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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of Report (Date of earliest event reported): September 26, 2011 (August 31, 2011)**

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**DELCATH SYSTEMS, INC.**

(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(State of Incorporation)

**001-16133**  
(Commission  
File Number)

**06-1245881**  
(IRS Employer  
Identification No.)

**810 Seventh Avenue  
35<sup>th</sup> Floor  
New York, New York 10019**  
(Address of Principal Executive Offices) (Zip Code)

**Registrant's telephone number, including area code: (212) 489-2100**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On September 26, 2011, Delcath Systems, Inc. (the “Company”) announced the appointment of Graham G. Miao, M.S., M.B.A., Ph.D., as Executive Vice President, Chief Financial Officer of the Company, effective September 26, 2011. Concurrent with, and effective as of Mr. Miao’s start date, David McDonald, the Company’s current Executive Vice President, Chief Financial Officer will serve as Executive Vice President, Business Development of the Company.

Mr. Miao, age 47, has extensive financial and management experience in global business operations in the United States, Asia and Europe. He most recently served, since 2009, as Chief of Staff of the Global CFO Organization at The Dun & Bradstreet Corporation (NYSE: DNB). From 2007 to 2009, he served as Executive Vice President and Chief Financial Officer of Pagoda Pharmaceuticals Inc., a specialty pharmaceutical and medical device company; and, from 2004-2007, he served as Vice President, Strategic Planning and Financial Analysis, Global Flavors of Symrise Inc, a supplier of flavoring and fragrance products.

In his role as Executive Vice President, Chief Financial Officer, Mr. Miao will receive an initial base salary of \$325,000 per year. Mr. Miao will be paid a \$100,000 special one-time bonus, which is subject to forfeiture, on a pro-rata basis, if his employment is terminated for cause or he resigns prior to the first anniversary of his employment. On Mr. Miao’s start date, he received 25,000 shares of restricted stock and was granted a stock option to purchase 100,000 shares of common stock, pursuant to the Company’s 2009 Stock Incentive Plan, as amended. Mr. Miao will also be eligible to receive an annual cash incentive bonus pursuant to Delcath’s Annual Incentive Plan, with a target annual incentive opportunity of 40% of his base salary (pro-rated for the fiscal year ending December 31, 2011). Although Mr. Miao’s employment is “at-will”, in the event the Company terminates Mr. Miao’s employment other than for cause, he is entitled to a severance payment equal to his then annual base salary, payable over a period of 12-months, the continuation of group health coverage for a period of 12-months, plus payment of his annual incentive bonus earned for the immediately preceding completed calendar year (“Severance Benefits”), provided, that in order to receive the “Severance Benefits”, Mr. Miao must execute a general release in favor of the Company.

In connection with his employment, Mr. Miao also entered into the Company’s standard form of employee confidentiality and restrictive covenant agreement, pursuant to which, Mr. Miao agreed: to an assignment of his inventions and discoveries to the Company; not to disclose or otherwise use the Company’s confidential information either during his employment with the Company or at any time after termination, except as permitted in the agreement; not to compete with the Company during the term of his employment and for a period of one year thereafter; and not to solicit the Company’s customers or employees for a period of one year following termination of Mr. Miao’s employment with the Company.

The foregoing description of the terms of Mr. Miao’s employment with the Company is qualified in its entirety by reference to the employment offer letter between the Company and Mr. Miao, dated August 31, 2011, and by reference to the form of employee confidentiality and restrictive covenant agreement, the foregoing being attached as Exhibit 10.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

The Company issued a press release dated September 26, 2011 announcing the appointment of Mr. Miao, a copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
10.1	Employment Offer Letter between Delcath Systems, Inc. and Graham Miao, Ph.D., dated August 31, 2011
10.2	Form of Employee Confidentiality and Restrictive Covenant Agreement
99.1	Press Release of Delcath Systems, Inc., dated September 26, 2011

**SIGNATURES**

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

Date: September 26, 2011

DELCATH SYSTEMS, INC.

