
**UNITED STATES
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**

Date of Report (Date of earliest event reported): June 29, 2017

DELCATH SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-16133
(Commission
File Number)

06-1245881
(IRS Employer
Identification No.)

1633 Broadway, Suite 22C, New York, New York
(Address of principal executive offices)

10019
(Zip code)

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

None
(Former name or former address, if changed since last report.)

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

- Emerging growth company
 - If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to section 13(a) of the Exchange Act.
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Item 1.01 Entry into a Material Definitive Agreement.

On June 29, 2017, our Board authorized the establishment of a new series of preferred stock designated as Series A Preferred Stock, \$0.01 par value, the terms of which are set forth in the certificate of designations for such series of Preferred Stock (the "Series A Certificate of Designations") which was filed with the State of Delaware on June 30, 2017 (together with any preferred shares issued in replacement thereof in accordance with the terms thereof, the "Series A Preferred Stock"). On July 2, 2017, we entered into an exchange agreement (the "Exchange") with one of our investors which had purchased certain senior secured convertible notes (the "Notes"), convertible into shares of our common stock pursuant to a certain June 6, 2016 securities purchase agreement, of \$4.2 million aggregate principal amount of such Notes for 4,200 shares of Series A Preferred Stock (the "Series A Preferred Shares"). The Exchange is being made in reliance upon the exemption from registration provided by Rule 3(a)(9) of the Securities Act of 1933, as amended. The Series A Preferred Shares shall be entitled to the whole number of votes equal to \$4.2 million divided by \$3.68 (the closing bid price on June 13, 2016, the date of issuance of the Notes as adjusted for the reverse stock split effected in July 2016,) or 1,141,304 votes. The Series A Preferred Stock has no dividend, liquidation or other preferential rights to our common stock, and each share of Series A Preferred Stock shall be redeemable for the amount of \$0.001, payable in cash, per share at our written election.

Item 3.02. Unregistered Sales of Equity Securities.

See Item 1.01 above.

Item 5.03. Amendment to Certificate of Incorporation.

See Item 1.01 above.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> |
|------------------------|--|
| 3.1 | Certificate of Designation of Series A Preferred Stock |
| 10.1 | Form of Exchange Agreement |

SIGNATURE

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.

DELCATH SYSTEMS, INC.

Date: July 3, 2017

By: /s/ Jennifer Simpson

Name: Jennifer Simpson

Title: President and Chief Executive Officer

EXHIBIT INDEX

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Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "DELCATH SYSTEMS, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF JUNE, A.D. 2017, AT 2:08 O'CLOCK P.M.



Jeffrey W. Bullock, Secretary of State

Authentication: 202815722

Date: 06-30-17

2168713 8100
SR# 20175052463

You may verify this certificate online at corp.delaware.gov/authver.shtml

**CERTIFICATE OF DESIGNATIONS,
PREFERENCES AND RIGHTS OF THE
SERIES A
PREFERRED STOCK
OF
DELCATH SYSTEMS, INC.**

**Pursuant to Section 151 of the
General Corporation Law of the State of Delaware**

Delcath Systems, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation (the “**Board**”) as required by Section 151 of the General Corporation Law of the State of Delaware at a meeting duly called and held on June 29, 2017:

RESOLVED, that pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware (the “**DGCL**”) and the authority vested in the Board by the Certificate of Incorporation of the Corporation filed with the Secretary of State of the State of Delaware on June 30, 2017 (the “**Certificate of Incorporation**”), the Board hereby fixes and determines the designation of, the number of shares constituting, and the rights, preferences, privileges, and qualifications, limitations and restrictions thereof, relating to, a series of the preferred stock, par value \$0.01 per share, of the Corporation (the “**Preferred Stock**”), pursuant to this certificate of designations (this “**Certificate of Designations**”) as follows:

1. Designation and Number of Shares. There shall hereby be created and established a series of Preferred Stock of the Corporation designated as “Series A Preferred Stock” (the “**Series A Preferred Stock**”). The authorized number of shares of Series A Preferred Stock shall be 4,200 shares;

Each share of Series A Preferred Stock shall have a par value of \$0.01, a stated value of \$1,000.00 and a liquidation preference of \$0.001 per share, as described herein.

