECEMBER 31, 2002, (ii) THE 90TH DAY AFTER THE DATE SPIROS DEVELOPMENT CORPORATION II, INC. DELIVERS QUARTERLY FINANCIAL STATEMENTS OF SPIROS DEVELOPMENT CORPORATION II, INC. TO THE HOLDER OF THE SPECIAL COMMON STOCK SHOWING CASH OR CASH EQUIVALENTS OF LESS THAN \$5 MILLION AND (iii) THE DATE OF TERMINATION BY SPIROS DEVELOPMENT CORPORATION II, INC. OF THAT CERTAIN TECHNOLOGY LICENSE AGREEMENT, DEVELOPMENT AGREEMENT OR MANUFACTURING AND MARKETING AGREEMENT DATED ON OR ABOUT DECEMBER 22, 1997. COPIES OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF SPIROS DEVELOPMENT CORPORATION II, INC. ARE AVAILABLE AT THE OFFICES OF SPIROS DEVELOPMENT CORPORATION II, INC., 7475 LUSK BOULEVARD, SAN DIEGO, CALIFORNIA 92121, AND WILL BE FURNISHED TO ANY STOCKHOLDER OF SPIROS DEVELOPMENT CORPORATION II, INC. ON REQUEST AND WITHOUT COST.

Spiros Development Corporation II, Inc.

Dura Pharmaceuticals, Inc.

U- _____ UNITS

UNIT CERTIFICATE

Each Unit Consisting of

One Share of Callable Common Stock, par value \$0.001 per share,
of Spiros Development Corporation II, Inc. and
One Warrant to Purchase One-Fourth of One Share of Common Stock,
par value \$0.001 per share, of Dura Pharmaceuticals, Inc.

SEE REVERSE SIDE FOR
CERTAIN DEFINITIONS

CUSIP 848935 20 1

THIS IS TO CERTIFY that

_____ or registered assigns, is the registered holder of the number of Units, offered pursuant to a Registration Statement on Forms S-1/S-3 (the "Registration Statement"), set forth above ("Units"), each of which entitles the holder to one share of callable common stock (the "Callable Common Stock" or the "Shares"), par value \$0.001 per share, of Spiros Development Corporation II, Inc. ("SDC II") and one warrant (the "Warrants") to purchase one-fourth of one share of common stock ("Dura Common Stock"), par value \$0.001 per share, of Dura Pharmaceuticals, Inc. ("Dura").

Each Warrant entitles the holder to purchase one-fourth of one share of Dura Common Stock at an exercise price of \$54.84 per share of Dura Common Stock subject to adjustment, at any time after the securities included in the Units become separately transferable through December 31, 2002. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Registration Statement.

The Callable Common Stock and the Warrants may not be traded separately until December 31, 1999 or such earlier date as the Purchase Option is exercised or expires unexercised. At any time after the securities are separately transferable, this Unit Certificate is exchangeable upon the surrender hereof by the registered holder to the Transfer Agent in exchange for one or more new Stock Certificates, representing in the

aggregate the number of Shares comprising the Units represented hereby, and one or more new Warrant Certificates, representing in the aggregate the number of Warrants comprising the Units represented hereby.

SDC II and Dura, respectively, agree at all times to reserve or hold available a sufficient number of shares of its Callable Common Stock and Warrants to cover the number of securities issuable upon the exchange of this Certificate and the exercise of rights of the underlying securities.

This Unit Certificate entitles the holder hereof, either at law or in equity, to any rights as a shareholder of SDC II or warrant holder of Dura as shall pertain to the underlying securities.

This Unit Certificate is exchangeable at any time upon the surrender hereof by the registered holder to the Transfer Agent for one or more new Unit Certificates of like tenor and date representing in the aggregate the right to the number of Units represented hereby.

SDC II and Dura (the "Companies") may deem and treat the registered holder of this Unit Certificate at any time as the absolute owner hereof and of the securities covered hereby for all purposes and shall not be affected by any notice to the contrary.

The Warrants covered by this Certificate are subject to the terms of the Warrant Agreement. The Warrant Agreement is available at the executive offices of Dura.

The Warrant Agreement is incorporated herein by reference and made a part hereof and reference is hereby made thereto for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder.

The terms of this Unit Certificate shall be governed by the laws of the State of California without giving effect to conflicts of law principles thereof.

This Unit Certificate shall not be valid or obligatory for any purpose unless countersigned by the Transfer Agent.

IN WITNESS WHEREOF, the Companies have caused this Unit Certificate to be executed by its duly authorized officers.

Dated:

Spiros Development Corporation II, Inc.

PRESIDENT SECRETARY

Dura Pharmaceuticals, Inc.

PRESIDENT SECRETARY

COUNTERSIGNED AND REGISTERED:
CHASEMELLON SHAREHOLDER SERVICES, L.L.C.
TRANSFER AGENT AND REGISTRAR

BY

AUTHORIZED SIGNATURE

[REVERSE SIDE]

KEEP THIS CERTIFICATE IN A SAFE PLACE. IF IT IS LOST, STOLEN, OR DESTROYED THE CORPORATION WILL REQUIRE A BOND OF INDEMNITY AS A CONDITION TO THE ISSUANCE OF A REPLACEMENT CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common
TEN ENT - as tenants by the entireties
JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT.....Custodian.....
(Cust) (Minor)
under Uniform Gifts to Minors Act
.....
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer

unto _____

PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS,
INCLUDING ZIP CODE, OF ASSIGNEE)

_____ Units represented by the within
Certificate and do hereby irrevocably constitute and appoint

Attorney to transfer the said units on the books of the within named Corporation
with full power of substitution in the premises.

Dated _____

Signature

Signature

NOTICE: The signature(s) to this
assignment must correspond with the
name(s) as written upon the face of
the Certificate in every particular,
without alteration or enlargement or
any change whatever.

Signature(s) Guaranteed

By _____

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS,
STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN
AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE
17Ad-15.

SPECIMEN CERTIFICATE

CALLABLE COMMON STOCK

The securities of Spiros Development Corporation II, Inc., a Delaware company (the "Company") evidenced hereby are subject to an option of the holder of a majority of the Special Common Stock of the Company, as described in the Amended and Restated Certificate of Incorporation of the Company, to purchase such securities at an agreed upon price, exercisable by notice given at any time beginning on the closing date of the offering of the Callable Common Stock, par value \$0.001 per share (the "Callable Common Stock"), of Spiros Development Corporation II, Inc. and the warrants (the "Warrants") to purchase common shares of Dura Pharmaceuticals, Inc. ("Dura") which comprise the Units, (the "Unit Offering") and ending on the earlier of (i) December 31, 2002, (ii) the 90th day after the date the Company provides such holder with quarterly financial statements of the Company showing cash or cash equivalents of less than \$5,000,000 or (iii) the date of termination by the Company of that certain Technology License Agreement, Development Agreement or Manufacturing and Marketing Agreement dated on or about December 22, 1997. Copies of the Amended and Restated Certificate of Incorporation of the Company are available at the offices of the Company, 7475 Lusk Boulevard, San Diego, California 92121, Attention: Mitchell R. Woodbury and will be furnished to any shareholder of the Company on request and without cost.

Until December 31, 1999 or such earlier date as the Purchase Option is exercised or expires unexercised (the "Separation Date"), the shares of Callable Common Stock represented by this Certificate may be traded, exchanged, or otherwise transferred only together with the Warrant issued herewith. The holder hereof may, but need not, submit this Certificate for the removal of this legend after the Separation Date.

SPIROS DEVELOPMENT CORPORATION II, INC.
Incorporated Under The Laws of the State of Delaware

CALLABLE COMMON STOCK

FULLY PAID AND NON-ASSESSABLE CALLABLE COMMON STOCK,
PAR VALUE OF \$.001 PER SHARE
OF SPIROS DEVELOPMENT CORPORATION II, INC.

CUSIP 848936100
See Reverse For Certain Definitions

THIS CERTIFIES that

according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entirety

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT.....Custodian.....
(cust) (Minor)
under Uniform Gifts to Minors Act
.....
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sells, assigns and transfers unto

Please insert Social Security or other identifying number of assignee

Please print or typewrite name and address including postal zip code of assignee

Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

attorney, to transfer the said same on the books of the within named Company, with full power of substitution in the premises.

Dated:

Signature

Signature

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

In presence of:

Important:

All signatures must be guaranteed by a firm which is a financial institution and a member of the Securities Transfer Agent's medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP") or the New York Stock Exchange, Inc. Medallion Signature Program ("MSP").

Signature Guarantee:

Name of Firm

Authorized Signature

Name of Authorized Signatory
(Please print)

Address of Firm

Area Code and Telephone Number of Firm

SPECIMEN CERTIFICATE

SPECIAL COMMON STOCK

The Special Common Stock, par value \$1.00 of Spiros Development Corporation II, Inc., a Delaware company (the "Company"), evidenced hereby entitles the holders of a majority of the shares of such Special Common Stock to purchase all, but not less than all, of the outstanding shares of the Company's Callable Common Stock, par value \$0.001 per share (the "Callable Common Stock") exercisable by notice given at any time beginning on the closing date of the offering of the Units, each Unit comprised of one share of Callable Common Stock and one warrant to purchase one-fourth of one share of the common stock of Dura Pharmaceuticals, Inc. and ending on the earlier of (i) December 31, 2002, (ii) the 90th day after the date the Company provides such holder with quarterly financial statements of the Company showing cash or cash equivalents of less than \$5,000,000 or (iii) the date of termination by the Company of that certain Technology License Agreement, Development Agreement or Manufacturing and Marketing Agreement dated on or about December 22, 1997, all as described in the Amended and Restated Certificate of Incorporation of the Company. Copies of the Amended and Restated Certificate of Incorporation of the Company are available at the offices of the Company, 7475 Lusk Boulevard, San Diego, California 92121, Attention: Mitchell R. Woodbury and will be furnished to any stockholder of the Company on request and without cost.

SPIROS DEVELOPMENT CORPORATION II, INC.
Incorporated Under The Laws of the State of Delaware

SPECIAL COMMON STOCK

FULLY PAID AND NON-ASSESSABLE CALLABLE COMMON STOCK,
PAR VALUE OF \$1.00 PER SHARE
OF SPIROS DEVELOPMENT CORPORATION II, INC.

Certificate No. S-1

See Reverse For Certain Definitions

THIS CERTIFIES that Dura Pharmaceuticals, Inc.

is the owner of 1,000 Shares of Special Common Stock of

SPIROS DEVELOPMENT CORPORATION II, INC. (the "Company"), transferable on the books of the Company by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. This certificate and the shares represented hereby are subject to the laws of Delaware, and to the Amended and Restated Certificate of Incorporation of the Company as now or hereafter amended (copies of which are on file at the offices of the Company and the Transfer Agent), which are made a part hereof with the same force and effect as if they were set forth herein, to all of which the holder, by acceptance hereof, assents. This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its duly authorized officers and the facsimile of its corporate seal to be hereunto affixed.

Dated: December 22, 1997

Countersigned and Registered:

/s/ Cam L. Garner, President

Authorized Officer

/s/ Mitchell R. Woodbury, Secretary

Authorized Officer

[REVERSE OF SPIROS DEVELOPMENT CORPORATION II, INC.'S
SPECIAL COMMON STOCK]

SPIROS DEVELOPMENT CORPORATION II, INC.

The securities represented hereby have not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be offered, sold or otherwise transferred, pledged or hypothecated in the absence of a registration statement in effect with respect to such securities, or delivery of an opinion of counsel in form and substance satisfactory to the issuer of these securities that such offer, sale or transfer, pledge or hypothecation is in compliance with the Act.

The Company will furnish without charge to each stockholder who so requests a copy of the powers, designations, preferences and relative, participating, optional or other special rights of each class of shares of the Company or series thereof, and the qualifications, limitations or restrictions of such preferences and/or rights.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT.....Custodian.....
(cust) (Minor)
under Uniform Gifts to Minors Act
.....
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sells, assigns and transfers

unto _____
(Please insert Social Security
or other identifying number of assignee)

Please print or typewrite name and address
including postal zip code of assignee

_____ Shares of Special Common Stock

represented by the within certificate, and do hereby irrevocably constitute and appoint

attorney, to transfer the said same on the books of the within named Company, with full power of substitution in the premises.

Dated: _____

Signature

Signature

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

In presence of: _____

Important: All signatures must be guaranteed by a firm which is a financial institution and a member of the Securities Transfer Agent's medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP") or the New York Stock Exchange, Inc. Medallion Signature Program ("MSP").

Signature Guarantee: _____
Name of Firm

Authorized Signature

Name of Authorized Signatory
(Please print)

Address of Firm

Area Code and Telephone Number of Firm

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in Registration Statement Nos. 33-99722, 33-93914, and 33-71798 on Form S-3 and Registration Statement No. 333-34551 on Form S-8 of Dura Pharmaceuticals, Inc. of our report dated March 21, 1997 (December 19, 1997 as to Note 7), relating to the financial statements of Spiros Development Corporation (a development stage enterprise) as of December 31, 1995 and 1996 and for the periods then ended, included in this Current Report on Form 8-K of Dura Pharmaceuticals, Inc.

/s/ DELOITTE & TOUCHE LLP

San Diego, California
January 5, 1998

TECHNOLOGY LICENSE AGREEMENT

This TECHNOLOGY LICENSE AGREEMENT (the "Agreement") is made as of December 22, 1997, by and among DURA PHARMACEUTICALS, INC., a Delaware corporation ("DURA"), DURA DELIVERY SYSTEMS, INC., a Delaware corporation ("DDSI"), SPIROS DEVELOPMENT CORPORATION, a Delaware corporation ("Spiros Corp."), and SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp. II").

RECITALS

WHEREAS, DURA and Spiros Corp. II are parties to the Development Agreement, the Manufacturing and Marketing Agreement, and the Albuterol and Product Option Agreement (all capitalized terms shall have the respective meanings set forth in Section 1 hereof).

WHEREAS, DURA has the Purchase Option to acquire all of the Spiros Corp. II Common Stock.

WHEREAS, DURA, DDSI and/or Spiros Corp. are the owners or licensees of the Core Technology and of certain rights relating to the Spiros Products and certain intellectual property rights relating thereto.

WHEREAS, DURA, DDSI and Spiros Corp. are willing to grant to Spiros Corp. II and Spiros Corp. II desires to acquire from DURA, DDSI and Spiros Corp., a license to the Core Technology and the Spiros Products for the purpose of allowing Spiros Corp. II to perform research, develop and commercialize the Spiros Products.

WHEREAS, pursuant to the Development Agreement, Spiros Corp. II has engaged DURA to employ the intellectual property rights and technology licensed hereunder in conducting the Development and commercialization of Spiros Products.

WHEREAS, in the course of researching and developing the Program Technology, DURA or Spiros Corp. II may develop certain inventions, processes or know-how, or DURA may obtain on behalf of Spiros Corp. II rights to certain additional technology or patents or other proprietary rights useful to other than just the Spiros Products.

WHEREAS, DURA desires to acquire, and Spiros Corp. II is willing to grant to DURA, an exclusive worldwide license or sublicense to make, use, market and sell such developments, technology or rights other than with respect to Spiros Products.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, and in order to induce DURA to enter into the Agreements, DURA, DDSI, Spiros Corp. and Spiros Corp. II hereby agree as follows:

1. DEFINITIONS.

1.1 DEFINITIONS. All capitalized terms used herein and not otherwise defined shall have the respective meanings, to the extent such terms are used herein, set forth in SCHEDULE 1.1 attached hereto, which is incorporated by this reference as though fully set forth herein.

1.2 SINGULAR AND PLURAL. Singular and plural forms, as the case may be, of terms defined herein shall have correlative meanings.

2. GRANT OF LICENSES.

2.1 GRANT OF EXCLUSIVE LICENSES TO SPIROS CORP. II; RIGHT TO SUBLICENSE.

2.1.1 DURA GRANT. Subject to the terms and conditions of this Agreement, DURA hereby grants to Spiros Corp. II an exclusive (against DURA and all other Persons) perpetual, worldwide right and license, terminable only as set forth herein, to employ the DURA Core Technology to research, develop, make, have made, use, sell, have sold and import the Spiros Products (except with respect to beclomethasone in Japan, Hong Kong, Singapore, the Republic of China, Taiwan, the Republic of Korea and the People's Republic of China).

2.1.2 DDSI GRANT. Subject to the terms and conditions of this Agreement, DDSI hereby grants to Spiros Corp. II an exclusive (against DDSI and all other Persons) perpetual, worldwide right and license, terminable only as set forth herein, to employ the DDSI Core Technology to research, develop, make, have made, use, sell, have sold and import the Spiros Products (except with respect to beclomethasone in Japan, Hong Kong, Singapore, the Republic of China, Taiwan, the Republic of Korea and the People's Republic of China).

2.1.3 SPIROS CORP. GRANT. Subject to the terms and conditions of this Agreement, Spiros Corp. hereby grants to Spiros Corp. II an exclusive (against Spiros Corp. and all other Persons) perpetual, worldwide right and license, terminable only as set forth herein, to employ the Spiros Core Technology to research, develop, make, have made, use, sell, have sold and import the Spiros Products (except with respect to beclomethasone in Japan, Hong Kong, Singapore, the Republic of China, Taiwan, the Republic of Korea and the People's Republic of China).

2.2 THIRD PARTY LICENSES TO DURA OR ANY OF ITS AFFILIATES. With respect to the rights of third parties that may be obtained by DURA after the date

hereof, and which are necessary or useful to the Development under the Development Agreement or the

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commercialization of the Spiros Products under the Manufacturing and Marketing Agreement, DURA shall use commercially reasonable efforts to secure such rights and the right to sublicense such rights to Spiros Corp. II and shall sublicense such rights to Spiros Corp. II whenever possible; PROVIDED that Spiros Corp. II shall not be obligated to accept any grant of rights or assume any obligations hereunder without its prior written consent. If Spiros Corp. II desires to obtain any such rights licensed to DURA or any of its Affiliates pursuant to an agreement with any Person other than Spiros Corp. II (a "Third Party Agreement"), the existence of which DURA shall promptly inform Spiros Corp. II, Spiros Corp. II and DURA agree to negotiate in good faith regarding the allocation between DURA or any of its Affiliates and Spiros Corp. II of the royalty, license fee, milestone fee or other payments payable to the third party and the assumption of any obligations applicable to such license, if any. Spiros Corp. II shall bear the cost of obtaining any such rights and shall assume such obligations only in proportion to its and its sublicensees' (other than DURA's and/or any of its Affiliates) use of such rights. Any sublicense granted to Spiros Corp. II hereunder shall be limited to the rights that DURA and/or any of its Affiliates has a right to grant under any such Third Party Agreement and to any obligations under any such Third Party Agreement, and to any obligations assumed by DURA and/or any of its Affiliates in consideration of the grant or assignment of such rights to DURA which are to be sublicensed to Spiros Corp. II. No party shall take any action, or fail to take any action within its control, that would constitute or give rise to a breach or other violation by DURA or any of its Affiliates of any such Third Party Agreement. The parties agree that no future licensing fees are required to be paid by Spiros Corp. II during the term of this Agreement as consideration for the licenses and sublicenses granted to Spiros Corp. II hereunder, except as set forth in this Section 2.2.

2.3 SPIROS CORP. II SUBLICENSES AND LICENSES TO DURA.

2.3.1 DEVELOPMENT LICENSE. Spiros Corp. II hereby grants DURA an exclusive, even as to Spiros Corp. II and all other Persons, royalty-free license to employ and engage in any and all uses of the Program Technology to conduct Development, subject to the terms and conditions of and to the extent necessary to perform its obligations under the Development Agreement. The rights granted under this Section 2.3.1 may be further sublicensed by DURA only to its Affiliates or as permitted under of the Development Agreement (and, in such a case, solely to the extent necessary to perform any subcontracting services thereunder) or as otherwise agreed to in writing by Spiros Corp. II.

2.3.2 COMMERCIALIZATION LICENSE. Spiros Corp. II hereby grants

DURA an exclusive, even as to Spiros Corp. II and all other Persons, worldwide license to use the Program Technology to make, have made, use, sell, supply and import Spiros Products subject to the terms and conditions of and to the extent necessary to perform its obligations under the

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Manufacturing and Marketing Agreement. The rights granted under this Section 2.3.2 may be further sublicensed by DURA only to its Affiliates or as permitted under the Manufacturing and Marketing Agreement (and, in such a case, solely to the extent necessary to perform any subcontracting services thereunder) or as otherwise agreed to in writing by Spiros Corp. II.

2.3.3 ALBUTEROL PRODUCT LICENSE. Spiros Corp. II hereby grants DURA effective upon the exercise of the Albuterol Option, an exclusive, royalty-free, irrevocable, perpetual, worldwide license to use the Program Technology to develop, make, have made, use, sell, have sold, supply and import the Albuterol Product. The license granted hereunder shall include the right to grant sublicenses with respect to the Program Technology licensed under this Section 2.3.3 for use with the Albuterol Product.

2.3.4 PRODUCT OPTION LICENSE. Spiros Corp. II hereby grants DURA effective upon the exercise of the Product Option, an exclusive, royalty-free, irrevocable, perpetual, worldwide license to use the Program Technology to develop, have developed, make, have made, use, sell, have sold, supply and import the Option Product. The license granted hereunder shall include the right to grant sublicenses with respect to the Program Technology licensed under this Section 2.3.4 for use with the Option Product.

2.3.5 ADDITIONAL LICENSE. Spiros Corp. II hereby grants DURA an exclusive, royalty-free, irrevocable, perpetual, worldwide license to use the Program Technology, including technology relating to enhancements to Spiros technology or any next generation inhaler system in which Spiros Corp. II has rights, to develop, have developed, make, have made, use, sell, have sold, supply and import any products other than the Spiros Products.

2.3.6 OTHER LICENSES. The foregoing licenses are granted in addition to, and not in substitution for, any other license granted to DURA, whether pursuant to this Agreement or otherwise.

2.4 RESTRICTIONS UPON USE OF PROGRAM TECHNOLOGY. Except as provided in the Agreements or by the prior written consent of DURA, Spiros Corp. II shall not, directly or indirectly, prior to the expiration or termination (other than by exercise) of the Purchase Option, (a) license, sublicense, encumber, pledge, sell, assign or otherwise transfer to any Person any rights under the Program Technology, (b) make, have made, use or sell any of the Program Technology for any purpose whatsoever, or (c) authorize, cause or assist in any way any other Person to do any of the foregoing. Following the expiration or termination

(other than by exercise) of the Purchase Option, the foregoing limitations shall cease to be applicable and Spiros Corp. II shall have, without limitation, the right to sublicense the Program Technology for use with the Spiros Products.

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2.5 ADJUSTMENT OF LICENSES. The licenses granted in Sections 2.1 and 2.3 hereunder shall be subject to adjustment (a) upon the Albuterol Option Closing Date, so as to exclude any rights to the Albuterol Program Assets from the licenses granted therein, and (b) upon the Product Option Closing Date, so as to exclude any rights to Spiros Product Program Assets from the license granted therein.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

3.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF DURA. DURA represents, warrants and covenants to Spiros Corp. II as follows:

3.1.1 ORGANIZATION OF DURA. DURA is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority adequate for executing and delivering and performing its obligations under this Agreement;

3.1.2 ORGANIZATION OF DDSI. DDSI is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority adequate for executing and delivering and performing its obligations under this Agreement;

3.1.3 ORGANIZATION OF SPIROS CORP.. Spiros Corp. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority adequate for executing and delivering and performing its obligations under this Agreement.

3.1.4 AUTHORIZATION. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of DURA, DDSI and Spiros Corp. and this Agreement shall constitute a legal, valid and binding obligation of each of DURA, DDSI and Spiros Corp., enforceable against DURA, DDSI and Spiros Corp. in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors;

3.1.5 COMPLIANCE WITH OTHER INSTRUMENTS. The execution, delivery and performance of this Agreement do not and will not conflict with or contravene any provision of the charter documents or by-laws of each of DURA, DDSI and Spiros Corp. or any material agreement, document, instrument, indenture or other obligation of DURA, DDSI or Spiros Corp.;

3.1.6 OTHER AGREEMENTS. None of DURA, DDSI or Spiros Corp. shall

enter into any agreement, make any commitment, take any action or fail to take any action that would contravene any material provision of, or materially derogate or restrict any of the rights and licenses granted or assigned to Spiros Corp. II under, this Agreement and each of DURA, DDSI and Spiros Corp.

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agree to abide and be bound by the terms of any license agreement to which they are a party, any of the rights to which have been or will be sublicensed or assigned to Spiros Corp. II;

3.1.7 INTELLECTUAL PROPERTY RIGHTS. To the best of its knowledge, each of DURA, DDSI and Spiros Corp. has sufficient legal and/or beneficial title and ownership to grant the licenses to the DURA Core Technology, the DDSI Core Technology and the Spiros Corp. Core Technology, respectively, and the other intellectual property rights provided in Section 2 above. None of DURA, DDSI or Spiros Corp. is aware of and has not received any communications alleging that it has violated, or that Spiros Corp. II by practicing the Core Technology as contemplated in the Agreements would violate, any intellectual property rights of any third party. Except for the 1933 Royalty Agreement, there are no outstanding options, licenses or agreements of any kind between DURA, DDSI or Spiros Corp. and any third party relating to the research, development, manufacture, use or sale of the Spiros Products. To the best of its knowledge, there is no material unauthorized use, infringement or misappropriation of any of the Core Technology. DURA, DDSI and Spiros Corp. are not aware of, nor have they received any communications challenging the ownership, validity or effectiveness of the Core Technology.

3.1.8 VALIDITY. None of DURA, DDSI or Spiros Corp. is aware of any action, suit or inquiry or investigation instituted by any federal, state, local or foreign governmental agency or instrumentality which questions or threatens the validity of the Agreements.