By: /s/ Peter J. Graham

Name: Peter J. Graham

Title: Executive Vice President, General Counsel

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**EXHIBIT INDEX**

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99.1	Press Release of Delcath Systems, Inc., dated September 26, 2011



August 29, 2011

Graham Miao, Ph.D.  
7 Beth Court  
Randolph, NJ 07869

Re: Employment Offer

Dear Graham:

Delcath Systems, Inc. ("Delcath" or "Company") is pleased to offer you the position of Executive Vice President, Chief Financial Officer at the New York, NY location of Delcath. This position reports directly to the Chief Executive Officer. Your start date is September 26, 2011. This letter is written to confirm the details of our offer to you.

The terms of your employment offer include the following:

1. Your initial rate of base salary will be paid at an annualized rate of \$325,000 per year. Your base salary will be reviewed periodically and may be increased or decreased. The base salary is intended to compensate you for all hours worked. Compensation and benefits are subject to applicable taxes, deductions, and withholdings.
2. You will also be eligible to earn an annual performance bonus based upon the achievement of annual performance goals according to the terms of the Company's annual incentive plan. Your annual incentive target bonus will be up to 40% of your gross annual base salary. For the calendar year ending December 31, 2011, your annual incentive target bonus opportunity will be pro-rated to reflect the period of your employment with the Company in 2011.
3. On your first day of employment with the Company, you will be granted a stock option to purchase 100,000 shares of the Company's common stock at a price per share equal to the closing price on the date of grant ("Option"). The Option will be granted under and subject to the 2009 Stock Incentive Plan ("2009 Plan") and shall be subject to the terms of the 2009 Plan and such further terms and conditions as set forth in a written stock option grant letter to be provided by the Company to you to evidence the Option. The Option will vest in three (3) equal installments (1/3 each) over a three (3) year period on the first, second and third anniversary of your employment start date. The Option shall

vest in full and become immediately exercisable in the event of a Change of Control (“COC”) as defined in the 2009 Plan if the Option has not otherwise already expired or been terminated. The Option will be a non-qualified option and is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Internal Revenue Code.

4. On your first day of employment with the Company you will also be granted 25,000 shares of restricted stock (the “Restricted Stock Award”). The Restricted Stock Award shall be granted under the Company’s 2009 Plan and shall be subject to the terms of the 2009 Plan and such further terms and conditions as set forth in a written restricted stock agreement to be provided by the Company to you to evidence the Restricted Stock Award under the 2009 Plan. The Restricted Stock Award will vest in three (3) equal installments (1/3 each) over a three (3) year period on the first, second and third anniversary of your employment start date. The Restricted Stock Award shall vest in full in the event of a COC as defined in the 2009 Plan if the Restricted Stock Award has not otherwise already expired or terminated.
5. You will receive a Special One-Time Bonus of \$100,000 (“Special Bonus”) payable within your first payroll cycle. If you are terminated for cause or resign prior to the first anniversary of your date of employment, you shall be obligated to return a pro rata portion of the Special Bonus to the Company based upon the number of days of your employment with the Company prior to the date of termination divided by 365.
6. Effective January 1, 2012, you will be eligible to earn four (4) weeks of paid vacation annually (which will accrue on a monthly basis), according to the terms of Delcath’s vacation policy. For the remainder of calendar year 2011, you will be eligible to earn one week of paid vacation.
7. You will be entitled to participate in various Company benefit programs. Company benefits may be modified or terminated from time to time in the Company’s sole discretion. At present, you will be eligible for the following Company benefits, subject to the terms and conditions of the applicable plans or policies:
  - a. Health and Dental insurance;
  - b. Life, Accidental Death and Dismemberment, Short and Long Term Disability insurance;
  - c. Participation in the Company’s 401K retirement savings plan;
  - d. Participation in the pre-tax transit program, if available;
  - e. Participation in a Flexible Spending Account.

In case of a conflict between any benefit described anywhere in this agreement and the applicable plan or policy, the terms of the applicable plan or policy will control.