2. Fractional Shares. The Corporation shall not issue any fractional shares of the Series A Preferred Stock.

3. Dividends. The Series A Preferred Stock shall not be entitled to receive any dividends from the Corporation.

4. Liquidation Preferences. Upon the dissolution, liquidation or winding up of the Corporation (a “**Liquidation Event**”), each holder of Series A Preferred Stock (each, a “**Holder**”, and collectively, the “**Holder**s”) shall be entitled to receive and to be paid out of the assets of the Corporation available for distribution to its stockholders on a *pari passu* basis with one another and before any payment or distribution shall be made on the Common Stock or on any other class of capital stock of the Corporation ranking junior to the Series A Preferred Stock upon a Liquidation Event, the amount of \$0.001 per share, payable in cash per share of Series A Preferred Stock. Neither the sale of all or substantially all of the assets or capital stock of the Corporation, nor the merger or consolidation of the Corporation into or with any Person or the merger or consolidation of any Person into or with the Corporation, shall be deemed to be a Liquidation Event for the purposes of this Section 4. After the payment to each Holder of the full preferential amount provided for in this Section 4, each such Holder, as such, shall have no right or claim to any of the remaining assets of the Corporation.

5. Voting Rights.

(a) Each Holder, as such, shall be entitled to the whole number of votes equal to the number of shares of Common Stock equal to the Stated Value of the Series A Preferred Stock divided by \$3.68 (the closing bid price on June 13, 2016, the date of issuance of the Notes), but without regard to the Maximum Percentage and the Exchange Cap or any other limitations or restrictions on conversions set forth in the Notes and without regard to whether or not there are then a sufficient number of shares of Common Stock authorized for issuance upon conversion of the Remaining Note (as defined in the Exchange Agreement) or any other Notes then outstanding; provided, however, that such amount of votes with respect to the Series A Preferred Stock shall not exceed 19.9% (or such greater percentage allowed by The NASDAQ Capital Market without any stockholder approval requirements) of the voting power of the Corporation.

(b) Each Holder shall be entitled to receive the same prior notice of any stockholders’ meeting as is provided to the holders of Common Stock as well as prior notice of all stockholder actions to be taken by legally available means in lieu of a meeting (and copies of proxy materials, consent solicitation statements and other information sent to stockholders in connection therewith), all in accordance with the Bylaws and the DGCL, and shall be entitled to vote or, if applicable, provide consent, together with the holders of Common Stock as if they were a single class of securities upon any matter submitted to a vote of stockholders, except as otherwise expressly required by law and except as required by the terms hereof to be submitted to a series vote of the applicable Holders, in which case each Holder only shall vote as a separate series.

6. Covenants. In addition to any other rights provided by law, except where the vote or, if applicable, written consent of the holders of a greater number of shares is required by law, without first obtaining the affirmative vote at a meeting duly called for such purpose or, if applicable, the written consent without a meeting of the holders in the aggregate of a majority in voting power of all of the Series A Preferred Stock, voting together as if they were a single class of securities, the Corporation shall not (and the Corporation shall cause its Subsidiaries (as defined in the Exchange Agreement) not to), directly or indirectly, whether by merger, consolidation, reorganization or otherwise:

(i) alter, amend or repeal any provision of, or add any provision to, the Certificate of Incorporation, this Certificate of Designations, the Bylaws or any other organizational documents of the Corporation, or file any certificate of amendment of the Certificate of Incorporation (including any certificate of designations of, or certificate of amendment or other instrument with respect to, any series of preferred stock), if such action would adversely affect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Series A Preferred Stock or would adversely affect the rights, powers and preferences of any Holder in its capacity as such (in each case as determined by a majority of the aggregate voting power of the Holders in their sole and absolute discretion), regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation, this Certificate of Designations, the Bylaws or other organizational documents of the Corporation or by merger, consolidation, reorganization or otherwise or, without limitation of the foregoing, authorize, approve, consent to, take or effect any transaction or series of transactions, whether by amendment to the Certificate of Incorporation, this Certificate of Designations, the Bylaws or other organizational documents of the Corporation, or by merger, consolidation, reorganization or otherwise, to cancel the outstanding shares of any series of Series A Preferred Stock or to reclassify, convert or exchange such share into cash or other property (including securities) of the Corporation, or to otherwise adversely affect the rights, powers and preferences of any series of Series A Preferred Stock or the rights of any Holder as such (in each case as determined by the majority of the aggregate voting power of the Holders in their sole discretion);

(ii) increase or decrease, or authorize the increase or decrease of, the authorized number of shares of any series of Series A Preferred Stock;
or

(iii) authorize, approve, consent to, or enter into any agreement with respect to, any of the foregoing, directly or indirectly, or authorize, approve, consent to, cause or permit any Subsidiary of the Corporation, directly or indirectly, to take any actions described in clauses (i) through (ii) above.

Notwithstanding the foregoing, if any of the actions contemplated in Section 6(b) above would comply with the foregoing but disproportionately, materially and adversely affects the rights, powers and preferences of any Holder relative to the comparable rights, powers and preferences of the other Holders, such action shall also require the prior written consent of such adversely affected Holder.

7. Transfer. A Holder may transfer its shares of Series A Preferred Stock in whole, or in part, and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided, that a share of Series A Preferred Stock shall only be transferable in conjunction with, and in proportion to, a transfer of Notes then held by such Holder; provided, further, that such transfer is in compliance with applicable securities laws. If a Holder transfers Series A Preferred Stock in whole or in part, the Corporation agrees, upon the request of such transferor, to authorize a new series of Preferred Stock with rights, preferences, privileges, and restrictions substantially identical to those of the Series A Preferred Stock being transferred, and, upon the request of such transferor, to exchange the Series A Preferred Stock being transferred for the same number of shares or fractional shares of such newly authorized Series A Preferred Stock. The Corporation shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any Holder may reasonably request in order to carry out the intent and accomplish the purposes of this Section 7.

8. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any certificate representing a share of Series A Preferred Stock (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of an indemnification undertaking by the applicable Holder to the Corporation in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of the certificate(s), the Corporation shall execute and deliver new certificate(s) of like tenor and date.

9. Remedies. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under the Certificate of Incorporation, the Bylaws, any other organizational documents of the Corporation and any of the other Transaction Documents (as defined in the Exchange Agreement) or Exchange Documents (as defined in the Exchange Agreement), at law or in equity (including a decree of specific performance and/or other injunctive relief), and no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Corporation therefore acknowledges and agrees that, in the event of any such breach or threatened breach, the Holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. Upon any request made by a Holder to the Corporation, the Corporation shall promptly (and in any event within 48 hours) provide all requested information and documentation to such Holder to enable such Holder to confirm the Corporation's compliance with the terms and conditions of this Certificate of Designations or to assert or exercise the rights, powers or privileges of a Holder hereunder.

10. Noncircumvention. The Corporation hereby covenants and agrees that the Corporation will not, by amendment of its Certificate of Incorporation, Bylaws or through any

reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action (in each case, whether directly by the Corporation or indirectly through any Subsidiary of the Corporation), avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all actions as may be required to protect the rights of the Holders.

11. Failure or Indulgence Not Waiver. No failure or delay on the part of any Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Corporation and the Holders and shall not be construed against any Person as the drafter hereof.

12. Notices. The Corporation shall provide the Holders with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given to a Holder under this Certificate of Designations, unless otherwise provided herein, such notice must be to such Holder in writing and shall be given in accordance with the Exchange Agreement.