3.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF SPIROS CORP. II. Spiros Corp. II represents, warrants and covenants to DURA, DDSI and Spiros Corp. as follows:

3.2.1 ORGANIZATION. Spiros Corp. II is a corporation duly organized, validly existing and in good standing under the laws of State of Delaware with full corporate power and authority adequate for executing and delivering and performing its obligations under this Agreement;

3.2.2 AUTHORIZATION. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Spiros Corp. II, and this Agreement shall constitute a legal, valid and binding obligation of Spiros Corp. II, enforceable against Spiros Corp. II in accordance with its terms, subject to laws of general application relating to

bankruptcy, insolvency and the relief of debtors;

3.2.3 COMPLIANCE WITH OTHER INSTRUMENTS. The execution, delivery and performance of this Agreement do not and will not conflict with or contravene any provision of the charter documents or by-laws of Spiros Corp. II or any material agreement, document, instrument, indenture or other obligation of Spiros Corp. II;

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3.2.4 OTHER AGREEMENTS. Spiros Corp. II shall not enter into any agreement, make any commitment, take any action or fail to take any action that would contravene any material provisions of, or materially derogate or restrict any of the rights or licenses granted to DURA under, this Agreement;

3.2.5 SUBLICENSES. Spiros Corp. II agrees to abide and be bound by the terms of the sublicenses granted to it in accordance with the terms of this Agreement by DURA, DDSI and/or Spiros Corp. under any Third Party Agreement or under any agreement with a third party;

3.2.6 NON-COMPETITION. Spiros Corp. II shall not, during the term of this Agreement, without the prior written consent of DURA, solicit the employment of any person, in any capacity, who, at any time during the term of this Agreement, shall have been an officer, director, employee or agent of DURA or any of its Affiliates, except for the officers of Spiros Corp. II on the date hereof; and

3.2.7 VALIDITY. Spiros Corp. II is aware of no action, suit or inquiry or investigation instituted by any federal, state, local or foreign governmental agency or instrumentality which questions or threatens the validity of the Agreements.

4. DISCLOSURE AND USE OF TECHNOLOGY AND RIGHTS.

4.1 TECHNOLOGY TRANSFER.

4.1.1 PRIOR TO EXPIRATION OR TERMINATION OF PURCHASE OPTION. At any time prior to the expiration or termination (other than by exercise) of the Purchase Option and upon request by Spiros Corp. II, each of DURA, DDSI and Spiros Corp. shall, within a reasonable time thereafter, provide access to Spiros Corp. II to all physical manifestations of the Program Technology which they control.

4.1.2 AFTER EXPIRATION OR TERMINATION OF OPTION. After expiration or termination (other than by exercise) of the Purchase Option, DURA shall, except as provided otherwise in any of the Agreements, within thirty (30) days of a written request by Spiros Corp. II, provide to Spiros Corp. II or a sublicensee designated by Spiros Corp. II, reasonably sufficient quantities of

previously manufactured quantities of Spiros Products and all physical manifestations of the Program Technology, including, without limitation, copies of all laboratory notebooks, designs, specifications, formulas, procedures, clinical and pre-clinical data and other information, all to the extent that such Spiros Products, or Program Technology were developed prior to the time of such required delivery. Spiros Corp. II shall pay all costs of shipping, packaging, copying and similar or related costs in connection therewith, provided such costs have not been previously paid by Spiros Corp. II hereunder or under the

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Development Agreement.

4.1.3 TECHNICAL ASSISTANCE AFTER EXPIRATION OR TERMINATION OF PURCHASE OPTION. For a period of one (1) year after expiration or termination (other than by exercise) of the Purchase Option, each of DURA, DDSI and Spiros Corp. shall provide to Spiros Corp. II, or a sublicensee designated by Spiros Corp. II, at Spiros Corp. II's or such permitted sublicensee's sole option and expense, reasonable technical assistance and instruction in understanding, interpreting and applying the Program Technology solely for the purposes of further developing the Program Technology and developing and commercializing Spiros Products. Each of DURA, DDSI and Spiros Corp. shall make their respective employees directly involved in the Development of the Program Technology prior to the expiration or termination (other than by exercise) of the Purchase Option, reasonably available for consultation by telephone, or in person at their respective offices at reasonable cost, in connection with such assistance and instruction, all at the sole expense of Spiros Corp. II or such sublicensee. The obligations set forth in this Section 4.1.3 shall not include any obligation to disclose matters unrelated to the application of the Program Technology to the Spiros Products, matters with respect to the Albuterol Product (following the exercise of the Albuterol Option) or matters with respect to the Option Product (following the exercise of the Product Option).

4.2 PATENTS.

4.2.1 RIGHTS PRIOR TO EXPIRATION OR TERMINATION OF PURCHASE OPTION. Except as set forth below, until the expiration or termination (other than by exercise) of the Purchase Option, DURA shall, at Spiros Corp. II's sole expense, direct and cause appropriate patent applications to be prepared, filed and prosecuted in all relevant territories, in a timely fashion, with respect to any inventions included in the Program Technology whether arising out of inventions made solely by DURA employees or consultants, inventions made solely by DDSI employees or consultants, inventions made solely by Spiros Corp. employees or consultants, inventions made solely by Spiros Corp. II employees or consultants or inventions made jointly by any of the parties' employees or consultants. DURA and Spiros Corp. II shall discuss and evaluate with each other such discoveries and

inventions and shall confer regarding the advisability of filing patent applications to cover those discoveries and inventions, including the countries in which such patent applications should be filed. DURA shall cause any patents issuing thereon to be maintained and enforced that DURA and Spiros Corp. II believe, in their commercially reasonable judgment, are patentable and commercially and technically significant to Spiros Corp. II. With respect to the Developed Technology that has substantial application to Spiros Products, as well as to products other than the Spiros Products, the expenses of preparing, prosecuting and maintaining such patents shall be reasonably allocated between DURA and Spiros Corp. II by their mutual agreement.

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4.2.2 RIGHTS AFTER EXPIRATION OR TERMINATION OF PURCHASE OPTION.

After the expiration or termination of the Purchase Option (other than by exercise), Spiros Corp. II shall have the exclusive right, at its sole expense, to prepare and prosecute, in its name, patent applications, and to maintain patents issued with respect to the Program Technology. In the event that Spiros Corp. II declines to prepare, prosecute or maintain any such patent application or patent, Spiros Corp. II shall give DURA no less than sixty (60) days' prior written notice of such decision but in all events at least as much time so as to allow DURA to take action to forestall a loss of novelty or a statutory bar to patentability. Following such written notice, and in order to protect its rights, DURA shall have the right in its sole discretion and at its sole expense, to undertake the preparation, prosecution or maintenance of any such patent application or patent issued thereon with respect to the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology. Enforcement rights upon the expiration or termination (other than by exercise) of the Purchase Option are governed by Section 5.2.2 hereunder.

4.2.3 COOPERATION. Each party agrees to cause each of its employees and agents to take all actions and to execute, acknowledge and deliver all instruments or agreements reasonably requested by the other party, and necessary for the perfection, maintenance, enforcement or defense of that party's rights as set forth above.

4.3 CONFIDENTIAL INFORMATION. Any party receiving Confidential Information shall maintain the confidential and proprietary status of such Confidential Information, keep such Confidential Information and each part thereof within its possession or under its control sufficient to prevent any activity with respect to the Confidential Information that is not specifically authorized by this Agreement, use all commercially reasonable efforts to prevent the disclosure of any Confidential Information to any other Person, and use commercially reasonable efforts to ensure that such Confidential Information is used only for those purposes specifically authorized herein; PROVIDED, HOWEVER, that such restriction shall not apply to any Confidential Information that is (a) independently developed by the receiving party outside the scope of this Agreement or the Development Agreement (PROVIDED, HOWEVER, that such restriction

shall apply to any technology licensed by DURA, DDSI or Spiros Corp. to Spiros Corp. II under this Agreement), (b) in the public domain at the time of its receipt or thereafter becomes part of the public domain through no fault of the receiving party, (c) received without an obligation of confidentiality from a third party having the right to disclose such information, (d) released from the restrictions of this Section 4.3 by the express written consent of the disclosing party, (e) disclosed to any permitted assignee, permitted sublicensee or permitted subcontractor of DURA, DDSI, Spiros Corp. or Spiros Corp. II under the Agreements (if such assignee, sublicensee or

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subcontractor is subject to the provisions of this Section 4.3 or substantially similar provisions) or (f) required by law, statute, rule or court order to be disclosed (the disclosing party shall, however, use commercially reasonable efforts to obtain confidential treatment of any such disclosure). The obligations set forth in this Section 4.3 shall survive for a period of ten (10) years from the expiration or termination (other than by exercise) of the Purchase Option. Without limiting the generality of the foregoing, DURA, DDSI, Spiros Corp. and Spiros Corp. II each shall use commercially reasonable efforts to obtain, if not already in place, confidentiality agreements from their respective employees and agents, similar in scope to this Section 4.3, to protect the Confidential Information.

4.4 PERMITTED DISCLOSURES. Notwithstanding the provisions of Section 4.3 hereof, DURA, DDSI, Spiros Corp. and Spiros Corp. II (and their permitted sublicensees) may, to the extent necessary, disclose and use Confidential Information, consistent with the rights of DURA, DDSI, Spiros Corp. and Spiros Corp. II otherwise granted hereunder (a) for the purpose of securing institutional or government approval to clinically test or market any Spiros Product, (b) for the purpose of securing patent protection for an invention within the scope of the Program Technology, (c) in the case of Spiros Corp. II, following expiration or termination (other than by exercise) of the Purchase Option, to the extent necessary or useful in the development or commercialization of any Spiros Products or (d) in the case of DURA, following exercise of the Albuterol Option or the Product Option, to the extent necessary or useful in the development or commercialization of the Albuterol Product or the Option Product, respectively; PROVIDED, that the disclosing party obtains an agreement from any Person to whom such Confidential Information is disclosed to preserve the confidentiality thereof upon terms reasonably equivalent to those set forth herein and to use such Confidential Information only for those purposes consistent with the respective rights granted to Spiros Corp., DURA, DDSI and Spiros Corp. II hereunder or under any of the Agreements.

5. PATENT INFRINGEMENT.

5.1 NOTIFICATION OF INFRINGEMENT. Each party shall notify all other parties of any infringement known to such party by any Person of any Patent

Rights and shall provide all other parties with the available evidence, if any, of such infringement.

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5.2 ENFORCEMENT OF PATENT RIGHTS. If any party has actual notice of infringement by any Person of Patent Rights, the respective officers of DURA and Spiros Corp. II shall confer to determine in good faith an appropriate course of action to enforce such Patent Rights or otherwise abate the infringement thereof, subject to the provisions of this Section 5.2. DURA and Spiros Corp. II shall consult with each other in the planning and execution of any action to enforce Patent Rights.

5.2.1 RIGHTS PRIOR TO EXPIRATION OR TERMINATION OF OPTION. Until the expiration or termination (other than by exercise) of the Purchase Option, if DURA determines that enforcement of Patent Rights is appropriate, DURA shall have the right, but not the obligation, to take appropriate action to enforce such Patent Rights. Any enforcement with respect to the Patent Rights shall be at DURA's expense; PROVIDED, HOWEVER, that if DURA elects to so act with respect to the Patent Rights, Spiros Corp. II shall have the right to participate in the enforcement of such Patent Rights by agreeing to bear a percentage of the costs of such enforcement in such amount as the parties shall determine. If, within six (6) months after notice of infringement, DURA has not commenced an action to enforce such Patent Rights or thereafter ceases to diligently pursue such action, Spiros Corp. II shall have the right, at its expense, to take appropriate action to enforce such Patent Rights as its sole remedy hereunder. All amounts recovered in any action to enforce Patent Rights undertaken by DURA and Spiros Corp. II, whether by judgment or settlement, shall be retained by DURA and Spiros Corp. II pro rata according to the respective percentages of expenses borne by them in enforcing such Patent Rights. Neither DURA nor Spiros Corp. II shall enter into any settlement that includes the grant of a license under, agreement not to enforce, or any statement prejudicial to the validity or enforceability of any Patent Rights without the consent of the other, which consent shall not be unreasonably withheld. Any amounts retained by Spiros Corp. II shall not be considered Available Funds.

5.2.2 RIGHTS AFTER EXPIRATION OR TERMINATION OF OPTION. After the expiration or termination (other than by exercise) of the Purchase Option, if Spiros Corp. II determines that enforcement of Patent Rights is appropriate, Spiros Corp. II shall have the right, but not the obligation, to take appropriate action to enforce such Patent Rights. Any enforcement with respect to the Patent Rights shall be at Spiros Corp. II's expense; PROVIDED, HOWEVER, that if Spiros Corp. II elects to so act with respect to the Patent Rights, DURA shall have the right to participate in the enforcement of such Patent Rights by agreeing to bear a percentage of the costs of such enforcement in such amount as the parties shall determine. If, within six (6) months after notice of infringement, Spiros Corp. II has not commenced an action to enforce such Patent Rights or thereafter ceases to diligently pursue such action, DURA shall have

the right, at its expense, to take appropriate action to enforce such Patent Rights as its sole remedy hereunder. All amounts recovered in any action to enforce Patent Rights undertaken by

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Spiros Corp. II and DURA, whether by judgment or settlement, shall be retained by Spiros Corp. II or DURA pro rata according to the respective percentages of expenses borne by them in enforcing such Patent Rights. Neither DURA nor Spiros Corp. II shall enter into any settlement that includes the grant of a license under, agreement not to enforce, or any statement prejudicial to the validity or enforceability of any Patent Rights without the consent of the other, which consent shall not be unreasonably withheld.

5.2.3 COOPERATION. Each party agrees to cause each of its employees and agents to take all actions and to execute, acknowledge and deliver all instruments or agreements reasonably requested by the other party, and necessary for the perfection, maintenance, enforcement or defense of the party's rights as set forth above.

5.3 DISCLAIMER OF WARRANTY; CONSEQUENTIAL DAMAGES.

5.3.1 DISCLAIMER OF WARRANTY. Nothing in this Agreement shall be construed as a representation made or warranty given by any party hereto that any patents will issue based on pending applications within the Patent Rights, or that any such Patent Rights which do issue will be valid, or that the practice by a party hereto of any license granted hereunder, or that the use of any Program Technology licensed hereunder, will not infringe the patent or proprietary rights of any other Person. Spiros Corp. II understands that the Development shall involve technologies that have not been approved by any regulatory authority and that none of DURA, DDSI or Spiros Corp. guarantees the safety or usefulness of any Spiros Product. In addition, except as expressly set forth in Section 3 of this Agreement, DURA, DDSI, Spiros Corp. and Spiros Corp. II acknowledge that THE PROGRAM TECHNOLOGY IS LICENSED TO Spiros Corp. II AND SUBLICENSSED TO DURA HEREUNDER AS IS, AND DURA, DDSI, SPIROS CORP. AND SPIROS CORP. II EXPRESSLY DISCLAIM AND HEREBY WAIVE, RELEASE AND RENOUNCE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH PROGRAM TECHNOLOGY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. Except as expressly set forth in this agreement, DURA, DDSI, Spiros Corp. and Spiros Corp. II disclaim all warranties of any nature, express or implied.

5.3.2 CONSEQUENTIAL DAMAGES. NONE OF THE PARTIES TO THIS AGREEMENT SHALL BE ENTITLED TO RECOVER FROM ANOTHER PARTY HERETO ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

6. INDEMNIFICATION.

6.1 INDEMNIFICATION BY DURA. DURA shall indemnify the Spiros Corp. II Indemnitees, pay on demand and protect, defend, save and hold harmless each Spiros Corp. II Indemnatee from and against any and all Claims incurred by or asserted against any Spiros Corp. II Indemnatee of whatever kind or nature, including, without limitation, any claim or liability based upon negligence, warranty, strict liability, violation of government regulation or infringement of patent or other propriety rights, arising from or occurring as a result of (a) any use of the Program Technology by DURA or any Affiliate, agent or sublicensee of DURA (other than Spiros Corp. II in contravention of the terms of this Agreement), (b) any of the Development or any other services to be performed by DURA during the term of the Agreements pursuant to the Agreements, including, without limitation, any workers' compensation claim by any DURA employee or consultant or other Person or (c) subject to Section 5.3.2, any breach of the Agreements by DURA, except, with respect to Spiros Corp. II Indemnitees, in cases in which Claims of Spiros Corp. II Indemnitees are based upon the gross negligence or willful misconduct of a Spiros Corp. II Indemnatee. A Spiros Corp. II Indemnatee shall promptly notify DURA of any Claim with respect to which an Spiros Corp. II Indemnatee is seeking indemnification hereunder, upon becoming aware thereof, and permit DURA at DURA's cost to defend against such Claim and shall cooperate in the defense thereof.

6.2 INDEMNIFICATION BY SPIROS CORP. II. Spiros Corp. II shall indemnify the DURA Indemnitees, the DDSI Indemnitees and the Spiros Corp. Indemnitees, pay on demand and protect, defend, save and hold harmless each DURA Indemnatee, DDSI Indemnatee or Spiros Corp. Indemnatee from and against any and all Claims incurred by or asserted against any DURA Indemnatee, DDSI Indemnatee or Spiros Corp. Indemnatee of whatever kind or nature, including, without limitation, any claim or liability based upon negligence, warranty, strict liability, violation of government regulation or infringement of patent or other propriety rights, arising from or occurring as a result of (a) any use of the Program Technology by Spiros Corp. II or any sublicensee of Spiros Corp. II (other than the use of such by DURA, DDSI or Spiros Corp. whether pursuant to the Agreements or otherwise) or (b) subject to Section 5.3.2, any breach of the Agreements by Spiros Corp. II, except, with respect to DURA Indemnitees, in cases in which Claims are based upon the gross negligence or willful misconduct of a DURA Indemnatee or, except with respect to DDSI Indemnitees, in cases in which Claims are based upon the gross negligence or willful misconduct of a DDSI Indemnatee or, except with respect to Spiros Corp. Indemnitees, in cases in which Claims are based upon the gross negligence or willful misconduct of a Spiros Corp. Indemnatee. An Indemnatee hereunder shall promptly notify Spiros Corp. II of any Claim with respect to which such Indemnatee is seeking indemnification hereunder, upon becoming aware thereof, and permit Spiros Corp. II at Spiros

Corp. II's cost to defend against such Claim and shall cooperate in the defense thereof.

6.3 DEFENSE OF CLAIMS. None of DURA, DDSI, Spiros Corp. or Spiros Corp. II shall enter into, or permit, any settlement of any Claim for which indemnification is being sought by such party hereunder without the express written consent of each other party (or a DURA, DDSI, Spiros Corp. or Spiros Corp. II Indemnitee, as the case may be), which consent shall not be unreasonably withheld or delayed. Each party may, at its option and expense, have its own counsel participate in any proceeding which is under the direction of another party (the "Indemnifying Party") and will cooperate with the Indemnifying Party and its insurer in the disposition of any such matter; PROVIDED, HOWEVER, that if the Indemnifying Party shall not defend such Claim, the other party shall have the right to defend such Claim itself and recover from the Indemnifying Party all reasonable attorneys' fees and expenses incurred by it during the course of such defense.

7. TECHNOLOGY ACCESS FEE.

7.1 FEE. In consideration of the license rights granted to Spiros Corp. II herein and in recognition of DURA's, DDSI's and Spiros Corp.'s expertise which they have developed over a period of years and individually, Spiros Corp. II shall pay DURA, DDSI and Spiros Corp. an aggregate technology access fee equal to the greater of (a) five percent (5%) of the Net Sales in a calendar year for each Spiros Product, to be paid by Spiros Corp. II fifty percent (50%) to DURA, twenty percent (20%) to DDSI and thirty percent (30%) to Spiros Corp. or (b) Two Million Dollars for all Spiros Products in any calendar year beginning in calendar 1998, to be paid by Spiros Corp. II fifty percent (50%) to DURA, twenty percent (20%) to DDSI and thirty percent (30%) to Spiros Corp.

7.2 TERM. Such technology access fee obligation shall terminate on a country-to-country basis, on the following basis: (a) in those countries where no patents covering such Spiros Product issue, ten (10) years following the first commercial sale of such Spiros Product in such country; and (b) in those countries where a patent(s) covering such Spiros Product issue, upon the expiration of the last-to-expire patent covering the manufacture, use, import or sale of a Spiros Product in such country.

7.3 PAYMENT OF TECHNOLOGY ACCESS FEES. Spiros Corp. II shall pay Five Hundred Thousand Dollars (\$500,000) on or before the forty-fifth (45th) day following the end of each calendar quarter, fifty percent (50%) to DURA, twenty percent (20%) to DDSI and thirty percent (30%) to Spiros Corp. Within sixty (60) days following the end of each calendar year, Spiros Corp. II shall provide to DURA, DDSI and Spiros Corp. a formal

accounting of the Net Sales of each Spiros Product in such calendar year (the "Accounting"), and shall calculate the aggregate sum with respect to sales of all Spiros Products which would be due if Spiros Corp. II were to pay DURA five percent (5%) of the Net Sales in a calendar year for each Spiros Product (the "Net Sales Amount"). In the event that the Net Sales Amount is less than Two Million Dollars (\$2,000,000), no additional payments shall be due and payable from Spiros Corp. II with respect to access to the Core Technology. In the event that the Net Sales Amount is greater than Two Million Dollars (\$2,000,000), Spiros Corp. II shall promptly pay, but in no event later than five (5) business days following delivery of the Accounting to DURA, DDSI and Spiros Corp., the difference between the Net Sales Amount and Two Million Dollars (\$2,000,000) with respect to access to the Core Technology, fifty percent (50%) to DURA, twenty percent (20%) to DDSI and thirty percent (30%) to Spiros Corp.

7.4 PRODUCT SALES. The Spiros Products for which such technology access fees are payable shall be deemed to have been sold when shipped and billed to a third party.

7.5 PAYEE. Such technology access fees shall be paid by Spiros Corp. II directly to the party entitled thereto or to such party's designee as duly named in a written notice to Spiros Corp. II.

7.6 PAYMENT IN DOLLARS. Such technology access fees shall

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be paid in United States currency. All technology access fees accrued in currencies other than U.S. dollars shall be converted into U.S. dollars on the basis of the rate of exchange applied by Citibank, N.A., New York, as of the last banking day of each quarter for which such technology access fees become due.

7.7 PROHIBITED PAYMENTS. Notwithstanding any other provision of the Agreements, if Spiros Corp. II is prevented from paying any such technology access fee by virtue of the statutes, laws, codes or governmental regulations of the country from which the payment is to be made, then such technology access fee shall be made by depositing funds in the currency in which accrued to the other party's account in a bank acceptable to the other party in the country whose currency is involved.

7.8 TAXES. If a law or governmental regulation requires withholding of taxes on any payment due hereunder, such taxes shall be deducted from any amount to be remitted hereunder and shall be paid to the proper taxing authority, and proof of payment shall be provided to the party on whose behalf such taxes were

paid as evidence of such payment in such form as required by the tax authorities having jurisdiction thereover.

7.9 REPORTS. Each payment of any such technology access fee shall be accompanied by a written report, prepared and signed by a financial officer of Spiros Corp. II, showing for the quarter for which payment is being made, the gross sales and Net Sales of each Spiros Product sold and the technology access fees which shall have accrued with respect thereto and currency conversion calculations, if any. In the event that, for any quarter following the first quarter in which a Spiros Product is sold for which such a technology access fee would be payable, no such technology access fee is due, the party having responsibility for sales of such Spiros Product shall report the same to the other parties.

7.10 MAINTENANCE AND EXAMINATION OF RECORDS. At the request and expense of DURA, Spiros Corp. II, or their respective Affiliates, the other parties hereto and their Affiliates shall permit an independent certified public accountant appointed by such party and reasonably acceptable to the other party, at reasonable times and upon reasonable notice (but not exceeding once in any twelve (12) month period), to examine those records as may be necessary to: (a) determine, with respect to any calendar year ending not more than three (3) years prior to such party's request, the correctness of any report or payment under this Agreement; or (b) obtain information as to the Spiros Product sales for any calendar year. Said independent certified public accountant shall verify to the requesting party only the amount of payment due or costs incurred hereunder and disclose no other information revealed in its audit. Results of any such examination shall be made available to the parties. Any amount of deficiency, or overcharge, shall be paid or refunded promptly to Spiros Corp. II, plus interest at the commercial prime lending rate of Citibank, N.A., New York (or equivalent banking

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institution) until the date paid. The party requesting the audit shall bear the full cost of the performance of any such audit unless such audit discloses a variance of more than five percent (5%) from the amount of the original report, technology access fee or payment calculation, in which case the party being audited shall bear the full cost of the performance of such audit. DURA and Spiros Corp. II shall maintain and keep complete and accurate records in sufficient detail to enable any examination concerning technology access fees to be conducted pursuant to this Section 7.10.

8. TERM AND TERMINATION.

8.1 TERM. This Agreement shall be effective as of the date hereof and shall continue in full force and effect indefinitely, unless terminated earlier as provided in Sections 8.2, 8.3 and 8.4 hereof.

8.2 TERMINATION BY MUTUAL AGREEMENT. By mutual agreement, the parties

hereto may at any time terminate this Agreement and the Development on mutually acceptable terms.

8.3 EFFECT OF PURCHASE OPTION EXERCISES.

8.3.1 PURCHASE OPTION. In the event the Purchase Option is exercised by DURA, this Agreement shall terminate, effective upon the Purchase Option Closing Date, without any obligation to make payments pursuant to Section 7 of this Agreement.

8.3.2 PARTIAL TERMINATION UPON EXERCISE OF ALBUTEROL OPTION. In the event that the Albuterol Option is exercised, this Agreement shall terminate, effective on the Albuterol Option Closing Date, with respect to the Albuterol Program Assets and any obligation to make technology access fee payments with respect to the Albuterol Product, but shall otherwise continue in full force and effect until terminated pursuant to this Section 8.

8.3.3 PARTIAL TERMINATION UPON EXERCISE OF PRODUCT OPTION. In the event that the Product Option is exercised, this Agreement shall terminate, effective on the Product Option Closing Date, with respect to the Spiros Product Program Assets and any obligation to make technology access fee payments with respect to the Option Product, but shall otherwise continue in full force and effect until terminated pursuant to this Section 8.