8. Delcath will provide you with temporary housing assistance in New York City not to exceed \$3,500 per month for up to twelve (12) months from the start date of your employment. This amount will be grossed up to cover the applicable taxes. You will be responsible for any rent in excess of \$3,500 per month and all other expenses associated with temporary housing. You will also be responsible for identifying and selecting your apartment and will submit monthly statements to the Company to obtain rent reimbursement.
9. Your employment will at all times be subject to Delcath's policies and procedures as in effect from time to time.
10. The Company may terminate your employment at any time and for any or no reason, with or without cause or advance notice, by giving you written notice of such termination. Similarly, you may terminate your employment with the Company at any time, for any or no reason, upon fourteen (14) days written notice to the Company, during which time you shall provide reasonable transition assistance to the Company. Your employment with the Company will be as an employee "at will". As such, no written or verbal statement will be construed to create a real or implied contract of continued employment.
11. Notwithstanding the at-will nature of the employment relationship, if you voluntarily resign or your employment is terminated for "cause", all compensation and benefits will cease immediately. Additionally, you will receive no additional payments from the Company other than your accrued base salary and accrued and unused vacation benefits earned through the date of your termination.
12. If the Company terminates your employment without "cause", you will be entitled to the following:
  - a. severance payments equal to your annual base salary for twelve (12) months ("Severance Payment"), paid in equal installments over the course of the 12-month period following your employment; provided, however, that in order to receive the Severance Payment and the other benefits described in Sections 12 b. and 12 c. below, you will be required to execute and not rescind a general release in favor of the Company in a form acceptable to the Company. As used in this agreement, "cause" shall mean, as reasonably determined by the Company based on the information then known to it, that one or more of the following has occurred: (1) you have committed a crime punishable as a felony; (2) you have engaged in fraud, dishonesty, gross negligence, or other misconduct, including but not limited to use of controlled substances; (3) you have failed to perform or uphold your responsibilities under this agreement or comply with reasonable directives of the Board; or (4) you have materially breached this agreement or any other agreement with the Company, including but not limited to the Confidentiality and Restrictive



Covenant Agreement; (5) you have violated a written Company policy, including but not limited to violation of the Code of Ethics; or (6) you have engaged in conduct that reflects poorly upon you or the Company.

- b. continuation of the group health, dental, vision, and prescription drug coverages in which you are enrolled at the time your employment terminates with the Company, pursuant to the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"); Company agrees to subsidize 100% of the cost of such COBRA coverage until the twelve month anniversary of the date upon which your employment with the Company terminates.
  - c. to the extent the date of your termination of employment occurs after the close of a calendar year but before the bonus payment date for such year, you shall be eligible to receive any annual incentive bonus award for the completed calendar year to the extent you have earned such award based upon the achievement of objectives in accordance with the terms and conditions of the Company's annual incentive plan.
13. This offer is conditioned upon your acceptance and agreement to the enclosed Confidentiality and Restrictive Covenant Agreement. Please sign both copies of the Confidentiality and Restrictive Covenant Agreement and return them to me for signature on behalf of Delcath.
  14. On your first day, you will be required to complete the U.S. Government Eligibility form (Form I-9) and provide documents that verify your identity and employment eligibility. Enclosed is a copy of the documents that may be provided to establish your right to work in the United States.
  15. This agreement is governed by and will be construed in accordance with the laws of the State of New York. The parties agree that any action relating to this agreement will be instituted and prosecuted exclusively in a federal or state court located in the State of New York, New York County. Delcath and you irrevocably consent to submit to the personal jurisdiction of the state and federal courts of New York and agree not to bring any action relating to this agreement in any other court.
  16. When signed by you, this offer letter will become a legally binding agreement. This agreement (including the Confidentiality and Restrictive Covenant Agreement, the Stock Option grant letter and the Restricted Stock grant letter referred to above) contains the entire agreement relating to the subject matter hereof. No modification, discharge or waiver of this agreement will be binding on Delcath unless agreed to in writing signed by an officer of Delcath. This agreement automatically will inure to the benefit of Delcath, its successors and assigns.

We are pleased that you will be joining Delcath and are confident your skills and talents will become valued assets to our organization. If you agree with the terms outlined above, please sign below where indicated whereupon this letter will become a binding agreement. Please

return the original to my attention by September 2, 2011, along with the two signed copies of the Employee Confidentiality and Restrictive Covenant Agreement.

We look forward to having you join our team.

Sincerely,



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Peter Graham  
EVP, General Counsel &  
Global Human Resources

I, Graham Miao, Ph.D., agree and accept this offer of employment with Delcath Systems, Inc.



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(Signature)

Date: 8/31/11

# Delcath Systems, Inc.

## EMPLOYEE CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT

AGREEMENT ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Delcath Systems, Inc., and its predecessors, divisions, affiliates, successors, and assigns (the "Company"), and \_\_\_\_\_, residing at \_\_\_\_\_ ("Employee").

WHEREAS, the Company wishes to obtain reasonable protection of its confidential business and technical information which it has developed, acquired and/or is or may be developed or acquired by the Company at substantial expenses, and

WHEREAS, the Company wishes to obtain reasonable protection against unfair competition during the Employees employment by the Company and following termination of the Employee's employment by the Company and to further protect against unfair use of its confidential business and technical information the Company desires to have Employee execute this Agreement, and

WHEREAS, the Employee is willing to execute this Agreement and grant the Company the benefits of the restrictive covenants contained herein.

For and in consideration of the continued employment of Employee by the Company and compensation and benefits paid to Employee and hereafter to be paid to Employee by the Company, Employee agrees as follows:

### 1. NO PRIOR CONFLICTING CONTRACTS.

Employee represents that Employee's employment or potential employment by the Company is not in violation of any contract or covenants to which Employee is a party with any employer, entity, or person. Employee agrees not to use or disclose in Employee's work with the Company any secret or confidential information of others, including prior employers, unless such information is rightfully possessed by the Company.

### 2. DEFINITIONS

(a) *Confidential Information.* For purposes of this Agreement, the term "Confidential Information" means information that is not generally known to the public and that is used, developed, or obtained by the Company in connection with its business, including, but not limited to, information, observations, and data obtained by Employee while employed by the Company thereof concerning (i) the business or affairs of the Company, (ii) products or services, (iii) fees, costs, compensation, and pricing structures, (iv) designs, (v) specifications (including, but not limited to, supplier specifications); (vi) clinical trial data; (vii) analyses, (viii) drawings, photographs and reports, (ix) computer software, including operating systems, applications, and program listings, (x) flow charts, manuals, and documentation, (xi) data or data bases, (xii) accounting and business methods, (xiii) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xiv)

customers and clients and customer or client lists, (xv) other copyrightable works, (xvi) all production methods, processes, technology, and trade secrets, and (xvii) all similar and related information in whatever form. Confidential Information will not include any information that has been published (other than a disclosure by Employee in breach of this Agreement) in a form generally available to the public prior to the date Employee proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

(b) *Work Product*. For purposes of this Agreement, the term “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, discoveries, methods, designs, processes, analyses, drawings, reports, service marks, trademarks, trade names, logos, and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) that relates to the Company’s actual or anticipated business, research and development, or existing or future products or services and which are conceived, developed, or made by Employee (whether or not during usual business hours, whether or not by the use of the facilities of the Company, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed, or made prior to the effective date of this Agreement) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing.

3. CONFIDENTIALITY REQUIREMENTS.

(a) Employee acknowledges and agrees that, as a result of the nature of the Company’s business and the nature of Employee’s position with the Company, Employee has been or will come into contact with, and will have access to, Confidential Information belonging to the Company. Employee acknowledges that the aforementioned Confidential Information is unique and not generally known to the public with respect to the Company and has been developed, acquired, and compiled by the Company at its great effort and expense.

(b) Employee further acknowledges and agrees that any disclosure or use of the Company’s Confidential Information by Employee, other than in connection with the Company’s business or as specifically authorized by the Company, will be or may become highly detrimental to the business of the Company, and serious loss of business and damage to the Company will or may result.

(c) Accordingly, Employee agrees to hold all Confidential Information in the strictest confidence and agrees to safeguard and not use, disclose, divulge or reveal the Company’s Confidential Information to any person, either during Employee’s employment or at any time after the termination of Employee’s employment with the Company, without specific prior written authorization from an executive officer of the Company. If Employee is an executive officer of the Company, Employee must obtain prior written authorization from the Chief Executive Officer.

(d) Employee further agrees to promptly deliver to the Company, upon the termination of Employee’s employment with the Company, or at any other time as the Company

may so request, all Company property, including but not limited to laptops, personal digital assistants (PDAs), and cell phones, and all documentation, memoranda, notes, customer lists, records, reports, blueprints, software, drawings, computer disks, programs, and any other documents (and all copies thereof) containing Confidential Information or relating to the Company's business and any property associated therewith, which Employee may then possess or have under Employee's control.

4. WORK PRODUCT REQUIREMENTS.

(a) All Work Product that Employee may have conceived, developed, made, discovered, invented or originated during his/her employment by the Company prior to the Effective Date, during Employee's employment with the Company, or at any time in the period of twelve (12) months after termination of Employee's employment, shall be deemed work for hire and shall be the exclusive property of the Company, as applicable. Employee hereby assigns all of Employee's right, title, and interest in and to such Work Product to the Company, including all intellectual property rights therein.

(b) Employee shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending, and enforcing the Company's rights therein. Employee hereby appoints the Company as Employee's attorney-in-fact to execute on Employee's behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company's rights to any Work Product.

5. NON-COMPETITION.

(a) Employee acknowledges and agrees that the Company has invested and will invest substantial time, effort, resources and finances in the research, development and commercialization of the Company's product(s) and is engaged in a highly competitive business and that, by virtue of the position in which Employee is employed, he or she will help create and will be given access to Confidential Information. If the Employee engages in any business that is competitive with the Company it will cause great and irreparable harm to the Company, the monetary loss from which would be difficult, if not impossible, to measure.

(b) Consequently, Employee covenants and agrees that so long as Employee is employed by the Company, and for a period of one (1) year following termination of Employee's employment with the Company, whether such termination is voluntary or involuntary, Employee will not, directly or indirectly (whether as an individual for Employee's own account, or as a partner, joint venturer, employee, agent, consultant or sales representative, officer, director or shareholder of any entity or otherwise), engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business, or in any manner compete with the Company, in any country in which the Company does business, without the Company's specific written consent to do so. "Competing Business" shall mean any enterprise, activity, or business that competes with the Company in any of its or their material businesses, including, without limitation, the research, design, development, identification, manufacture, marketing, or sales of targeted regional cancer or infectious disease drug delivery systems.

The restrictions contained in this section shall not prevent Employee from accepting employment with a large diversified organization with separate and distinct divisions that do not compete, directly or indirectly, with the Company, as long as prior to accepting such employment the Company receives separate written assurances from the prospective employer and from Employee, satisfactory to the Company, to the effect that Employee will not render any services, directly or indirectly, to any division or business unit that competes, directly or indirectly, with the Company. During the restrictive period set forth in this section, Employee will inform any new employer, prior to accepting employment, of the existence of this Agreement and provide such employer with a copy of this Agreement.

Nothing in this Agreement shall be construed to prevent or otherwise restrict or limit the Employee from owning shares and investing (as a passive investor), directly or indirectly, in the stock of any publicly traded competing corporation whose shares are listed on a national securities exchange or traded in the over-the-counter market, but only if Employee does not own more than an aggregate of one percent (1%) of the outstanding stock of such corporation.

6. NON-SOLICITATION OF CUSTOMERS AND EMPLOYEES.

(a) Employee acknowledges and agrees that, during the course of Employee's employment by the Company, Employee may come into contact with and become aware of some, most, or all of the Company's customers and employees, past, present, and prospective, and their names and addresses, as well as other information about the customers and employees not publicly available. Employee further acknowledges and agrees that the loss of such customers and employees may cause the Company great and irreparable harm.

(b) Consequently, Employee covenants and agrees that, if Employee's employment with the Company terminates, whether such termination is voluntary or involuntary, Employee will not, for a period of one (1) year following such termination, directly or indirectly (whether as an individual for Employee's own account, or as a partner, joint venturer, employee, agent, consultant or sales representative, officer, director or shareholder of any entity or otherwise), solicit or attempt to solicit to do business that would compete with the Company in any of its or their material businesses, including, without limitation, the research, design, development, identification, manufacture, marketing, or sales of targeted regional cancer or infectious disease drug delivery systems.

(c) Employee also agrees that, for a period of one (1) year following termination of Employee's employment with the Company, whether such termination is voluntary or involuntary, Employee will not, directly or indirectly (whether as an individual for Employee's own account, or as a partner, joint venturer, employee, agent, consultant or sales representative, officer, director or shareholder of any entity or otherwise), solicit or attempt to solicit any then current employee of the Company to leave employee's employment with the Company to become employed by any person, firm, corporation, or other entity.

7. ENFORCEMENT OF COVENANTS.

(a) Employee acknowledges that a breach by Employee of any of the terms of this Agreement will result in material, irreparable injury to the Company for which any remedy at law will not be adequate. Moreover, it will not be possible to measure damages for such

injuries precisely and, in the event of such a breach or threat of breach, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction restraining Employee from engaging in activities prohibited by this Agreement, together with such other relief as may be required to enforce specifically any of the terms of this Agreement. Employee consents to such temporary, preliminary, or permanent injunctive relief. Nothing in this Agreement shall be construed as prohibiting the Company from pursuing any other available remedies for breach or threatened breach of this Agreement, including recovery of damages, court costs, and attorneys' fees.

(b) If the Company is required to enforce any of its rights hereunder through legal proceedings, Employee shall reimburse the Company for all reasonable costs, expenses, and attorneys' fees incurred by the Company in connection with the enforcement of its rights hereunder.

(c) Employee understands and agrees that nothing in this Agreement creates a contract, express or implied, of employment for any specified period. Employee's employment may be terminated by Employee or the Company at any time and for any reason or no reason, unless expressly limited by a separate writing executed by both the Company and Employee.

(d) If one or more provisions of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, Employee agrees the validity, legality, and enforcement of the remaining provisions of the Agreement shall not in any way be affected or impaired. Employee also agrees that the language contained in Sections "3", "4", "5" and "6" of the Agreement is reasonable in scope and that Employee will not raise any issue regarding the reasonableness of the Agreement as a defense in any proceeding to enforce the Agreement. If a court determines that the language contained in Sections "3", "4", "5" and "6" of the Agreement is not reasonable, the parties agree that the court may modify such provisions to the maximum period of restriction, activities, term, or geographic scope that the court deems reasonable.

8. WAIVER OF BREACH.

The waiver by the Company of a breach of any provision of this Agreement by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee, and the failure of the Company to take action against any other employee(s) for similar breach(es) on their part, shall not be construed as a waiver of a breach by Employee.

9. AGREEMENT BINDING.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company, and the heirs, executors, and administrators of Employee. The Company shall have the right to transfer and assign all or any portion of its rights and obligations hereunder to any third party.

10. APPLICABLE LAW AND CHOICE OF FORUM.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties, being desirous of having any disputes resolved in a forum having a substantial body of law and experience with matters contained herein, and the parties

having a substantial connection with the State of New York, agree that any action or proceeding with respect to this Agreement shall be brought in a state or federal court located within the State of New York. The parties consent to the personal jurisdiction of the state and federal courts of New York should a legal action to enforce this Agreement be necessary.

11. MODIFICATION.

This Agreement may only be modified by the express written consent of both parties.

12. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding between Company and Employee with respect to the subject matter hereof and supersedes and replaces all prior contracts, agreements and understandings related to the same subject matter between the parties.

13. SECTION HEADINGS

The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

I have read and understand this Agreement and I agree to abide by its terms.

**[EMPLOYEE]**

**DELCATH SYSTEMS, INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





## **DEL CATH EXPANDS SENIOR MANAGEMENT TEAM**

### **Graham G. Miao Appointed Chief Financial Officer; David McDonald Appointed Executive Vice President, Business Development**

NEW YORK, NY – September 26, 2011 — Delcath Systems, Inc. (NASDAQ: DCTH) today announced the appointment of Graham G. Miao, M.S., MBA, Ph.D., 47, to the position of Executive Vice President, Chief Financial Officer (CFO). Concurrent with this appointment, David McDonald, 51, Delcath's CFO since 2009, will assume the newly created role of Executive Vice President, Business Development. Mr. Miao will report directly to Eamonn P. Hobbs, President & CEO, and Mr. McDonald will continue to report to Mr. Hobbs. Both appointments are effective as of September 26, 2011.

Mr. Miao is a senior financial executive with extensive experience in global business operations, financial planning and analysis, and business development in the United States, Asia and Europe. He joins Delcath from Dun & Bradstreet Corporation, where he served as Chief of Staff of the Global CFO Organization and member of the Financial Leadership team since 2009. Previously, Mr. Miao was Executive Vice President & CFO of Pagoda Pharmaceuticals—a Shanghai-based specialty pharmaceuticals and medical device company focused in urology and allergy.

Prior to joining Pagoda, Mr. Miao was Vice President of Strategic Planning & Financial Analysis at Symrise Inc., a German supplier of flavoring and fragrance products. In this role Mr. Miao served as division-CFO responsible for driving profitable growth of a \$700 million business line. Mr. Miao was also Senior Director for Global Primary Care and Global Medical Affairs at Schering-Plough Corporation, serving as the division-CFO for the company's \$3 billion primary care pharmaceuticals franchise. Prior to his time at Schering-Plough, Mr. Miao was at Pharmacia Corporation, serving as Director-Head of Finance for Pharmacia's \$1.3 billion Global Oncology franchise. In this role, he reported operationally to Gabriel Leung, then Head of Global Oncology franchise for Pharmacia and current member of the Delcath Board of Directors. Earlier in his career, Mr. Miao worked as a biotechnology analyst at J.P. Morgan and Company. Mr. Miao earned a Ph.D. in Biological Sciences and an M.B.A. from Columbia University, an M.S. in molecular biology from Arizona State University, and a B.S. in biochemistry from Fudan University in Shanghai, China.

Commenting on the appointments, Mr. Hobbs said, "The timing of Graham Miao's appointment as CFO is part of the planned expansion of our executive leadership team in advance of the expected commercial launch of our Hepatic CHEMOSAT® Delivery System at the end of this year. Graham's deep background in global financial operations and management, and track record of building high performance finance organizations,

make him ideally suited to help complete the next phase of our transition to a fully commercial enterprise. His knowledge of the global pharmaceutical industry landscape and experience in both established and development stage pharmaceutical/medical device companies will bring additional strategic insights as well. We are pleased to welcome Graham to the Delcath team.”

Mr. Hobbs continued, “We are also pleased to appoint Dave McDonald to the newly created position of Executive Vice President, Business Development. Dave’s considerable investment banking experience and skill set are well suited for this important new role. Dave will now be able to focus exclusively on the strategic development and partnering opportunities vital to the successful launch of CHEMOSAT in the EU and other foreign markets, as well as the long-term expansion of available markets for chemosaturation therapy. Dave’s contributions as CFO during the past two years have been immeasurable, not the least of which was successfully raising almost \$100 million in new capital during a volatile and challenging period for the equity markets. We are confident that in his new capacity his skills and leadership will continue to help drive Delcath’s long-term success.”

#### **About Delcath Systems**

Delcath Systems, Inc. is a development stage specialty pharmaceutical and medical device company focused on oncology. Delcath’s proprietary system for chemosaturation is designed to administer high dose chemotherapy and other therapeutic agents to diseased organs or regions of the body, while controlling the systemic exposure of those agents. The Company’s initial focus is on the treatment of primary and metastatic liver cancers. In 2010, Delcath concluded a Phase III metastatic melanoma study, and the Company recently completed a multi-arm Phase II trial to treat other liver cancers. The Company obtained authorization to affix a CE Mark for the Hepatic CHEMOSAT delivery system in April 2011. The Company has not yet received FDA approval for commercial sale of its system in the United States. For more information, please visit the Company’s website at <http://www.delcath.com/>.

*The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements made by the Company or on its behalf. This news release contains forward-looking statements, which are subject to certain risks and uncertainties that can cause actual results to differ materially from those described. Factors that may cause such differences include, but are not limited to, uncertainties relating to our ability and the time required to build inventory and establish commercial operations in Europe, adoption, use and resulting sales for the Hepatic CHEMOSAT delivery system in the EEA, if any, our ability to successfully commercialize the chemosaturation system and the potential of the chemosaturation system as a treatment for patients with terminal metastatic disease in the liver, acceptability of the Phase III clinical trial data by the FDA, our ability to address the issues raised in the Refusal to File letter received from the FDA and the timing of our re-submission of our NDA, re-submission and acceptance of the Company’s NDA by the FDA, approval of the Company’s NDA for the treatment of metastatic melanoma to the liver, adoption, use and resulting sales in the United States, if*

*any, approval of the current or future chemosaturation system for other indications, actions by the FDA or other foreign regulatory agencies, our ability to successfully enter into distribution and strategic partnership agreements in foreign markets and the corresponding revenue associated with such foreign markets, our ability to obtain reimbursement for the Hepatic CHEMOSAT system in Europe, uncertainties relating to the results from current or future research and development or clinical trials, and uncertainties regarding our ability to obtain financial and other resources for any research, development and commercialization activities. These factors, and others, are discussed from time to time in our filings with the Securities and Exchange Commission. You should not place undue reliance on these forward-looking statements, which speak only as of the date they are made. We undertake no obligation to publicly update or revise these forward-looking statements to reflect events or circumstances after the date they are made.*

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