13. Series A Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Series A), a register for the Series A Preferred Stock, in which the Corporation shall record the name, address, electronic mail address and facsimile number of the Person in whose name the shares of Series A Preferred Stock has been issued, as well as the name, address, electronic mail address and facsimile number of each transferee. The Corporation may treat the Person in whose name any share of Series A Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers. The Corporation shall keep the register open and available at all times during business hours for inspection by any Holder or its legal representatives

14. Redemption and Conversion Rights.

(a) Each share of Series A Preferred Stock shall be redeemable for the amount of \$0.001, payable in cash, per share at the written election of the Corporation.

(b) No shares of Series A Preferred Stock shall be convertible either at the Corporation's option or at the option of the Holder into shares of capital stock or other securities of the Corporation.

15. Actions Prohibited by Law. To the extent the Corporation is prohibited by law from taking any action specified in this Certificate of Designations to give effect to the rights, powers or privileges of any Holder, the Corporation shall, upon the request of such Holder, in

addition to any other requirements of this Certificate of Designations, take such actions as may be reasonably requested by such Holder to implement a valid and enforceable provision that is a reasonable substitute for the prohibited provision in order to give the maximum effect to the intent of the Corporation and such Holder to observe the rights, powers and privileges of such Holder (the "**Amended Provision**"). The Corporation shall take any action necessary or appropriate, to the extent reasonably within its control, to cause this Certificate of Designations to be amended to include the Amended Provision.

16. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

(a) "**Closing Date**" shall have the meaning ascribed to such term in the Exchange Agreement.

(b) "**Common Stock**" means (i) the Corporation's shares of common stock, \$0.01 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification or conversion of such common stock.

(c) "**Exchange Agreement**" means that certain securities purchase agreement by and among the Corporation and the other parties listed thereto, dated as of the Subscription Date, as may be amended from time in accordance with the terms thereof.

(d) "**Notes**" shall have the meaning as set forth in the Exchange Agreement.

(e) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(f) "**Subscription Date**" means June 30, 2017.

* * * * *

IN WITNESS WHEREOF, Delcath Systems, Inc. has caused this Certificate of Designations to be signed by its President and Chief Executive Officer this 30th day of June, 2017.

DELCATH SYSTEMS, INC.

By: /s/ Jennifer K. Simpson

Name: Jennifer K. Simpson

Title: President and Chief Executive Officer

EXCHANGE AGREEMENT

EXCHANGE AGREEMENT (the “**Agreement**”) is made as of the second day of July, 2017, by and between, Delcath Systems, Inc., a Delaware corporation (the “**Company**”) and the investor signatory hereto (the “**Investor**”).

WHEREAS, reference is hereby made to that certain Securities Purchase Agreement, dated June 6, 2016, by and among the Company, the Investor and certain other buyers signatory thereto (the “**Securities Purchase Agreement**”), pursuant to which the Investor and such other buyers acquired (i) certain senior secured convertible notes (the “**Notes**”), convertible into shares of the Company’s common stock, par value \$0.01 per share (the “**Common Stock**”) and (ii) warrants to acquire shares of the Common Stock. Capitalized terms not defined herein shall have the meaning as set forth in the Securities Purchase Agreement.

WHEREAS, as of the date hereof the Investor holds such aggregate principal amount of a Note as set forth on the signature page of the Investor hereto (the “**Investor Note**”).

WHEREAS, the Company has authorized a new series of preferred stock of the Company designated as Series A Preferred Stock, \$0.01 par value, the terms of which are set forth in the certificate of designations for such series of Preferred Stock (the “**Certificate of Designations**”) in the form attached hereto as **Exhibit A** (together with any preferred shares issued in replacement thereof in accordance with the terms thereof, the “**Series A Preferred Stock**”).

WHEREAS, subject to the terms and conditions set forth herein, the Company and the Investor desire to exchange (the “**Exchange**”) such aggregate principal amount of the Investor Note as set forth on the signature page of the investor hereto (the “**Exchange Note**”) for such aggregate number of shares of Series A Preferred Stock (the “**New Preferred Shares**”) as set forth on the signature page of the Investor attached hereto, with the remaining aggregate principal amount of the Investor Note (the “**Remaining Note**”) remaining with the Investor after the Closing Date.