8.4 TERMINATION BY DURA, DDSI AND SPIROS. Either DURA, DDSI and Spiros Corp., acting by unanimous action, or Spiros Corp. II shall have the right to terminate this Agreement, effective as set forth in a written notice of the occurrence of an Event of Default with respect to the other party.

8.5 RIGHTS IN BANKRUPTCY. All rights and licenses granted

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under or pursuant to this Agreement by DURA, DDSI, Spiros Corp. and Spiros Corp. II are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the Bankruptcy Code. The parties agree that DURA and Spiros Corp. II as licensees of such rights under this Agreement, shall retain and may fully exercise all of their rights and elections under the Bankruptcy Code. The parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against DURA, DDSI, Spiros Corp. or Spiros Corp. II under the Bankruptcy Code, the parties hereto which are not parties to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, and same, if not already in their possession, shall be promptly delivered to them upon any such commencement of a bankruptcy proceeding upon their written request therefor.

8.6 EFFECT OF TERMINATION.

8.6.1 TERMINATION BY DURA, DDSI AND SPIROS CORP.. If DURA, DDSI and Spiros Corp. terminate this Agreement pursuant to Section 8.4 hereof, (a) the licenses and sublicenses granted to Spiros Corp. II under Section 2.1 of this Agreement shall terminate, (b) all rights to the DURA Core Technology shall revert to DURA, all rights to the DDSI Core Technology shall revert to DDSI and all rights to the Spiros Core Technology shall revert to Spiros Corp., (c) all rights to the Program Technology except as set forth in (b) above shall revert to DURA, (d) all rights to develop, make, have made, use, sell and import all Spiros Products shall revert to DURA, DDSI and/or Spiros Corp. and (e) the provisions of Sections 1, 3.2.6, 4.3, 4.4, 5.3, 6, 9.4 and 9.5 of this Agreement shall survive. DURA will use reasonable efforts for a period of 120 days after a termination by DURA, DDSI and Spiros Corp., pursuant to Section 8.4 hereof, to negotiate royalties or any other compensation to be paid by DURA to Spiros Corp. II with respect to the Developed Technology that will revert to DURA. In the event the parties are unable to agree on the royalties or other compensation to be paid by DURA with respect to the Developed Technology with the 120 day period, such matter shall be submitted by DURA and Spiros Corp. II to binding arbitration in accordance with the rules of the American Arbitration Association.

8.6.2 TERMINATION BY SPIROS CORP. II. If Spiros Corp. II terminates this Agreement pursuant to Section 8.4 hereof, the provisions of Sections 1, 2.1, 2.3.3 (if the Albuterol Option has been exercised), 2.3.4 (if the Product Option has been exercised), 2.3.5, 3.2.6, 4.2.2, 4.3, 4.4, 5.3, 6, 7, 9.4 and 9.5 of this Agreement shall survive; PROVIDED, HOWEVER, if Spiros Corp. II fails to perform or observe or otherwise breaches its Material Obligations under Section 7 of this Agreement, which failure or breach is unremedied for a period of sixty (60) days after receipt by Spiros Corp. II of written notice thereof from DURA, or in the event such failure or breach

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is not capable of cure within sixty (60) days, for such longer period of time as Spiros Corp. II is vigorously pursuing such cure in good faith, DURA, DDSI and Spiros Corp. shall have the right to terminate this Agreement with the same effect as if DURA, DDSI and Spiros Corp. were to terminate this Agreement pursuant to Section 8.4 hereof.

8.6.3 TERMINATION OF PURCHASE OPTION UNEXERCISED. If the Purchase Option terminates unexercised, the licenses and sublicenses granted under Sections 2.3.1 and 2.3.2 of this Agreement shall terminate.

8.6.4 CONTINUING OBLIGATION TO MAKE PAYMENTS. Notwithstanding anything contained herein to the contrary, upon termination of this Agreement, the obligation to pay any amounts payable by any party to another party which accrued prior to such termination shall survive.

9. MISCELLANEOUS.

9.1 NO IMPLIED WAIVERS; RIGHTS CUMULATIVE. No failure on the part of DURA, DDSI, Spiros Corp. or Spiros Corp. II to exercise and no delay in exercising any right, power, remedy or privilege under this Agreement or provided by statute or at law or in equity or otherwise, including, without limitation, the right or power to terminate this Agreement, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

9.2 FORCE MAJEURE. DURA, DDSI, Spiros Corp. and Spiros Corp. II shall each be excused for any failure or delay in performing any of their respective obligations under this Agreement, if such failure or delay is caused by Force Majeure.

9.3 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement is intended or is to be construed to constitute DURA, DDSI, Spiros Corp. and Spiros Corp. II as partners or joint venturers or one party as an employee of any other party. Except as expressly provided herein, no party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other party or to bind any other party to any contract, agreement or undertaking with any third party.

9.4 NOTICES. All notices, requests and other communications to DURA, DDSI, Spiros Corp. or Spiros Corp. II hereunder shall be in writing (including telecopy or similar electronic transmissions), shall refer specifically to this Agreement and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered mail or certified mail, return receipt requested and postage prepaid, or

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by reliable overnight courier service, in each case to the respective address specified below (or to such address as may be specified in writing to the other party hereto):

If to DURA, addressed to:

Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

with a copy to the attention of General Counsel

If to DDSI, addressed to:

Dura Delivery Systems, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

If to SPIROS, addressed to:

Spiros Development Corporation
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

If to Spiros Corp. II, addressed to:

Spiros Development Corporation II, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

Each party shall provide each other party with copies of any notices sent hereunder, with such copies sent at the same time as the original notice. Any notice or communication given in conformity with this Section 9.4 shall be deemed to be effective when received by the addressee, if delivered by hand, telecopy or electronic transmission, three (3) days after mailing, if mailed, and one (1) business day after delivery to a reliable overnight courier service.

9.5 FURTHER ASSURANCES. Each of DURA, DDSI, Spiros Corp. and Spiros Corp. II hereby agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such additional assignments, agreements, documents and instruments, that may be necessary or as the other party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other party its rights and remedies under, this Agreement.

9.6 SUCCESSORS AND ASSIGNS. The terms and provisions of

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this Agreement shall inure to the benefit of, and be binding upon, DURA, DDSI, Spiros Corp., Spiros Corp. II and their respective successors and assigns; PROVIDED, HOWEVER, that DURA, DDSI, Spiros Corp. and Spiros Corp. II may not assign or otherwise transfer any of their respective rights and interests, nor delegate any of their respective obligations, hereunder, including, without limitation, pursuant to a merger or consolidation, without

the prior written consent of the other party hereto; PROVIDED FURTHER, HOWEVER, that DURA, DDSI or Spiros Corp. may fully assign their respective rights and interests, and delegate their respective obligations, hereunder, effective upon written notice thereof (a) to an Affiliate if such Affiliate assumes all of the obligations of DURA, DDSI or Spiros Corp., as the case may be, hereunder and this Agreement remains binding upon Dura, DDSI or Spiros Corp., as the case may be; or (b) to any Person that acquires all or substantially all of the assets of Dura, DDSI or Spiros Corp. as the case may be, or which is the surviving Person in a merger or consolidation with Dura, DDSI or Spiros Corp. if such Person assumes all the obligations of DURA, DDSI or Spiros Corp., as the case may be, hereunder. Notwithstanding the foregoing, Spiros Corp. II shall have the right to assign its rights and delegate its obligations hereunder following expiration or termination (other than by exercise) of the Purchase Option. Any attempt to assign or delegate any portion of this Agreement in violation of this Section 9.6 shall be null and void. Subject to the foregoing any reference to DURA, DDSI, Spiros Corp. or Spiros Corp. II hereunder shall be deemed to include the successors thereto and assigns thereof.

9.7 AMENDMENTS. No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent by DURA, DDSI, Spiros Corp. or Spiros Corp. II to any departure therefrom, shall in any event be effective unless the same shall be in writing specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by DURA, DDSI, Spiros Corp. and Spiros Corp. II, and each amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement shall be varied, contradicted or explained by any other agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by DURA, DDSI, Spiros Corp. and Spiros Corp. II.

9.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, as applied to contracts made and performed entirely within the State of California. Except as otherwise provided herein, any claim or controversy arising out of or related to this contract or any breach hereof shall be submitted to a court of competent jurisdiction in the State of California, and the parties hereby consent to the jurisdiction and venue of such court.

9.9 SEVERABILITY. If any provision hereof should be held

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invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as

nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, DURA, DDSI, Spiros Corp. and Spiros Corp. II hereby waive any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

9.10 HEADINGS. Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

9.12 ENTIRE AGREEMENT. This Agreement, together with any agreements referenced herein, constitute, on and as of the date hereof, the entire agreement of DURA, DDSI, Spiros Corp. and Spiros Corp. II with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between DURA, DDSI, Spiros Corp. and Spiros Corp. II with respect to such subject matter are hereby superseded in their entirety.

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

SPIROS DEVELOPMENT CORPORATION II, INC.

By: /s/ David S. Kabakoff

David S. Kabakoff
President and Chief Executive Officer

DURA PHARMACEUTICALS, INC.

By: /s/ Cam L. Garner

Cam L. Garner
President and Chief Executive Officer

DURA DELIVERY SYSTEMS, INC.

By: /s/ Mitchell R. Woodbury

Mitchell R. Woodbury
Secretary

SPIROS DEVELOPMENT CORPORATION

By: /s/ Mitchell R. Woodbury

Mitchell R. Woodbury
Secretary

[SIGNATURE PAGE TO TECHNOLOGY LICENSE AGREEMENT]

SCHEDULE 1.1

GLOSSARY

SCHEDULE 1.1

SCHEDULE 1.1

GLOSSARY

"AFFILIATE" of a person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. In the case of a corporations, "control" shall mean, among other things, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting stock.

"AGREEMENTS" shall mean the Manufacturing and Marketing Agreement, the Technology Agreement and the Development Agreement.

"ALBUTEROL OPTION" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL AND PRODUCT OPTION AGREEMENT" shall mean the Albuterol and Product Option Agreement dated as of December 22, 1997, between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"ALBUTEROL OPTION CLOSING DATE" shall have the meaning assigned to it in Section 1.5 of the Albuterol and Product Option Agreement.

"ALBUTEROL PROGRAM ASSETS" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL PRODUCT" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"AVAILABLE FUNDS" shall mean the sum of (a) the net proceeds to Spiros Corp. II from the sale of the Units in the Offering and the Contribution, (b) all royalties remitted to Spiros Corp. II by DURA (or its Affiliates) from the Sale of Spiros Products pursuant to the Agreements, (c) the Option Proceeds, if any, (d) any other amounts provided by DURA to Spiros Corp. II, if any and (e) interest or other income earned through temporary investment of the amounts described in clauses (a), (b), (c) or (d).

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, as amended from time to time.

"CLAIM" shall mean any and all liabilities, damages, losses, settlements, claims, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees).

SCHEDULE 1.1

"CONFIDENTIAL INFORMATION" shall mean all Program Technology disclosed by DURA (and its Affiliates) to Spiros Corp. II or by Spiros Corp. II to DURA pursuant to the Agreements or the Services Agreement.

"CONTRIBUTION" shall have the meaning assigned in Section 5.2 of the Development Agreement.

"CORE TECHNOLOGY" shall mean the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology.

"DDSI CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DDSI as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DDSI Patent Rights; PROVIDED, HOWEVER, that DDSI Core Technology shall also include Technology acquired by DDSI from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DDSI's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DDSI owns, or under which DDSI is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DDSI INDEMNITEE" shall mean DDSI, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DDSI PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DDSI (or the rights to which have been assigned to DDSI) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DESIGNATED COMPOUND(S)" shall mean any compounds for delivery using the System selected by Spiros Corp. II, and agreed to be developed by DURA.

"DEVELOPED TECHNOLOGY" shall mean any Technology including, without limitation, any enhancements, substitutions or improvements to the Core Technology that is (a) discovered, developed or otherwise acquired by DURA pursuant to the terms of the Development Agreement or (b) otherwise acquired by or on behalf of Spiros Corp. II during the term of the Development Agreement.

"DEVELOPMENT" shall mean the further development of the Program Technology for the purpose of identifying, developing, manufacturing, marketing and commercializing Spiros Products and

SCHEDULE 1.1

the making of the Other Expenditures.

"DEVELOPMENT AGREEMENT" shall mean the Development Agreement dated as of December 22, 1997, between DURA and Spiros Corp., as amended, modified or supplemented from time to time.

"DEVELOPMENT COSTS" shall mean the Direct Development Costs, the Indirect Development Costs and the Other Expenditures.

"DEVELOPMENT TERM" shall mean the period commencing on the Closing Date and ending on the earlier of (a) the Option Closing Date or (b) the date the Option terminates or expires other than by exercise.

"DIRECT DEVELOPMENT COSTS" shall mean all costs incurred by DURA or its Affiliates in respect of the Development, other than Indirect Development Costs, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis. Direct Development Costs shall consist primarily of fully-burdened payroll costs (burdened to include benefits, payroll taxes and an allocation of facilities and overhead costs) and any other such costs generated internally by DURA in respect of the Development.

"DPI" shall mean the motor-driven dry powder inhaler (other than an inahler designed to deliver a single dose of a drug) developed by DURA, DDSI and/or Spiros Corp. and to be developed by DURA and/or Spiros Corp. II.

"DURA COMMON STOCK" shall mean the Common Stock of DURA, par value \$.001 per share.

"DURA CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DURA as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DURA Patent Rights and DURA Trademarks; PROVIDED, HOWEVER, that DURA Core Technology shall also include Technology acquired by DURA from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DURA's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DURA owns, or under which DURA is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DURA INDEMNITEE" shall mean DURA, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DURA PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DURA (or the rights to which have been assigned to DURA) as of the date of the Technology Agreement relating to DPIs, PSSs and/or formulation methods for dry powder inhalation, (b) any

SCHEDULE 1.1

patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DURA TRADEMARKS" shall mean Spiros-TM-.

"EVENT OF DEFAULT" shall mean any of the following events: (a) at any time, if DURA or Spiros Corp. II fails to perform or observe or otherwise breaches any of its Material Obligations, and such failure or breach continues unremedied for a period of sixty (60) days after receipt by of written notice thereof from the other party; (b) at any time, effective as set forth in a written notice from the other party if DURA or Spiros Corp. II shall (i) seek the liquidation, reorganization, dissolution or winding-up of itself or the composition or readjustment of its debts (other than pursuant to a merger with an Affiliate), (ii) apply for or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator for itself or of all or a substantial part of its assets, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts (other than pursuant to a merger with an Affiliate) or (vi) adopt any resolution of its Board of Directors or shareholders for the purpose of effecting any of the foregoing (other than pursuant to a merger with an Affiliate); or (c) at any time, effective as set forth in a written notice from the other party, if a proceeding or case shall be commenced without the application or consent of DURA or Spiros Corp. II as applicable, and such proceeding or case shall continue undismissed, or an order, judgment or decrees approving or ordering any of the following shall be entered and continued unstayed and in effect, for a period of sixty (60) days from and after the date service of process is effected, seeking (i) DURA's or Spiros Corp. II's, as applicable, liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of DURA or Spiros Corp. II or for all or any substantial part of its assets or (iii) similar relief in respect of DURA or Spiros Corp. II under any law relating to bankruptcy, insolvency, reorganization, winding-up or the composition or readjustment of debts.

"FDA" shall mean the United States Food and Drug Administration or any successor agency or authority, the approval of which is required to market health care products in the United States.

"FDA APPROVAL" shall mean the final regulatory approval of the FDA required to commence commercial marketing of a health product.

SCHEDULE 1.1

"FORCE MAJEURE" shall mean any act of God, any accident explosion, fire, storm, earthquake, flood, drought, peril of the sea, riot, embargo, war or

foreign, federal, state or municipal order of general application, seizure, requisition or allocation, any failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event.

"INDIRECT DEVELOPMENT COSTS" shall mean all costs, fees and out-of-pocket or other expenses, including the purchase of any capital equipment related to the Development, incurred or paid by DURA to a third party, other than an Affiliate of DURA, in respect of the Development, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis.

"MANUFACTURING AND MARKETING AGREEMENT" shall mean the Manufacturing and Marketing Agreement dated as of December 22, 1997 between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"MANUFACTURE" shall mean the manufacture and assembly of the Spiros Products.

"MATERIAL OBLIGATION" shall mean the material obligations of a party under the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement.

"NET SALES" shall mean the gross amount invoiced for sales of Spiros Products by DURA or its sublicensees, if any, to third parties less (i) discounts actually allowed, (ii) credits for claims, allowances, retroactive price reductions or returned Spiros Products, (iii) prepaid freight charges incurred in transporting Spiros Products to customers, (iv) sales taxes and other governmental charges actually paid in connection with the sales (but excluding what is commonly known as income taxes) and (v) any royalty obligations under the 1993 Royalty Agreement. Net Sales shall not include sales between or among DURA, its Affiliates and its sublicensees unless such sales are for end use rather than for purposes of resale.

"OFFERING" shall mean the underwritten public offering of the Units pursuant to the Registration Statement.

"OPTION PROCEEDS" shall have the meaning assigned to it in Section 3 of the Albuterol and Product Option Agreement.

"OPTION PRODUCT" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"OTHER EXPENDITURES" shall mean funds spent by Spiros Corp. II to acquire capital equipment, develop a next generation inhaler system or to enhance the System.

SCHEDULE 1.1

"PATENT RIGHTS" shall mean any patents or patent applications within the Spiros Corp. II Patent Rights, the DURA Patent Rights, the DDSI Patent Rights and the Spiros Corp. Patent Rights.

"PERSON" shall mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity.

"PRODUCT OPTION" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"PRODUCT OPTION CLOSING DATE" shall have the meaning assigned to it in Section 2.5 of the Albuterol and Product Option Agreement.

"PROGRAM TECHNOLOGY" shall mean the Core Technology and the Developed Technology.

"PSS" shall mean the powder storage system developed and to be developed by DURA for use with the DPI.

"PURCHASE AGREEMENT" shall mean the Purchase Agreement dated as of December 16, 1997, among DURA, Spiros Corp. II, Merrill Lynch & Co., and Donaldson, Lufkin & Jenrette.

"PURCHASE OPTION" shall mean the option granted to the holder of Spiros Corp. II's Special Common Stock to purchase all of the Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION CLOSING DATE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION EXERCISE PRICE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter

"REGISTRATION STATEMENT" shall mean the Registration Statement on Form S-1/S-3 filed by Spiros Corp. II and DURA dated October 10, 1997 (No. 333-37673/333-37673-01), including all exhibits and any amendments thereof and supplements thereto.

"RESEARCH FUNDS" shall mean the Available Funds, less (i) all general and administrative expenses including, without limitation, those paid or payable pursuant to the Development Agreement or the Services Agreement, and the reasonable out-of-pocket expenses of Spiros Corp. II directors and reasonable compensation for Spiros Corp. II's independent directors, less (ii) any amounts paid to DURA under the Development Agreement or the Services Agreement, less (iii) any costs and expenses incurred in the defense or settlement of any action or claim or in respect of a judgment thereon, and less (iv) One Million Dollars (\$1,000,000) to be retained by Spiros Corp. II as working capital in the event DURA does not exercise the Purchase Option.

SCHEDULE 1.1

"SALE(S)" or "SELL" shall mean the activity undertaken by a sales representative during a sales call on physicians, physician assistants, nurses, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies (including all forms of communication not involving face to face contact by such sales representatives), describing the FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Spiros Product, in a fair and balanced manner consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (and the regulations thereunder).

"SPIROS CASSETTE SYSTEM" shall mean a DPI in which the PSS is in the form of a cassette.

"SPIROS CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by Spiros Corp. as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the Spiros Corp. Patent Rights; PROVIDED, HOWEVER, that Spiros Core Technology shall also include Technology acquired by Spiros Corp. from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on Spiros Corp.'s ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that Spiros Corp. owns, or under which Spiros Corp. is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"SPIROS CORP. INDEMNITEE" shall mean Spiros Corp., its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by Spiros Corp. (or the rights to which have been assigned to Spiros Corp.) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"SPIROS CORP. II CHARTER" shall mean Amended and Restated Certificate of Spiros Development Corporation II, Inc. in effect as of the closing of the Offering, as amended from time to time.

"SPIROS CORP. II COMMON STOCK" shall mean the Callable Common Stock of Spiros Corp. II, \$.001 par value.

"SPIROS CORP. II INDEMNITEE" shall mean Spiros Corp. II, its

SCHEDULE 1.1

successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. II PATENT RIGHTS" shall mean those certain inventions described in claims of (a) any patent application having one or more claims covering Developed Technology, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing applications or (c) any patent issued or issuing upon any of the foregoing applications.

"SPIROS PRODUCT(S)" shall mean (a) any System used with a formulation of albuterol, beclomethasone, ipratropium, an albuterol-ipratropium combination, budesonide or a Designated Compound developed, produced, manufactured or marketed by DURA on behalf of Spiros Corp. II using the Program Technology.

"SPIROS PRODUCT PROGRAM ASSETS" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"SYSTEM" shall mean the DPI and the PSS when used together.

"TECHNOLOGY" shall mean, solely with respect to motor-driven dry powder inhalers and powder storage systems for drugs for delivery through such inhalers, the manufacture thereof, and formulations of drugs to be delivered through such inhalers, public and nonpublic technical or other information, trade secrets, know-how, processes, formulations, concepts, ideas, preclinical, clinical, pharmacological or other data and testing results, experimental methods, or results, assays, descriptions, business or scientific plans, depictions, customer lists and any other written, printed or electronically stored materials, pharmaceutical compounds or any other natural or man-made pharmaceutical materials and any and all other intellectual property, including patents and patent applications, of any nature whatsoever. The term "Technology" shall include, without limitation, any of the foregoing as it relates to enhancements of, substitutions for or improvements to the Core Technology.

"TECHNOLOGY AGREEMENT" shall mean the Technology License Agreement dated as of December 22, 1997, among DURA, DDSI, Spiros Corp. and Spiros Corp. II, as amended, modified or supplemented from time to time.

"TERRITORY" shall mean the entire world.

"UNDERWRITERS" shall have the meaning assigned to it in the Registration Statement.

"UNITS" shall mean units, each consisting of one share of Spiros Corp. II Common Stock and one warrant to purchase one-fourth of one share of DURA Common Stock, all as described in the Registration Statement.

SCHEDULE 1.1

"1993 ROYALTY AGREEMENT" shall have the meaning assigned to it in the Registration Statement.

SCHEDULE 1.1

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the "Agreement") is made as of December 22, 1997, by and between DURA PHARMACEUTICALS, INC., a Delaware corporation ("DURA"), and SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp. II").

RECITALS

WHEREAS, DURA and Spiros Corp. II are parties to the Technology Agreement, the Manufacturing and Marketing Agreement, and the Albuterol and Product Option Agreement (all capitalized terms shall have the respective meaning set forth in Section 1 hereto).

WHEREAS DURA, Dura Delivery Systems, Inc., a Delaware corporation ("DDSI"), and Spiros Development Corporation, a Delaware corporation ("Spiros Corp."), have granted to Spiros Corp. II, and Spiros Corp. II has acquired from DURA, DDSI and Spiros Corp., a license to certain technology for the purpose of allowing Spiros Corp. II to further develop the Core Technology and to develop and commercialize the Spiros Products.

WHEREAS, DURA has experience in the development of pharmaceutical products and has the facilities, equipment, employees and other resources to accomplish development activities, on behalf of Spiros Corp. II, with respect to such rights and technology.

WHEREAS, Spiros Corp. II desires to engage DURA to perform such services in connection with the Development, and DURA is willing to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce DURA to enter into the Agreements, DURA and Spiros Corp. II hereby agree as follows:

1. DEFINITIONS.

1.1 DEFINITIONS. All capitalized terms used herein and not otherwise defined shall have the respective meanings, to the extent such terms are used herein, set forth in SCHEDULE 1.1 attached hereto, which is incorporated by this reference as though fully set forth herein.

1.2 SINGULAR AND PLURAL. Singular and plural forms, as the case may be, of terms defined herein shall have correlative meanings.

2. DEVELOPMENT SERVICES.

2.1 DEVELOPMENT. Spiros Corp. II hereby engages DURA, and DURA hereby accepts such engagement, to use commercially reasonable efforts to undertake the Development. Such services shall be provided as follows:

2.1.1 WORKPLAN AND BUDGET. As of the date of the closing of the Offering, DURA shall have provided Spiros Corp. II with a workplan and budget acceptable to the Board of Directors of Spiros Corp. II covering the period from the closing through December 31, 1998, a copy of which is attached hereto as SCHEDULE 2.1. Thereafter, DURA and Spiros Corp. II shall prepare an annual workplan and budget in accordance with Section 3 hereof. DURA and Spiros Corp. II may make changes in the annual workplan and budget from time to time as approved in writing by an authorized representative of each party. Expenditures made on behalf of Spiros Corp. II by DURA for which DURA is to be reimbursed pursuant to Section 5.1 hereof, shall not exceed in any calendar year one hundred twenty percent (120%) of the amount allocated in the annual workplan and budget applicable to such year unless otherwise approved by the Board of Directors of Spiros Corp. II. DURA shall report significant deviations from the

annual workplan and budget to Spiros Corp. II in a timely manner.

2.1.2 CONDUCT OF DEVELOPMENT. During the term of this Agreement, DURA shall use commercially reasonable efforts to (a) conduct the Development on behalf of Spiros Corp. II in a prudent and skillful manner in accordance, in all material respects, with the annual workplan and budget then in effect and applicable laws, ordinances, rules, regulations, orders, licenses and other requirements now or hereafter in effect and (b) diligently execute such annual workplan and budget and report to Spiros Corp. II any significant deviations therefrom in a timely manner. Spiros Corp. II hereby appoints DURA its exclusive agent, for the term of this Agreement, with the sole power and authority to file and prosecute all necessary regulatory applications and permits in DURA's name required to obtain FDA Approval and other regulatory approvals for the Spiros Products. DURA shall, at Spiros Corp. II's expense as described below, furnish all labor, supervision, services, supplies and materials necessary to perform the Development in accordance with the annual workplan and budget then in effect. In addition to its undertakings pursuant to the Technology Agreement, DURA agrees to use commercially reasonable efforts, on behalf of itself, DDSI and Spiros Corp., to attempt to obtain and to sublicense to Spiros Corp. II subject to the terms and conditions of the Technology Agreement, on behalf of and at the expense of Spiros Corp. II but in accordance with Section 2.4 of the Technology Agreement, any patent or technology license or sublicense from any Person, including DURA, DDSI or Spiros Corp., that DURA reasonably determines to be necessary or useful to enable DURA to conduct the Development under this Agreement.

2.1.3 SUBCONTRACTS. Spiros Corp. II acknowledges that DURA may elect to subcontract to third parties a portion of the Development. Spiros Corp. II acknowledges and agrees that in performing the Development, DURA may, and is hereby authorized to, without the prior written consent of Spiros Corp. II, engage or agree or otherwise collaborate with other Persons, including, without limitation, Affiliates of DURA or institutions performing other development activities for DURA, to provide assistance in carrying out the Development.

2.1.4 CHANGES TO THE WORKPLANS. If at any time Spiros Corp. II determines, based on the reports furnished pursuant to Section 3 hereof, in its reasonable business judgment and in consultation with DURA, or DURA determines with Spiros Corp. II's consent (which consent shall not be withheld unreasonably), that the Development should be discontinued with respect to the

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further development of a particular Spiros Product because the continuance thereof is unfeasible or uneconomic, or that the Development should be expanded to include one or more Designated Compounds, then Spiros Corp. II and DURA shall use all reasonable efforts to agree on the nature of further development and the identity of such Designated Compounds.

2.1.5 SALE OF SPIROS PRODUCTS PRIOR TO REGULATORY APPROVAL. Spiros Corp. II hereby appoints DURA as its exclusive agent for the Manufacture and Sale of Spiros Products during the term of this Agreement for the sole purpose of conducting the clinical testing required to obtain FDA Approval or other regulatory approval to market such Spiros Products. DURA shall charge Spiros Corp. II for all the costs (determined in accordance with Section 6.5 hereof) relating to the Manufacture and Sale of such Spiros Products prior to FDA Approval of such Spiros Products as Development Costs, and shall remit to Spiros Corp. II any revenues received by it from the sale of such Spiros Products. Spiros Corp. II agrees that all such revenues received hereunder with respect to Spiros Products shall be considered Available Funds.

2.1.6 MANUFACTURE AND SALE OF SPIROS PRODUCTS FOLLOWING REGULATORY APPROVAL. Spiros Corp. II and DURA hereby agree that the Manufacture and Sale of each Spiros Product during the term of this Agreement following FDA Approval or other required regulatory approval to market such Spiros Product shall be governed solely by the terms and conditions of the Manufacturing and Marketing Agreement.

2.2 DISCLAIMER OF WARRANTIES. DURA cannot and does not guarantee that the Development will be successful in whole or in part, that any Spiros Products

will be developed or that any developed Spiros Products will be successful in the marketplace. To the extent that DURA has complied with Section 2.1.2 hereof, the failure of DURA to further develop successfully the Program Technology or to discover, develop or commercialize any Spiros Product will not in and of itself constitute a breach by DURA of any representation, warranty, covenant or other obligation under the Agreements. In addition, neither DURA nor Spiros Corp. II makes any representation or warranty or guaranty that the Available Funds will be sufficient for the completion of the Development of any or all of the Spiros Products or to begin commercialization with respect to any Spiros Product.

2.3 RIGHTS TO PROPERTY. All right, title and interest to the Program Technology acquired or developed pursuant to this Agreement including any submissions or applications to the FDA or any foreign equivalent made by DURA in its name on behalf of Spiros Corp. II shall be the exclusive property of Spiros Corp. II; PROVIDED, HOWEVER, that such right, title and interest shall be subject in all events to (a) the rights to Albuterol Program Assets obtained from Spiros Corp. II pursuant to the exercise of the Albuterol Option or (b) the rights to the Spiros Product Program Assets obtained from Spiros Corp. II pursuant to the exercise of the Product Option. All matters relating to patents and patent applications with respect to the Program Technology acquired or developed pursuant to this Agreement shall be governed by Section 5.2 of the License Agreement.

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2.4 TERMINATION OF DEVELOPMENT UPON EXERCISE OF THE ALBUTEROL OPTION. If the Albuterol Option is exercised, Development hereunder shall cease with respect to the Albuterol Product. DURA and the Board of Directors of Spiros Corp. II shall agree upon an allocation to one or more remaining Spiros Products or to the Other Expenditures of the funds available as a result of the exercise of the Albuterol Option.

2.5 TERMINATION OF DEVELOPMENT UPON EXERCISE OF THE PRODUCT OPTION. If the Product Option is exercised, Development hereunder shall cease with respect to the Option Product. DURA and the Board of Directors of Spiros Corp. II shall agree upon an allocation to one or more remaining Spiros Products or to the Other Expenditures of the funds available as a result of the exercise of the Product Option.

3. REPORTS AND RECORDS. Within thirty (30) days after the end of each calendar quarter during the term of this Agreement, DURA shall provide to the Board of Directors of Spiros Corp. II a reasonably detailed report setting forth in respect of such quarter (a) the total Development Costs incurred, (b) a summary of the work performed hereunder by DURA and its employees and agents and (c) a description of any material developments with respect to the Program Technology. Prior to December 1 of each year (commencing with December 1, 1998) during the term of this Agreement, DURA shall report to the Board of Directors of Spiros Corp. II with respect to the progress of the Development, which report shall include the proposed annual workplan and budget for the next calendar year. Prior to January 1 of each year (commencing January 1, 1999), the Board of Directors of Spiros Corp. II shall approve such annual workplan and budget with such changes as it may, in the exercise of its reasonable business judgment, deem necessary and as DURA may approve (which approval shall not be unreasonably withheld); PROVIDED, that no annual workplan and budget shall be deemed effective until approved by DURA and the Board of Directors of Spiros Corp. II. DURA shall prepare a final report, within ninety (90) days after the expiration or termination of this Agreement, setting forth in reasonable detail a summary of the work performed since the last report provided to the Board of Directors hereunder and the material developments with respect thereto and containing a final statement of all costs billed to Spiros Corp. II hereunder. DURA shall keep and maintain proper and complete records and books of account documenting all of its expenses related to the Development, including those allocated to and reimbursed by Spiros Corp. II hereunder. At Spiros Corp. II's request and expense, DURA shall permit a certified independent public accountant selected by Spiros Corp. II to have access, no more than once in each calendar year during the term of this Agreement and each year for three (3) calendar years following the termination hereof, during regular business hours and upon reasonable notice to DURA, to such records and books for the sole purpose of determining the appropriateness of Development Costs invoiced hereunder;

PROVIDED, HOWEVER, that if such certified independent public accountant reasonably determines that such Development Costs have been, for any calendar year, after adjustments herein provided for, overstated by DURA by an amount equal to or greater than five percent (5%), DURA shall promptly refund any such overpayment to Spiros Corp. II and pay all reasonable fees and disbursements of such certified independent public accountant incurred in the course of making such determination.

4. OTHER ACTIVITIES. During the term of this Agreement, DURA shall devote such time and

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effort to the performance of services pursuant to this Agreement as may be necessary or appropriate to fulfill its duties under this Agreement; PROVIDED, HOWEVER, it is specifically understood and agreed by Spiros Corp. II that DURA shall not be required to devote itself, on a full-time basis, to the provision of such services and that DURA shall have the right to engage in its own development activities and in other business activities with other Persons, and Spiros Corp. II shall not, by virtue of this Agreement, have any right, title or interest in or to such independent activities or to the income or profits derived therefrom and, without limiting DURA's obligation to use commercially reasonable efforts to provide certain services hereunder, nothing set forth in this Agreement shall limit or reduce the ability of DURA to carry on such other activities.

5. PAYMENT FOR SERVICES; TIMING OF PAYMENTS.

5.1 PAYMENTS FOR DEVELOPMENT. In consideration of the Development to be carried out by DURA during the term of this Agreement, Spiros Corp. II shall reimburse DURA out of Available Funds for all of (a) the Direct Development Costs plus a fee equal to twenty-five percent (25%) of all of such costs (the "Management Fee"), PROVIDED that the cost to DURA of services provided by Affiliates of DURA shall not exceed the cost to each Affiliate of providing such services, and (b) the Indirect Development Costs plus a fee equal to twenty percent (20%) of all such costs (the "Indirect Management Fee"), invoiced to Spiros Corp. II by DURA. The amount to be paid to DURA pursuant to this Agreement shall not exceed the amount of the Available Funds. The Available Funds must be retained by Spiros Corp. II in an account separate from all accounts containing any other funds. Spiros Corp. II agrees to expend all Available Funds on Development and Other Expenditures pursuant to this Agreement, except as otherwise set forth in the Agreements. In the event that the cash and cash equivalents of Spiros Corp. II are reduced to less than \$5 million, DURA may, within thirty (30) days following notice from Spiros Corp. II that such funds have been reduced to less than \$5 million, at its option (the "Funding Option"), provide additional funds sufficient in the reasonable judgment of DURA and Spiros Corp. II to fund the continued Development of Spiros Products for an additional twelve (12) months at a level comparable to the level of funding provided during the prior twelve (12) months, which funding shall be considered Available Funds. The Funding Option may only be exercised one time and shall be irrevocable following exercise. Payment to Spiros Corp. II of all amounts in respect of the Funding Option must be made within thirty (30) days of its exercise.

5.2 CONTRIBUTIONS. Concurrently with the execution of this Agreement, DURA will contribute Seventy-Five Million Dollars (\$75,000,000) in cash to Spiros Corp. II (the "Contribution").

5.3 DEVELOPMENT EXPENSES. Within five (5) business days of the closing of the Offering and upon the receipt by Spiros Corp. II of an invoice therefor, Spiros Corp. II shall reimburse DURA for all development services as set forth on SCHEDULE 5.3 incurred by DURA through the date of the closing of the Offering, estimated to be five million Dollars (\$5,000,000) but which shall in no event exceed seven million Dollars (\$7,000,000).

5.4 TIMING OF PAYMENTS. Spiros Corp. II shall pay to DURA monthly the Development

Costs, plus the applicable Management Fee and Indirect Management Fee, actually incurred in the prior month as shown on a statement delivered by DURA to Spiros Corp. II. Spiros Corp. II shall make such payment within fifteen (15) days after the delivery of such statement from DURA.

5.5 CALCULATION OF COSTS. Direct Development Costs shall be allocated on a reasonable and consistent basis, and charged to Spiros Corp. II for services performed by DURA on behalf of Spiros Corp. II hereunder. DURA's expenditures and estimated expenditures for performing the Development hereunder shall be determined using generally accepted accounting principles, consistent with DURA's internal financial and accounting systems, allocated on a reasonable and consistent basis. Allocation of all Indirect Development Costs shall be made by DURA on a reasonable basis consistent with DURA's regular internal cost accounting system.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS. The provisions of Section 3 of the Technology Agreement with respect to DURA and Spiros Corp. II shall apply with equal force and effect to this Agreement and are incorporated hereunder.

7. CONFIDENTIALITY. The provisions of Sections 4.3 and 4.4 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

8. DISCLAIMER OF WARRANTY; CONSEQUENTIAL DAMAGES. The provisions of Section 5.3 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

9. INDEMNIFICATION AND INSURANCE.

9.1 INDEMNIFICATION. The provisions of Section 6 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

9.2 INSURANCE.

9.2.1 INSURANCE BY SPIROS CORP. II. To the extent Spiros Corp. II develops or uses, or causes the development or use (except by DURA or its Affiliates or subcontractors under this Agreement) of, the Spiros Products, Spiros Corp. II shall, to the extent available at commercially reasonable rates, maintain with insurers or underwriters of good repute such insurance relating to the Development, and the sale and use of the Spiros Products, against such risks, pursuant to such terms (including deductible limits or self-insured retentions) and for such periods, as is customary for comparable businesses undertaking the development, sale and use of products of a similar nature, and shall, to the extent reasonably possible and not unreasonably expensive, cause DURA, DDSI and Spiros Corp. to be named as additional insured parties on its insurance policies. To the extent Spiros Corp. II is required to obtain insurance under this Section 9.2.1 during the term of this Agreement, Spiros Corp. II may use Available Funds to pay the premiums therefor.

9.2.2 INSURANCE BY DURA. DURA shall, to the extent available at commercially

reasonable rates, maintain, with insurers or underwriters of good repute such insurance relating to the Development, against such risks and pursuant to such terms (including deductible limits or self-insured retentions) as is customary for comparable businesses undertaking research and development programs of a similar nature, and shall, to the extent reasonably possible and not unreasonably expensive, cause Spiros Corp. II to be named as an additional insured party on its insurance policies.

10. TERM AND TERMINATION.

10.1 TERM. This Agreement shall be effective as of the date hereof and,

unless terminated earlier as provided in Sections 10.2, 10.3 and 10.4 hereof, shall continue in full force and effect for the duration of the Development Term.

10.2 TERMINATION BY MUTUAL AGREEMENT. By mutual agreement, the parties hereto may at any time terminate this Agreement and the Development on mutually acceptable terms.

10.3 EFFECT OF PURCHASE OPTION EXERCISES.

10.3.1 PURCHASE OPTION. In the event the Purchase Option is exercised by DURA, this Agreement shall terminate, effective upon the Purchase Option Closing Date, without any obligation to make payments pursuant to Section 7 of the Technology Agreement.

10.3.2 PARTIAL TERMINATION UPON EXERCISE OF ALBUTEROL OPTION. In the event that the Albuterol Option is exercised as provided in the Albuterol and Product Option Agreement, this Agreement shall terminate, effective on the Albuterol Option Closing Date, with respect to the Albuterol Product, but shall otherwise continue in full force and effect until terminated pursuant to this Section 10.

10.3.3 PARTIAL TERMINATION UPON EXERCISE OF PRODUCT OPTION. In the event that the Product Option is exercised as provided in the Albuterol and Product Option Agreement, this Agreement shall terminate, effective on the Product Option Closing Date, with respect to the Option Product but shall otherwise continue in full force and effect until terminated pursuant to this Section 10.

10.4 TERMINATION FOR EVENT OF DEFAULT. Either DURA or Spiros Corp. II shall have the right to terminate this Agreement, effective as set forth in a written notice to the other party of the occurrence of an Event of Default with respect to such other party.

10.5 EFFECT OF TERMINATION.

10.5.1 RETURN OF SPIROS PRODUCTS. In the event of the termination of DURA's right to continue Development of one or more Spiros Products pursuant to Section 10.4 as a result of an Event of Default by DURA, DURA shall within thirty (30) days of the effective date of such termination, transfer to Spiros Corp. II all Program Technology and all other data, records and materials in DURA's possession or control which relate to such Spiros Products. DURA shall also cooperate in the transfer of regulatory filings related to such Spiros Products, and take such other

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actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of such Development rights to Spiros Corp. II.

10.5.2 CONTINUING OBLIGATION TO MAKE PAYMENTS. Termination of this Agreement shall not relieve the parties hereto of any liability, including any obligation to pay any amounts payable by any party to another party which accrued prior to such termination, nor preclude any party from pursuing all rights and remedies it may have hereunder or at law or equity with respect to any breach of this Agreement nor prejudice any party's right to obtain performance of any obligation.

11. MISCELLANEOUS.

11.1 NO IMPLIED WAIVERS; RIGHTS CUMULATIVE. No failure on the part of DURA or Spiros Corp. II to exercise and no delay in exercising any right, power, remedy or privilege under this Agreement or provided by statute or at law or in equity or otherwise, including, without limitation, the right or power to terminate this Agreement, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or

privilege.

11.2 FORCE MAJEURE. DURA and Spiros Corp. II shall each be excused for any failure or delay in performing any of their respective obligations under this Agreement, if such failure or delay is caused by Force Majeure.

11.3 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement is intended or is to be construed to constitute DURA and Spiros Corp. II as partners or joint venturers or one party as an employee of any other party. Except as expressly provided herein, no party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other party or to bind any other party to any contract, agreement or undertaking with any third party.

11.4 NOTICES. All notices, requests and other communications to DURA or Spiros Corp. II hereunder shall be in writing (including telecopy or similar electronic transmissions), shall refer specifically to this Agreement and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered mail or certified mail, return receipt requested and postage prepaid, or by reliable overnight courier service, in each case to the respective address specified below (or to such address as may be specified in writing to the other party hereto):

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If to DURA, addressed to:

Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President
with a copy to the attention of General Counsel

If to Spiros Corp. II, addressed to:

Spiros Development Corporation II, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

Any notice or communication given in conformity with this Section 12.4 shall be deemed to be effective when received by the addressee, if delivered by hand, telecopy or electronic transmission, three (3) days after mailing, if mailed and one (1) business day after delivery to a reliable overnight courier service.

11.5 FURTHER ASSURANCES. Each of DURA and Spiros Corp. II hereby agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such additional assignments, agreements, documents and instruments, that may be necessary or as the other party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other party its rights and remedies under, this Agreement.

11.6 SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement shall inure to the benefit of, and be binding upon, DURA, Spiros Corp. II, and their respective successors and assigns; PROVIDED, HOWEVER, that DURA and Spiros Corp. II may not assign or otherwise transfer any of their respective rights and interests, nor delegate any of their respective obligations, hereunder, including, without limitation, pursuant to a merger or consolidation, without the prior written consent of the other party hereto; PROVIDED FURTHER, HOWEVER, that DURA may fully assign its rights and interests, and delegate its obligations, hereunder, effective upon written notice thereof (a) to an Affiliate if such Affiliate assumes all of the obligations of DURA hereunder and this Agreement remains binding upon DURA; or (b) to any Person that acquires all or substantially all of the assets of DURA, or which is the surviving Person in a merger or consolidation with DURA, if such Person assumes all the obligations of DURA hereunder. Notwithstanding the foregoing, Spiros Corp. II shall have the right to assign its rights and delegate its obligations hereunder following

expiration or termination (other than by exercise) of the Purchase Option. Notwithstanding the foregoing, Spiros Corp. II shall have the right to assign its rights and delegate its obligations hereunder following expiration or termination (other than by exercise) of the Purchase Option. Any attempt to assign or delegate any portion of this Agreement in violation of this Section 11.6 shall be null and void. Subject to the foregoing any reference to DURA or Spiros Corp. II hereunder shall be deemed to include the successors thereto and assigns thereof.

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11.7 AMENDMENTS. No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent by DURA or Spiros Corp. II to any departure therefrom, shall in any event be effective unless the same shall be in writing specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by DURA and Spiros Corp. II, and each amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement shall be varied, contradicted or explained by any other agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by DURA and Spiros Corp. II.

11.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, as applied to contracts made and performed entirely within the State of California. Except as otherwise provided herein, any claim or controversy arising out of or related to this contract or any breach hereof shall be submitted to a court of competent jurisdiction in the State of California, and the parties hereby consent to the jurisdiction and venue of such court.

11.9 SEVERABILITY. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, DURA and Spiros Corp. II hereby waive any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

11.10 HEADINGS. Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

11.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

11.12 ENTIRE AGREEMENT. This Agreement, together with any agreements referenced herein, constitute, on and as of the date hereof, the entire agreement of DURA and Spiros Corp. II with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between DURA and Spiros Corp. II with respect to such subject matter are hereby superseded in their entirety.

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-10-

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

DURA PHARMACEUTICALS, INC.

By /s/ Cam L. Garner

Cam L. Garner
President and Chief Executive Officer

SPIROS DEVELOPMENT CORPORATION II, INC.

By /s/ David S. Kabakoff

David S. Kabakoff
President and Chief Executive Officer

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

SCHEDULE 1.1

GLOSSARY

SCHEDULE 1.1

SCHEDULE 1.1

GLOSSARY

"AFFILIATE" of a person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. In the case of a corporations, "control" shall mean, among other things, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting stock.

"AGREEMENTS" shall mean the Manufacturing and Marketing Agreement, the Technology Agreement and the Development Agreement.

"ALBUTEROL OPTION" shall have the meaning assigned to it in Section 1.1 of

the Albuterol and Product Option Agreement.

"ALBUTEROL AND PRODUCT OPTION AGREEMENT" shall mean the Albuterol and Product Option Agreement dated as of December 22, 1997, between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"ALBUTEROL OPTION CLOSING DATE" shall have the meaning assigned to it in Section 1.5 of the Albuterol and Product Option Agreement.

"ALBUTEROL PROGRAM ASSETS" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL PRODUCT" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"AVAILABLE FUNDS" shall mean the sum of (a) the net proceeds to Spiros Corp. II from the sale of the Units in the Offering and the Contribution, (b) all royalties or fees remitted to Spiros Corp. II by DURA (or its Affiliates) from the Sale of Spiros Products or in consideration of license rights granted pursuant to the Agreements, (c) the Option Proceeds, if any, (d) any other amounts provided by DURA to Spiros Corp. II, if any and (e) interest or other income earned through temporary investment of the amounts described in clauses (a), (b), (c) or (d).

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, as amended from time to time.

"CLAIM" shall mean any and all liabilities, damages, losses, settlements, claims, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees).

SCHEDULE 1.1

"CONFIDENTIAL INFORMATION" shall mean all Program Technology disclosed by DURA (and its Affiliates) to Spiros Corp. II or by Spiros Corp. II to DURA pursuant to the Agreements or the Services Agreement.

"CONTRIBUTION" shall have the meaning assigned in Section 5.2 of the Development Agreement.

"CORE TECHNOLOGY" shall mean the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology.

"DDSI CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DDSI as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DDSI Patent Rights; PROVIDED, HOWEVER, that DDSI Core Technology shall also include Technology acquired by DDSI from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DDSI's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DDSI owns, or under which DDSI is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DDSI INDEMNITEE" shall mean DDSI, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DDSI PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DDSI (or the rights to which have been assigned to DDSI) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DESIGNATED COMPOUND(S)" shall mean any compounds for delivery using the System selected by Spiros Corp. II, and agreed to be developed by DURA.

"DEVELOPED TECHNOLOGY" shall mean any Technology including, without limitation, any enhancements, substitutions or improvements to the Core Technology that is (a) discovered, developed or otherwise acquired by DURA pursuant to the terms of the Development Agreement or (b) otherwise acquired by or on behalf of Spiros Corp. II during the term of the Development Agreement.

"DEVELOPMENT" shall mean the further development of the Program Technology for the purpose of identifying, developing, manufacturing, marketing and commercializing Spiros Products and

SCHEDULE 1.1

the making of the Other Expenditures.

"DEVELOPMENT AGREEMENT" shall mean the Development Agreement dated as of December 22, 1997, between DURA and Spiros Corp., as amended, modified or supplemented from time to time.

"DEVELOPMENT COSTS" shall mean the Direct Development Costs, the Indirect Development Costs and the Other Expenditures.

"DEVELOPMENT TERM" shall mean the period commencing on the Closing Date and ending on the earlier of (a) the Option Closing Date or (b) the date the Option terminates or expires other than by exercise.

"DIRECT DEVELOPMENT COSTS" shall mean all costs incurred by DURA or its Affiliates in respect of the Development, other than Indirect Development Costs, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis. Direct Development Costs shall consist primarily of fully-burdened payroll costs (burdened to include benefits, payroll taxes and an allocation of facilities and overhead costs) and any other such costs generated internally by DURA in respect of the Development.

"DPI" shall mean the motor-driven dry powder inhaler (other than an inahler designed to deliver a single dose of a drug) developed by DURA, DDSI and/or Spiros Corp. and to be developed by DURA and/or Spiros Corp. II.

"DURA COMMON STOCK" shall mean the Common Stock of DURA, par value \$.001 per share.

"DURA CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DURA as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DURA Patent Rights and DURA Trademarks; PROVIDED, HOWEVER, that DURA Core Technology shall also include Technology acquired by DURA from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DURA's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DURA owns, or under which DURA is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DURA INDEMNITEE" shall mean DURA, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DURA PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DURA (or the rights to which have been assigned to DURA) as of the date of the Technology Agreement relating to DPis, PSSs and/or formulation methods for dry powder inhalation, (b) any

SCHEDULE 1.1

patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DURA TRADEMARKS" shall mean SpirosTM.

"EVENT OF DEFAULT" shall mean any of the following events: (a) at any time, if DURA or Spiros Corp. II fails to perform or observe or otherwise breaches any of its Material Obligations, and such failure or breach continues unremedied for a period of sixty (60) days after receipt by of written notice thereof from the other party; (b) at any time, effective as set forth in a written notice from the other party if DURA or Spiros Corp. II shall (i) seek the liquidation, reorganization, dissolution or winding-up of itself or the composition or readjustment of its debts (other than pursuant to a merger with an Affiliate), (ii) apply for or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator for itself or of all or a substantial part of its assets, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts (other than pursuant to a merger with an Affiliate) or (vi) adopt any resolution of its Board of Directors or shareholders for the purpose of effecting any of the foregoing (other than pursuant to a merger with an Affiliate); or (c) at any time, effective as set forth in a written notice from the other party, if a proceeding or case shall be commenced without the application or consent of DURA or Spiros Corp. II as applicable, and such proceeding or case shall continue undismissed, or an order, judgment or decrees approving or ordering any of the following shall be entered and continued unstayed and in effect, for a period of sixty (60) days from and after the date service of process is effected, seeking (i) DURA's or Spiros Corp. II's, as applicable, liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of DURA or Spiros Corp. II or for all or any substantial part of its assets or (iii) similar relief in respect of DURA or Spiros Corp. II under any law relating to bankruptcy, insolvency, reorganization, winding-up or the composition or readjustment of debts.

"FDA" shall mean the United States Food and Drug Administration or any successor agency or authority, the approval of which is required to market health care products in the United States.

"FDA APPROVAL" shall mean the final regulatory approval of the FDA required to commence commercial marketing of a health product.

SCHEDULE 1.1

"FORCE MAJEURE" shall mean any act of God, any accident explosion, fire, storm, earthquake, flood, drought, peril of the sea, riot, embargo, war or foreign, federal, state or municipal order of general application, seizure, requisition or allocation, any failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event.

"INDIRECT DEVELOPMENT COSTS" shall mean all costs, fees and out-of-pocket or other expenses, including the purchase of any capital equipment related to the Development, incurred or paid by DURA to a third party, other than an Affiliate of DURA, in respect of the Development, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis.

"MANUFACTURING AND MARKETING AGREEMENT" shall mean the Manufacturing and Marketing Agreement dated as of December 22, 1997 between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"MANUFACTURE" shall mean the manufacture and assembly of the Spiros Products.

"MATERIAL OBLIGATION" shall mean the material obligations of a party under the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement.

"NET SALES" shall mean the gross amount invoiced for sales of Spiros Products by DURA or its sublicensees, if any, to third parties less (i) discounts actually allowed, (ii) credits for claims, allowances, retroactive

price reductions or returned Spiros Products, (iii) prepaid freight charges incurred in transporting Spiros Products to customers, (iv) sales taxes and other governmental charges actually paid in connection with the sales (but excluding what is commonly known as income taxes) and (v) any royalty obligations under the 1993 Royalty Agreement. Net Sales shall not include sales between or among DURA, its Affiliates and its sublicensees unless such sales are for end use rather than for purposes of resale.

"OFFERING" shall mean the underwritten public offering of the Units pursuant to the Registration Statement.

"OPTION PROCEEDS" shall have the meaning assigned to it in Section 3 of the Albuterol and Product Option Agreement.

"OPTION PRODUCT" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"OTHER EXPENDITURES" shall mean funds spent by Spiros Corp. II to acquire capital equipment, develop a next generation inhaler system or to enhance the System.

SCHEDULE 1.1

"PATENT RIGHTS" shall mean any patents or patent applications within the Spiros Corp. II Patent Rights, the DURA Patent Rights, the DDSI Patent Rights and the Spiros Corp. Patent Rights.

"PERSON" shall mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity.

"PRODUCT OPTION" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"PRODUCT OPTION CLOSING DATE" shall have the meaning assigned to it in Section 2.5 of the Albuterol and Product Option Agreement.

"PROGRAM TECHNOLOGY" shall mean the Core Technology and the Developed Technology.

"PSS" shall mean the powder storage system developed and to be developed by DURA for use with the DPI.

"PURCHASE AGREEMENT" shall mean the Purchase Agreement dated as of December 16, 1997, among DURA, Spiros Corp. II, Merrill Lynch & Co., and Donaldson, Lufkin & Jenrette.

"PURCHASE OPTION" shall mean the option granted to the holder of Spiros Corp. II's Special Common Stock to purchase all of the Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION CLOSING DATE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION EXERCISE PRICE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter

"REGISTRATION STATEMENT" shall mean the Registration Statement on Form S-1/S-3 filed by Spiros Corp. II and DURA dated October 10, 1997 (No. 333-37673/333-37673-01), including all exhibits and any amendments thereof and supplements thereto.

"RESEARCH FUNDS" shall mean the Available Funds, less (i) all general and administrative expenses including, without limitation, those paid or payable pursuant to the Development Agreement or the Services Agreement, and the reasonable out-of-pocket expenses of Spiros Corp. II directors and reasonable compensation for Spiros Corp. II's independent directors, less (ii) any amounts paid to DURA under the Development Agreement or the Services Agreement, less (iii) any costs and expenses incurred in the defense or settlement of any action or claim or in respect of a judgment thereon, and less (iv) One Million Dollars

(\$1,000,000) to be retained by Spiros Corp. II as working capital in the event DURA does not exercise the Purchase Option.

SCHEDULE 1.1

"SALE(S)" or "SELL" shall mean the activity undertaken by a sales representative during a sales call on physicians, physician assistants, nurses, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies (including all forms of communication not involving face to face contact by such sales representatives), describing the FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Spiros Product, in a fair and balanced manner consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (and the regulations thereunder).

"SPIROS CASSETTE SYSTEM" shall mean a DPI in which the PSS is in the form of a cassette.

"SPIROS CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by Spiros Corp. as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the Spiros Corp. Patent Rights; PROVIDED, HOWEVER, that Spiros Core Technology shall also include Technology acquired by Spiros Corp. from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on Spiros Corp.'s ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that Spiros Corp. owns, or under which Spiros Corp. is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"SPIROS CORP. INDEMNITEE" shall mean Spiros Corp., its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by Spiros Corp. (or the rights to which have been assigned to Spiros Corp.) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"SPIROS CORP. II CHARTER" shall mean Amended and Restated Certificate of Spiros Development Corporation II, Inc. in effect as of the closing of the Offering, as amended from time to time.

"SPIROS CORP. II COMMON STOCK" shall mean the Callable Common Stock of Spiros Corp. II, \$.001 par value.

"SPIROS CORP. II INDEMNITEE" shall mean Spiros Corp. II, its

SCHEDULE 1.1

successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. II PATENT RIGHTS" shall mean those certain inventions described in claims of (a) any patent application having one or more claims covering Developed Technology, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing applications or (c) any patent issued or issuing upon any of the foregoing applications.

"SPIROS PRODUCT(S)" shall mean (a) any System used with a formulation of albuterol, beclomethasone, ipratropium, an albuterol-ipratropium combination, budesonide or a Designated Compound developed, produced, manufactured or marketed by DURA on behalf of Spiros Corp. II using the Program Technology.

"SPIROS PRODUCT PROGRAM ASSETS" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"SYSTEM" shall mean the DPI and the PSS when used together.

"TECHNOLOGY" shall mean, solely with respect to motor-driven dry powder inhalers and powder storage systems for drugs for delivery through such inhalers, the manufacture thereof, and formulations of drugs to be delivered through such inhalers, public and nonpublic technical or other information, trade secrets, know-how, processes, formulations, concepts, ideas, preclinical, clinical, pharmacological or other data and testing results, experimental methods, or results, assays, descriptions, business or scientific plans, depictions, customer lists and any other written, printed or electronically stored materials, pharmaceutical compounds or any other natural or man-made pharmaceutical materials and any and all other intellectual property, including patents and patent applications, of any nature whatsoever. The term "Technology" shall include, without limitation, any of the foregoing as it relates to enhancements of, substitutions for or improvements to the Core Technology.

"TECHNOLOGY AGREEMENT" shall mean the Technology License Agreement dated as of December 22, 1997, among DURA, DDSI, Spiros Corp. and Spiros Corp. II, as amended, modified or supplemented from time to time.

"TERRITORY" shall mean the entire world.

"UNDERWRITERS" shall have the meaning assigned to it in the Registration Statement.

"UNITS" shall mean units, each consisting of one share of Spiros Corp. II Common Stock and one warrant to purchase one-fourth of one share of DURA Common Stock, all as described in the Registration Statement.

SCHEDULE 1.1

"1993 ROYALTY AGREEMENT" shall have the meaning assigned to it in the Registration Statement.

SCHEDULE 2.1

Proposed Budget and Workplan

<TABLE>
<CAPTION>

	Year ended December 31, (in millions)					
	(3 months) 1997 (2)	1998	1999	2000	(4 months) 2001	Total
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Beginning cash balance	\$ --	\$151.7	\$95.8	\$45.9	\$12.4	\$ --
Dura Contribution	75.0	--	--	--	--	75.0
Net proceeds of the Offerings	81.7	--	--	--	--	81.7
Interest income(1)	--	6.0	3.5	1.4	0.3	11.2
Total	\$156.7	\$157.7	\$99.3	\$47.3	\$12.7	\$167.9
Payments						
Albuterol	3.4	30.3	--	--	--	33.7
Beclomethasone	1.6	9.1	6.0	0.3	--	17.0
Budesonide	--	4.6	15.2	11.1	6.3	37.2
Ipratropium	--	9.5	16.1	9.0	--	34.6
Albuterol-Ipratropium	--	6.5	11.2	10.1	3.0	30.8
Other Expenditures	--	1.5	4.5	4.0	2.0	12.0

General and administrative expenses	--	0.4	0.4	0.4	0.4	1.6
	-----	-----	-----	-----	-----	-----
Total	\$ 5.0	\$ 61.9	\$53.4	\$34.9	\$11.7	\$166.9
	-----	-----	-----	-----	-----	-----
Ending cash balance	\$151.7	\$ 95.8	\$45.9	\$12.4	\$ 1.0	\$ 1.0
	-----	-----	-----	-----	-----	-----
	-----	-----	-----	-----	-----	-----

</TABLE>

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- (1) Assumes an interest rate of 5%.
 - (2) Expenditures in the year ended December 31, 1997 include approximately \$4 million to repay Dura for estimated costs and expenses to be incurred by Dura on behalf of Spiros Corp. II between October 10, 1997 and the closing of the Offerings.

SCHEDULE 5.3

Contracting for Development services through closing.

Dry powder inhaler and drug development costs through closing of the Offering.

SCHEDULE 5.3

ALBUTEROL AND PRODUCT OPTION AGREEMENT

This ALBUTEROL AND PRODUCT OPTION AGREEMENT, is dated as of December 22, 1997, by and between DURA PHARMACEUTICALS, INC., a Delaware corporation ("DURA"), and SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp II").

RECITALS

A. DURA and Spiros Development Corporation, a Delaware corporation ("Spiros Corp.") are parties to the Agreements as hereinafter defined. Except where the context requires otherwise, capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Glossary attached as SCHEDULE 1.1 to this Agreement.

B. Pursuant to the Technology Agreement, each of DURA and Spiros Corp. have granted to Spiros Corp. II, and Spiros Corp. II has acquired from each of DURA and Spiros Corp., an exclusive license to certain patent rights and technology for the purpose of allowing Spiros Corp. II to develop and commercialize Spiros Products.

C. As a condition to entering into the Agreements, and in partial consideration of the Contribution, DURA desires to receive from Spiros Corp. II, and Spiros Corp. II is willing to grant to DURA, an option to acquire the Albuterol Program Assets (defined in Section 1.1 below), pursuant to the terms of this Agreement.

D. As a further condition to entering into the Agreements, and in partial consideration of the Contribution, DURA desires to receive from Spiros Corp. II, and Spiros Corp. II is willing to grant to DURA, an option to acquire the Spiros Product Program Assets (defined in Section 2.1 below), pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DURA and Spiros Corp. II hereby agree as follows:

1. ALBUTEROL OPTION

1.1 GRANT OF ALBUTEROL OPTION. Subject to the terms and conditions of this Agreement, Spiros Corp. II hereby grants to DURA an option (the "Albuterol Option") to acquire, for all purposes, medical uses and indications without any limitation imposed by Spiros Corp. II, all of Spiros Corp. II's right, title and interest in and to the following (the "Albuterol Program Assets"): (a) the

product developed by DURA pursuant to the Development Agreement with albuterol in the Spiros Cassette System (the "Albuterol Product"), (b) albuterol as formulated for use in the Albuterol Product, (c) a perpetual, sublicensable, non-exclusive, royalty-free license to the technology owned by Dura or developed or acquired by Dura during the term of the Development

Agreement applicable to the Albuterol Product for use solely with the Albuterol Product, and (d) all applications and documents filed with the FDA or any other regulatory body to obtain regulatory approval to commence commercial sale or use of the Albuterol Product. The tangible manifestations of the Albuterol Program Assets shall be delivered to DURA promptly following the Albuterol Option Closing Date (defined in Section 1.5 below).

1.2 ALBUTEROL OPTION PERIOD. Subject to earlier termination pursuant to Section 8 hereof, the Albuterol Option is exercisable commencing on the date of this Agreement and ending (the "Albuterol Option Termination Date") at 11:59 p.m., San Diego time, on the earlier of (a) three hundred and sixty (360) days after receipt of FDA Approval of the Albuterol Product or (b) the date following the commencement of Manufacture of the Albuterol Product pursuant to the Manufacturing and Marketing Agreement upon which Dura ceases to manufacture or market the Albuterol Product in accordance with the terms of the Manufacturing and Marketing Agreement. If the Albuterol Option Termination Date is not a business day, then the Albuterol Option Termination Date shall be 11:59 p.m., San Diego time, on the next succeeding business day.

1.3 EXERCISE PRICE. Upon exercise of the Albuterol Option, DURA shall make a single payment (the "Albuterol Option Exercise Price") to Spiros Corp. II equal to (a) the aggregate Purchase Option Exercise Price, assuming acquisition of all shares of Spiros Corp. II Common Stock issued pursuant to the Offering four years following the date of closing of the Offering, multiplied by (b) a fraction, the numerator of which will equal the development and commercialization costs and expenses incurred by Spiros Corp. II in connection with the development and commercialization of the Albuterol Product and the denominator of which will equal \$ 167,900,000 plus the net proceeds to DURA, if any, from the exercise by of the over-allotment option described in the Registration Statement by the Underwriters in connection with the Offering.

1.4 FORM OF PAYMENT. The Albuterol Option Exercise Price shall be paid in cash, by certified or bank cashier's check (or wire transfer) made payable to Spiros Corp. II.

1.5 MANNER OF EXERCISE. The Albuterol Option may be exercised at any time during the Albuterol Option Period by written notice (the "Albuterol Purchase Exercise Notice") to Spiros Corp. II, signed by an executive officer of DURA, stating that the Albuterol Option is being exercised and setting forth: (a) the estimated Albuterol Option Exercise Price as determined in accordance with Section 1.3 hereof; and (b) a closing date, not less than twenty (20) nor more than sixty (60) days after the date of such notice (the "Albuterol Option

Closing Date"), on which the Albuterol Program Assets shall be purchased.

1.6 ALBUTEROL OPTION CLOSING DATE.

(a) At the closing of the Albuterol Option on the Albuterol Option Closing Date, (i) Spiros Corp. II shall deliver to DURA such documents, bills of sale, licenses, sublicenses, further instruments of transfer and assignment and other papers and take such further actions as may be reasonably required or desirable to effect the transfer of the Albuterol Program Assets contemplated hereby, and (ii) DURA shall deliver to Spiros Corp. II a certified or bank cashier's check (or wire transfer) in the amount of the Albuterol Option Exercise Price.

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(b) Transfer of all Albuterol Program Assets to DURA shall be deemed to occur automatically on the Albuterol Option Closing Date, subject to the provisions of Section 5 hereof. Notwithstanding any other provision of this Agreement, with respect to any rights held by Spiros Corp. II pursuant to an agreement with any person other than DURA, which rights relate to the Albuterol Program Assets, the rights granted to DURA hereunder shall be limited to the rights which Spiros Corp. II has a right to assign or grant under such agreement and shall be subject to any obligations assumed by Spiros Corp. II in consideration of the grant or assignment of such rights to Spiros Corp. II, including all obligations to pay any license fees and royalties with respect to the Albuterol Program Assets (such assumed obligations being referred to herein as the "Assumed Albuterol Obligations"); PROVIDED, HOWEVER, that Spiros Corp. II shall use commercially reasonable efforts to obtain the right to grant sublicenses or assign such rights on terms reasonably acceptable to DURA.

2. PRODUCT OPTION

2.1 GRANT OF PRODUCT OPTION. Subject to the terms and conditions of this Agreement, Spiros Corp. II hereby grants to DURA an option (the "Product Option") to acquire, for all purposes, medical uses and indications without any limitation imposed by Spiros Corp. II, all of Spiros Corp. II's right, title and interest in and to the following (the "Spiros Product Program Assets"): (a) a single Spiros Product (other than the Albuterol Product) developed by DURA pursuant to the Development Agreement for which DURA determines to exercise the Product Option (the "Option Product"), (b) the compound to be delivered by the Option Product, as formulated for use specifically in the Option Product, (c) a perpetual, sublicensable, non-exclusive, royalty-free license to the technology owned by Dura or developed or acquired by Dura during the term of the Development Agreement applicable to the Option Product for use solely with the Option Product, and (d) all applications and documents filed with the FDA or any other regulatory body to obtain regulatory approval to commence commercial sale or use of the Option Product. The tangible manifestations of the Spiros Product Program Assets shall be delivered to DURA promptly following the Product Option

Closing Date (as defined in Section 2.5 below).

2.2 PRODUCT OPTION PERIOD. Subject to earlier termination pursuant to Section 8 hereof, the Product Option is exercisable with respect to each Spiros Product commencing on the date of this Agreement and ending (the "Product Option Termination Date") at 11:59 p.m., San Diego time, ninety (90) days after receipt of FDA Approval of such Spiros Product. If the Product Option Termination Date is not a business day, then the Product Option Termination Date shall be 11:59 p.m., San Diego time, on the next succeeding business day.

2.3 EXERCISE PRICE. Upon exercise of the Product Option, DURA shall make a single payment (the "Product Option Exercise Price") to Spiros Corp. II, of one hundred and ten percent (110%) of (a) the aggregate Purchase Option Exercise Price, assuming acquisition of all shares of Spiros Corp. II Common Stock issued pursuant to the Offering four years following the date of closing of the Offering, multiplied by (b) a fraction, the numerator of which will equal the development and commercialization costs and expenses incurred by Spiros Corp. II in connection

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with the development and commercialization of the Option Product and the denominator of which will equal \$167,900,000 plus the net proceeds to DURA, if any, from the exercise by of the over-allotment option described in the Registration Statement by the Underwriters in connection with the Offering.

2.4 FORM OF PAYMENT. The Product Option Exercise Price shall be paid in cash, by certified or bank cashier's check (or wire transfer) made payable to Spiros Corp. II.

2.5 MANNER OF EXERCISE. The Product Option may be exercised at any time during the Product Option Period by written notice (the "Product Purchase Exercise Notice") to Spiros Corp. II, signed by an executive officer of DURA, stating that the Product Option is being exercised and setting forth: (a) the Spiros Product to be designated as the Option Product; (b) the estimated Product Option Exercise Price as determined in accordance with Section 2.3 hereof; and (c) a closing date, not less than twenty (20) nor more than sixty (60) days after the date of such notice (the "Product Option Closing Date"), on which the Spiros Product Program Assets shall be purchased.

2.6 PRODUCT OPTION CLOSING DATE.

(a) At the closing of the Product Option on the Product Option Closing Date, (i) Spiros Corp. II shall deliver to DURA such documents, bills of sale, licenses, sublicenses, further instruments of transfer and assignment and other papers and take such further actions as may be reasonably required or desirable to effect the transfer of the Spiros Product Program Assets

contemplated hereby, and (ii) DURA shall deliver to Spiros Corp. II a certified or bank cashier's check (or wire transfer) in the amount of the Product Option Exercise Price.

(b) Transfer of all Spiros Product Program Assets to DURA shall be deemed to occur automatically on the Product Option Closing Date, subject to the provisions of Section 5 hereof. Notwithstanding any other provision of this Agreement, with respect to any rights held by Spiros Corp. II pursuant to an agreement with any person other than DURA, which rights relate to the Spiros Product Program Assets, the rights granted to DURA hereunder shall be limited to the rights which Spiros Corp. II has a right to assign or grant under such agreement and shall be subject to any obligations assumed by Spiros Corp. II in consideration of the grant or assignment of such rights to Spiros Corp. II, including all obligations to pay any license fees and royalties with respect to the Spiros Product Program Assets (such assumed obligations being referred to herein as the "Assumed Option Product Obligations"); PROVIDED, HOWEVER, that Spiros Corp. II shall use commercially reasonable efforts to obtain the right to grant sublicenses or assign such rights on terms reasonably acceptable to DURA.

3. DISPOSITION OF ALBUTEROL OPTION EXERCISE PRICE AND PRODUCT OPTION EXERCISE PRICE. Until the expiration or termination of the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement, at which time all proceeds of the Albuterol Option Exercise Price and Product Option Exercise Price (together with any interest, dividends and other earnings thereon, the "Option Proceeds") received by Spiros Corp. II will become unrestricted as to disposition or use by Spiros Corp. II, the Option Proceeds shall be deemed Available Funds and shall not be otherwise expended, used, encumbered or distributed.

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4. REPRESENTATIONS, WARRANTIES AND COVENANTS. The provisions of Section 3 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

5. CONDITIONS TO ALBUTEROL OR PRODUCT OPTION CLOSING.

5.1 CONDITIONS TO OBLIGATIONS OF DURA. The obligations of DURA to consummate the transactions contemplated by this Agreement following exercise of the Albuterol Option or the Product Option shall be subject, at DURA's option, to the fulfillment at or prior to the Albuterol Closing Date or Product Option Closing Date, as the case may be, of each of the following conditions:

(a) Spiros Corp. II shall have duly executed and delivered to DURA each of the documents, certificates and other items provided in Section 1.6(a)(i), in the case of the exercise of the Albuterol Option, and Section 2.6(a)(i), in the case of the exercise of the Product Option, of this Agreement to the reasonable satisfaction of DURA and its counsel.

(b) The representations and warranties made by Spiros Corp. II in Section 3.1 of the Technology Agreement shall be true and correct in all material respects on and as of the Albuterol Option Closing Date or the Product Option Closing Date, as the case may be, with the same effect as though such representations and warranties had been made or given on and as of such date, and Spiros Corp. II shall have performed and complied in all material respects with all of Spiros Corp. II's obligations under this Agreement which are to be performed or complied with by it on or prior to the Albuterol Option Closing Date or the Product Option Closing Date, as the case may be.

(c) No action, suit or other proceeding before a court, tribunal or other governmental agency or body shall have been instituted or threatened to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of governmental authority having appropriate jurisdiction, and no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a government, regulatory or administrative agency or commission nor any statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect which would (i) make the acquisition or holding by DURA of the Albuterol Program Assets, or the Spiros Product Program Assets, as the case may be, illegal or impose material limitations on its ability to exercise full rights of ownership with respect to such Albuterol Program Assets or Spiros Product Program Assets, as the case may be, or (ii) otherwise prevent the consummation of the transactions contemplated hereby.

5.2 CONDITIONS TO OBLIGATIONS OF SPIROS CORP. II. The obligations of Spiros Corp. II to consummate the transactions contemplated by this Agreement following exercise of the Albuterol Option or Product Option, shall be subject, at Spiros Corp. II's option, to the

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fulfillment at or prior to the Albuterol Option Closing Date or Product Option Closing Date, as the case may be, of each of the following conditions:

(a) DURA shall have delivered to Spiros Corp. II the Albuterol Option Exercise Price or the Product Option Exercise Price, as the case may be.

(b) Each of the representations and warranties made by DURA in Section 3.1 of the Technology Agreement shall be true and correct in all material respects on and as of the Albuterol Option Closing Date or the Product Option Closing Date, as the case may be, with the same effect as though such representations and warranties had been made or given on and as of such date, and DURA shall have performed and complied in all material respects with all of

DURA's obligations under this Agreement which are to be performed or complied with on or prior to the Albuterol Option Closing Date or the Product Option Closing Date, as the case may be.

(c) No action, suit or other proceeding before a court, tribunal or other governmental agency or body shall have been instituted or threatened to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of governmental authority having appropriate jurisdiction, and no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a government, regulatory or administrative agency or commission nor any statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect which would (i) make the transfer by Spiros Corp. II of the Albuterol Program Assets or the Spiros Product Program Assets, as the case may be, pursuant to this Agreement illegal or (ii) otherwise prevent the consummation of the transactions contemplated hereby.

6. DISCLAIMER OF WARRANTY. SPIROS CORP. II DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, (a) THAT THE ALBUTEROL PROGRAM ASSETS OR THE SPIROS PRODUCT PROGRAM ASSETS, OR ANY USE THEREOF, WILL BE FREE FROM CLAIMS OF PATENT INFRINGEMENT, INTERFERENCE OR UNLAWFUL USE OF PROPRIETARY INFORMATION OF ANY THIRD PARTY AND (b) OF THE ACCURACY, RELIABILITY, TECHNICAL OR COMMERCIAL VALUE, COMPREHENSIVENESS OR MERCHANTABILITY OF THE ALBUTEROL PROGRAM ASSETS OR THE SPIROS PRODUCT PROGRAM ASSETS OR THEIR SUITABILITY OR FITNESS FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, DEVELOPMENT, MANUFACTURE, USE OR SALE OF PRODUCTS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO OTHER WARRANTIES OF WHATEVER NATURE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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7. ADDITIONAL AGREEMENTS. Following the receipt of the Albuterol Option Exercise Notice and until the Albuterol Option Closing Date and following the receipt of the Product Option Exercise Notice and until the Product Option Closing Date, the following shall apply:

(a) DURA and Spiros Corp. II will take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on them with respect to the consummation of the transactions contemplated by this Agreement. DURA and Spiros Corp. II will take all reasonable actions necessary to obtain (and will cooperate with the other party in obtaining) any consent, approval, order or authorization of, or any registration, declaration or filing with, any governmental entity, domestic or foreign, or other person, required to be obtained or made by such party in connection with the taking of any action contemplated by this Agreement.

(b) Spiros Corp. II shall each use its best efforts to ensure a quick and effective transfer to DURA of the Albuterol Program Assets or the Spiros Product Program Assets, as the case may be.

(c) Spiros Corp. II will use its best efforts to preserve the business organization of Spiros Corp. II intact and, with respect to the Albuterol Program Assets or the Spiros Product Program Assets, as the case may be, carry on its business diligently and in substantially the same manner as it did prior to such exercise and will take such action as may be necessary to maintain, preserve, renew and keep in force and effect the existence, rights and franchises of Spiros Corp. II, and Spiros Corp. II shall not, with respect thereto, make or institute any change in its methods of sale, management, accounting or operation.

(d) Spiros Corp. II shall ensure that, with respect to all Albuterol Program Assets or all Spiros Product Program Assets, as the case may be, no contract or commitment will be entered into, and no purchase or sale of assets (tangible or intangible) will be made, by or on behalf of Spiros Corp. II, except contracts, commitments, purchases or sales which are in the ordinary course of business and consistent with past practice and are not material to Spiros Corp. II (individually or in the aggregate).

8. TERM; SURVIVAL.

8.1 TERM. This Agreement shall continue in full force and effect until the earliest of (a) the termination of the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement by Spiros Corp. II as a result of a breach of such agreement by DURA, (b) at such time as both the Albuterol Option and Product Option have terminated as to DURA, whether by exercise or otherwise, or (c) at such time as the Purchase Option terminates, whether by exercise or otherwise, at which time this Agreement shall terminate.

8.2 SURVIVAL. If this Agreement is terminated hereunder, Section 3 shall survive any such termination.

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9. MISCELLANEOUS.

9.1 NO IMPLIED WAIVERS; RIGHTS CUMULATIVE. No failure on the part of DURA or Spiros Corp. II to exercise and no delay in exercising any right, power, remedy or privilege under this Agreement or provided by statute or at law or in equity or otherwise, including, without limitation, the right or power to terminate this Agreement, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial

exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

9.2 FORCE MAJEURE. DURA and Spiros Corp. II shall each be excused for any failure or delay in performing any of their respective obligations under this Agreement, if such failure or delay is caused by Force Majeure.

9.3 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement is intended or is to be construed to constitute DURA and Spiros Corp. II as partners or joint venturers or one party as an employee of any other party. Except as expressly provided herein, no party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other party or to bind any other party to any contract, agreement or undertaking with any third party.

9.4 NOTICES. All notices, requests and other communications to DURA or Spiros Corp. II hereunder shall be in writing (including telecopy or similar electronic transmissions), shall refer specifically to this Agreement and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered mail or certified mail, return receipt requested, postage prepaid, in each case to the respective address specified below (or to such address as may be specified in writing to the other party hereto):

If to DURA, addressed to:

Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President
with a copy to the attention
of General Counsel

If to Spiros Corp. II, addressed to:

Spiros Development Corporation II, Inc.
c/o Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

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Any notice or communication given in conformity with this Section 9.4 shall be deemed to be effective when received by the addressee, if delivered by hand, telecopy or electronic transmission, and three (3) days after mailing, if mailed.

9.5 FURTHER ASSURANCES. Each of DURA and Spiros Corp. II hereby agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such additional assignments, agreements, documents and instruments, that may be necessary or as the other party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other party its rights and remedies under, this Agreement. Each party shall provide each other party with copies of any notices sent hereunder with copies sent at the same time as the original notice.

9.6 SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement shall inure to the benefit of, and be binding upon, DURA, Spiros Corp. II, and their respective successors and assigns; PROVIDED, HOWEVER, that DURA and Spiros Corp. II may not assign or otherwise transfer any of their respective rights and interests, nor delegate any of their respective obligations, hereunder, including, without limitation, pursuant to a merger or consolidation, without the prior written consent of the other party hereto; PROVIDED FURTHER, HOWEVER, that DURA may fully assign its rights and interests, and delegate its obligations, hereunder, effective upon written notice thereof (a) to an Affiliate if such Affiliate assumes all of the obligations of DURA hereunder and this Agreement remains binding upon DURA; or (b) to any Person that acquires all or substantially all of the assets of DURA, or which is the surviving Person in a merger or consolidation with DURA. Any attempt to assign or delegate any portion of this Agreement in violation of this Section 9.6 shall be null and void. Subject to the foregoing any reference to DURA or Spiros Corp. II hereunder shall be deemed to include the successors thereto and assigns thereof.

9.7 AMENDMENTS. No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent by DURA or Spiros Corp. II to any departure therefrom, shall in any event be effective unless the same shall be in writing specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by DURA and Spiros Corp. II, and each amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement shall be varied, contradicted or explained by any other agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by DURA and Spiros Corp. II.

9.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, as applied to contracts made and performed entirely within the State of California. Except as otherwise provided herein, any claim or controversy arising out of or related to this contract or any breach hereof shall be submitted to a court of competent jurisdiction in the State of California, and the parties hereby consent to the jurisdiction and venue of such court.

9.9 SEVERABILITY. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, DURA and Spiros Corp. II hereby waive any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

9.10 HEADINGS. Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

9.12 ENTIRE AGREEMENT. This Agreement, together with any agreements referenced herein and the Prior Agreements, constitutes, on and as of the date hereof, the entire agreement of DURA and Spiros Corp. II with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between DURA and Spiros Corp. II with respect to such subject matter are hereby superseded in their entirety.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal and delivered as of the date first above written.

SPIROS DEVELOPMENT CORPORATION II, INC.

By: /s/ David S. Kabakoff

David S. Kabakoff
President and Chief Executive Officer

DURA PHARMACEUTICALS, INC.

By: /s/ Cam L. Garner

Cam L. Garner
President and Chief Executive Officer

[SIGNATURE PAGE TO ALBUTEROL AND PRODUCT
PURCHASE OPTION AGREEMENT]

SCHEDULE 1.1

GLOSSARY

SCHEDULE 1.1

SCHEDULE 1.1

GLOSSARY

"AFFILIATE" of a person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. In the case of a corporations, "control" shall mean, among other

things, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting stock.

"AGREEMENTS" shall mean the Manufacturing and Marketing Agreement, the Technology Agreement and the Development Agreement.

"ALBUTEROL OPTION" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL AND PRODUCT OPTION AGREEMENT" shall mean the Albuterol and Product Option Agreement dated as of December 22, 1997, between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"ALBUTEROL OPTION CLOSING DATE" shall have the meaning assigned to it in Section 1.5 of the Albuterol and Product Option Agreement.

"ALBUTEROL PROGRAM ASSETS" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL PRODUCT" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"AVAILABLE FUNDS" shall mean the sum of (a) the net proceeds to Spiros Corp. II from the sale of the Units in the Offering and the Contribution, (b) all royalties remitted to Spiros Corp. II by DURA (or its Affiliates) from the Sale of Spiros Products pursuant to the Agreements, (c) the Option Proceeds, if any, (d) any other amounts provided by DURA to Spiros Corp. II, if any and (e) interest or other income earned through temporary investment of the amounts described in clauses (a), (b), (c) or (d).

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, as amended from time to time.

"CLAIM" shall mean any and all liabilities, damages, losses, settlements, claims, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees).

SCHEDULE 1.1

"CONFIDENTIAL INFORMATION" shall mean all Program Technology disclosed by DURA (and its Affiliates) to Spiros Corp. II or by Spiros Corp. II to DURA pursuant to the Agreements or the Services Agreement.

"CONTRIBUTION" shall have the meaning assigned in Section 5.2 of the Development Agreement.

"CORE TECHNOLOGY" shall mean the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology.

"DDSI CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by

DDSI as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DDSI Patent Rights; PROVIDED, HOWEVER, that DDSI Core Technology shall also include Technology acquired by DDSI from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DDSI's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DDSI owns, or under which DDSI is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DDSI INDEMNITEE" shall mean DDSI, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DDSI PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DDSI (or the rights to which have been assigned to DDSI) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DESIGNATED COMPOUND(S)" shall mean any compounds for delivery using the System selected by Spiros Corp. II, and agreed to be developed by DURA.

"DEVELOPED TECHNOLOGY" shall mean any Technology including, without limitation, any enhancements, substitutions or improvements to the Core Technology that is (a) discovered, developed or otherwise acquired by DURA pursuant to the terms of the Development Agreement or (b) otherwise acquired by or on behalf of Spiros Corp. II during the term of the Development Agreement.

"DEVELOPMENT" shall mean the further development of the Program Technology for the purpose of identifying, developing, manufacturing, marketing and commercializing Spiros Products and

SCHEDULE 1.1

the making of the Other Expenditures.

"DEVELOPMENT AGREEMENT" shall mean the Development Agreement dated as of December 22, 1997, between DURA and Spiros Corp., as amended, modified or supplemented from time to time.

"DEVELOPMENT COSTS" shall mean the Direct Development Costs, the Indirect Development Costs and the Other Expenditures.

"DEVELOPMENT TERM" shall mean the period commencing on the Closing Date and ending on the earlier of (a) the Option Closing Date or (b) the date the Option terminates or expires other than by exercise.

"DIRECT DEVELOPMENT COSTS" shall mean all costs incurred by DURA or its Affiliates in respect of the Development, other than Indirect Development Costs, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis. Direct Development Costs shall consist primarily of fully-burdened payroll costs (burdened to include benefits, payroll taxes and an allocation of facilities and overhead costs) and any other such costs generated internally by DURA in respect of the Development.

"DPI" shall mean the motor-driven dry powder inhaler (other than an inahler designed to deliver a single dose of a drug) developed by DURA, DDSI and/or Spiros Corp. and to be developed by DURA and/or Spiros Corp. II.

"DURA COMMON STOCK" shall mean the Common Stock of DURA, par value \$.001 per share.

"DURA CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DURA as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DURA Patent Rights and DURA Trademarks; PROVIDED, HOWEVER, that DURA Core Technology shall also include Technology acquired by DURA from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DURA's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DURA owns, or under which DURA is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DURA INDEMNITEE" shall mean DURA, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DURA PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DURA (or the rights to which have been assigned to DURA) as of the date of the Technology Agreement relating to DPIs, PSSs and/or formulation methods for dry powder inhalation, (b) any

SCHEDULE 1.1

patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DURA TRADEMARKS" shall mean Spiros-TM-.

"EVENT OF DEFAULT" shall mean any of the following events: (a) at any time, if DURA or Spiros Corp. II fails to perform or observe or otherwise breaches any of its Material Obligations, and such failure or breach continues unremedied for a period of sixty (60) days after receipt by of written notice

thereof from the other party; (b) at anytime, effective as set forth in a written notice from the other party if DURA or Spiros Corp. II shall (i) seek the liquidation, reorganization, dissolution or winding-up of itself or the composition or readjustment of its debts (other than pursuant to a merger with an Affiliate), (ii) apply for or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator for itself or of all or a substantial part of its assets, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts (other than pursuant to a merger with an Affiliate) or (vi) adopt any resolution of its Board of Directors or shareholders for the purpose of effecting any of the foregoing (other than pursuant to a merger with an Affiliate); or (c) at any time, effective as set forth in a written notice from the other party, if a proceeding or case shall be commenced without the application or consent of DURA or Spiros Corp. II as applicable, and such proceeding or case shall continue undismissed, or an order, judgment or decrees approving or ordering any of the following shall be entered and continued unstayed and in effect, for a period of sixty (60) days from and after the date service of process is effected, seeking (i) DURA's or Spiros Corp. II's, as applicable, liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of DURA or Spiros Corp. II or for all or any substantial part of its assets or (iii) similar relief in respect of DURA or Spiros Corp. II under any law relating to bankruptcy, insolvency, reorganization, winding-up or the composition or readjustment of debts.

"FDA" shall mean the United States Food and Drug Administration or any successor agency or authority, the approval of which is required to market health care products in the United States.

"FDA APPROVAL" shall mean the final regulatory approval of the FDA required to commence commercial marketing of a health product.

SCHEDULE 1.1

"FORCE MAJEURE" shall mean any act of God, any accident explosion, fire, storm, earthquake, flood, drought, peril of the sea, riot, embargo, war or foreign, federal, state or municipal order of general application, seizure, requisition or allocation, any failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event.

"INDIRECT DEVELOPMENT COSTS" shall mean all costs, fees and out-of-pocket or other expenses, including the purchase of any capital equipment related to the Development, incurred or paid by DURA to a third party, other than an Affiliate of DURA, in respect of the Development, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis.

"MANUFACTURING AND MARKETING AGREEMENT" shall mean the Manufacturing and Marketing Agreement dated as of December 22, 1997 between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"MANUFACTURE" shall mean the manufacture and assembly of the Spiros Products.

"MATERIAL OBLIGATION" shall mean the material obligations of a party under the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement.

"NET SALES" shall mean the gross amount invoiced for sales of Spiros Products by DURA or its sublicensees, if any, to third parties less (i) discounts actually allowed, (ii) credits for claims, allowances, retroactive price reductions or returned Spiros Products, (iii) prepaid freight charges incurred in transporting Spiros Products to customers, (iv) sales taxes and other governmental charges actually paid in connection with the sales (but excluding what is commonly known as income taxes) and (v) any royalty obligations under the 1993 Royalty Agreement. Net Sales shall not include sales between or among DURA, its Affiliates and its sublicensees unless such sales are for end use rather than for purposes of resale.

"OFFERING" shall mean the underwritten public offering of the Units pursuant to the Registration Statement.

"OPTION PROCEEDS" shall have the meaning assigned to it in Section 3 of the Albuterol and Product Option Agreement.

"OPTION PRODUCT" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"OTHER EXPENDITURES" shall mean funds spent by Spiros Corp. II to acquire capital equipment, develop a next generation inhaler system or to enhance the System.

SCHEDULE 1.1

"PATENT RIGHTS" shall mean any patents or patent applications within the Spiros Corp. II Patent Rights, the DURA Patent Rights, the DDSI Patent Rights and the Spiros Corp. Patent Rights.

"PERSON" shall mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity.

"PRODUCT OPTION" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"PRODUCT OPTION CLOSING DATE" shall have the meaning assigned to it in Section 2.5 of the Albuterol and Product Option Agreement.

"PROGRAM TECHNOLOGY" shall mean the Core Technology and the Developed Technology.

"PSS" shall mean the powder storage system developed and to be developed by DURA for use with the DPI.

"PURCHASE AGREEMENT" shall mean the Purchase Agreement dated as of December 16, 1997, among DURA, Spiros Corp. II, Merrill Lynch & Co., and Donaldson, Lufkin & Jenrette.

"PURCHASE OPTION" shall mean the option granted to the holder of Spiros Corp. II's Special Common Stock to purchase all of the Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION CLOSING DATE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION EXERCISE PRICE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter

"REGISTRATION STATEMENT" shall mean the Registration Statement on Form S-1/S-3 filed by Spiros Corp. II and DURA dated October 10, 1997 (No. 333-37673/333-37673-01), including all exhibits and any amendments thereof and supplements thereto.

"RESEARCH FUNDS" shall mean the Available Funds, less (i) all general and administrative expenses including, without limitation, those paid or payable pursuant to the Development Agreement or the Services Agreement, and the reasonable out-of-pocket expenses of Spiros Corp. II directors and reasonable compensation for Spiros Corp. II's independent directors, less (ii) any amounts paid to DURA under the Development Agreement or the Services Agreement, less (iii) any costs and expenses incurred in the defense or settlement of any action or claim or in respect of a judgment thereon, and less (iv) One Million Dollars (\$1,000,000) to be retained by Spiros Corp. II as working capital in the event DURA does not exercise the Purchase Option.

SCHEDULE 1.1

"SALE(S)" or "SELL" shall mean the activity undertaken by a sales representative during a sales call on physicians, physician assistants, nurses, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies (including all forms of communication not involving face to face contact by such sales representatives), describing the FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Spiros Product, in a fair and balanced manner consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (and the regulations thereunder).

"SPIROS CASSETTE SYSTEM" shall mean a DPI in which the PSS is in the form

of a cassette.

"SPIROS CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by Spiros Corp. as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the Spiros Corp. Patent Rights; PROVIDED, HOWEVER, that Spiros Core Technology shall also include Technology acquired by Spiros Corp. from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on Spiros Corp.'s ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that Spiros Corp. owns, or under which Spiros Corp. is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"SPIROS CORP. INDEMNITEE" shall mean Spiros Corp., its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by Spiros Corp. (or the rights to which have been assigned to Spiros Corp.) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"SPIROS CORP. II CHARTER" shall mean Amended and Restated Certificate of Spiros Development Corporation II, Inc. in effect as of the closing of the Offering, as amended from time to time.

"SPIROS CORP. II COMMON STOCK" shall mean the Callable Common Stock of Spiros Corp. II, \$.001 par value.

"SPIROS CORP. II INDEMNITEE" shall mean Spiros Corp. II, its

SCHEDULE 1.1

successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. II PATENT RIGHTS" shall mean those certain inventions described in claims of (a) any patent application having one or more claims covering Developed Technology, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing applications or (c) any patent issued or issuing upon any of the foregoing applications.

"SPIROS PRODUCT(S)" shall mean (a) any System used with a formulation of

albuterol, beclomethasone, ipratropium, an albuterol-ipratropium combination, budesonide or a Designated Compound developed, produced, manufactured or marketed by DURA on behalf of Spiros Corp. II using the Program Technology.

"SPIROS PRODUCT PROGRAM ASSETS" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"SYSTEM" shall mean the DPI and the PSS when used together.

"TECHNOLOGY" shall mean, solely with respect to motor-driven dry powder inhalers and powder storage systems for drugs for delivery through such inhalers, the manufacture thereof, and formulations of drugs to be delivered through such inhalers, public and nonpublic technical or other information, trade secrets, know-how, processes, formulations, concepts, ideas, preclinical, clinical, pharmacological or other data and testing results, experimental methods, or results, assays, descriptions, business or scientific plans, depictions, customer lists and any other written, printed or electronically stored materials, pharmaceutical compounds or any other natural or man-made pharmaceutical materials and any and all other intellectual property, including patents and patent applications, of any nature whatsoever. The term "Technology" shall include, without limitation, any of the foregoing as it relates to enhancements of, substitutions for or improvements to the Core Technology.

"TECHNOLOGY AGREEMENT" shall mean the Technology License Agreement dated as of December 22, 1997, among DURA, DDSI, Spiros Corp. and Spiros Corp. II, as amended, modified or supplemented from time to time.

"TERRITORY" shall mean the entire world.

"UNDERWRITERS" shall have the meaning assigned to it in the Registration Statement.

"UNITS" shall mean units, each consisting of one share of Spiros Corp. II Common Stock and one warrant to purchase one-fourth of one share of DURA Common Stock, all as described in the Registration Statement.

SCHEDULE 1.1

"1993 ROYALTY AGREEMENT" shall have the meaning assigned to it in the Registration Statement.

SCHEDULE 1.1

MANUFACTURING AND MARKETING AGREEMENT

This MANUFACTURING AND MARKETING AGREEMENT (the "Agreement") is made as of December 22, 1997 by and between DURA PHARMACEUTICALS, INC., a Delaware corporation ("DURA"), and SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp. II").

RECITALS

WHEREAS, DURA and Spiros Corp. II are parties to the Development Agreement, the Technology Agreement and the Albuterol and Product Option Agreement (all capitalized terms shall have the respective meaning set forth in Section 1 hereof).

WHEREAS, DURA has the Purchase Option to acquire all of the Spiros Corp. II Common Stock.

WHEREAS, DURA has the expertise necessary to manufacture, itself or through subcontractors, the Spiros Products.

WHEREAS, DURA has marketing and sales personnel currently performing marketing for respiratory pharmaceutical products.

WHEREAS, Spiros Corp. II desires to license DURA to manufacture, promote and sell the Spiros Products, and DURA is willing to accept such engagement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce DURA to enter into the Agreements, DURA and Spiros Corp. II hereby agree as follows:

1. DEFINITIONS.

1.1 DEFINITIONS. All capitalized terms used herein and not otherwise defined shall have the respective meanings, to the extent such terms are used herein, set forth in SCHEDULE 1.1 attached hereto, which is incorporated by this reference as though fully set forth herein.

1.2 SINGULAR AND PLURAL. Singular and plural forms, as the case may be, of terms defined herein shall have correlative meanings.

2. DURA'S RESPONSIBILITIES.

2.1 DURA'S GENERAL RESPONSIBILITIES. During the term of this

Agreement, DURA shall, at its sole expense (except as otherwise expressly provided herein), in addition to its other obligations hereunder, have responsibility for performing the activities set forth below:

(a) supervise, train and maintain such competent and qualified sales personnel as may be required to promote the Spiros Products as provided herein;

(b) use diligent and commercially reasonable efforts to launch, market, promote and commence Sales of a Spiros Product promptly upon receipt of FDA Approval of such Spiros Product;

(c) on or before the thirtieth (30th) day of each calendar quarter following receipt of FDA Approval, furnish to Spiros Corp. II a report containing DURA's Manufacture and Sales activities during the prior calendar quarter;

(d) make no statement, representation or warranty, oral or written, concerning the Spiros Products inconsistent with or contrary to the labeling approved by regulatory authorities in respect of the Spiros Products;

(e) promptly submit to Spiros Corp. II all adverse drug experience information concerning the Spiros Products; and

(f) conform its practices and procedures relating to Spiros Product sampling to product sampling practices and procedures DURA follows with respect to other similar products, which practices and procedures shall be in compliance with applicable rules and regulations.

DURA shall take such other actions as DURA and Spiros Corp. II may jointly agree upon and deem necessary, desirable or appropriate to promote and Sell the Spiros Products effectively and as contemplated by this Agreement.

2.2 ADVERTISING AND PROMOTIONAL RESPONSIBILITIES. From time to time, but at least once each year, DURA shall develop and formulate a marketing plan setting forth DURA's strategies and plans for pricing, marketing and detailing Spiros Products. Marketing plans shall be prepared in a manner appropriate for product launch and consistent with sales and marketing plans for similarly placed pharmaceutical products. The marketing plans shall be submitted to the Board of Directors of Spiros Corp. II as part of the annual workplan and budget for approval.

2.3 TERMS OF SALE. DURA will be responsible for determining all terms of sale, including but not limited to, policies concerning pricing, credit terms, cash discounts and returns and allowances.

3. ROYALTIES.

3.1 ROYALTIES ON SALES OF SPIROS PRODUCTS. Dura shall receive and retain on its own behalf all payments by purchasers

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of the Spiros Products Sold by DURA hereunder. DURA hereby agrees to pay to Spiros Corp. II royalties equal to seven percent (7%) of Net Sales of each Spiros Products Sold beginning on the date of FDA Approval of such product; provided, however, that prior to the expiration of the Albuterol Option no royalty payment shall apply with respect to Net Sales of the Albuterol Product.

3.2 ROYALTY PAYMENT. Royalties due on Net Sales of Spiros Products shall be paid quarterly in arrears, on or before the forty-fifth (45th) day following the end of each calendar quarter. Acceptance by Spiros Corp. II of any payment remitted hereunder, whether or not the amount shall be in dispute, shall not constitute acceptance by Spiros Corp. II of the account or schedules on which such payment is based.

3.3 SINGLE ROYALTY. All sales of Spiros Products among DURA, its Affiliates and any of their sublicensees shall be disregarded for purposes of computing royalties under this Section 3, but in such instances royalties shall be payable only upon sales to unlicensed third parties unless such other sales were for purposes of end use, rather than for resale. Nothing contained herein shall obligate DURA to pay Spiros Corp. II more than one royalty on any unit of Spiros Products sold.

3.4 LATE PAYMENTS. DURA shall pay interest to Spiros Corp. II on the aggregate amount of any amounts payable by DURA that are not paid on or before the date such payments are due under this Agreement at a rate per annum equal to the lesser of the prime rate of interest as reported by Citibank, N.A., New York, from time to time, plus two percent (2%), or the highest rate permitted by applicable law, calculated on the number of days such payment is delinquent.

4. ACCOUNTING AND STATEMENTS.

4.1 ROYALTY STATEMENTS. DURA shall keep, and cause its Affiliates, if any, to keep true and accurate accounts of all royalties payable to Spiros Corp. II under the Agreement and DURA shall deliver or cause to be delivered to Spiros Corp. II written statements of royalties due on or before the forty-fifth (45th) day following the end of each calendar quarter and at the same time shall pay Spiros Corp. II the amount of such royalties shown to be due pursuant to Section 3. Such reports shall show in reasonably specific detail: (a) the gross sales of each Spiros Product sold by DURA, its Affiliates and sublicensees during the reporting period and the calculation of Net Sales from such gross sales; (b) the royalties payable in United

States dollars, if any, which shall have accrued hereunder based upon Net Sales of Spiros Products; (c) the withholding taxes, if any, required by law to be deducted in respect of such sales; and (d) the date of the first commercial sale of each Spiros Product.

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4.2 RECORDS. DURA shall keep, and cause its Affiliates and sublicensees, if any, to keep accurate records in sufficient detail to be able to determine the amount of royalties payable. Spiros Corp. II shall have the right at its own expense to have an independent certified public accounting firm examine the relevant books and records of account of DURA, any of its Affiliates or sublicensees during reasonable business hours not more often than once during each calendar year, to determine whether appropriate accounting and payment of royalties have been made during the preceding two (2) calendar years. This independent certified public accounting firm shall treat as confidential and shall not disclose to Spiros Corp. II any information other than information which is needed or proper to support the information required to be given to Spiros Corp. II pursuant to this Agreement. If such accounting firm concludes that additional royalties were owed during such period, DURA shall pay the additional royalties within thirty (30) days of the date Spiros Corp. II delivers to DURA such accounting firm's written report so concluding. The fees charged by such accounting firm shall be paid by Spiros Corp. II; PROVIDED, HOWEVER, if the audit discloses that the royalties payable by DURA for the audited period are more than one hundred five percent (105%) of the royalties actually paid for such period, then DURA shall pay the reasonable fees and expenses charged by such accounting firm.

4.3 SUBLICENSEE RECORDS. DURA shall include in each permitted sublicense granted by it pursuant to this Agreement or the License Agreement a provision requiring the sublicensee to make reports to DURA, to keep and maintain records of sales made pursuant to such sublicense and to grant access to such records by Spiros Corp. II's independent accountant to the same extent required of DURA under this Agreement.

5. MANUFACTURING AND SALE RECORDS. DURA shall keep, maintain, update and preserve for the benefit of Spiros Corp. II true, accurate and complete records of all efforts made by DURA pursuant to this Agreement, including, without limitation, records of current and prospective customer contacts, status of sales programs, advertising efforts, promotion efforts, market feedback, marketing strategy, distribution, business leads and sales leads ("Records"). Upon written request of Spiros Corp. II or upon the termination of this Agreement, copies of the Records shall be sent by DURA to Spiros Corp. II within sixty (60) days of such request or termination.

6. MANUFACTURING PRACTICES.

6.1 MANUFACTURING SPECIFICATIONS. The Manufacture of all Spiros Products during the term of this Agreement shall be the responsibility of

subcontractor to manufacture, the Spiros Products under this Agreement in compliance in all material respects with all requirements of applicable laws and regulations and all applicable good manufacturing practices, as prescribed from time to time by the FDA and other applicable worldwide regulatory authorities, using the specifications, manufacturing methods and formulae as agreed upon by DURA and Spiros Corp. II in writing.