WHEREAS, the Exchange is being made in reliance upon the exemption from registration provided by Rule 3(a)(9) of the Securities Act of 1933, as amended (the “**1933 Act**”).

WHEREAS, concurrently herewith, the Company is entering into agreements with holders of Notes (each, an “**Other Investor**” and together with the Investor, the “**Investors**”, and such agreements, each an “**Other Agreement**”) substantially in the form of this Agreement (other than with respect to the identity of the Investor; any provision regarding the reimbursement of legal fees and proportional changes reflecting the different holdings of such Other Investors and provisions to document that each such other Investor receives consideration thereunder in proportional economic value as provided to the Investor hereunder).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the promises and the mutual agreements, representations and warranties, provisions and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Exchange. On the date hereof (or such other date and time as is mutually agreed to in writing by the Company and the Required Holders) (the “**Closing Date**”, and the Closing, the “**Closing**”), the Investor shall, and the Company shall pursuant to Rule 3(a)(9) of the 1933 Act, exchange the Exchange Note for the New Preferred Shares As part of the Exchange, the following transactions shall occur:

(a) Prior to the Closing Date, the Company shall have filed the Certificate of Designations with the Delaware Secretary of State. As of the Closing Date, the Exchange Note shall be free and clear of all Liens. Upon receipt of the New Preferred Shares in accordance herewith, all of the Investor’s rights under the Exchange Note shall be extinguished (including, without limitation, the rights to receive any accrued and unpaid interest thereon or any other shares of Common Stock with respect thereto). Immediately following the consummation of the Exchange, the Exchange Note shall automatically be cancelled for no additional consideration. The Remaining Note shall remain outstanding after the Closing Date until such time as it shall be converted or redeemed in accordance therewith.

(b) On the Closing Date, the Investor shall be deemed for all corporate purposes to have become the holder of record of the New Preferred Shares and shall be entitled to exercise all of its rights with respect to the New Preferred Shares, irrespective of the date the Company delivers the certificate(s) evidencing the New Preferred Shares to the Investor.

(c) The Company and the Investor shall execute and/or deliver such other documents and agreements as are customary and reasonably necessary to effectuate the Exchange.

(d) The Exchange shall take place at the offices of Kelley Drye & Warren LLP, 101 Park Avenue, New York, NY 10178 on the Closing Date, or at such other time as the Company and the Required Holders mutually agree in writing, and may be undertaken remotely by electronic exchange of documentation.

2. Closing Conditions.

2.1 Conditions to Investor’s Obligations. The obligation of the Investor to consummate the Closing is subject to the fulfillment, to the Investor’s reasonable satisfaction, prior to or at Closing, of each of the following conditions, provided that these conditions are for the Investor’s sole benefit and may be waived by the Investor at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (except

for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or Material Adverse Effect, which are accurate in all respects) as of such specified date).

(b) Issuance of Securities. Prior to the Closing Date, the Company shall have filed the Certificate of Designations with the Delaware Secretary of State, which shall have not been amended and shall be in full force and effect as of the Closing. At the Closing, the Company shall issue the New Preferred Shares to the Investor in accordance herewith on the books and records of the Company.

(c) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(d) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Investor, and the Investor shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request.

2.2 Conditions to the Company's Obligations. The obligation of the Company to consummate the Closing is subject to the fulfillment, to the Company's reasonable satisfaction, prior to or at the Closing in question, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing the Investor with prior written notice thereof:

(a) Representations and Warranties. The representations and warranties of the Investor contained in this Agreement shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which are accurate in all respects) on the date hereof and on and as of the Closing Date as if made on and as of such date (except for representations and warranties that speak as of a specific date, which are accurate in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which are accurate in all respects) as of such specified date).

(b) No Actions. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

(c) Proceedings and Documents. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to Investor, as of the date hereof and as of the Closing Date, that:

3.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect (as defined below) on its business or properties. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on the business, properties, assets, liabilities, operations, results of operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, if any, individually or taken as a whole, or on the transactions contemplated hereby or on the Exchange Documents (as defined below) or by the agreements and instruments to be entered into (or entered into) in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under this Agreement. The Certificate of Designations in the form attached hereto as **Exhibit A** has been filed with the Delaware Secretary of State and is in full force and effect as of the Closing, enforceable against the Company in accordance with its terms and will not have been amended as of the Closing.

3.2 Authorization. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the other Exchange Documents and the performance of all obligations of the Company hereunder and thereunder, and the authorization of all the transactions contemplated by this Agreement, including, without limitation, the issuance of the New Preferred Shares, have been taken on or prior to the date hereof.

3.3 Valid Issuance of the New Preferred Shares. The New Preferred Shares when issued and delivered in accordance with the terms of this Agreement, for the consideration expressed herein, will be duly and validly issued, fully paid and non-assessable. The New Preferred Shares will be freely tradable and shall not be required to bear, and shall not bear, any 1933 Act or other restrictive legend.

3.4 Offering. Neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the New Preferred Shares. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for persons engaged by the Investor or its investment advisor) relating to or arising out of the transactions contemplated hereby). The Company shall pay, and hold the Investor harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in

connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the exchange and issuance of the New Preferred Shares. The offer, exchange and issuance of the New Preferred Shares as contemplated by this Agreement are exempt from the registration requirements of the 1933 Act and the qualification or registration requirements of state securities laws or other applicable blue sky laws. Neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

3.5 Compliance With Laws. The Company has not violated any law or any governmental regulation or requirement which violation has had or would reasonably be expected to have a Material Adverse Effect, and the Company has not received written notice of any such violation.

3.6 Consents; Waivers. No consent, waiver, approval or authority of any nature, or other formal action, by any Person, not already obtained, is required in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions provided for herein and therein.

3.7 Acknowledgment Regarding Investor's Purchase of New Preferred Shares. The Company acknowledges and agrees that the Investor is acting solely in the capacity of arm's length purchaser with respect to this Agreement and the Certificate of Designations (collectively, the "**Exchange Documents**") and the transactions contemplated hereby and thereby and that the Investor is not (i) an officer or director of the Company, (ii) an "affiliate" of the Company (as defined in Rule 144 promulgated under the 1933 Act), or (iii) to the knowledge of the Company, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Exchange Documents and the transactions contemplated hereby and thereby, and any advice given by the Investor or any of its representatives or agents in connection with the Exchange Documents and the transactions contemplated hereby and thereby is merely incidental to the Investor's acceptance of the securities to be issued to the Investor pursuant to the terms and conditions set forth in this Agreement. The Company further represents to the Investor that the Company's decision to enter into the Exchange Documents has been based solely on the independent evaluation by the Company and its representatives.

3.8 Absence of Litigation. Except as set forth in the reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the reporting requirements of the 1934 Act, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company, the Common Stock, any securities of the Company or any of the Company's officers or directors in their capacities as such.

3.9 No Group. The Company acknowledges that, to the Company's knowledge, the Investor is acting independently in connection with this Agreement and the transactions contemplated hereby, and is not acting as part of a "group" as such term is defined under Section 13(d) of the 1933 Act and the rules and regulations promulgated thereunder.

3.10 Validity; Enforcement; No Conflicts. This Agreement and each other Exchange Document to which the Company is a party have been duly and validly authorized, executed and delivered on behalf of the Company and shall constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies. The execution, delivery and performance by the Company of this Agreement and each other Exchange Document to which the Company is a party and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Company or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party or by which it is bound, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities or "blue sky" laws) applicable to the Company, except in the case of clause (ii) above, for such conflicts, defaults or rights which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

3.11 Disclosure. Other than as set forth in the 8-K Filing (as defined below), the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information. The Company understands and confirms that the Investor will rely on the foregoing representations in effecting transactions in securities of the Company.