6.2 INSPECTION OF MANUFACTURING FACILITIES. DURA or its subcontractor shall permit Spiros Corp. II and its duly authorized agents, at Spiros Corp. II's sole expense, to enter DURA's or its subcontractor's premises, upon reasonable notice during normal working hours, for the purpose of inspecting the manufacturing processes and components used in the manufacture of the Spiros Products and the quality thereof.

7. CONFIDENTIALITY. The provisions of Sections 4.3 and 4.4 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

8. REPRESENTATIONS, WARRANTIES AND COVENANTS. The provisions of Section 3 of the Technology Agreement with respect to DURA and Spiros Corp. II shall apply with equal force and effect to this Agreement and are incorporated hereunder. In addition, DURA represents, warrants and covenants to Spiros Corp. II as follows:

8.1 DURA'S EFFORTS. DURA shall use its commercially reasonable efforts to locate and contact specialist respiratory physicians and other physicians, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies for the purpose of determining whether such persons, groups or entities may be interested in buying or prescribing the Spiros Products. DURA hereby agrees that failure to use its commercially reasonable efforts as described in this Agreement shall constitute a material breach of this Agreement;

8.2 COMPLIANCE WITH APPLICABLE LAWS. DURA shall comply (and shall require all its sublicensees, agents and representatives to comply) with all applicable laws, statutes, regulations and treaties relating to the Manufacture and Sale of the Spiros Corp. II's Products and the performance of DURA's obligations hereunder. DURA shall demonstrate, at Spiros Corp. II's reasonable request, compliance with all applicable laws, statutes, regulations and treaties;

8.3 USE OF NAMES. DURA shall use the then-current names used by Spiros Corp. II for the Spiros Products (but will not represent or imply that it is Spiros Corp. II or an Affiliate of Spiros Corp. II, or a part of or partner or joint venturer with Spiros Corp. II);

shall keep Spiros Corp. II informed as to any problems encountered with the Spiros Products and any suggested resolutions for those problems and shall communicate promptly to Spiros Corp. II any and all modifications, design changes or improvements suggested by any employee or agent; and

8.5 RECORDS. DURA shall keep and maintain a file of all persons and entities to which Spiros Products have been sold by DURA or its sublicensees, including: name; address; serial number, if any, of the Spiros Products; date of delivery; and any applicable contract or purchase order executed by such person or entity. Such file may be inspected by Spiros Corp. II at any time and a complete copy of such file shall be delivered to Spiros Corp. II upon the termination or earlier expiration of this Agreement pursuant to Section 9.

9. TERM AND TERMINATION.

9.1 TERM. This Agreement shall be effective as of the date hereof and, unless terminated earlier as provided in Sections 9.2, 9.3 and 9.4 hereof, and shall continue in full force and effect until such time as the Purchase Option terminates or expires (other than by exercise), subject to Section 9.6.

9.2 TERMINATION BY MUTUAL AGREEMENT. By mutual agreement, the parties hereto may at any time terminate this Agreement on mutually acceptable terms.

9.3 EFFECT OF OPTION EXERCISES.

9.3.1 PURCHASE OPTION. Subject to Section 9.6, in the event the Purchase Option is exercised by DURA, this Agreement shall terminate, effective upon the Purchase Option Closing Date, without any obligation to make payments pursuant to Section 7 of the Technology Agreement.

9.3.2 PARTIAL TERMINATION UPON EXERCISE OF ALBUTEROL OPTION. In the event that the Albuterol Option is exercised, this Agreement shall terminate, effective on the Albuterol Option Closing Date, with respect to the Albuterol Program Assets and any obligation to make royalty payments with respect to the Albuterol Product, but shall otherwise continue in full force and effect until terminated pursuant to this Section 9.

9.3.3 PARTIAL TERMINATION UPON EXERCISE OF PRODUCT OPTION. In the event that the Product Option is exercised, this Agreement shall terminate, effective on the Product Option Closing Date, with respect to the Option Product and any obligation to make royalty payments with respect to the Product Option, but shall otherwise continue in full force and effect until terminated pursuant to this Section 9.

9.4 TERMINATION BY DURA. Either DURA or Spiros Corp. II shall have the right to terminate this Agreement, effective as set forth in a written notice to the other of an Event of Default with respect to such other party.

9.5 EFFECT OF TERMINATION.

9.5.1 RETURN OF SPIROS PRODUCTS. In the event of the termination of DURA's right to continue to Manufacture and Sell one or more (other than as a result of the exercise of the Albuterol Option or the Product Option) Spiros Products pursuant to Section 9.4 as a result of an Event of Default by DURA, DURA shall within thirty (30) days of the effective date of such termination, transfer to Spiros Corp. II all Program Technology and all other data, records and materials in DURA's possession or control which relate to such Spiros Products. In addition, DURA shall within fifteen (15) days of the effective date of the termination notify Spiros Corp. II in writing of the quantity of such Spiros Products which it has in inventory, and DURA shall thereupon be permitted during the six (6) months following such termination to Sell such inventory of Spiros Products; provided that Spiros Corp. II shall first have the right to purchase such Spiros Products for a transfer price equal to the cost of manufacture of such products together with DURA's overhead thereon. DURA shall also cooperate in the transfer of regulatory filings related to such Spiros Products, and take such other actions and execute such other instruments, assignments and documents as may be necessary to effect the transfer of the Manufacture and Sale rights to Spiros Corp. II.

9.5.2 SURVIVAL. Sections 1, 2.1(c), (d), (e) and (f), 3 (but only to the extent rights to payments have accrued prior to termination), 4, 5, 7, 8, 9, 10 and 11 of this Agreement, and all obligations to pay any amounts due hereunder, shall survive, and shall not be affected by, any termination of this Agreement pursuant to this Section 9.

10. INDEMNIFICATION AND INSURANCE.

10.1 INDEMNIFICATION. The provisions of Sections 6.1 and 6.2 of the Technology Agreement shall apply with equal force and effect to this Agreement and are incorporated hereunder.

10.2 INSURANCE.

10.2.1 INSURANCE BY SPIROS CORP. II. To the extent Spiros Corp. II develops or uses, or causes the development or use (except by DURA or its Affiliates or sublicensees under this Agreement) of, the Spiros Products, Spiros Corp. II shall, to the extent available at commercially reasonable rates, maintain with insurers or underwriters of good repute such insurance relating

to the development, sale and use of the Spiros Products, against such risks, pursuant to such terms (including deductible limits or self-insured retentions) and for such periods, as is customary for comparable businesses undertaking the development, sale and use of products of a similar nature, and shall, to the extent reasonably possible and not unreasonably expensive, cause DURA and its Affiliates to be named as additional insured parties on its insurance policies. To the extent Spiros Corp. II is required to obtain insurance under this Section 10.2.1 during the term of this Agreement, Spiros Corp. II may use Available Funds to pay the premiums therefore.

10.2.2 INSURANCE BY DURA. DURA shall, to the extent available at commercially reasonable rates, maintain, with insurers or underwriters of good repute such insurance relating to the Development, Manufacture and Sale, against such risks and pursuant to such terms (including deductible limits or self-insured retentions) as is customary for comparable businesses undertaking research, development and commercialization programs of a similar nature, and shall, to the extent reasonably possible and not unreasonably expensive, cause Spiros Corp. II to be named as an additional insured party on its insurance policies.

11. MISCELLANEOUS.

11.1 NO IMPLIED WAIVERS; RIGHTS CUMULATIVE. No failure on the part of DURA or Spiros Corp. II to exercise and no delay in exercising any right, power, remedy or privilege under this Agreement or provided by statute or at law or in equity or otherwise, including, without limitation, the right or power to terminate this Agreement, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

11.2 FORCE MAJEURE. DURA and Spiros Corp. II shall each be excused for any failure or delay in performing any of their respective obligations under this Agreement, if such failure or delay is caused by Force Majeure.

11.3 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement is intended or is to be construed to constitute DURA and Spiros Corp. II as partners or joint venturers or one party as an employee of any other party. Except as expressly provided herein, no party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other party or to bind any other party to any contract, agreement or undertaking with any third party.

11.4 NOTICES. All notices, requests and other communications to DURA or Spiros Corp. II hereunder shall be in writing (including telecopy or similar electronic transmissions), shall refer specifically to this Agreement and shall be personally delivered or sent by telecopy or other electronic facsimile transmission or by registered mail or certified mail, return receipt requested, postage prepaid, or reliable overnight courier service, in each case to the respective address specified below (or to such address as may be specified in writing to the other party hereto):

If to DURA, addressed to:

Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President
with a copy to the attention of General Counsel

If to Spiros Corp. II, addressed to:

Spiros Development Corporation II, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

Any notice or communication given in conformity with this Section 11.4 shall be deemed to be effective when received by the addressee, if delivered by hand, telecopy or electronic transmission, three (3) days after mailing, if mailed, and one (1) business day after delivery to a reliable overnight courier service.

11.5 FURTHER ASSURANCES. Each of DURA and Spiros Corp. II hereby agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such additional assignments, agreements, documents and instruments, that may be necessary or as the other party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other party its rights and remedies under, this Agreement.

11.6 SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement shall inure to the benefit of, and be binding upon, DURA, Spiros Corp. II, and their respective successors and assigns; PROVIDED, HOWEVER, that DURA and Spiros Corp. II may not assign or otherwise transfer any of their respective rights and interests, nor delegate any of their respective obligations, hereunder, including, without limitation, pursuant to a merger or

consolidation, without the prior written consent of the other party hereto; PROVIDED FURTHER, HOWEVER, that DURA may fully assign its rights and interests, and delegate its obligations, hereunder, effective upon written notice thereof (a) to an Affiliate if such Affiliate assumes all of the obligations of DURA hereunder and this Agreement remains binding upon DURA; or (b) to any Person that acquires all or substantially all of the assets of DURA, or which is the surviving Person in a merger or consolidation with DURA, if such Person assumes all the obligations of DURA hereunder. Notwithstanding the foregoing, Spiros Corp. II shall have the right to assign its rights and delegate its obligations hereunder following expiration or termination (other than by exercise) of the Purchase Option. Any attempt to assign or delegate any portion of this Agreement in violation of this Section 11.6 shall be null and void. Subject to the foregoing any reference to DURA or Spiros Corp. II hereunder shall be deemed to include the successors thereto and assigns thereof.

11.7 AMENDMENTS. No amendment, modification, waiver, termination or discharge of any provision of this Agreement, nor consent by DURA or Spiros Corp. II to any departure therefrom, shall in any event be effective unless the same shall be in writing specifically identifying this Agreement and the provision intended to be amended, modified, waived, terminated or discharged and signed by DURA and Spiros Corp. II, and each amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given. No provision of this Agreement shall be varied, contradicted or explained by any other agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by DURA and Spiros Corp. II.

11.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, as applied to contracts made and performed entirely within the State of California. Except as otherwise provided herein, any claim or controversy arising out of or related to this contract or any breach hereof shall be submitted to a court of competent jurisdiction in the State of California, and the parties hereby consent to the jurisdiction and venue of such court.

11.9 SEVERABILITY. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, then, to the fullest extent permitted by law, (a) all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, DURA and Spiros Corp. II

hereby waive any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

11.10 HEADINGS. Headings used herein are for convenience only and shall not in any way affect the construction of, or be taken into consideration in interpreting, this Agreement.

11.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

11.12 ENTIRE AGREEMENT. This Agreement, together with any agreements referenced herein, constitute, on and as of the date hereof, the entire agreement of DURA and Spiros Corp. II with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between DURA and Spiros Corp. II with respect to such subject matter are hereby superseded in their entirety.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

DURA PHARMACEUTICALS, INC.

By: /s/ Cam L. Garner

Cam L. Garner
President and Chief Executive Officer

SPIROS DEVELOPMENT CORPORATION II, INC.

By: /s/ David S. Kabakoff

David S. Kabakoff,
President and Chief Executive Officer

[SIGNATURE PAGE TO MANUFACTURING AND
MARKETING AGREEMENT]

SCHEDULE 1.1

GLOSSARY

SCHEDULE 1.1

GLOSSARY

"AFFILIATE" of a person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. In the case of a corporations, "control" shall mean, among other things, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting stock.

"AGREEMENTS" shall mean the Manufacturing and Marketing Agreement, the Technology Agreement and the Development Agreement.

"ALBUTEROL OPTION" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL AND PRODUCT OPTION AGREEMENT" shall mean the Albuterol and Product Option Agreement dated as of December 22, 1997, between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"ALBUTEROL OPTION CLOSING DATE" shall have the meaning assigned to it in

Section 1.5 of the Albuterol and Product Option Agreement.

"ALBUTEROL PROGRAM ASSETS" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL PRODUCT" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"AVAILABLE FUNDS" shall mean the sum of (a) the net proceeds to Spiros Corp. II from the sale of the Units in the Offering and the Contribution, (b) all royalties remitted to Spiros Corp. II by DURA (or its Affiliates) from the Sale of Spiros Products pursuant to the Agreements, (c) the Option Proceeds, if any, (d) any other amounts provided by DURA to Spiros Corp. II, if any and (e) interest or other income earned through temporary investment of the amounts described in clauses (a), (b), (c) or (d).

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, as amended from time to time.

"CLAIM" shall mean any and all liabilities, damages, losses, settlements, claims, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees).

SCHEDULE 1.1

"CONFIDENTIAL INFORMATION" shall mean all Program Technology disclosed by DURA (and its Affiliates) to Spiros Corp. II or by Spiros Corp. II to DURA pursuant to the Agreements or the Services Agreement.

"CONTRIBUTION" shall have the meaning assigned in Section 5.2 of the Development Agreement.

"CORE TECHNOLOGY" shall mean the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology.

"DDSI CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DDSI as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DDSI Patent Rights; PROVIDED, HOWEVER, that DDSI Core Technology shall also include Technology acquired by DDSI from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DDSI's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DDSI owns, or under which DDSI is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DDSI INDEMNITEE" shall mean DDSI, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DDSI PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DDSI (or the rights to which have been assigned to DDSI) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DESIGNATED COMPOUND(S)" shall mean any compounds for delivery using the System selected by Spiros Corp. II, and agreed to be developed by DURA.

"DEVELOPED TECHNOLOGY" shall mean any Technology including, without limitation, any enhancements, substitutions or improvements to the Core Technology that is (a) discovered, developed or otherwise acquired by DURA pursuant to the terms of the Development Agreement or (b) otherwise acquired by or on behalf of Spiros Corp. II during the term of the Development Agreement.

"DEVELOPMENT" shall mean the further development of the Program Technology for the purpose of identifying, developing, manufacturing, marketing and commercializing Spiros Products and

SCHEDULE 1.1

the making of the Other Expenditures.

"DEVELOPMENT AGREEMENT" shall mean the Development Agreement dated as of December 22, 1997, between DURA and Spiros Corp., as amended, modified or supplemented from time to time.

"DEVELOPMENT COSTS" shall mean the Direct Development Costs, the Indirect Development Costs and the Other Expenditures.

"DEVELOPMENT TERM" shall mean the period commencing on the Closing Date and ending on the earlier of (a) the Option Closing Date or (b) the date the Option terminates or expires other than by exercise.

"DIRECT DEVELOPMENT COSTS" shall mean all costs incurred by DURA or its Affiliates in respect of the Development, other than Indirect Development Costs, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis. Direct Development Costs shall consist primarily of fully-burdened payroll costs (burdened to include benefits, payroll taxes and an allocation of facilities and overhead costs) and any other such costs generated internally by DURA in respect of the Development.

"DPI" shall mean the motor-driven dry powder inhaler (other than an inahler

designed to deliver a single dose of a drug) developed by DURA, DDSI and/or Spiros Corp. and to be developed by DURA and/or Spiros Corp. II.

"DURA COMMON STOCK" shall mean the Common Stock of DURA, par value \$.001 per share.

"DURA CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DURA as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DURA Patent Rights and DURA Trademarks; PROVIDED, HOWEVER, that DURA Core Technology shall also include Technology acquired by DURA from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DURA's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DURA owns, or under which DURA is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DURA INDEMNITEE" shall mean DURA, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DURA PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DURA (or the rights to which have been assigned to DURA) as of the date of the Technology Agreement relating to DPIs, PSSs and/or formulation methods for dry powder inhalation, (b) any

SCHEDULE 1.1

patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DURA TRADEMARKS" shall mean Spiros=TM=.

"EVENT OF DEFAULT" shall mean any of the following events: (a) at any time, if DURA or Spiros Corp. II fails to perform or observe or otherwise breaches any of its Material Obligations, and such failure or breach continues unremedied for a period of sixty (60) days after receipt by of written notice thereof from the other party; (b) at any time, effective as set forth in a written notice from the other party if DURA or Spiros Corp. II shall (i) seek the liquidation, reorganization, dissolution or winding-up of itself or the composition or readjustment of its debts (other than pursuant to a merger with an Affiliate), (ii) apply for or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator for itself or of all or a substantial part of its assets, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or

readjustment of debts (other than pursuant to a merger with an Affiliate) or (vi) adopt any resolution of its Board of Directors or shareholders for the purpose of effecting any of the foregoing (other than pursuant to a merger with an Affiliate); or (c) at any time, effective as set forth in a written notice from the other party, if a proceeding or case shall be commenced without the application or consent of DURA or Spiros Corp. II as applicable, and such proceeding or case shall continue undismissed, or an order, judgment or decrees approving or ordering any of the following shall be entered and continued unstayed and in effect, for a period of sixty (60) days from and after the date service of process is effected, seeking (i) DURA's or Spiros Corp. II's, as applicable, liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of DURA or Spiros Corp. II or for all or any substantial part of its assets or (iii) similar relief in respect of DURA or Spiros Corp. II under any law relating to bankruptcy, insolvency, reorganization, winding-up or the composition or readjustment of debts.

"FDA" shall mean the United States Food and Drug Administration or any successor agency or authority, the approval of which is required to market health care products in the United States.

"FDA APPROVAL" shall mean the final regulatory approval of the FDA required to commence commercial marketing of a health product.

SCHEDULE 1.1

"FORCE MAJEURE" shall mean any act of God, any accident explosion, fire, storm, earthquake, flood, drought, peril of the sea, riot, embargo, war or foreign, federal, state or municipal order of general application, seizure, requisition or allocation, any failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event.

"INDIRECT DEVELOPMENT COSTS" shall mean all costs, fees and out-of-pocket or other expenses, including the purchase of any capital equipment related to the Development, incurred or paid by DURA to a third party, other than an Affiliate of DURA, in respect of the Development, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis.

"MANUFACTURING AND MARKETING AGREEMENT" shall mean the Manufacturing and Marketing Agreement dated as of December 22, 1997 between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"MANUFACTURE" shall mean the manufacture and assembly of the Spiros Products.

"MATERIAL OBLIGATION" shall mean the material obligations of a party under the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement.

"NET SALES" shall mean the gross amount invoiced for sales of Spiros Products by DURA or its sublicensees, if any, to third parties less (i) discounts actually allowed, (ii) credits for claims, allowances, retroactive price reductions or returned Spiros Products, (iii) prepaid freight charges incurred in transporting Spiros Products to customers, (iv) sales taxes and other governmental charges actually paid in connection with the sales (but excluding what is commonly known as income taxes) and (v) any royalty obligations under the 1993 Royalty Agreement. Net Sales shall not include sales between or among DURA, its Affiliates and its sublicensees unless such sales are for end use rather than for purposes of resale.

"OFFERING" shall mean the underwritten public offering of the Units pursuant to the Registration Statement.

"OPTION PROCEEDS" shall have the meaning assigned to it in Section 3 of the Albuterol and Product Option Agreement.

"OPTION PRODUCT" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"OTHER EXPENDITURES" shall mean funds spent by Spiros Corp. II to acquire capital equipment, develop a next generation inhaler system or to enhance the System.

SCHEDULE 1.1

"PATENT RIGHTS" shall mean any patents or patent applications within the Spiros Corp. II Patent Rights, the DURA Patent Rights, the DDSI Patent Rights and the Spiros Corp. Patent Rights.

"PERSON" shall mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity.

"PRODUCT OPTION" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"PRODUCT OPTION CLOSING DATE" shall have the meaning assigned to it in Section 2.5 of the Albuterol and Product Option Agreement.

"PROGRAM TECHNOLOGY" shall mean the Core Technology and the Developed Technology.

"PSS" shall mean the powder storage system developed and to be developed by DURA for use with the DPI.

"PURCHASE AGREEMENT" shall mean the Purchase Agreement dated as of December 16, 1997, among DURA, Spiros Corp. II, Merrill Lynch & Co., and Donaldson, Lufkin & Jenrette.

"PURCHASE OPTION" shall mean the option granted to the holder of Spiros Corp. II's Special Common Stock to purchase all of the Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION CLOSING DATE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION EXERCISE PRICE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter

"REGISTRATION STATEMENT" shall mean the Registration Statement on Form S-1/S-3 filed by Spiros Corp. II and DURA dated October 10, 1997 (No. 333-37673/333-37673-01), including all exhibits and any amendments thereof and supplements thereto.

"RESEARCH FUNDS" shall mean the Available Funds, less (i) all general and administrative expenses including, without limitation, those paid or payable pursuant to the Development Agreement or the Services Agreement, and the reasonable out-of-pocket expenses of Spiros Corp. II directors and reasonable compensation for Spiros Corp. II's independent directors, less (ii) any amounts paid to DURA under the Development Agreement or the Services Agreement, less (iii) any costs and expenses incurred in the defense or settlement of any action or claim or in respect of a judgment thereon, and less (iv) One Million Dollars (\$1,000,000) to be retained by Spiros Corp. II as working capital in the event DURA does not exercise the Purchase Option.

SCHEDULE 1.1

"SALE(S)" or "SELL" shall mean the activity undertaken by a sales representative during a sales call on physicians, physician assistants, nurses, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies (including all forms of communication not involving face to face contact by such sales representatives), describing the FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Spiros Product, in a fair and balanced manner consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (and the regulations thereunder).

"SPIROS CASSETTE SYSTEM" shall mean a DPI in which the PSS is in the form of a cassette.

"SPIROS CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by Spiros Corp. as of the date of the closing of the Offering necessary or useful

to the development of the Spiros Products, and (b) the Spiros Corp. Patent Rights; PROVIDED, HOWEVER, that Spiros Core Technology shall also include Technology acquired by Spiros Corp. from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on Spiros Corp.'s ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that Spiros Corp. owns, or under which Spiros Corp. is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"SPIROS CORP. INDEMNITEE" shall mean Spiros Corp., its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by Spiros Corp. (or the rights to which have been assigned to Spiros Corp.) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"SPIROS CORP. II CHARTER" shall mean Amended and Restated Certificate of Spiros Development Corporation II, Inc. in effect as of the closing of the Offering, as amended from time to time.

"SPIROS CORP. II COMMON STOCK" shall mean the Callable Common Stock of Spiros Corp. II, \$.001 par value.

"SPIROS CORP. II INDEMNITEE" shall mean Spiros Corp. II, its

SCHEDULE 1.1

successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. II PATENT RIGHTS" shall mean those certain inventions described in claims of (a) any patent application having one or more claims covering Developed Technology, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing applications or (c) any patent issued or issuing upon any of the foregoing applications.

"SPIROS PRODUCT(S)" shall mean (a) any System used with a formulation of albuterol, beclomethasone, ipratropium, an albuterol-ipratropium combination, budesonide or a Designated Compound developed, produced, manufactured or

marketed by DURA on behalf of Spiros Corp. II using the Program Technology.

"SPIROS PRODUCT PROGRAM ASSETS" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"SYSTEM" shall mean the DPI and the PSS when used together.

"TECHNOLOGY" shall mean, solely with respect to motor-driven dry powder inhalers and powder storage systems for drugs for delivery through such inhalers, the manufacture thereof, and formulations of drugs to be delivered through such inhalers, public and nonpublic technical or other information, trade secrets, know-how, processes, formulations, concepts, ideas, preclinical, clinical, pharmacological or other data and testing results, experimental methods, or results, assays, descriptions, business or scientific plans, depictions, customer lists and any other written, printed or electronically stored materials, pharmaceutical compounds or any other natural or man-made pharmaceutical materials and any and all other intellectual property, including patents and patent applications, of any nature whatsoever. The term "Technology" shall include, without limitation, any of the foregoing as it relates to enhancements of, substitutions for or improvements to the Core Technology.

"TECHNOLOGY AGREEMENT" shall mean the Technology License Agreement dated as of December 22, 1997, among DURA, DDSI, Spiros Corp. and Spiros Corp. II, as amended, modified or supplemented from time to time.

"TERRITORY" shall mean the entire world.

"UNDERWRITERS" shall have the meaning assigned to it in the Registration Statement.

"UNITS" shall mean units, each consisting of one share of Spiros Corp. II Common Stock and one warrant to purchase one-fourth of one share of DURA Common Stock, all as described in the Registration Statement.

SCHEDULE 1.1

"1993 ROYALTY AGREEMENT" shall have the meaning assigned to it in the Registration Statement.

SCHEDULE 1.1

SERVICES AGREEMENT

SERVICES AGREEMENT (this "Agreement") made as of the 22 day of December, 1997, among DURA PHARMACEUTICALS, INC., a Delaware corporation ("DURA"), and SPIROS DEVELOPMENT CORPORATION II, INC., a Delaware corporation ("Spiros Corp. II").

WHEREAS:

DURA and Spiros Corp. II desire to provide the services described herein on the terms set forth herein. Any capitalized terms not defined herein shall have the meaning assigned to such terms in the Glossary attached as SCHEDULE 1.1 to this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. SERVICES. Upon the request of Spiros Corp. II from time to time, DURA will supply Spiros Corp. II with management and administrative services as mutually agreed upon. Such services will be provided at reasonable times and upon reasonable notice, as mutually agreed to by the parties.

2. COMPENSATION. Spiros Corp. II shall pay to DURA a fee of \$100,000, quarterly in arrears within 30 days of the date of the invoice received from DURA for the services provided.

3. REIMBURSEMENT. Upon the consummation of the Offering, Spiros Corp. II shall reimburse DURA for all out-of-pocket expenses incurred by DURA in connection with the services provided hereunder, including those out-of-pocket expenses incurred pursuant to the Offering. In addition, Spiros Corp. II shall reimburse DURA for its direct and indirect costs, including the fully burdened cost of labor for DURA's employees that performed services in connection with the Offering.

4. TERM AND TERMINATION.

A. This Agreement shall terminate upon the later of (i) one year after the termination of the Purchase Option (as defined in the Prospectus relating to the Offering) or (ii) upon the exercise of the Purchase Option. This Agreement can be terminated by Spiros Corp. II at any time after termination of the Purchase Option. Either party may, in its discretion, terminate this Agreement in the event that the Technology Agreement, Development Agreement or Manufacturing and Marketing Agreement terminates as a result of an Event of Default by the other party.

B. Notwithstanding the foregoing, in the event that the Offering is

not

consummated and is withdrawn, this Agreement shall terminate and be of no further force and effect.

5. INDEMNIFICATION OF DURA. Spiros Corp. II hereby agrees to indemnify, protect and hold DURA harmless from any and all liabilities, costs or expenses incurred by DURA as a result of services rendered by DURA under this Agreement, including lawsuits of and claims by third parties, except for liabilities, costs or expenses resulting from DURA's own negligence or wilful misconduct.

6. FORCE MAJEURE. DURA shall not be liable for delay in performance of any of its obligations hereunder if such delay is due to causes beyond its reasonable control including, without limitation, acts of God, fires, strikes, acts of ware, or intervention of any government or authority; provided, however, that any such delay or failure shall be remedied by such party as soon as possible.

7. RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement is intended or is to be construed to constitute DURA and Spiros Corp. II as partners or joint venturers or DURA as an employee of Spiros Corp. II. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

8. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

9. NOTICES. Any notice or other communication required or permitted to be given to any party under this Agreement shall be given in writing and shall be delivered by hand or by registered mail, postage prepaid and return receipt requested, or by reputable overnight delivery service or courier, addressed to each party at the following addresses or such other address as may be designated by notice pursuant to this Section 9:

If to Spiros Corp. II: Spiros Corporation II, Inc.
c/o Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121
Attention: President

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If to DURA: Dura Pharmaceuticals, Inc.
7475 Lusk Boulevard
San Diego, CA 92121

Attention: President
with a copy to the attention
of General Counsel

Any notice or communication given in conformity with this Section 9 shall be deemed to be effective when received by the addressee, if delivered by hand or delivery service or courier, and three days after mailing, if mailed.

10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts to be performed wholly within the State of California. Except as otherwise provided herein, any claim or controversy arising out of or related to this Agreement or any breach thereof shall be submitted to a court of competent jurisdiction in the State of California and the parties hereby consent to the jurisdiction and venue of such court.

11. SEVERABILITY. If any provision in this Agreement is deemed to be or becomes invalid, illegal or unenforceable in any jurisdiction, (i) such provision will be deemed amended in such jurisdiction to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, it cannot be so amended without materiality altering the intention of the parties, it will be deleted, (ii) the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby in any other jurisdiction and (iii) the remaining provisions of this Agreement shall continue in full force without being impaired or invalidated in any way.

12. AMENDMENTS. No amendment, modification or addition hereto shall be effective or binding on either party unless set forth in writing and executed by a duly authorized representative of both parties.

13. WAIVER. No waiver of any right under this Agreement shall be deemed effective unless contained in a writing signed by the party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

14. HEADINGS. The section headings contained in this Agreement are included for convenience only and form no part of the agreement between the parties.

15. ASSIGNMENT. Neither party may assign its rights and obligations hereunder without the prior written consent of the other party, which consent may not be unreasonably withheld; provided, however, that DURA may assign such rights and obligations hereunder to an Affiliate or to any person or entity with which DURA is merged or consolidated or which

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purchases all or substantially all of the assets of DURA. DURA may subcontract

all or any portion of its duties hereunder to third parties, in its sole discretion; provided, however, that any such subcontractor shall be bound by the terms of this Agreement.

16. NO EFFECT ON OTHER AGREEMENTS. No provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the parties unless specifically referred to, and solely to the extent provided, in any such other agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

DURA PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Cam L. Garner

Name: Cam L. Garner

Title: Chairman, President & CEO

SPIROS DEVELOPMENT CORPORATION II, INC.,
a Delaware corporation

By: /s/ David S. Kabakoff

Name: David S. Kabakoff

Title: Chairman, President & CEO

[SIGNATURE PAGE TO SERVICES AGREEMENT]

SCHEDULE 1.1

GLOSSARY

SCHEDULE 1.1

SCHEDULE 1.1

GLOSSARY

"AFFILIATE" of a person shall mean a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. "Control" (and, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. In the case of a corporations, "control" shall mean, among other things, the direct or indirect ownership of more than fifty percent (50%) of its outstanding voting stock.

"AGREEMENTS" shall mean the Manufacturing and Marketing Agreement, the Technology Agreement and the Development Agreement.

"ALBUTEROL OPTION" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL AND PRODUCT OPTION AGREEMENT" shall mean the Albuterol and Product Option Agreement dated as of December 22, 1997, between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"ALBUTEROL OPTION CLOSING DATE" shall have the meaning assigned to it in Section 1.5 of the Albuterol and Product Option Agreement.

"ALBUTEROL PROGRAM ASSETS" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"ALBUTEROL PRODUCT" shall have the meaning assigned to it in Section 1.1 of the Albuterol and Product Option Agreement.

"AVAILABLE FUNDS" shall mean the sum of (a) the net proceeds to Spiros Corp. II from the sale of the Units in the Offering and the Contribution, (b) all royalties remitted to Spiros Corp. II by DURA (or its Affiliates) from the Sale of Spiros Products pursuant to the Agreements, (c) the Option Proceeds, if any, (d) any other amounts provided by DURA to Spiros Corp. II, if any and (e) interest or other income earned through temporary investment of the amounts described in clauses (a), (b), (c) or (d).

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code, as amended from time to time.

"CLAIM" shall mean any and all liabilities, damages, losses, settlements, claims, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees).

SCHEDULE 1.1

"CONFIDENTIAL INFORMATION" shall mean all Program Technology disclosed by DURA (and its Affiliates) to Spiros Corp. II or by Spiros Corp. II to DURA pursuant to the Agreements or the Services Agreement.

"CONTRIBUTION" shall have the meaning assigned in Section 5.2 of the Development Agreement.

"CORE TECHNOLOGY" shall mean the DURA Core Technology, the DDSI Core Technology and the Spiros Core Technology.

"DDSI CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DDSI as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DDSI Patent Rights; PROVIDED, HOWEVER, that DDSI Core Technology shall also include Technology acquired by DDSI from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DDSI's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DDSI owns, or under which DDSI is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DDSI INDEMNITEE" shall mean DDSI, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DDSI PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DDSI (or the rights to which have been assigned to DDSI) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DESIGNATED COMPOUND(S)" shall mean any compounds for delivery using the System selected by Spiros Corp. II, and agreed to be developed by DURA.

"DEVELOPED TECHNOLOGY" shall mean any Technology including, without limitation, any enhancements, substitutions or improvements to the Core Technology that is (a) discovered, developed or otherwise acquired by DURA pursuant to the terms of the Development Agreement or (b) otherwise acquired by or on behalf of Spiros Corp. II during the term of the Development Agreement.

"DEVELOPMENT" shall mean the further development of the Program Technology for the purpose of identifying, developing, manufacturing, marketing and commercializing Spiros Products and

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the making of the Other Expenditures.

"DEVELOPMENT AGREEMENT" shall mean the Development Agreement dated as of December 22, 1997, between DURA and Spiros Corp., as amended, modified or supplemented from time to time.

"DEVELOPMENT COSTS" shall mean the Direct Development Costs, the Indirect Development Costs and the Other Expenditures.

"DEVELOPMENT TERM" shall mean the period commencing on the Closing Date and ending on the earlier of (a) the Option Closing Date or (b) the date the Option terminates or expires other than by exercise.

"DIRECT DEVELOPMENT COSTS" shall mean all costs incurred by DURA or its Affiliates in respect of the Development, other than Indirect Development Costs, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis. Direct Development Costs shall consist primarily of fully-burdened payroll costs (burdened to include benefits, payroll taxes and an allocation of facilities and overhead costs) and any other such costs generated internally by DURA in respect of the Development.

"DPI" shall mean the motor-driven dry powder inhaler (other than an inahler designed to deliver a single dose of a drug) developed by DURA, DDSI and/or Spiros Corp. and to be developed by DURA and/or Spiros Corp. II.

"DURA COMMON STOCK" shall mean the Common Stock of DURA, par value \$.001 per share.

"DURA CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by DURA as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the DURA Patent Rights and DURA Trademarks; PROVIDED, HOWEVER, that DURA Core Technology shall also include Technology acquired by DURA from a third party after the date of the closing of

the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on DURA's ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that DURA owns, or under which DURA is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"DURA INDEMNITEE" shall mean DURA, its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"DURA PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by DURA (or the rights to which have been assigned to DURA) as of the date of the Technology Agreement relating to DPIs, PSSs and/or formulation methods for dry powder inhalation, (b) any

SCHEDULE 1.1

patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"DURA TRADEMARKS" shall mean Spiros-TM-.

"EVENT OF DEFAULT" shall mean any of the following events: (a) at any time, if DURA or Spiros Corp. II fails to perform or observe or otherwise breaches any of its Material Obligations, and such failure or breach continues unremedied for a period of sixty (60) days after receipt by of written notice thereof from the other party; (b) at any time, effective as set forth in a written notice from the other party if DURA or Spiros Corp. II shall (i) seek the liquidation, reorganization, dissolution or winding-up of itself or the composition or readjustment of its debts (other than pursuant to a merger with an Affiliate), (ii) apply for or consent to the appointment of, or the taking possession by, a receiver, custodian, trustee or liquidator for itself or of all or a substantial part of its assets, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts (other than pursuant to a merger with an Affiliate) or (vi) adopt any resolution of its Board of Directors or shareholders for the purpose of effecting any of the foregoing (other than pursuant to a merger with an Affiliate); or (c) at any time, effective as set forth in a written notice from the other party, if a proceeding or case shall be commenced without the application or consent of DURA or Spiros Corp. II as applicable, and such proceeding or case shall continue undismissed, or an order, judgment or decrees approving or ordering any of the following shall be entered and continued unstayed and in effect, for a period of sixty (60) days from and after the date service of process is effected, seeking (i) DURA's or Spiros Corp. II's, as applicable, liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee,

receiver, custodian, liquidator or the like of DURA or Spiros Corp. II or for all or any substantial part of its assets or (iii) similar relief in respect of DURA or Spiros Corp. II under any law relating to bankruptcy, insolvency, reorganization, winding-up or the composition or readjustment of debts.

"FDA" shall mean the United States Food and Drug Administration or any successor agency or authority, the approval of which is required to market health care products in the United States.

"FDA APPROVAL" shall mean the final regulatory approval of the FDA required to commence commercial marketing of a health product.

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"FORCE MAJEURE" shall mean any act of God, any accident explosion, fire, storm, earthquake, flood, drought, peril of the sea, riot, embargo, war or foreign, federal, state or municipal order of general application, seizure, requisition or allocation, any failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event.

"INDIRECT DEVELOPMENT COSTS" shall mean all costs, fees and out-of-pocket or other expenses, including the purchase of any capital equipment related to the Development, incurred or paid by DURA to a third party, other than an Affiliate of DURA, in respect of the Development, determined in accordance with generally accepted accounting principles consistent with DURA's internal accounting system, allocated on a reasonable and consistent basis.

"MANUFACTURING AND MARKETING AGREEMENT" shall mean the Manufacturing and Marketing Agreement dated as of December 22, 1997 between DURA and Spiros Corp. II, as amended, modified or supplemented from time to time.

"MANUFACTURE" shall mean the manufacture and assembly of the Spiros Products.

"MATERIAL OBLIGATION" shall mean the material obligations of a party under the Technology Agreement, the Development Agreement or the Manufacturing and Marketing Agreement.

"NET SALES" shall mean the gross amount invoiced for sales of Spiros Products by DURA or its sublicensees, if any, to third parties less (i) discounts actually allowed, (ii) credits for claims, allowances, retroactive price reductions or returned Spiros Products, (iii) prepaid freight charges incurred in transporting Spiros Products to customers, (iv) sales taxes and other governmental charges actually paid in connection with the sales (but excluding what is commonly known as income taxes) and (v) any royalty obligations under the 1993 Royalty Agreement. Net Sales shall not include sales between or among DURA, its Affiliates and its sublicensees unless such sales are for end use rather than for purposes of resale.

"OFFERING" shall mean the underwritten public offering of the Units pursuant to the Registration Statement.

"OPTION PROCEEDS" shall have the meaning assigned to it in Section 3 of the Albuterol and Product Option Agreement.

"OPTION PRODUCT" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"OTHER EXPENDITURES" shall mean funds spent by Spiros Corp. II to acquire capital equipment, develop a next generation inhaler system or to enhance the System.

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"PATENT RIGHTS" shall mean any patents or patent applications within the Spiros Corp. II Patent Rights, the DURA Patent Rights, the DDSI Patent Rights and the Spiros Corp. Patent Rights.

"PERSON" shall mean any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity.

"PRODUCT OPTION" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"PRODUCT OPTION CLOSING DATE" shall have the meaning assigned to it in Section 2.5 of the Albuterol and Product Option Agreement.

"PROGRAM TECHNOLOGY" shall mean the Core Technology and the Developed Technology.

"PSS" shall mean the powder storage system developed and to be developed by DURA for use with the DPI.

"PURCHASE AGREEMENT" shall mean the Purchase Agreement dated as of December 16, 1997, among DURA, Spiros Corp. II, Merrill Lynch & Co., and Donaldson, Lufkin & Jenrette.

"PURCHASE OPTION" shall mean the option granted to the holder of Spiros Corp. II's Special Common Stock to purchase all of the Spiros Corp. II Common Stock as set forth in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION CLOSING DATE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter.

"PURCHASE OPTION EXERCISE PRICE" shall have the meaning assigned to it in Article V of the Spiros Corp. II Charter

"REGISTRATION STATEMENT" shall mean the Registration Statement on Form S-

1/S-3 filed by Spiros Corp. II and DURA dated October 10, 1997 (No. 333-37673/333-37673-01), including all exhibits and any amendments thereof and supplements thereto.

"RESEARCH FUNDS" shall mean the Available Funds, less (i) all general and administrative expenses including, without limitation, those paid or payable pursuant to the Development Agreement or the Services Agreement, and the reasonable out-of-pocket expenses of Spiros Corp. II directors and reasonable compensation for Spiros Corp. II's independent directors, less (ii) any amounts paid to DURA under the Development Agreement or the Services Agreement, less (iii) any costs and expenses incurred in the defense or settlement of any action or claim or in respect of a judgment thereon, and less (iv) One Million Dollars (\$1,000,000) to be retained by Spiros Corp. II as working capital in the event DURA does not exercise the Purchase Option.

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"SALE(S)" or "SELL" shall mean the activity undertaken by a sales representative during a sales call on physicians, physician assistants, nurses, hospitals, clinics, health maintenance organizations, preferred provider organizations and managed care companies (including all forms of communication not involving face to face contact by such sales representatives), describing the FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Spiros Product, in a fair and balanced manner consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (and the regulations thereunder).

"SPIROS CASSETTE SYSTEM" shall mean a DPI in which the PSS is in the form of a cassette.

"SPIROS CORE TECHNOLOGY" shall mean (a) Technology owned or controlled by Spiros Corp. as of the date of the closing of the Offering necessary or useful to the development of the Spiros Products, and (b) the Spiros Corp. Patent Rights; PROVIDED, HOWEVER, that Spiros Core Technology shall also include Technology acquired by Spiros Corp. from a third party after the date of the closing of the Offering necessary or useful to the development of the Spiros Products, except to the extent that there are any limitations or restrictions on Spiros Corp.'s ability to license or sublicense such Technology. "Owned or controlled" shall include Technology that Spiros Corp. owns, or under which Spiros Corp. is licensed and has the right to grant sublicenses and/or grant immunity from suit.

"SPIROS CORP. INDEMNITEE" shall mean Spiros Corp., its successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. PATENT RIGHTS" shall mean those certain inventions described in claims of (a) the patent applications pending, filed by Spiros Corp. (or the rights to which have been assigned to Spiros Corp.) as of the date of the Technology Agreement relating to dry powder inhalers, powder storage systems and/or formulation methods for dry powder inhalation, (b) any patent application

constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing patent applications and (c) any patent issued or issuing upon any of the foregoing.

"SPIROS CORP. II CHARTER" shall mean Amended and Restated Certificate of Spiros Development Corporation II, Inc. in effect as of the closing of the Offering, as amended from time to time.

"SPIROS CORP. II COMMON STOCK" shall mean the Callable Common Stock of Spiros Corp. II, \$.001 par value.

"SPIROS CORP. II INDEMNITEE" shall mean Spiros Corp. II, its

SCHEDULE 1.1

successors and assigns, and the directors, officers, employees, agents and counsel thereof.

"SPIROS CORP. II PATENT RIGHTS" shall mean those certain inventions described in claims of (a) any patent application having one or more claims covering Developed Technology, (b) any patent application constituting an equivalent, counterpart, reissue, extension or continuation (including, without limitation, a continuation in part or a subdivision) of any of the foregoing applications or (c) any patent issued or issuing upon any of the foregoing applications.

"SPIROS PRODUCT(S)" shall mean (a) any System used with a formulation of albuterol, beclomethasone, ipratropium, an albuterol-ipratropium combination, budesonide or a Designated Compound developed, produced, manufactured or marketed by DURA on behalf of Spiros Corp. II using the Program Technology.

"SPIROS PRODUCT PROGRAM ASSETS" shall have the meaning assigned to it in Section 2.1 of the Albuterol and Product Option Agreement.

"SYSTEM" shall mean the DPI and the PSS when used together.

"TECHNOLOGY" shall mean, solely with respect to motor-driven dry powder inhalers and powder storage systems for drugs for delivery through such inhalers, the manufacture thereof, and formulations of drugs to be delivered through such inhalers, public and nonpublic technical or other information, trade secrets, know-how, processes, formulations, concepts, ideas, preclinical, clinical, pharmacological or other data and testing results, experimental methods, or results, assays, descriptions, business or scientific plans, depictions, customer lists and any other written, printed or electronically stored materials, pharmaceutical compounds or any other natural or man-made pharmaceutical materials and any and all other intellectual property, including patents and patent applications, of any nature whatsoever. The term "Technology" shall include, without limitation, any of the foregoing as it relates to enhancements of, substitutions for or improvements to the Core

Technology.

"TECHNOLOGY AGREEMENT" shall mean the Technology License Agreement dated as of December 22, 1997, among DURA, DDSI, Spiros Corp. and Spiros Corp. II, as amended, modified or supplemented from time to time.

"TERRITORY" shall mean the entire world.

"UNDERWRITERS" shall have the meaning assigned to it in the Registration Statement.

"UNITS" shall mean units, each consisting of one share of Spiros Corp. II Common Stock and one warrant to purchase one-fourth of one share of DURA Common Stock, all as described in the Registration Statement.

SCHEDULE 1.1

"1993 ROYALTY AGREEMENT" shall have the meaning assigned to it in the Registration Statement.

SCHEDULE 1.1

Contact: David S. Kabakoff
Executive Vice President
Dura Pharmaceuticals, Inc.
(619) 457-2553

DURA PHARMACEUTICALS, INC. FILES REGISTRATION STATEMENT
WITH SPIROS DEVELOPMENT CORPORATION II, INC.

San Diego, CA - October 10, 1997 - Dura Pharmaceuticals, Inc. (Nasdaq NNM: DURA) and Spiros Development Corporation II, Inc. (Spiros Corp. II), a separate newly-formed Delaware corporation, today announced the filing of a combined registration statement with the Securities and Exchange Commission (SEC) with respect to a proposed public offering of units. Each unit will consist of one share of callable common stock of Spiros Corp. II and one warrant to purchase one-fourth of one share of Dura common stock. Application has been made to have the units listed for quotation on the Nasdaq National Market under the symbol "SDCO".

Spiros Corp. II was formed in September 1997 primarily to continue to fund the development of Spiros-TM-, a proprietary pulmonary drug delivery system, and to conduct formulation work, clinical trials and commercialization for four leading asthma drugs (albuterol, beclomethasone, ipratropium and budesonide) and certain combinations and alternative formulations thereof for use in Spiros.

Dura will receive an option to acquire all (but not less than all) of the shares of the Spiros Corp. II callable common stock through December 31, 2002 at escalating predetermined prices. The Spiros Corp. II callable common stock and the Dura warrants which comprise the units will trade only as units through December 31, 1999 or such earlier date that Dura exercises its purchase option.

The proceeds from the proposed offering are estimated to be approximately \$75 million (\$86.25 million if the underwriters' over-allotment option is exercised in full). Spiros Corp. II will receive all of the net proceeds from the proposed offering. Immediately prior to the consummation of the proposed offering, Dura will contribute \$75 million in cash to Spiros Corp. II.

Prior to the closing of the proposed offering and subject to providing formal notice of exercise, Dura intends to exercise its option to purchase all of the outstanding shares of the callable common stock of Spiros Development Corporation (Spiros Corp.), a separate, private company formed in 1995 to develop Spiros, for an estimated purchase price of \$45.7 million. Dura expects to record charges to its earnings for the \$75 million contribution to Spiros Corp. II and for substantially all of the Spiros Corp. purchase price in the respective periods in which those transactions occur.

Merrill Lynch & Co. and Donaldson, Lufkin & Jenrette Securities Corp. are

managing the offering. A prospectus relating to these securities may be obtained from Merrill Lynch & Co., Prospectus Department, 250 Vesey Street, World Financial Center, North Tower, New York, New York 10281 or from Donaldson, Lufkin & Jenrette

Securities Corp., 277 Park Ave., New York, New York 10172, Attention: Prospectus Department.

Dura Pharmaceuticals, Inc. is a San Diego based developer and marketer of prescription pharmaceutical products for the treatment of allergies, asthma, and related respiratory conditions. Dura has focused on the U.S. respiratory market because of its size and growth opportunities through two major strategies: (1) acquiring respiratory prescription pharmaceuticals and/or businesses developing or marketing such pharmaceuticals targeted at high-prescribing respiratory physicians, and (2) developing Spiros, a pulmonary drug delivery system.

A registration statement relating to these securities has been filed with the SEC but has not yet become effective. These securities may not be sold nor may offers be accepted prior to the time the registration statement becomes effective. This press release shall not constitute an offer to sell nor the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Except for the historical and factual information contained herein, the matters discussed in this press release may contain forward-looking statements which involve risks and uncertainties, including the timely development of the Spiros system, competitive products and pricing, Dura's and Spiros Corp. II's limited manufacturing experience, dependency upon third parties and their successful development efforts, and other risks detailed from time to time in the companies' filings with the SEC. Actual results may differ materially from those projected. Forward-looking statements represent the companies' judgment as of the date of this release. Each of Dura and Spiros Corp. II disclaim, however, any intent or obligation to update any forward-looking statements.

* * *

Contact: David S. Kabakoff
Executive Vice President
Dura Pharmaceuticals, Inc.
(619) 457-2553

DURA PHARMACEUTICALS, INC. AND SPIROS DEVELOPMENT
CORPORATION II, INC. ANNOUNCE PUBLIC OFFERING OF UNITS

San Diego, CA - December 17, 1997 - Dura Pharmaceuticals, Inc. (Nasdaq NNM: DURA) and Spiros Development Corporation II, Inc. (Spiros Corp. II), a separate newly-formed Delaware corporation, today announced the public offering of 5.5 million Units at a price of \$16 per Unit. Each Unit will consist of one share of callable common stock of Spiros Corp. II and one warrant to purchase one-fourth of one share of Dura common stock. The Units will trade on the Nasdaq National Market under the symbol "SDCOZ". All of the net proceeds of the offering will be paid to Spiros Corp. II. The callable common stock of Spiros Corp. II and the warrants will trade only as units through December 31, 1999, or such earlier date as Dura may exercise an option to purchase all of the shares of Spiros Corp. II common stock outstanding at the time of exercise or as such option expires unexercised.

Merrill Lynch & Co. and Donaldson, Lufkin & Jenrette Securities Corp. are managing the offering. Dura and Spiros Corp. II have granted the underwriters a 30-day over-allotment option to purchase up to an additional 825,000 Units.

A copy of the final prospectus relating to these securities may be obtained from Merrill Lynch & Co., Prospectus Department, 250 Vesey Street, World Financial Center, North Tower, New York, New York 10281 or from Donaldson, Lufkin & Jenrette Securities Corp., 277 Park Ave., New York, New York 10172, Attention: Prospectus Department.

Spiros Corp. II was formed in September 1997 primarily to continue to fund the development of Spiros-TM-, a proprietary pulmonary drug delivery system, and to conduct formulation work, clinical trials and commercialization for four leading asthma drugs (albuterol, beclomethasone, ipratropium and budesonide) and certain combinations and

Dura and Spiros Development Corp. II Announce Public Offering of Units
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(more)

alternative formulations thereof for use in Spiros.

Dura Pharmaceuticals, Inc. is a San Diego based developer and marketer of

prescription pharmaceutical products for the treatment of allergies, asthma, and related respiratory conditions. Dura has focused on the U.S. respiratory market because of its size and growth opportunities through two major strategies: (1) acquiring respiratory prescription pharmaceuticals and/or businesses developing or marketing such pharmaceuticals targeted at high-prescribing respiratory physicians, and (2) developing Spiros, a pulmonary drug delivery system.

Except for the historical and factual information contained herein, the matters discussed in this press release may contain forward-looking statements which involve risks and uncertainties, including the timely development of the Spiros system, competitive products and pricing, Dura's and Spiros Corp. II's limited manufacturing experience, dependency upon third parties and their successful development efforts, and other risks detailed from time to time in the companies' filings with the SEC. Actual results may differ materially from those projected. Forward-looking statements represent the companies' judgment as of the date of this release. Each of Dura and Spiros Corp. II disclaim, however, any intent or obligation to update any forward-looking statements.

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