3.12 Reaffirmation. The Company hereby: (x) reaffirms its Obligations (as defined in the Security Agreement), (y) further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Security Agreement, each Guaranty and any other Security Document to Hudson Bay Master Fund Ltd., in its capacity as collateral agent (in such capacity, the "**Collateral Agent**") for the holders of the Notes and (z) acknowledges that all of such Liens and all Collateral (as defined in the Security Agreement) heretofore pledged as security for such Obligations, continue to be and remain collateral for such Obligations from and after the date hereof. For the avoidance of doubt, each Transaction Document remains in full force and effect. The Company hereby acknowledges that the New Preferred Shares are not in any way intended to impair or affect the Liens granted, pledged or assigned by the Company to the Collateral Agent for the holders of the Notes in accordance with the terms of the Security Documents.

4. Representations and Warranties of the Investor. The Investor hereby represents, warrants and covenants that:

4.1 Authorization. The Investor has full power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby and has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby.

4.2 Accredited Investor Status; Investment Experience. The Investor is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D. The Investor can bear the economic risk of its investment in the New Preferred Shares, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the New Preferred Shares.

4.3 No Governmental Review. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the New Preferred Shares or the fairness or suitability of the investment in the New Preferred Shares nor have such authorities passed upon or endorsed the merits of the offering of the New Preferred Shares.

4.4 Validity; Enforcement; No Conflicts. This Agreement has been duly and validly authorized, executed and delivered on behalf of the Investor and constitutes the legal, valid and binding obligations of the Investor enforceable against the Investor in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies. The execution, delivery and performance by the Investor of this Agreement and each other Exchange Document to which the Investor is a party and the consummation by the Investor of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities or “blue sky” laws) applicable to the Investor, except in the case of clause (ii) above, for such conflicts, defaults or rights which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

4.5 Ownership of Exchange Note. The Investor owns and holds, beneficially and of record, the entire right, title, and interest in and to the Exchange Note free and clear of all rights and Liens (other than pledges or security interests (x) arising by operation of applicable securities laws and (y) that the Investor may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker). The Investor has full power and authority to transfer and dispose of the Exchange Note to the Company free and clear of any right or Lien.

4.6 Exemption; No Consideration. The Investor acknowledges and agrees that the Exchange is being made in reliance upon the exemption from registration provided by Rule 3(a)(9) of the 1933 Act and the securities of the Company being issued to the Investor in the Exchange will be issued exclusively in the Exchange for the surrender and cancellation of the Exchange Note and no other consideration has or will be paid to the Company for the New Preferred Shares to effect the Exchange hereunder.

5. Additional Covenants

5.1 Disclosure. The Company shall, on or before 8:30 a.m., New York City time, on []¹ issue a press release and Current Report on Form 8-K disclosing all material terms of the transactions contemplated hereby and attaching the form of this Agreement and the Certificate of Designations as exhibits thereto to the extent not previously filed with the SEC (such Current Report on Form 8-K with all exhibits attached thereto, the “**8-K Filing**”).

5.2 Blue Sky. The Company shall make all filings and reports relating to each Exchange required under applicable securities or “Blue Sky” laws of the states of the United States following the date hereof, if any.

5.3 Fees and Expenses. The Company shall reimburse the Investor for its legal fees and expenses in connection with the preparation and negotiation of this Agreement and transactions contemplated thereby, in an amount not to exceed \$15,000 (the “**Investor Counsel Expense**”). The Investor Counsel Expense shall be paid by the Company whether or not the transactions contemplated by this Agreement are consummated.] Except as otherwise set forth above, each party to this Agreement shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

6. Miscellaneous

6.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

6.2 Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each

¹ Insert date of the open of the Principal Market immediately following the time of signing of this Agreement

party hereby irrevocably submits to the exclusive jurisdiction of the state or federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

6.3 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.

6.4 Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party) or by electronic mail; or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and e-mail addresses for such communications shall be as set forth in the Securities Purchase Agreement or to such other address, facsimile number and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or e-mail containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

6.5 Finder's Fees. Each party represents that it neither is nor will be obligated for any finders' fee or commission in connection with this transaction. The Company shall indemnify and hold harmless the Investor from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

6.6 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), only with the written consent of the Company and the Investor. Effective as of the Closing Date, with respect to any Pre-Installment Conversion Shares (as defined in the Exchange Note) delivered to the Investor in excess of the related Post-Installment Conversion Shares (as defined in the Exchange Note) for any given Installment Date (as defined in the Exchange Note) occurring prior to the date hereof, each party hereby waives the requirement in Section 8(b) of the Exchange Note to apply such remaining Pre-Installment Conversion Shares against the Installment Amount (as defined in the Exchange Note) due on a future Installment Date and the Investor shall instead be entitled to keep such excess Pre-Installment Conversion Shares as additional interest thereunder.

6.7 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 so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

6.8 Entire Agreement. This Agreement together with the other Exchange Documents, represents the entire agreement and understandings between the parties concerning the Exchange and the other matters described herein and therein and supersedes and replaces any and all prior agreements and understandings solely with respect to the subject matter hereof and thereof. Except as expressly set forth herein, nothing herein shall amend, modify or waive any term or condition of the other Exchange Documents.

6.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.10 Interpretation. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" and (d) references to "hereunder" or "herein" relate to this Agreement.

6.11 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

6.12 Survival. The representations, warranties and covenants of the Company and the Investor contained herein shall survive the Closing and delivery of the New Preferred Shares.

6.13 Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

6.14 No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

6.15 Independent Nature of Investor's Obligations and Rights. The obligations of the Investor under this Agreement are several and not joint with the obligations of any Other Investor, and the Investor shall not be responsible in any way for the performance of the obligations of any Other Investor under any Other Agreement. Nothing contained herein or in any Other Agreement, and no action taken by the Investor pursuant hereto, shall be deemed to constitute the Investor and Other Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investor and Other Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement and the Company acknowledges that, to the best of its knowledge, the Investor and the Other Investors are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement. The Company and the Investor confirm that the Investor has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any Other Investor to be joined as an additional party in any proceeding for such purpose.

6.16 Equal Treatment Acknowledgement; Most Favored Nations. The parties hereto hereby acknowledge and agree that, in accordance with Section 9(e) of the Securities Purchase Agreement, the Company is obligated to present the terms of this offering to each Other Investor; provided that each Other Agreement shall be negotiated separately with each Other Investor and shall not in any way be construed as the Investor or any Other Investor acting in concert or as a group with respect to the purchase, disposition or voting of securities of the Company or otherwise. The Company hereby represents and warrants as of the date hereof and covenants and agrees that none of the terms offered to any Person with respect to the Exchange, including, without limitation with respect to any consent, release, amendment, settlement, or waiver relating to any Exchange (each an "**Settlement Document**"), is or will be more favorable to such Person (other than any reimbursement of legal fees) than those of the Investor and this Agreement. If, and whenever on or after the date hereof, the Company enters into a Settlement Document, then (i) the Company shall provide notice thereof to the Investor immediately

following the occurrence thereof and (ii) the terms and conditions of this Agreement shall be, without any further action by the Investor or the Company, automatically amended and modified in an economically and legally equivalent manner such that the Investor shall receive the benefit of the more favorable terms and/or conditions (as the case may be) set forth in such Settlement Document, provided that upon written notice to the Company at any time the Investor may elect not to accept the benefit of any such amended or modified term or condition, in which event the term or condition contained in this Agreement shall apply to the Investor as it was in effect immediately prior to such amendment or modification as if such amendment or modification never occurred with respect to the Investor. The provisions of this Section 6.16 shall apply similarly and equally to each Settlement Document.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date provided above.

THE COMPANY

DELCATH SYSTEMS, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date provided above.

INVESTOR:

By: _____

Name:

Title:

Aggregate Principal Amount of Investor Note:

Aggregate Principal Amount of Exchange Note:

Aggregate Number of New Preferred Shares:
