

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 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): August 6, 2021**

**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 10019**  
(Address of principal executive offices) (Zip Code)

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

**Not Applicable**  
(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:

- 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$.01 par value	DCTH	The NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

**Item 1.01. Entry into a Material Definitive Agreement.**

*(a) Growth Capital Term Loan*

On August 6, 2021, Delcath Systems, Inc. (the “Company”) entered into a Loan and Security Agreement and the Supplement to the Loan and Security Agreement (together, the “Loan Agreement”) with Avenue Venture Opportunities Fund, L.P. (the “Lender,” or “Avenue”) for a term loan in an aggregate principal amount of up to \$20,000,000 (the “Loan”). The Loan bears interest at an annual rate equal to the greater of (a) the sum of 7.70% plus the prime rate as reported in The Wall Street Journal and (b) 10.95%. The Loan is secured by a lien upon and security interest in all of the Company’s assets globally, including intellectual property. The Loan maturity date is August 1, 2024.

The initial tranche of the Loan is \$15,000,000, including \$4,000,000 which has been funded into a restricted account and will be released upon achievement of (a)(x) positive FOCUS trial efficacy per the trial’s predefined Statistical Analysis Plan (SAP) (specifically the Overall Response Rate exceeds the pre-specified threshold for success defined in the SAP by a statistically significant amount); and (y) based on data contained within the FOCUS trial database and appropriate for use with the U.S. Food and Drug Administration, safety and tolerability among FOCUS trial participants is within the range of currently approved and commonly used cytotoxic chemotherapeutic agents; and (b) raising subsequent net equity proceeds of at least \$20,000,000. The Company may request an additional \$5,000,000 of gross proceeds between October 1, 2022 and December 31, 2022, with funding subject to the approval of Avenue’s Investment Committee.

In connection with the Loan, the Company issued to the Lender warrants to purchase 127,755 shares of common stock of the Company at an exercise price per share equal to \$0.01. The warrants, which are exercisable until August 31, 2026, were offered and sold by the Company in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended.

Up to \$3,000,000 of the principal amount of the Loan outstanding may be converted, at the option of the Lender, into shares of the Company’s common stock at a conversion price of \$11.98 per share.

Pursuant to the Loan Agreement, the Company will make monthly interest-only payments during the first fifteen months of the term of the Loan, which could be increased to up to twenty-four months upon the achievement of specified performance milestones. Following the interest-only period, the Company will make equal monthly payments of principal, plus accrued interest, until the Loan’s maturity date when all remaining principal and accrued interest must be paid. If the Company prepays the Loan, it will be required to pay (a) a prepayment fee of 3% if the Loan is prepaid during the interest-only period; and (b) a prepayment fee of 1% if the Loan is prepaid after the interest-only period. On the Loan’s maturity date or on the date of the prepayment of the Loan, the Company must also make an incremental final payment equal to 4.25% of the aggregate funding.

The Company paid an aggregate commitment fee of \$150,000 at closing of the Loan. Upon a second tranche, the Lender will earn a 1.0% fee on the \$5,000,000 of incremental committed capital, for a total commitment fee of \$200,000.

The Loan Agreement contains certain representations and warranties by the Company and other agreements that are customary in loan agreements of this type. The Loan Agreement also contains customary events of default, including non-payment of principal or interest, violations of covenants, bankruptcy and material judgments.

The Company intends to use the proceeds of the Loan for general corporate purposes.

The foregoing descriptions of the Loan and Security Agreement, the Supplement to the Loan and Security Agreement and the Warrant do not purport to be complete and are qualified in their entirety by the

full text of the Loan and Security Agreement, the Supplement to the Loan and Security Agreement and the Warrant, which are attached as Exhibits 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

*(b) Extension and Amendment of Convertible Notes Payable*

Also on August 6, 2021, the Company executed a Second Note Amending Agreement to amend an aggregate of \$2,000,000 outstanding secured convertible notes payable to Rosalind Opportunities Fund I L.P. and Rosalind Master Fund L.P., which (a) reduces the conversion price of the notes to \$1,198 per share of the Company's Series E Convertible Preferred Stock; and (b) extends the maturity date of the notes to October 30, 2024. In addition, in order to induce Avenue to provide the Loan described above, the holders of the convertible notes agreed to subordinate (a) all of the Company's indebtedness and obligations to the holders; and (b) all of the holders' security interest in the Company's assets, to the Loan and Avenue's security interest in the Company's assets.

The foregoing description of the Second Note Amending Agreement does not purport to be complete and is qualified in its entirety by the full text of the Second Note Amending Agreement, a prior note amending agreement, and the underlying notes, which are attached as Exhibits 10.4, 10.5, 10.6 and 10.7, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

**Item 2.02. Results of Operations and Financial Condition**

On August 10, 2021, the Company issued a press release, furnished as Exhibit 99.1 and incorporated in this Item 2.02 by reference, announcing its financial results for the fiscal quarter ended June 30, 2021.

The information contained in this Item 2.02, including Exhibit 99.1, is being furnished, and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of Section 18. Furthermore, the information contained in this Item 2.02, including Exhibit 99.1, shall not be incorporated by reference into any registration statement filed by the Company under the Securities Act of 1933, as amended, unless specifically identified therein as being incorporated therein by reference.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure concerning the Loan set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 3.02. Unregistered Sales of Equity Securities.**

The disclosure concerning the Warrant set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 8.01. Other Events.**

On August 9, 2021, the Company issued a press release announcing the completion of a growth capital term loan as described in more detail in Item 1.01 of this Current Report on Form 8-K. The full text of the press release is attached as Exhibit 99.2 to this Current Report on Form 8-K.

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

(d) Exhibits:

- 10.1 [Loan and Security Agreement, dated August 6, 2021, between Delcath Systems, Inc., as borrower, and Avenue Venture Opportunities Fund, L.P., as lender.](#)

- 10.2 [Supplement to the Loan and Security Agreement, dated August 6, 2021, between Delcath Systems, Inc. as borrower, and Avenue Venture Opportunities Fund, L.P., as lender.](#)
- 10.3 [Warrant, dated August 6, 2021, issued by Delcath Systems, Inc. to Avenue Venture Opportunities Fund, L.P.](#)
- 10.4 [Second Note Amending Amendment, dated as of August 6, 2021, between Delcath Systems, Inc. and Rosalind Opportunities Fund I L.P. and Rosalind Master Fund L.P](#)
- 10.5 [Note Amending Agreement, dated as of July 15, 2019, between Delcath Systems, Inc. and Rosalind Opportunities Fund I L.P. and Rosalind Master Fund L.P.](#)
- 10.6 [8% Secured Promissory Note, dated July 15, 2019, issued by Delcath Systems, Inc. to Rosalind Opportunities Fund I L.P.](#)
- 10.7 [8% Secured Promissory Note, dated July 15, 2019, issued by Delcath Systems, Inc. to Rosalind Master Fund L.P.](#)
- 99.1 [Press Release of the Company, dated August 10, 2021, announcing financial results for the fiscal quarter ended June 30, 2021.](#)
- 99.2 [Press Release of the Company, dated August 9, 2021, announcing growth capital term loan transaction with Avenue Venture Opportunities Fund, L.P.](#)
- 104 Cover Page Interactive File (the cover page tags embedded within the Inline XBRL document)

**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 thereunto duly authorized.

DELCATH SYSTEMS, INC.

Date: August 11, 2021

By: \_\_\_\_\_ /s/ Gerard Michel

Name: Gerard Michel

Title: Chief Executive Officer

**LOAN AND SECURITY AGREEMENT**

**Dated as of August 6, 2021**

**between**

**DELCATH SYSTEMS, INC.,  
a Delaware corporation,**

**as "Borrower",**

**and**

**AVENUE VENTURE OPPORTUNITIES FUND, L.P.,  
a Delaware limited partnership,**

**as "Lender"**

## LOAN AND SECURITY AGREEMENT

Borrower and Lender have entered or anticipate entering into one or more transactions pursuant to which Lender agrees to make available to Borrower a loan facility governed by the terms and conditions set forth in this document and one or more Supplements executed by Borrower and Lender which incorporate this document by reference. Each Supplement constitutes a supplement to and forms part of this document, and will be read and construed as one with this document, so that this document and the Supplement constitute a single agreement between the parties (collectively referred to as this “**Agreement**”).

Accordingly, the parties agree as follows:

### ARTICLE 1 - INTERPRETATION

**1.1 Definitions.** The terms defined in Article 10 and in the Supplement will have the meanings therein specified for purposes of this Agreement.

**1.2 Inconsistency.** In the event of any inconsistency between the provisions of any Supplement and this document, the provisions of the Supplement will be controlling for the purpose of all relevant transactions.

**1.3 Transparency Pledge.** For the avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement or in the other Loan Documents: (a) Lender shall not be entitled to (i) require Borrower’s investors or members of Borrower’s Board of Directors to make any additional written or verbal commitments of ongoing financial support, or (ii) require Borrower to conduct its banking or hold its deposits at any specific bank or financial institution; and (b) Borrower shall not be required to maintain any minimum tangible net worth, working capital, current ratio, quick asset ratio, liquidity ratio or debt-to-equity ratio or comply with any similar financial covenant.

### ARTICLE 2 - THE COMMITMENT AND LOANS

**2.1 The Commitment.** Subject to the terms and conditions of this Agreement, Lender agrees to make term loans to Borrower from time to time from the Closing Date and to and including the Termination Date in an aggregate principal amount not exceeding the Commitment. The Commitment is not a revolving credit commitment, and Borrower does not have the right to repay and reborrow hereunder; provided that Borrower may prepay the Loans as set forth in the Supplement. Each Loan requested by Borrower to be made on a single Business Day shall be for a minimum principal amount set forth in the Supplement, except to the extent the remaining Commitment is a lesser amount.

**2.2 Notes Evidencing Loans; Repayment.** Each Loan shall be evidenced by a separate Note payable to the order of Lender, in the total principal amount of the Loan. Principal and interest of each Loan shall be payable at the times and in the manner set forth in the Note and regularly scheduled payments thereof shall be effected by automatic debit of the appropriate funds from Borrower’s Primary Operating Account as specified in the Supplement hereto. Repayment of the Loans and payment of all other amounts owed to Lender will be paid by Borrower in the currency in which the same has been provided (i.e., United States Dollars).

### 2.3 Procedures for Borrowing.

**(a)** At least five (5) Business Days (or, in case of the Loans to be extended on or about the Closing Date, two (2) Business Days) prior to a proposed Borrowing Date (or such lesser period of time as may be agreed upon by Lender in its sole discretion), Lender shall have received from Borrower a written request for a borrowing hereunder (a “**Borrowing Request**”). Each Borrowing Request shall be in substantially the form of **Exhibit “B”** to the Supplement, shall be executed by a responsible executive or financial officer of Borrower, and shall state how much is requested, and shall be accompanied by such other information and documentation as Lender may reasonably request, including the executed Note(s) for the Loan(s) covered by the Borrowing Request.

**(b)** No later than 1:00 p.m. Pacific Standard Time on the Borrowing Date, if Borrower has satisfied the conditions precedent in Article 4 by 9:00 a.m. Pacific Standard Time on such Borrowing Date, Lender shall make the Loan available to Borrower in immediately available funds.

**2.4 Interest.** Except as otherwise specified in the applicable Note and/or Supplement, Basic Interest on the outstanding principal balance of each Loan shall accrue daily at the Designated Rate from the Borrowing

Date. If the outstanding principal balance of such Loan is not paid at maturity, interest shall accrue at the Default Rate until paid in full, as further set forth herein.

## 2.5 Intentionally Omitted.

**2.6 Interest Rate Calculation.** Basic Interest, along with charges and fees under this Agreement and any Loan Document, shall be calculated for actual days elapsed on the basis of a 360-day year, which results in higher interest, charge or fee payments than if a 365-day year were used. In no event shall Borrower be obligated to pay Lender interest, charges or fees at a rate in excess of the highest rate permitted by applicable law from time to time in effect.

**2.7 Default Interest.** Any unpaid payments in respect of the Obligations shall bear interest from their respective maturities, whether scheduled or accelerated, at the Default Rate, compounded monthly. Borrower shall pay such interest on demand.

**2.8 Late Charges.** If Borrower is late in making any scheduled payment in respect of the Obligations by more than five (5) days, then Borrower agrees to pay a late charge of five percent (5.00%) of the payment due, but not less than Fifty Dollars (\$50.00) for any one such delinquent payment. This late charge may be charged by Lender for the purpose of defraying the expenses incidental to the handling of such delinquent amounts. Borrower acknowledges that such late charge represents a reasonable sum considering all of the circumstances existing on the date of this Agreement and represents a fair and reasonable estimate of the costs that will be sustained by Lender due to the failure of Borrower to make timely payments. Borrower further agrees that proof of actual damages would be costly and inconvenient. Such late charge shall be paid without prejudice to the right of Lender to collect any other amounts provided to be paid or to declare a default under this Agreement or any of the other Loan Documents or from exercising any other rights and remedies of Lender.

**2.9 Lender's Records.** Principal, Basic Interest and all other sums owed under any Loan Document shall be evidenced by entries in records maintained by Lender for such purpose. Each payment on and any other credits with respect to principal, Basic Interest and all other sums outstanding under any Loan Document shall be evidenced by entries in such records. Absent manifest error, Lender's records shall be conclusive evidence thereof.

## 2.10 Grant of Security Interests; Filing of Financing Statements.

(a) To secure the timely payment and performance of all of Borrower's Obligations, Borrower hereby grants to Lender continuing security interests in all of the Collateral. In connection with the foregoing, Borrower authorizes Lender to prepare and file any financing statements describing the Collateral without otherwise obtaining Borrower's signature or consent with respect to the filing of such financing statements. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect.

(b) In furtherance of Borrower's grant of the security interests in the Collateral pursuant to Section 2.10(a) above, Borrower hereby pledges and grants to Lender a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. On the Closing Date or at any time thereafter following Lender's request, the certificate or certificates for the Shares will be delivered to the Lender, accompanied by an instrument of assignment duly executed in blank by Borrower, unless such Shares have not been certificated. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Lender may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Lender and cause new certificates representing such securities to be issued in the name of Lender or its transferee(s). Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Lender may reasonably request to perfect or continue the perfection of Lender's security interest in the Shares. Except as provided in the following sentence, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would constitute a violation of any of the terms of this Agreement. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default and Lender's written notice to Borrower of Lender's intent to exercise its rights and remedies under this Agreement, including this Section 2.10(b).



(c) Borrower is and shall remain absolutely and unconditionally liable for the performance of its Obligations, including, without limitation, any deficiency by reason of the failure of the Collateral to satisfy all amounts due Lender under any of the Loan Documents.

(d) All Collateral pledged by Borrower under this Agreement and any Supplement shall secure the timely payment and performance of all Obligations. Except in connection with Transfers permitted by this Agreement or as otherwise expressly provided in this Agreement (in which case the Lien on the Collateral so transferred shall be automatically deemed released), no Collateral pledged under this Agreement or any Supplement shall be released until such time as all Obligations (other than inchoate indemnity obligations) have been satisfied and paid in full.

### ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

Borrower and Guarantor each represents and warrants that, except as set forth in the Supplement or the Disclosure Letter (as the same may be updated by Borrower as of the date of any Borrowing Date, subject to Lender's prior written approval in its sole and absolute discretion), if any, as of the Closing Date and each Borrowing Date:

**3.1 Due Organization.** Borrower is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, and is duly qualified to conduct business and is in good standing in each other jurisdiction in which its business is conducted or its properties are located, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

**3.2 Authorization, Validity and Enforceability.** The execution, delivery and performance of all Loan Documents executed by Borrower are within Borrower's powers, have been duly authorized, and are not in conflict with Borrower's certificate of incorporation or by-laws, or the terms of any charter or other organizational document of Borrower, as amended from time to time; and all such Loan Documents constitute valid and binding obligations of Borrower, enforceable against the parties thereto in accordance with their terms (except as may be limited by bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights in general, and subject to general principles of equity).

**3.3 Compliance with Applicable Laws.** Borrower has complied with all licensing, permit and fictitious name requirements necessary to lawfully conduct the business in which it is engaged, and to conduct any sales, leases or the furnishing of services by Borrower, including without limitation those requiring consumer or other disclosures, in each case, the noncompliance with which would have a Material Adverse Effect.

**3.4 No Conflict.** The execution, delivery, and performance by Borrower of all Loan Documents are not in conflict with any law, rule, regulation, order or directive, or any material indenture, agreement, or undertaking to which Borrower is a party or by which Borrower may be bound or affected. Without limiting the generality of the foregoing, the issuance of the Warrant and the grant of registration rights in connection therewith do not violate any agreement or instrument by which Borrower is bound or require the consent of any holders of Borrower's securities other than consents which have been obtained prior to the Closing Date.

**3.5 No Litigation, Claims or Proceedings.** There is no litigation, tax claim, proceeding or dispute pending, or, to the knowledge of Borrower, threatened in writing against or affecting Borrower, its property or the conduct of its business that, individually or in the aggregate during the term of this Agreement, could reasonably be expected to result in liability or damages to Borrower in excess of Four Hundred Thousand Dollars (\$400,000.00).

**3.6 Correctness of Financial Statements.** Borrower's financial statements which have been delivered to Lender fairly and accurately, in all material respects, reflect Borrower's financial condition in accordance with GAAP (except with respect to unaudited financial statements, for the absence of footnotes and subject to normal year-end adjustments) as of the latest date of such financial statements; and, since that date there has been no Material Adverse Change.

**3.7 Subsidiaries.** As of the Closing Date, Borrower is not a majority owner of or in a control relationship with any other business entity, except for Delcath Ireland and the Excluded Subsidiaries. The Borrower, Delcath Ireland and the Excluded Subsidiaries each constitute a "holding company" and a "subsidiary" of each other (as the case may be, and in accordance with Sections 7 and 8 of the Irish Companies Act) and accordingly the prohibition contained in section 239 of the Irish Companies Act does not apply to the Loan Documents or the transactions contemplated thereby.

**3.8 Environmental Matters.** To its knowledge after reasonable inquiry, Borrower has concluded that Borrower is in compliance with Environmental Laws, except to the extent a failure to be in such compliance would not reasonably be expected to have a Material Adverse Effect.

**3.9 No Event of Default.** No Default or Event of Default has occurred and is continuing.

**3.10 Full Disclosure.** None of the representations or warranties made by Borrower in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the written statements contained in any exhibit, report, statement or certificate furnished by or on behalf of Borrower in connection with the Loan Documents (including disclosure materials delivered by or on behalf of Borrower to Lender prior to the Closing Date or pursuant to Section 5.2 hereof), taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not materially misleading as of the time when made or delivered (it being recognized by Lender that projections and estimates as to future events provided by Borrower in good faith are not to be viewed as facts and that the actual results during the period or periods covered by any such projections and estimates may differ from projected or estimated results).

**3.11 Specific Representations Regarding Collateral.**

**(a) Title.** Except for the security interests created by this Agreement and Permitted Liens, (i) Borrower is and will be the unconditional legal and beneficial owner of the Collateral, and (ii) the Collateral is genuine and subject to no Liens. There exist no prior assignments or encumbrances of record with the U.S. Patent and Trademark Office or U.S. Copyright Office affecting any Collateral in favor of any third party, other than Permitted Liens.

**(b) Rights to Payment.** The names of the obligors, amount owing to Borrower, due dates and all other information with respect to the Rights to Payment are and will be correctly stated in all material respects in all Records relating to the Rights to Payment. Borrower further represents and warrants, to its knowledge, that each Person appearing to be obligated on a Right to Payment has authority and capacity to contract and is bound as it appears to be.

**(c) Location of Collateral.** As of the Closing Date, Borrower's chief executive office, Inventory, Records, Equipment, and any other offices or places of business are located at the address(es) set out in the Disclosure Letter.

**(d) Business Names.** Other than its full corporate name, within the past five (5) years, Borrower has not conducted business using any trade names or fictitious business names except as set out in the Disclosure Letter.

**3.12 Copyrights, Patents, Trademarks and Licenses.**

**(a)** Borrower owns or is licensed or otherwise has the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, authorizations and other similar rights that are reasonably necessary for the operation of its business, without known conflict with the rights of any other Person, except as could not reasonably be expected to have a Material Adverse Effect.

**(b)** To Borrower's knowledge, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Borrower infringes upon any rights held by any other Person, except as could not reasonably be expected to have a Material Adverse Effect.

**(c)** No claim or litigation regarding any of the foregoing is pending or, to Borrower's knowledge, threatened in writing, and, to Borrower's knowledge, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or proposed which, in either case, could reasonably be expected to have a Material Adverse Effect.

**3.13 Regulatory Compliance.** Borrower has met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, except to the extent a failure to do so could not reasonably be expected to have a Material Adverse Effect. No event has occurred resulting from Borrower's failure to comply with ERISA that is reasonably likely to result in Borrower's incurring any liability that could reasonably be expected to have a Material Adverse Effect. Borrower is not required to be registered as an "investment company" or a company "controlled" by an "investment company"

within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has complied in all material respects with all the provisions of the Federal Fair Labor Standards Act, except to the extent a failure to so comply could not reasonably be expected to have a Material Adverse Effect.

**3.14 Shares.** Borrower has full power and authority to create a first priority Lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been and will be duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened (in writing) suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

**3.15 Compliance with Anti-Corruption Laws.** Borrower has not taken any action that would cause a violation of any anti-corruption law, including but not limited to, the Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and all other applicable anti-corruption laws. Borrower, its employees, and, to its knowledge, its agents and representatives have not, directly or indirectly, offered, paid, given, promised or authorized the payment of any money, gift or anything of value to any person acting in an official capacity for any government department, agency or instrumentality, including state-owned or controlled companies or entities, and public international organizations, as well as a political party or official thereof or candidate for political office in violation of applicable law. None of Borrower's principals or staff are officers, employees or representatives of governments, government agencies, or government-owned or controlled enterprises.

**3.16 External Company.** The Borrower is not a relevant external company, as that term is defined in Section 1301 of the Irish Companies Act.

**3.17 Survival.** The representations and warranties of Borrower as set forth in this Agreement shall, unless such representation or warranty is with respect to a specified time, survive the execution and delivery of this Agreement to the fullest extent permitted by law.

## ARTICLE 4 - CONDITIONS PRECEDENT

**4.1 Conditions to First Loan.** The obligation of Lender to make its first Loan hereunder is, in addition to the conditions precedent specified in Section 4.2 and in any Supplement or Schedule 2 hereto, subject to the fulfillment of the following conditions and to the receipt by Lender of the documents described below, duly executed and in form and substance reasonably satisfactory to Lender:

**(a) Resolutions.** A certified copy of the resolutions of the Board of Directors of (i) Borrower, authorizing the execution, delivery and performance by Borrower of the Loan Documents; and (ii) each Guarantor, authorizing the execution, delivery and performance by each Guarantor of the Guaranty Documents.

**(b) Incumbency, Signatures and other Certifications.** A certificate of the secretary of Borrower and each Guarantor certifying the names of the officer or officers of Borrower and each Guarantor authorized to sign the Loan Documents, together with a sample of the true signature of each such officer. In respect of Delcath Ireland, such certificate shall certify (i) that Borrower and Delcath Ireland are members of a group of companies consisting within the meaning of Section 7 of Irish Companies Act and for the purposes of Section 243 of the Irish Companies Act and (ii) that the entry by Delcath Ireland will not constitute unlawful financial assistance for the purpose of Section 82 of the Irish Companies Act.

**(c) Legal Opinion.** The opinion of legal counsel for Borrower and the Guarantors (or, in respect of matters of Irish law, Irish counsel for the Lender) as to such matters as Lender may reasonably request, in form and substance reasonably satisfactory to Lender.

**(d) Charter Documents.** Copies of the organizational, constitutional and charter documents of Borrower and each Guarantor (e.g., Articles or Certificate of Incorporation and Bylaws, or other relevant constitutional documents), as amended through the Closing Date, certified by an officer of Borrower or Guarantor, as applicable, as being true, correct and complete.

**(e) This Agreement and other Loan Documents.** (i) Counterparts of this Agreement and the Supplement, (ii) counterparts of the Mortgage Debenture and the Irish Share Charge, and the (iii) the Disclosure Letter.

**(f) Financing Statements.** Filing copies (or other evidence of filing satisfactory to Lender and its counsel) of such UCC financing statements, collateral assignments, account control agreements, and termination statements, with respect to the Collateral as Lender shall request.

**(g) CRO Documents.** An agreed form CRO registration template for the Mortgage Debenture and each other Guaranty Document creating security, and a letter of authorization enabling Matheson, legal advisors to Lender as to Irish law, to make such registrations.

**(h) Intellectual Property Security Agreement.** An Intellectual Property Security Agreement executed by Borrower.

**(i) Lien Searches.** UCC lien, judgment, bankruptcy and tax lien searches of Borrower and (as applicable) each Guarantor from such jurisdictions or offices as Lender may reasonably request, all as of a date reasonably satisfactory to Lender and its counsel.

**(j) Good Standing Certificate.** A certificate of status or good standing of Borrower and (as applicable) each Guarantor (other than Delcath Ireland) as of a date acceptable to Lender from the jurisdiction of Borrower's and each Guarantor's organization and any foreign jurisdictions where Borrower and any Guarantor is qualified to do business.

**(k) Warrant.** The Warrant issued by Borrower exercisable for such number, type and class of shares of Borrower's capital stock, and for an initial exercise price as is specified therein.

**(l) Insurance Certificates.** Insurance certificates showing Lender as loss payee or additional insured.

**(m) Irish Searches.** Up to date searches against Delcath Ireland in the CRO and High Court Central Office in Ireland and all other appropriate registries or public offices and searches from the High Court register of petitions for liquidation and bankruptcy and confirmation that all acts appearing thereon which Lender requires to be discharged have been fully discharged to the satisfaction of Lender.

**(n) Other Documents.** Such other documents and instruments as Lender may reasonably request to

effectuate the intents and purposes of this Agreement, including those items set forth on Schedule 2 hereto within the timeframe set forth therein (or by such other date as Lender may approve in its sole discretion), in each case, in form and substance reasonably acceptable to Lender.

**4.2 Conditions to All Loans.** The obligation of Lender to make its initial Loan and each subsequent Loan is subject to the following further conditions precedent that:

**(a) No Default.** No Default or Event of Default has occurred and is continuing or will result from the making of any such Loan, and the representations and warranties of Borrower contained in Article 3 of this Agreement (subject to the Disclosure Letter, as the same may be updated in accordance with Article 3) and Part 3 of the Disclosure Letter are true and correct in all material respects as of the Borrowing Date of such Loan, except to the extent such representations and warranties relate solely to an earlier date (in which case the same are true and correct in all material respects as of such date).

**(b) No Material Adverse Change.** No event has occurred that has had or could reasonably be expected to have a Material Adverse Change.

**(c) Borrowing Request.** Borrower shall have delivered to Lender a Borrowing Request for such Loan.

**(d) Note.** Borrower shall have delivered an executed Note evidencing such Loan, substantially in the form attached to the Supplement as an exhibit.

**(e) Supplemental Lien Filings.** Borrower and each Guarantor shall have executed and delivered such amendments or supplements to this Agreement and additional Security Documents, financing statements and third party waivers as Lender may reasonably request in connection with the proposed Loan, in order to create, protect or perfect or to maintain the perfection of Lender's Liens on the Collateral.

**(f) VCOC Limitation.** Lender shall not be obligated to make any Loan under its Commitment if at the time of or after giving effect to the proposed Loan Lender would no longer qualify as: (i) a "venture capital operating company" under U.S. Department of Labor Regulations Section 2510.3-101(d), Title 29 of the Code of Federal Regulations, as amended; and (ii) a "business development company" under the provisions of federal Investment Company Act of 1940, as amended; and (iii) a "regulated investment company" under the provisions of the Internal Revenue Code of 1986, as amended.

**(g) Financial Projections.** Borrower shall have delivered to Lender Borrower's business plan and/or financial projections or forecasts as most recently approved by Borrower's Board of Directors.

## ARTICLE 5 - AFFIRMATIVE COVENANTS

During the term of this Agreement and until its performance of all Obligations (other than inchoate indemnity obligations), Borrower will (and will cause each Guarantor, as applicable):

**5.1 Notice to Lender.** Promptly give written notice to Lender of:

**(a)** Any litigation or administrative or regulatory proceeding affecting Borrower or any Guarantor where the amount claimed against Borrower or any Guarantor is at the Threshold Amount or more, or where the granting of the relief requested could reasonably be expected to have a Material Adverse Effect; or of the acquisition by Borrower or any Guarantor of any commercial tort claim (in excess of Fifty Thousand Dollars (\$50,000.00)), including brief details of such claim and such other information as Lender may reasonably request to enable Lender to better perfect its Lien in such commercial tort claim as Collateral.

**(b)** Any dispute where the amount claimed against Borrower or any Guarantor is at the Threshold Amount or more, or where the granting of the relief requested could reasonably be expected to have a Material Adverse Effect which may exist between Borrower, any Guarantor, and any governmental or regulatory authority.

**(c)** The occurrence of any Default or any Event of Default.

**(d)** Any change in the location of any of Borrower's or any Guarantor's principal places of business or Collateral at least thirty (30) days in advance of such change (except for changes in location of (i) items of movable property such as laptop computers and (ii) other Collateral with a book value less than One Hundred Thousand Dollars (\$100,000)), or of the establishment of any new, or the discontinuance of any existing, principal place of business.

**(e)** Any dispute or default by Borrower, a Subsidiary or any Guarantor under any joint venture, partnering, distribution, cross-licensing, strategic alliance, collaborative research or manufacturing, license or similar agreement which could reasonably be expected to have a Material Adverse Effect.

**(f)** Any other matter which has resulted or could reasonably be expected to result in a Material Adverse Change.

**(g)** Any Subsidiary Borrower or any Guarantor intends to acquire or create.

**5.2 Financial Statements.** Deliver to Lender or cause to be delivered to Lender, in form and detail reasonably satisfactory to Lender the following financial and other information, which Borrower warrants shall be accurate and complete in all material respects as of the date delivered:

**(a) Monthly Financial Statements.** No later than thirty (30) days after the end of each month, Borrower's unaudited, consolidated balance sheet as of the end of such period, and Borrower's unaudited, consolidated income statement and cash flow statement for such period and for that portion of Borrower's financial reporting year ending with such period, prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year-end audit adjustments) and attested by a responsible financial officer of Borrower as being complete and correct in all material respects and fairly presenting Borrower's and its Subsidiaries consolidated financial condition and the results of Borrower's and its Subsidiaries consolidated operations as of the date(s) and for the period(s) covered thereby.

**(b) Year-End Financial Statements.** No later than ninety (90) days after the end of each financial reporting year (unless the SEC has promulgated an extension to the annual filing deadline applicable to the Borrower, in which case the deadline shall be such date), a complete copy of Borrower's audit report for Borrower and its Subsidiaries, on a consolidated basis, which shall include balance sheet, income statement, statement of changes in equity and statement of cash flows for such year, prepared in accordance with GAAP and certified by an independent certified public accountant selected by Borrower and reasonably satisfactory to Lender (the "**Accountant**"). The Accountant's certification shall not be qualified or limited due to a restricted or limited examination by the Accountant of any material portion of Borrower's or its Subsidiaries' records.

(c) **Compliance Certificates.** Simultaneously with the delivery of each set of financial statements referred to in paragraphs (a) and (b) above, a certificate of the chief financial officer of Borrower (or other executive officer) substantially in the form of Exhibit “C” to the Supplement (a **“Compliance Certificate”**) stating, among other things, whether any Default or Event of Default exists on the date of such certificate, and if so, setting forth the details thereof and the action which Borrower is taking or proposes to take with respect thereto. If requested by Lender, a Compliance Certificate also shall be delivered to Lender on the Closing Date.

(d) **Government Required Reports.** Promptly after sending, issuing, making available, or filing, copies of all material reports, proxy statements, and financial statements that Borrower sends or makes available generally to its stockholders, and, not later than five (5) days after actual filing or the date such filing was first due, all registration statements and reports that Borrower files or is required to file with the Securities and Exchange Commission, or any other governmental or regulatory authority having similar authority.

(e) **Other Information.** Such other statements, lists of property and accounts, budgets (as updated), sales projections, forecasts, reports, operating plans, financial exhibits, capitalization tables (as updated) and information relating to equity and debt financings consummated after the Closing Date (including post-closing capitalization table(s)), or other information as Lender may from time to time reasonably request and as prepared by Borrower in the ordinary course of business.

Documents required to be delivered pursuant to the terms of this Section 5.2 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower’s website on the internet at Borrower’s website address.

(f) **Board Packages.** In addition to the information described in Section 5.2(e), Borrower will promptly provide Lender with copies of all notices, minutes, consents and other materials, financial or otherwise, which Borrower provides to its Board of Directors (collectively, **“Board Packages”**); provided, however, that Borrower need not provide Lender with copies of routine Board actions, such as option and stock grants under Borrower’s equity incentive plan in the normal course of business; and provided, further,

however, that such Board Packages may be redacted to the extent that (i) based on the advice of counsel, Borrower’s Board of Directors determines such redaction is reasonably necessary to preserve the attorney-client privilege, to protect highly confidential proprietary information, or for other similar reasons, (ii) such redacted material relates to Lender (or Borrower’s strategy regarding the Loans or Lender) or (iii) such redacted material relates to “closed-door” executive sessions of the Board.

### 5.3 [Reserved].

**5.4 Existence.** Maintain and preserve Borrower’s and each Guarantor’s existence, present form of business, and all rights and privileges necessary in the normal course of its business; and keep all Borrower’s property in good working order and condition, ordinary wear and tear and obsolescence excepted.

**5.5 Insurance.** Obtain and keep in force insurance in such amounts and types as is usual in the type of business conducted by Borrower and each Guarantor, with insurance carriers having a policyholder rating of not less than “A” and financial category rating of Class VII in “Best’s Insurance Guide,” unless otherwise approved by Lender. Such insurance policies must be in form and substance reasonably satisfactory to Lender, and shall list Lender as an additional insured or loss payee, as applicable, on endorsement(s) in form reasonably acceptable to Lender. Borrower and each Guarantor shall furnish to Lender such endorsements, and upon Lender’s request, copies of any or all such policies. So long as no Event of Default exists, Lender agrees to remit proceeds of insurance to Borrower and Borrower shall use such proceeds for the purchase or replacement of the damaged or destroyed Collateral or acquisition of other assets to be used or useful for the business which shall be Collateral.

**5.6 Accounting Records.** Maintain adequate books, accounts and records, and prepare all financial statements in accordance with GAAP (except with respect to unaudited financial statements, for the absence of footnotes and subject to normal year-end audit adjustments), and in compliance with the regulations of any governmental or regulatory authority having jurisdiction over Borrower or Borrower’s (or any Guarantor or Guarantor’s) business where noncompliance could reasonably be expected to have a Material Adverse Effect; and permit employees or agents of Lender upon reasonable prior notice and at such reasonable times as Lender may request, at Borrower’s expense (not to exceed Two Thousand Five

Hundred Dollars (\$2,500.00) in any 12-month period unless an Event of Default has occurred and is continuing), to inspect Borrower's properties, and to examine, review and audit, and make copies and memoranda of Borrower's and each Guarantor's books, accounts and records. The exercise of inspection rights pursuant to this Article 5 shall be limited to once in any 12-month period unless an Event of Default has occurred and is continuing.

**5.7 Compliance with Laws.** Comply in all material respects with all laws (including Environmental Laws), rules, regulations applicable to, and all orders and directives of any governmental or regulatory authority having jurisdiction over, Borrower or Borrower's (or Guarantor or Guarantor's) business, and with all material agreements to which Borrower or any Guarantor is a party, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

**5.8 Taxes and Other Liabilities.** Pay all Borrower's Indebtedness when due; pay all material taxes and other governmental or regulatory assessments before delinquency or before any penalty attaches thereto, except as may be contested in good faith by the appropriate procedures and for which Borrower shall maintain appropriate reserves; and timely file all federal and other material required tax returns (subject to any applicable extensions); where "material" means, individually or in the aggregate, in excess of Ten Thousand Dollars (\$10,000.00).

**5.9 Special Collateral Covenants.**

**(a) Maintenance of Collateral; Inspection.** Do all things reasonably necessary to maintain, preserve, protect and keep all Collateral in good working order and salable condition, ordinary wear and tear excepted, deal with the Collateral in all commercially reasonable ways as are considered good practice by owners of like property, and use the Collateral lawfully and, to the extent applicable, only as permitted by Borrower's or Guarantors' insurance policies. Maintain, or cause to be maintained, complete and accurate Records, in all material respects, relating to the Collateral. Upon reasonable prior notice at reasonable times during normal business hours, Borrower and each Guarantor hereby authorizes Lender's officers, employees, representatives and agents to inspect the Collateral and to discuss the Collateral and the Records relating thereto with Borrower's and each Guarantors' officers and employees, and, in the case of any Right to Payment, after consultation with Borrower, with any Person which is or may be obligated thereon. The exercise of

inspection rights pursuant to this Article 5 shall be limited to once in any 12-month period unless an Event of Default has occurred and is continuing.

**(b) Documents of Title.** Not sign or authorize the signing of any financing statement or other document naming Borrower or any Guarantor as debtor or obligor, or acquiesce or cooperate in the issuance of any bill of lading, warehouse receipt or other document or instrument of title with respect to any Collateral, except those negotiated to Lender, or those naming Lender as secured party, or if solely to create, perfect or maintain a Permitted Lien.

**(c) Change in Location or Name.** Without at least thirty (30) days' prior written notice to Lender: (a) not relocate any Collateral (other than (i) moveable property such as laptop computers and (ii) other Collateral with a book value less than One Hundred Thousand Dollars (\$100,000)) or Records, its chief executive office, or establish a place of business at a location other than as specified in the Disclosure Letter; and (b) not change its name, mailing address, location of Collateral (other than (i) moveable property such as laptop computers and (ii) other Collateral with a book value less than One Hundred Thousand Dollars (\$100,000)), jurisdiction of incorporation or its legal structure.

**(d) Decals, Markings.** At the request of Lender, following the occurrence and during the continuation of an Event of Default, firmly affix a decal, stencil or other marking to designated items of Equipment, indicating thereon the security interest of Lender.

**(e) Agreement with Persons in Possession of Collateral.** Use its commercially reasonable efforts to obtain and maintain such acknowledgments, consents, waivers and agreements (each a "**Waiver**") from the owner, operator, lienholder, mortgagee, landlord or any Person in possession of tangible Collateral (other than (i) moveable property such as laptop computers and (ii) other Collateral with a book value less than One Hundred Thousand Dollars (\$100,000) per location within the United States of America as Lender may require, all in form and substance reasonably satisfactory to Lender. In addition, Lender shall have the right to require Borrower to use its commercially reasonable efforts to provide Lender with a Waiver for any Collateral that is located in the United States of America in a jurisdiction that provides for statutory landlord's Liens and for any location at which the Person in possession of such Collateral (other than (i) moveable property such as laptop computers and (ii) other Collateral with a book value less than One

Hundred Thousand Dollars (\$100,000)) has a Lien thereon. Notwithstanding anything to the contrary in this Section 5.9(e), Borrower, each Guarantor and Lender acknowledge and agree that all material Intellectual Property and Records that are maintained on items of Collateral for which Borrower or any Guarantor is unable to provide a Waiver also shall be maintained or backed up in a manner sufficient that Lender shall be able to have access to such Intellectual Property and Records in accordance with the exercise of Lender's rights hereunder.

**(f) Certain Agreements on Rights to Payment.** Other than in its commercially reasonable judgement, not make any material discount, credit, rebate or other reduction in the original amount owing on a Right to Payment or accept in satisfaction of a Right to Payment less than the original amount thereof.

**5.10 Authorization for Automated Clearinghouse Funds Transfer.** (i) Authorize Lender to initiate debit entries to the Deposit Account specified by Borrower in the Disclosure Letter, through Automated Clearinghouse ("**ACH**") transfers, in order to satisfy the regularly scheduled payments of principal and interest; (ii) provide Lender at least thirty (30) days' notice of any change in such account; and (iii) grant Lender any additional authorizations necessary to begin ACH debits from a new account which becomes the Primary Operating Account.

**5.11 Anti-Corruption Laws.** Provide true, accurate and complete information, in all material respects, in all product orders, reimbursement requests and other communications relating to Borrower and each Guarantor and their respective products.

## ARTICLE 6 - NEGATIVE COVENANTS

During the term of this Agreement and until the performance of all Obligations (other than inchoate indemnity obligations), Borrower will not, and will not permit any Subsidiary to:

**6.1 Indebtedness.** Be indebted for borrowed money, the deferred purchase price of property, or leases which would be capitalized in accordance with GAAP (other than operating leases); or become liable as a surety, guarantor, accommodation party or otherwise for or upon the obligation of any other Person, except:

**(a)** Indebtedness incurred for the acquisition of supplies, inventory or other property or services on normal trade credit;

**(b)** Indebtedness incurred pursuant to one or more transactions permitted under Section 6.4;

**(c)** Indebtedness of Borrower under this Agreement;

**(d)** Subordinated Debt;

**(e)** any Indebtedness approved by Lender prior to the Closing Date as shown on Schedule 6.1;

**(f)** Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens" not to exceed One Hundred Thousand Dollars (\$100,000.00) in aggregate principal amount outstanding at any time;

**(g)** Indebtedness incurred under corporate credit cards not to exceed One Hundred Thousand Dollars (\$100,000.00) in aggregate principal amount outstanding at any time;

**(h)** guaranties and similar surety obligations in respect of Indebtedness permitted under this Section 6.1; and

**(i)** letters of credit securing performance of operating leases, real estate leases or appeal bonds and other obligations permitted under this Agreement, provided that such Indebtedness does not exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate amount outstanding at any time;

**(j)** Indebtedness incurred to finance insurance premiums; extensions, refinancings and renewals of any of the foregoing; provided that the principal amount thereof is not increased; and

**(k)** other Indebtedness in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) outstanding at any time.

**6.2 Liens.** Create, incur, assume or permit to exist any Lien, or grant any other Person a negative pledge that limits, restricts or prohibits the granting of any lien on Borrower's property in favor of Lender, on any of Borrower's property, except Permitted Liens and any negative pledge in respect of any asset subject to a Lien permitted by clause (c) of the definition of Permitted Liens. Borrower and Lender agree that this covenant is not intended to constitute a lien, deed of trust, equitable mortgage, or security interest of any kind on any of Borrower's real property, and this Agreement shall not be recorded or recordable. Notwithstanding the foregoing, however, violation of this covenant by Borrower shall constitute an Event of Default.



**6.3 Dividends.** Pay any dividends or purchase, redeem or otherwise acquire or make any other distribution with respect to any of Borrower's capital stock, except (a) dividends or other distributions solely of capital stock of Borrower, (b) so long as no Event of Default has occurred and is continuing, repurchases of stock from employees or contractors upon termination of employment or services under reverse vesting or similar repurchase plans not to exceed One Hundred Thousand Dollars (\$100,000) in any calendar year, (c) the conversion of Borrower's convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, and may make payments in cash for any fractional units upon such conversion or in connection with the exercise or conversion of warrants or other securities, and (d) the purchase, redemption or other acquisition of shares of Borrower's capital stock with the proceeds received from a substantially concurrent issue of new shares of its capital stock.

**6.4 Fundamental Changes.** (a) Liquidate or dissolve; (b) enter into, or permit any of Borrower's Subsidiaries to enter into, any Change of Control; or (c) acquire, or permit any of Borrower's Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. Notwithstanding anything to the contrary in this Section 6.4, Borrower may enter into a transaction that will constitute a Change of Control so long as: (i) the Person that results from such Change of Control (the "**Surviving Entity**") shall have executed and delivered to Lender an agreement in form and substance reasonably satisfactory to Lender, containing an assumption by the Surviving Entity of the due and punctual payment and performance of all Obligations and performance and observance of each covenant and condition of Borrower in the Loan Documents; (ii) all such obligations of the Surviving Entity to Lender shall be guaranteed by any Person that directly or indirectly owns or controls fifty percent (50.00%) or more of the voting stock of the Surviving Entity; (iii) immediately after giving effect to such Change of Control, no Event of Default or, event which with the lapse of time or giving of notice or both, would result in an Event of Default shall have occurred and be continuing; and (iv) the credit risk to Lender, in its sole discretion, with respect to the Obligations and the Collateral shall not be increased. In determining whether the proposed Change of Control would result in an increased credit risk, Lender may consider, among other things, changes in Borrower's management team, employee base, access to equity markets, venture capital support, financial position and/or disposition of

intellectual property rights which may reasonably be anticipated as a result of the Change of Control. In addition, (i) a Subsidiary may merge or consolidate into another Subsidiary, (ii) Borrower may consolidate or merge with any of Borrower's Subsidiaries provided that Borrower is the continuing or surviving Person, (iii) Delcath Holdings and any other Excluded Subsidiary may be dissolved.

**6.5 Sales of Assets.** Sell, transfer, lease, license or otherwise dispose of (a "**Transfer**") any of Borrower's assets except (i) licenses of Intellectual Property in the ordinary course of business consistent with industry practice, on a non-exclusive basis, or which may be exclusive as to geographic territory outside the United States or field of use, provided that such licenses of Intellectual Property neither result in a legal transfer of title of the licensed Intellectual Property nor have the same effect as a sale of such Intellectual Property; (ii) Transfers of worn-out, obsolete or surplus property (each as determined by Borrower in its reasonable judgment); (iii) Transfers of Inventory in the ordinary course of business; (iv) Transfers constituting Permitted Liens; (v) Transfers permitted in Section 6.3, 6.4, 6.6 or 6.7 hereunder; (vi) Transfers of assets (other than Intellectual Property) for fair consideration and in the ordinary course of its business and (vii) other Transfers in an aggregate amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) in any fiscal year.

**6.6 Loans/Investments.** Make or suffer to exist any loans, guaranties, advances, or investments ("**Investments**"), except:

(a) accounts receivable in the ordinary course of Borrower's business;

(b) Investments in domestic certificates of deposit issued by, and other domestic investments with, financial institutions organized under the laws of the United States or a state thereof, having at least One Hundred Million Dollars (\$100,000,000.00) in capital and a rating of at least "investment grade" or "A" by Moody's or any successor rating agency;

(c) Investments in marketable obligations of the United States of America and in open market commercial paper given the highest credit rating by a national credit agency and maturing not more than one year from the creation thereof;

(d) temporary advances to cover incidental expenses to be incurred in the ordinary course of business;

(e) Investments in joint ventures, strategic alliances, licensing and similar arrangements customary in Borrower's industry and which do not require Borrower to assume or otherwise become liable for the obligations of any third party not directly related to or arising out of such arrangement or, without the prior written consent of Lender, require Borrower to transfer ownership of non-cash assets to such joint venture or other entity;

(f) Investments in (i) one or more wholly-owned Subsidiaries of Borrower, so long as in accordance with Section 6.14(a) of this Agreement, each such Person has been made a co-borrower hereunder or has executed and delivered to Lender an agreement, in form and substance reasonably satisfactory to Lender, containing a guaranty of the Obligations (including the guaranty delivered by Delcath Ireland on the Closing Date), (ii) Investments by a Borrower or a Guarantor in the Excluded Subsidiaries (other than Delcath Holdings or Delcath Germany) not to exceed Five Hundred Thousand Dollars (\$500,000.00) US in the aggregate outstanding at any time, (iii) Investments by or among Excluded Subsidiaries (other than Delcath Holdings or Delcath Germany) and (iv) Investments in Delcath Germany not to exceed Five Hundred Thousand Dollars (\$500,000.00) US in the aggregate outstanding at any time;

(g) Investments approved by Lender prior to the Closing Date as set forth in the Disclosure Letter;

(h) Investments accepted in connection with transactions permitted under Section 6.4 or investments accepted in connection with Transfers permitted by Section 6.5;

(i) non-cash loans approved by Borrower's Board of Directors to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors, limited to an aggregate total of One Hundred Thousand Dollars (\$100,000.00) at any time outstanding;

(j) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business;

(k) Investments permitted under Section 6.11;

(l) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions to, customers and suppliers in the ordinary course of business;

(m) Investments by wholly owned Subsidiaries in other wholly owned Subsidiaries or in Borrower;

(n) Investments consisting of deposit accounts; provided Lender has a perfected security interest therein to the extent required by 6.11;

(o) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(p) other Investments in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) in any Fiscal Year.

**6.7 Transactions with Related Persons.** Directly or indirectly enter into any transaction with or for the benefit of a Related Person on terms more favorable to the Related Person than would have been obtainable in an "arms' length" dealing, except (a) sales of equity securities by Borrower and incurrence of Subordinated Debt for capital raising purposes, (b) Investments permitted under clauses (d), (f), (i) or (m) of Section 6.6, (c) employment and consulting arrangements, including stock options, employee compensation, and severance arrangements in the ordinary course of business, and (d) customary reimbursement and indemnity arrangements in the ordinary course of business, and.

**6.8 Other Business.** Engage in any material line of business other than the business Borrower conducts as of the Closing Date and any business substantially similar or related or incidental thereto.

**6.9 Financing Statements and Other Actions.** Fail to execute and deliver to Lender all financing statements, notices and other documents (including, without limitation, any filings with the United States Patent and Trademark Office and the United States Copyright Office) from time to time reasonably requested by Lender to maintain a perfected first priority security interest in the Collateral in favor of Lender, subject to Permitted Liens; fail to perform such other acts, and execute and deliver to Lender such additional conveyances, assignments, agreements and instruments, as Lender may at any time reasonably request in connection with the administration and enforcement of this Agreement or Lender's rights, powers and remedies hereunder.

**6.10 Compliance.** Become required to be registered as an “investment company” or controlled by an “investment company,” within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Loan for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply in all material respects with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could reasonably be expected to have a Material Adverse Effect or a material adverse effect on the Collateral or the priority of Lender’s Lien on the Collateral, or permit any of its subsidiaries to do any of the foregoing.

**6.11 Other Deposit and Securities Accounts.** Maintain any Deposit Accounts or accounts holding securities owned by Borrower or any Guarantor except (i) Deposit Accounts and investment/securities accounts as set forth in the Disclosure Letter, and (ii) other Deposit Accounts and securities/investment accounts, in each case, with respect to which Borrower (and such Guarantor) and Lender shall have taken such action as Lender reasonably deems necessary to obtain a perfected first priority security interest therein, subject to Permitted Liens. The provisions of the previous sentence shall not apply to Deposit Accounts (i) exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower’s employees and identified to Lender as such or (ii) Excluded Accounts.

**6.12 Prepayment of Indebtedness.** Prepay, redeem or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness (other than the Loans and Indebtedness permitted by Section 6.1 hereof). Notwithstanding the foregoing, Lender agrees that the conversion or exchange into Borrower’s equity securities of any Indebtedness (other than the Loans) and the payment of cash in lieu of the issuance of fractional shares upon such conversion or exchange shall not be prohibited by this Section 6.12.

**6.13 Repayment of Subordinated Debt.** Repay, prepay, redeem or otherwise satisfy in any manner any Subordinated Debt, except in accordance with the terms of any subordination agreement among Borrower or any Guarantor, Lender and the holder(s) of such Subordinated Debt. Notwithstanding the foregoing, Lender agrees that the conversion or exchange into Borrower’s or any Guarantor’s equity securities of any Subordinated Debt and the payment of cash in lieu of fractional shares shall not be prohibited by this Section 6.13.

## **6.14 Subsidiaries.**

(a) Acquire or create any Subsidiary, unless any such Domestic Subsidiary becomes, at Lender’s option, either a co-borrower hereunder or executes and delivers to Lender one or more agreements, in form and substance reasonably satisfactory to Lender, containing a guaranty of the Obligations that is secured by first priority Liens on such Person’s assets, subject to Permitted Liens. For clarity, the parties acknowledge and agree that Lender shall have the exclusive right, acting reasonably, to determine whether any such Subsidiary will be made a co-borrower hereunder or a Guarantor. Prior to the acquisition or creation of any such Subsidiary, Borrower shall notify Lender thereof in writing, which notice shall contain the jurisdiction of such Person’s formation and include a description of such Person’s fully diluted capitalization and Borrower’s purpose for its acquisition or creation of such Subsidiary.

(b) Sell, transfer, encumber or otherwise dispose of Borrower’s ownership interest in any Subsidiary other than Permitted Liens or in a manner permitted by Section 6.4.

(c) Cause or permit a Subsidiary to do any of the following:  
(i) grant Liens on such Subsidiary’s assets, except for Liens that would constitute Permitted Liens if incurred by Borrower and Liens on any property held or acquired by such Subsidiary in the ordinary course of its business securing Indebtedness incurred or assumed for the purpose of financing all or any part of the cost of acquiring such property; provided, that such Lien attaches solely to the property acquired with such Indebtedness and that the principal amount of such Indebtedness does not exceed one hundred percent (100.00%) of the cost of such property; and  
(ii) issue any additional Shares, except to Borrower or a wholly owned Subsidiary of Borrower.

(d) Notwithstanding any other provision of this Agreement or the Supplement to the contrary, Borrower shall not (x) invest in or loan to, directly or indirectly, cash or other assets of a value in excess of such amounts as are expressly permitted under Section 6.6(f) during the term of this Agreement; or (y) cause or permit Delcath Holdings to maintain cash or other assets of a value in excess of Ten Thousand Dollars (\$10,000.00) in the aggregate at any time during the term of this Agreement.

**6.15 Leases.** Create, incur, assume, or suffer to exist any obligation as lessee for the rental or hire of any personal property (“**Personal Property Leases**”), except for Personal Property Leases of Equipment in the ordinary course of business that do not in the aggregate require Borrower to make payments (including taxes, insurance, maintenance and similar expenses which Borrower is required to pay under the terms of any such lease) in any calendar year in excess of One Hundred Thousand Dollars (\$100,000.00) in aggregate amount. For the avoidance of doubt, this Section 6.15 will not be applicable to Indebtedness otherwise permitted under Section 6.1(f) of this Agreement.

**6.16 Anti-Corruption Laws.**

(a) Take any action that would cause a violation of any anti-corruption law, including but not limited to, the Foreign Corrupt Practices Act, the United Kingdom Bribery Act, and all other applicable anti-corruption laws.

(b) Directly or indirectly, offer, pay, give, promise or authorize the payment of any money, gift, or anything of value to any person acting in an official capacity for any government department, agency, or instrumentality, including state-owned or controlled companies or entities, and public international organizations, as well as a political party or official thereof or candidates for political office, except in compliance with applicable law.

**6.17 Financial Assistance.** Use any Loan directly or indirectly for the purposes of providing financial assistance within the meaning of section 82 of the Irish Companies Act.

**ARTICLE 7 - EVENTS OF DEFAULT**

**7.1 Events of Default; Acceleration.** Upon the occurrence and during the continuation of any Event of Default, the obligation of Lender to make any additional Loan shall be suspended. The occurrence and continuation of any of the following (each, an “**Event of Default**”) shall at the option of Lender (1) make all sums of Basic Interest and principal, as well as any other Obligations and amounts owing under any Loan Documents, immediately due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor or any other notices or demands, and (2) give Lender

the right to exercise any other right or remedy provided by contract or applicable law:

(a) Borrower shall fail to pay any principal or interest under this Agreement or any Note, or fail to pay any fees or other charges when due under any Loan Document, and such failure continues for three (3) Business Days or more after the same first becomes due; or an Event of Default as defined in any other Loan Document shall have occurred.

(b) Any representation or warranty made, or financial statement, certificate or other written document provided, by Borrower or any Guarantor under any Loan Document, taken together with all such representations, warranties, statements, certificates and documents, shall prove to have been false or misleading in any material respect when made or deemed made herein.

(c) If there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect; it being acknowledged and agreed by Lender that a CMC CRL, in and of itself, will not trigger an Event of Default under this Section 7.1(c).

(d) (i) Borrower or any Guarantor shall fail to pay its debts generally as they become due; or (ii) Borrower or any Guarantor shall commence any Insolvency Proceeding with respect to itself, an involuntary Insolvency Proceeding shall be filed against Borrower or any Guarantor, or a custodian, receiver, trustee, assignee for the benefit of creditors, or other similar official, shall be appointed to take possession, custody or control of the properties of Borrower or any Guarantor, and such involuntary Insolvency Proceeding, petition or appointment is acquiesced to by Borrower or such Guarantor or is not dismissed within forty-five (45) days; or (iii) the dissolution, winding up, or termination of the business or cessation of operations of Borrower or any Guarantor (including any transaction or series of related transactions deemed to be a liquidation, dissolution or winding up of Borrower or any Guarantor pursuant to the provisions of Borrower’s or such Guarantor’s charter documents); or (iv) Borrower or any Guarantor shall take any corporate action for the purpose of effecting, approving, or consenting to any of the foregoing.

(e) Borrower or any Guarantor shall be in default beyond any applicable period of grace or cure under any other agreement involving the borrowing of money, the purchase of property, the advance of credit or any other monetary liability of any kind to Lender or to any Person in an amount in excess of the Threshold Amount.

(f) Any governmental or regulatory authority shall take any final and non-appealable judicial or administrative action, or any defined benefit pension plan maintained by Borrower or any Guarantor shall have any unfunded liabilities, any of which, in the reasonable judgment of Lender, could reasonably be expected to have a Material Adverse Effect.

(g) Any sale, transfer or other disposition of all or a substantial or material part of the assets of Borrower or any Guarantor, including without limitation to any trust or similar entity, shall occur.

(h) Any judgment(s) singly or in the aggregate in excess of the Threshold Amount (not covered by independent third party insurance as to which liability has been accepted by such insurance carrier) shall be entered against Borrower or any Guarantor which remain unsatisfied, unvacated or unstayed pending appeal for ten (10) or more days after entry thereof.

(i) Borrower or any Guarantor shall fail to perform or observe any covenant contained in Article 6 of this Agreement.

(j) Borrower or any Guarantor shall fail to perform or observe any covenant contained in Article 5 or elsewhere in this Agreement or any other Loan Document (other than a covenant which is dealt with specifically elsewhere in this Article 7) and, if capable of being cured, the breach of such covenant is not cured within ten (10) days after the sooner to occur of Borrower's or such Guarantor's receipt of notice of such breach from Lender or the date on which such breach first becomes known to any officer of Borrower or such Guarantor (the "**Notice Date**"); provided, however that if such breach is not capable of being cured within such 10-day period and Borrower timely notifies Lender of such fact and Borrower diligently pursues such cure, then the cure period shall be extended to the date requested in Borrower's notice but in no event more than thirty (30) days from the Notice Date; provided, further, that such 30-day opportunity to cure shall not apply in the case of any failure to perform or observe any covenant which has been the subject of a prior failure within the preceding one hundred eighty (180) days or which is a willful and knowing breach by Borrower.

**7.2 Remedies upon Default.** Upon the occurrence and during the continuance of an Event of Default, Lender shall be entitled to, at its option, exercise any or all of the rights and remedies available to a secured party under the UCC or any other applicable law, and exercise any or all of its rights and remedies provided for in this Agreement and in any

other Loan Document. The obligations of Borrower under this Agreement, and each Guarantor under the Guaranty Documents, shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Obligations is rescinded or must otherwise be returned by Lender upon, on account of, or in connection with, the insolvency, bankruptcy or reorganization of Borrower or any Guarantor or otherwise, all as though such payment had not been made.

**7.3 Sale of Collateral.** Upon the occurrence and during the continuance of an Event of Default, Lender may sell all or any part of the Collateral, at public or private sales, to itself, a wholesaler, retailer or investor, for cash, upon credit or for future delivery, and at such price or prices as Lender may deem commercially reasonable. To the extent permitted by law, Borrower and each Guarantor hereby specifically waives all rights of redemption and any rights of stay or appraisal which it has or may have under any applicable law in effect from time to time. Subject to applicable law, any such public or private sales shall be held at such times and at such place(s) as Lender may determine. In case of the sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Lender until the selling price is paid by the purchaser, but Lender shall not incur any liability in case of the failure of such purchaser to pay for the Collateral and, in case of any such failure, such Collateral may be resold. Subject to applicable law, Lender may, instead of exercising its power of sale, proceed to enforce its security interest in the Collateral by seeking a judgment or decree of a court of competent jurisdiction. Without limiting the generality of the foregoing, if an Event of Default is in existence,

(1) Subject to the rights of any third parties, Lender may license, or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Copyrights, Patents or Trademarks included in the Collateral throughout the world for such term or terms, on such conditions and in such manner as Lender shall in its sole discretion determine;

(2) Lender may (without assuming any obligations or liability thereunder), at any time and from time to time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Borrower and each Guarantor in, to and under any Copyright Licenses, Patent Licenses or Trademark Licenses and take or refrain from taking any action under any thereof, and Borrower and each Guarantor hereby releases Lender from, and agrees to hold Lender free and harmless from and against any

claims arising out of, any lawful action so taken or omitted to be taken with respect thereto other than claims arising out of Lender's gross negligence or willful misconduct; and

(3) Upon request by Lender, Borrower and each Guarantor will execute and deliver to Lender a power of attorney, in form and substance reasonably satisfactory to Lender for the implementation of any lease, assignment, license, sublicense, grant of option, sale or other disposition of a Copyright, Patent or Trademark. In the event of any such disposition pursuant to this clause 3, Borrower and each Guarantor shall supply its know-how and expertise relating to the products or services made or rendered in connection with Patents, the manufacture and sale of the products bearing Trademarks, and its customer lists and other records relating to such Copyrights, Patents or Trademarks and to the distribution of said products, to Lender.

(4) If, at any time when Lender shall determine to exercise its right to sell the whole or any part of the Shares hereunder, such Shares or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act (or any similar statute), then Lender may, in its discretion (subject only to applicable requirements of law), sell such Shares or part thereof by private sale in such manner and under such circumstances as Lender may deem necessary or advisable, but subject to the other requirements of this Article 7, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, Lender in its discretion may (i) in accordance with applicable securities laws proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Shares or part thereof could be or shall have been filed under the Securities Act (or similar statute), (ii) approach and negotiate with a single possible purchaser to effect such sale, and (iii) restrict such sale to a purchaser who is an accredited investor under the Securities Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Shares or any part thereof. In addition to a private sale as provided above in this Article 7, if any of the Shares shall not be freely distributable to the public without registration under the Securities Act (or similar statute) at the time of any proposed sale pursuant to this Article 7, then Lender shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any

sale hereunder (including a sale at auction) be conducted subject to restrictions:

(A) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;

(B) as to the content of legends to be placed upon any certificates representing the Shares sold in such sale, including restrictions on future transfer thereof;

(C) as to the representations required to be made by each Person bidding or purchasing at such sale relating to such Person's access to financial information about Borrower or any of its Subsidiaries and such Person's intentions as to the holding of the Shares so sold for investment for its own account and not with a view to the distribution thereof; and

(D) as to such other matters as Lender may, in its discretion, deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Bankruptcy Code and other laws affecting the enforcement of creditors' rights and the Securities Act and all applicable state securities laws.

(5) Borrower and each Guarantor recognizes that Lender may be unable to effect a public sale of any or all the Shares and may be compelled to resort to one or more private sales thereof in accordance with clause (4) above. Borrower and each Guarantor also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. Lender shall be under no obligation to delay a sale of any of the Shares for the period of time necessary to permit the applicable Subsidiary to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if Borrower and/or the Subsidiary would agree to do so.

**7.4 Borrower's/Guarantors' Obligations upon Default.** Upon the request of Lender after the occurrence and during the continuance of an Event of Default, Borrower and each Guarantor will:

(a) Assemble and make available to Lender the Collateral at such place(s) as Lender shall reasonably designate, segregating all Collateral so that each item is capable of identification; and

(b) Subject to the rights of any lessor, permit Lender, by Lender's officers, employees, agents and representatives, to enter any premises where any Collateral is located, to take possession of the Collateral, to complete the processing, manufacture or repair of any Collateral, and to remove the Collateral, or to conduct any public or private sale of the Collateral, all without any liability of Lender for rent or other compensation for the use of Borrower's premises.

## ARTICLE 8 - SPECIAL COLLATERAL PROVISIONS

**8.1 Compromise and Collection.** Borrower, each Guarantor and Lender recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Rights to Payment; that certain of the Rights to Payment may be or become uncollectible in whole or in part; and that the expense and probability of success of litigating a disputed Right to Payment may exceed the amount that reasonably may be expected to be recovered with respect to such Right to Payment. Borrower and each Guarantor hereby authorizes Lender, after and during the continuance of an Event of Default, to compromise with the obligor, accept in full payment of any Right to Payment such amount as Lender shall negotiate with the obligor, or abandon any Right to Payment. Any such action by Lender shall be considered commercially reasonable so long as Lender acts in good faith based on information known to it at the time it takes any such action.

**8.2 Performance of Borrower's/Guarantors' Obligations.** Without having any obligation to do so, upon reasonable prior notice to Borrower, Lender may perform or pay any obligation which Borrower or any Guarantor has agreed to perform or pay under this Agreement the performance or payment of which, as applicable is due, including, without limitation, the payment or discharge of taxes or Liens levied or placed on or threatened against the Collateral. In so performing or paying, Lender shall determine the action to be taken and the amount necessary to discharge such obligations. Borrower shall reimburse Lender on demand for any amounts paid by Lender pursuant to this Section, which amounts shall constitute Obligations secured by the Collateral and shall bear interest from the date of demand at the Default Rate.

**8.3 Power of Attorney.** For the purpose of protecting and preserving the Collateral and Lender's rights under this Agreement, Borrower and each Guarantor hereby irrevocably appoints Lender, with full power of substitution, as its attorney-in-fact with full power and authority, after the occurrence and during the continuance of an Event of Default, to do any act which Borrower or any Guarantor is obligated to do hereunder; to exercise such rights with respect to the Collateral as Borrower or any Guarantor might exercise; to use such Inventory, Equipment, Fixtures or other property as Borrower or any Guarantor might use; to enter Borrower's and each Guarantors' premises; to give notice of Lender's security interest in, and to collect the Collateral; and before or after Default, to the extent that Borrower has failed to do so after Lender's request (unless an Event of Default has occurred), execute and file in Borrower's and each Guarantors' name any financing statements, amendments and continuation statements, account control agreements or other Security Documents necessary or desirable to create, maintain, perfect or continue the perfection of Lender's security interests in the Collateral. Borrower and each Guarantor hereby ratifies all that Lender shall lawfully do or cause to be done by virtue of this appointment.

**8.4 Authorization for Lender to Take Certain Action.** The power of attorney created in Section 8.3 is a power coupled with an interest and shall be irrevocable. The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon Lender to exercise such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and in no event shall Lender or any of its directors, officers, employees, agents or representatives be responsible to Borrower or any Guarantor for any act or failure to act, except for gross negligence or willful misconduct. After the occurrence and during the continuance of an Event of Default, Lender may exercise this power of attorney without notice to or assent of Borrower or any Guarantor, in the name of Borrower and any Guarantor, or in Lender's own name, from time to time in Lender's sole discretion and at Borrower's and Guarantors' expense. To further carry out the terms of this Agreement, after the occurrence and during the continuance of an Event of Default, Lender may:

(a) Execute any statements or documents or take possession of, and endorse and collect and receive delivery or payment of, any checks, drafts, notes, acceptances or other instruments and documents constituting Collateral, or constituting the payment of amounts due and to become due or any performance to be rendered with respect to the Collateral.

(b) Sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts; drafts, certificates and statements under any commercial or standby letter of credit relating to Collateral; assignments, verifications and notices in connection with Accounts; or any other documents relating to the Collateral, including without limitation the Records.

(c) Use or operate Collateral or any other property of Borrower for the purpose of preserving or liquidating Collateral.

(d) File any claim or take any other action or proceeding in any court of law or equity or as otherwise deemed appropriate by Lender for the purpose of collecting any and all monies due or securing any performance to be rendered with respect to the Collateral.

(e) Commence, prosecute or defend any suits, actions or proceedings or as otherwise deemed appropriate by Lender for the purpose of protecting or collecting the Collateral. In furtherance of this right, upon the occurrence and during the continuance of an Event of Default, Lender may apply for the appointment of a receiver or similar official to operate Borrower's business.

(f) Prepare, adjust, execute, deliver and receive payment under insurance claims, and collect and receive payment of and endorse any instrument in payment of loss or returned premiums or any other insurance refund or return, and apply such amounts at Lender's sole discretion, toward repayment of the Obligations or replacement of the Collateral.

**8.5 Application of Proceeds.** Any Proceeds and other monies or property received by Lender pursuant to the terms of this Agreement or any Loan Document may be applied by Lender first to the payment of expenses of collection, including without limitation reasonable attorneys' fees, and then to the payment of the Obligations in such order of application as Lender may elect.

**8.6 Deficiency.** If the Proceeds of any disposition of the Collateral are insufficient to cover all costs and expenses of such sale and the payment in full of all the Obligations, plus all other sums required to be expended or distributed by Lender, then Borrower and each Guarantor shall be liable for any such deficiency.

**8.7 Lender Transfer.** Upon the transfer of all or any part of the Obligations, Lender may transfer all or part of the Collateral and shall be fully discharged thereafter from all liability and responsibility with respect to such Collateral so transferred, and the transferee shall be vested with all the rights and powers of Lender hereunder with respect to such Collateral so transferred, but with respect to any Collateral not so transferred, Lender shall retain all rights and powers hereby given.

#### **8.8 Lender's Duties.**

(a) Lender shall use reasonable care in the custody and preservation of any Collateral in its possession. Without limitation on other conduct which may be considered the exercise of reasonable care, Lender shall be deemed to have exercised reasonable care in the custody and preservation of such Collateral if such Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not have any responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, declining value, tenders or other matters relative to any Collateral, regardless of whether Lender has or is deemed to have knowledge of such matters; or taking any necessary steps to preserve any rights against any Person with respect to any Collateral. Under no circumstances shall Lender be responsible for any injury or loss to the Collateral, or any part thereof, arising from any cause beyond the reasonable control of Lender.

(b) Lender may at any time deliver the Collateral or any part thereof to Borrower and the receipt of Borrower shall be a complete and full acquittance for the Collateral so delivered, and Lender shall thereafter be discharged from any liability or responsibility therefor.

(c) Neither Lender, nor any of its directors, officers, employees, agents, attorneys or any other person affiliated with or representing Lender shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by Borrower or any other party through the ordinary negligence of Lender, or any of its directors, officers, employees, agents, attorneys or any other person affiliated with or representing Lender.

**8.9 Termination of Security Interests and Loan Documents.** Upon the payment in full of the Obligations (other than inchoate indemnity obligations) and satisfaction of all Borrower's obligations under this Agreement and the other Loan Documents (other than



inchoate indemnity obligations), and if Lender has no further obligations under its Commitment, the security interest granted hereby shall automatically terminate, all rights to the Collateral shall automatically revert to Borrower and this Agreement and the other Loan Documents shall terminate; provided that (i) those obligations, liabilities, covenants and terms that are expressly specified herein and in any other Loan Document as surviving that respective agreement's termination, including without limitation, Borrower's indemnity obligations set forth in this Agreement, shall continue to survive notwithstanding anything to the contrary set forth herein, and (ii) nothing set forth herein shall affect or be deemed to affect those obligations, liabilities, covenants and terms set forth in any warrant instrument issued to Lender's parent company or set forth in any other equity securities or convertible debt securities of Borrower acquired by Lender in connection with this Agreement. Upon any such termination, Lender shall return all Collateral in its possession or control to Borrower and, at Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination. In connection therewith, Borrower agrees to provide Lender with such information as may be reasonably requested by Lender as to whether the securities issuable upon the exercise of any Warrant issued in connection with this Agreement constitute "qualified small business stock" for purposes of Section 1202(c) of the Internal Revenue Code and Section 18152.5 of the California Revenue and Taxation Code.

## ARTICLE 9 - GENERAL PROVISIONS

**9.1 Notices.** Any notice given by any party under any Loan Document shall be in writing and personally delivered, sent by overnight courier, or United States mail, postage prepaid, or sent by facsimile, or other authenticated message, charges prepaid, to the other party's or parties' addresses set out in the Disclosure Letter. Each party may change the address or facsimile number to which notices, requests and other communications are to be sent by giving written notice of such change to each other party. Notice given by hand delivery shall be deemed received on the date delivered; if sent by overnight courier, on the next Business Day after delivery to the courier service; if by first class mail, on the third Business Day after deposit in the U.S. Mail; and if by facsimile, on the date of transmission.

**9.2 Binding Effect.** The Loan Documents shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns; provided, however, that Borrower may not assign or

transfer Borrower's rights or obligations under any Loan Document. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Lender's rights and obligations under the Loan Documents provided that, so long as no Event of Default has occurred and is continuing, Lender shall not assign any of such rights or obligations to any competitor of Borrower. In connection with any of the foregoing, Lender may disclose all documents and information which Lender now or hereafter may have relating to the Loans, Borrower, or its business, provided that any Person who receives such information shall have agreed in writing in advance to maintain the confidentiality of such information on terms no less favorable to Borrower than are set forth in Section 9.13 hereof.

**9.3 No Waiver.** Any waiver, consent or approval by Lender of any Event of Default or breach of any provision, condition, or covenant of any Loan Document must be in writing and shall be effective only to the extent set forth in writing. To the fullest extent permitted by law, no waiver of any breach or default shall be deemed a waiver of any later breach or default of the same or any other provision of any Loan Document. To the fullest extent permitted by law, no failure or delay on the part of Lender in exercising any power, right, or privilege under any Loan Document shall operate as a waiver thereof, and no single or partial exercise of any such power, right, or privilege shall preclude any further exercise thereof or the exercise of any other power, right or privilege. Lender has the right at its sole option to continue to accept interest and/or principal payments due under the Loan Documents after default, and such acceptance shall not constitute a waiver of said default or an extension of the maturity of any Loan unless Lender agrees otherwise in writing.

**9.4 Rights Cumulative.** All rights and remedies existing under the Loan Documents are cumulative to, and not exclusive of, any other rights or remedies available under contract or applicable law.

**9.5 Unenforceable Provisions.** Any provision of any Loan Document executed by Borrower which is prohibited or unenforceable in any jurisdiction, shall be so only as to such jurisdiction and only to the extent of such prohibition or unenforceability, but all the remaining provisions of any such Loan Document shall remain valid and enforceable.

**9.6 Accounting Terms.** Except as otherwise provided in this Agreement, accounting terms and financial covenants and information shall be determined and prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year-end adjustments).

**9.7 Indemnification; Exculpation.** Borrower and each Guarantor shall pay and protect, defend and indemnify Lender and Lender's employees, officers, directors, shareholders, affiliates, correspondents, agents and representatives (other than Lender, collectively "**Agents**") against, and hold Lender and each such Agent harmless from, all claims, actions, proceedings, liabilities, damages, losses, expenses (including, without limitation, attorneys' fees and costs) and other amounts incurred by Lender and each such Agent, arising from (i) the matters contemplated by this Agreement or any other Loan Documents, (ii) any dispute between Borrower and a third party, or (iii) any contention that Borrower has failed to comply with any law, rule, regulation, order or directive applicable to Borrower's business; **provided, however**, that this indemnification shall not apply to any of the foregoing to the extent incurred as the result of Lender's or any Agent's gross negligence or willful misconduct. This indemnification shall survive the payment and satisfaction of all of Borrower's Obligations to Lender.

**9.8 Reimbursement.** Borrower and each Guarantor shall reimburse Lender for all reasonable and documented costs and out-of-pocket expenses, including without limitation reasonable attorneys' fees and disbursements expended or incurred by Lender in any arbitration, mediation, judicial reference, legal action or otherwise in connection with (a) the preparation and negotiation of the Loan Documents, (b) the amendment and enforcement of the Loan Documents, including without limitation during any workout, attempted workout, and/or in connection with the rendering of legal advice as to Lender's rights, remedies and obligations under the Loan Documents, (c) collecting any sum which becomes due Lender under any Loan Document, (d) any proceeding for declaratory relief, any counterclaim to any proceeding, or any appeal, or (e) the protection, preservation or enforcement of any rights of Lender. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, proceeding or other activity of any kind in connection with an Insolvency Proceeding; (4) garnishment, levy, and debtor and third party examinations; and (5) postjudgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment. All of the foregoing costs and expenses shall be payable upon demand by Lender, and if not paid within forty-five (45) days of presentation of invoices shall bear interest at the Default Rate.

**9.9 Execution in Counterparts; Electronic Signatures.** This Agreement and the other Loan Documents may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This Agreement and each of the other Loan Documents may be executed by electronic signatures. Borrower and Lender expressly agree to conduct the transactions contemplated by this Agreement and the other Loan Documents by electronic means (including, without limitation, with respect to the execution, delivery, storage and transfer of this Agreement and each of the other Loan Documents by electronic means and to the enforceability of electronic Loan Documents). Delivery of an executed signature page to this Agreement and each of the other Loan Documents by facsimile or other electronic mail transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) shall be effective as delivery of a manually executed counterpart hereof and thereof, as applicable. The words "execution," "signed," "signature" and words of like import herein shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**9.10 Entire Agreement.** The Loan Documents are intended by the parties as the final expression of their agreement and therefore contain the entire agreement between the parties and supersede all prior understandings or agreements concerning the subject matter hereof. This Agreement may be amended only in a writing signed by Borrower and Lender.

**9.11 Governing Law and Jurisdiction.**

**(a)** THIS AGREEMENT AND THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

**(b)** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND BY

EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF BORROWER AND LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH OF BORROWER AND LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO. BORROWER AND LENDER EACH WAIVE PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY CALIFORNIA LAW.

**9.12 Waiver of Jury Trial.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, BORROWER AND LENDER EACH WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. BORROWER AND LENDER EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEMS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

**9.13 Confidentiality.** Lender agrees to hold in confidence all confidential information that it receives from Borrower pursuant to the Loan Documents,

except for disclosure as shall be reasonably required and, in each case, subject to the same confidentiality obligations set forth herein: (a) to legal counsel and accountants for Lender (to the extent that such professional advisors are subject to the same obligations of confidentiality as set forth herein); (b) to other professional advisors to Lender (to the extent that such professional advisors are subject to the same obligations of confidentiality as set forth herein); (c) to regulatory officials having jurisdiction over Lender to the extent required by law; (d) to Lender's investors and prospective investors (to the extent that such investors or prospective investors are subject to the same confidentiality obligation set forth herein), and in Lender's SEC filings as required by law, but only to the extent such disclosure is required under applicable law; (e) as required by law or legal process or in connection with any legal proceeding to which Lender and Borrower are adverse parties; (f) in connection with a disposition or proposed disposition of any or all of Lender's rights hereunder to any assignee or participant (to the extent that any transferee or proposed transferee is subject to the same confidentiality obligation set forth herein); (g) to Lender's subsidiaries or Affiliates in connection with their business with Borrower (subject to the same confidentiality obligation set forth herein); (h) as required by valid order of a court of competent jurisdiction, administrative agency or governmental body, or by any applicable law, rule, regulation, subpoena, or any other administrative or legal process, or by applicable regulatory or professional standards, including in connection with any judicial or other proceeding involving Lender relating to this Agreement and the transactions contemplated hereby; and (i) as required in connection with Lender's examination or audit. For purposes of this section, Lender and Borrower agree that "confidential information" shall mean any information regarding or relating to Borrower other than: (i) information which is or becomes generally available to the public other than as result of a disclosure by Lender in violation of this section, (ii) information which becomes available to Lender from any other source (other than Borrower) which Lender does not know is bound by a confidentiality agreement with respect to the information made available, and (iii) information that Lender knows on a non-confidential basis prior to Borrower disclosing it to Lender. In addition, Borrower agrees that Lender may use Borrower's name, logo and/or trademark in connection with certain promotional materials that Lender may disseminate to the public, including, but are not limited to, brochures, internet website, press releases and any other materials relating to the fact that Lender has a financing relationship with Borrower.

## ARTICLE 10 — DEFINITIONS

The definitions appearing in this Agreement or any Supplement shall be applicable to both the singular and plural forms of the defined terms:

**“Account”** means any “account,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all accounts receivable, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper, Documents or Instruments) now owned or hereafter received or acquired by or belonging or owing to Borrower (including, without limitation, under any trade name, style or division thereof) whether arising out of goods sold or services rendered by Borrower or from any other transaction, whether or not the same involves the sale of goods or services by Borrower (including, without limitation, any such obligation that may be characterized as an account or contract right under the UCC) and all of Borrower’s rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of Borrower’s rights to any goods represented by any of the foregoing (including, without limitation, unpaid seller’s rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all monies due or to become due to Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of Borrower), now in existence or hereafter occurring, including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

**“Affiliate”** means any Person which directly or indirectly controls, is controlled by, or is under common control with Borrower. “Control,” “controlled by” and “under common control with” mean direct or indirect possession of the power to direct or cause the direction of management or policies (whether through ownership of voting securities, by contract or otherwise); provided, that control shall be conclusively presumed when any Person or affiliated group directly or indirectly owns ten percent (10.00%) or more of the securities having ordinary voting power for the election of directors of a corporation.

**“Agreement”** means this Loan and Security Agreement and each Supplement thereto, as each may be amended or supplemented from time to time.

**“Bankruptcy Code”** means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, *et seq.*), as amended.

**“Basic Interest”** means the rate of interest payable on the outstanding balance of each Loan at the applicable Designated Rate.

**“Borrowing Date”** means the Business Day on which the proceeds of a Loan are disbursed by Lender.

**“Borrowing Request”** means a written request from Borrower in substantially the form of Exhibit “B” to the Supplement, requesting the funding of one or more Loans on a particular Borrowing Date.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which commercial banks in New York City, San Francisco or Dublin are authorized or required by law to close.

**“Change of Control”** means: (a) any sale, license, or other disposition of all or substantially all of the assets of Borrower; (b) any reorganization, consolidation, merger or other transaction involving Borrower; or (c) any transaction or series of related transactions in which any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, the power to control the management of Borrower, or to control the equity interests of Borrower entitled to vote for members of the Board of Directors or equivalent governing body of Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing fifty percent (50.00%) or more of the combined voting power of such securities.

**“Chattel Paper”** means any “chattel paper,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Closing Date”** means the date of this Agreement.

**“CMC CRL”** means a Complete Response Letter issued by the FDA to the Borrower (each, a **“CRL”**) based solely upon information requested from the FDA with respect to Borrower’s Chemistry, Manufacturing and Control (**“CMC”**) data; provided that (1) Borrower immediately upon receipt thereof provides to Lender the

CRL and any response (and all subsequent communications related) thereto and (2) the CMC CRL does not result in the cessation (temporary or permanent) of any program or trial of Borrower then in progress (whether related to the HEPZATO KIT or otherwise).

**“Collateral”** means all of Borrower’s right, title and interest in and to the following property, whether now owned or hereafter acquired and wherever located: (a) all Receivables; (b) all Equipment; (c) all Fixtures; (d) all General Intangibles; (e) all Inventory; (f) all Investment Property; (g) all Deposit Accounts; (h) all Shares; (i) all other Goods and personal property of Borrower, whether tangible or intangible and whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located; (j) all Records; and (k) all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing.

Notwithstanding the foregoing the term “Collateral” shall not include: (i) more than sixty-five percent (65.00%) of the issued and outstanding capital stock, membership units or other securities entitled to vote owned or held of record by Borrower in any Subsidiary that is a controlled foreign corporation (as defined in the Internal Revenue Code), provided that the Collateral shall include one hundred percent (100.00%) of the issued and outstanding non-voting capital stock of such Subsidiary; (ii) “intent-to-use” trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, but only to the extent the granting of a security interest in such “intent to use” trademarks would be contrary to applicable law; (iii) any contract, Instrument or Chattel Paper in which Borrower has any right, title or interest if and to the extent such contract, Instrument or Chattel Paper includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Borrower therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such contract, Instrument or Chattel Paper to enforce any remedy with respect thereto; provided, however, that the foregoing exclusion shall not apply if (A) such prohibition has been waived or such other person has otherwise consented to the creation hereunder of a security interest in such contract, Instrument or Chattel Paper, or (B) such prohibition would be rendered ineffective pursuant to Sections 9-407(a) or 9-408(a) of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the Bankruptcy Code or principles of equity); provided,

further, that immediately upon the ineffectiveness, lapse or termination of any such provision, the term “Collateral” shall include, and Borrower shall be deemed to have granted a security interest in, all its rights, title and interests in and to such contract, Instrument or Chattel Paper as if such provision had never been in effect; and provided further that the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect Lender’s unconditional continuing security interest in and to all rights, title and interests of Borrower in or to any payment obligations or other rights to receive monies due or to become due under any such contract, Instrument or Chattel Paper and in any such monies and other proceeds of such contract, Instrument or Chattel Paper; (iv) any motor vehicles subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a Uniform Commercial Code financing statement or (v) any real property.

**“Commitment”** means the obligation of Lender to make Loans to Borrower up to the aggregate principal amount set forth in the Supplement.

**“Copyright License”** means any written agreement granting any right to use any Copyright or Copyright registration now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Copyrights”** means all of the following now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (i) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or of any other country; (ii) all registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country; (iii) all continuations, renewals or extensions thereof; and (iv) any registrations to be issued under any pending applications.

**“CRO”** means the Companies Registration Office of Ireland.

**“Default”** means an event which with the giving of notice, passage of time, or both would constitute an Event of Default.

**“Default Rate”** means the applicable Designated Rate plus five percent (5.00%) per annum.

**“Delcath Germany”** means Delcath Systems GmbH, an entity organized under the laws of Germany and a wholly-owned Subsidiary of Delcath Ireland.

**“Delcath Holdings”** means Delcath Holdings Limited, an entity incorporated under the laws of Ireland and an Affiliate of Borrower.

**“Delcath Ireland”** means Delcath Systems Limited, an entity incorporated under the laws of Ireland (with registered number 498524 and having its registered office at 10 Earlsfort Terrace, Dublin 2, Dublin, Ireland) and a wholly-owned Subsidiary of Borrower.

**“Delcath Netherlands”** means Delcath Systems B.V., an entity organized under the laws of the Netherlands and a wholly-owned Subsidiary of Delcath Ireland.

**“Delcath UK”** means Delcath UK Systems Limited, an entity organized under the laws of England and Wales and a wholly-owned Subsidiary of Delcath Ireland.

**“Deposit Accounts”** means any “deposit accounts,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Designated Rate”** means the rate of interest per annum described in the Supplement as being applicable to an outstanding Loan from time to time.

**“Disclosure Letter”** means that certain Confidential Disclosure Letter delivered by the Borrower to the Lender of even date herewith.

**“Documents”** means any “documents,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Dollars”** or **“\$”** means lawful currency of the United States.

**“Domestic Subsidiary”** means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

**“Environmental Laws”** means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authorities, in each case relating to environmental, health, or safety matters.

**“Equipment”** means any “equipment,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any and all additions, substitutions and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto.

**“Event of Default”** means any event described in Section 7.1.

**“Excluded Account”** means any account used exclusively for payroll or payroll taxes, or cash collateral permitted hereunder, and identified as such by Borrower in writing to Lender.

**“Excluded Subsidiary”** means each, and **“Excluded Subsidiaries”** means all, of Delcath Germany, Delcath Netherlands, Delcath UK and Delcath Holdings and each Foreign Subsidiary formed after the Closing Date.

**“Fixtures”** means any “fixtures,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Foreign Subsidiary”** means any (i) Subsidiary that is not a Domestic Subsidiary and (ii) any Domestic Subsidiary whose assets consist exclusively of Equity Interests Subsidiaries that are not Domestic Subsidiaries.

**“GAAP”** means generally accepted accounting principles and practices consistent with those principles and practices promulgated or adopted by the Financial Accounting Standards Board and the Board of the American Institute of Certified Public Accountants, their respective predecessors and successors. Each accounting term used but not otherwise expressly defined herein shall have the meaning given it by GAAP.

**“General Intangibles”** means any “general intangibles,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include, without limitation, all right, title and interest that Borrower may now or hereafter have in or under any contract, all customer lists, Copyrights, Trademarks, Patents, websites, domain names, and all applications therefor and reissues, extensions, or renewals thereof, other items of, and rights to, Intellectual Property, interests in partnerships, joint ventures and other business associations, Licenses, permits, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge,

know-how, software, data bases, data, skill, expertise, recipes, experience, processes, models, drawings, materials and records, goodwill (including, without limitation, the goodwill associated with any Trademark, Trademark registration or Trademark licensed under any Trademark License), claims in or under insurance policies, including unearned premiums, uncertificated securities, money, cash or cash equivalents, deposit, checking and other bank accounts, rights to sue for past, present and future infringement of Copyrights, Trademarks and Patents, rights to receive tax refunds and other payments and rights of indemnification.

**“Goods”** means any “goods,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Guarantor”** means each guarantor delivering to Lender the Guaranty Documents; provided that, as of the Closing Date, the Guarantor is Delcath Ireland.

**“Guaranty Documents”** means that certain Unconditional Guaranty and that certain Mortgage Debenture, each in form and content reasonably acceptable to Lender, executed by each Guarantor; provided that the Mortgage Debenture grants to the Lender, and the Unconditional Guaranty is secured by, first priority Liens on each Guarantor’s assets.

**“Indebtedness”** of any Person means at any date, without duplication and without regard to whether matured or unmatured, absolute or contingent: (i) all obligations of such Person for borrowed money; (ii) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments; (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business; (iv) all obligations of such Person as lessee under capital leases; (v) all obligations of such Person to reimburse or prepay any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance, or similar instrument, whether drawn or undrawn; (vi) all obligations of such Person to purchase securities which arise out of or in connection with the sale of the same or substantially similar securities; (vii) all obligations of such Person to purchase, redeem, exchange, convert or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, now or hereafter outstanding, except to the extent that such obligations remain performable solely at the option of such Person; (viii) all obligations to repurchase assets previously sold (including any obligation to repurchase any accounts or chattel paper under any factoring, receivables purchase, or similar

arrangement); (ix) obligations of such Person under interest rate swap, cap, collar or similar hedging arrangements; and (x) all obligations of others of any type described in clause (i) through clause (ix) above guaranteed by such Person.

**“Insolvency Proceeding”** means with respect to a Person (a) any case, action or proceeding before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors with respect to such Person, (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of such Person’s creditors generally or any substantial portion of its creditors, undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code, but in each case, excluding any avoidance or similar action against such Person commenced by an assignee for the benefit of creditors, bankruptcy trustee, debtor in possession, or other representative of another Person or such other Person’s estate, or (c) in the case of any Person incorporated in Ireland, an Irish Insolvency Proceeding occurs.

**“Instruments”** means any “instrument,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Intellectual Property”** means all of Borrower’s Copyrights, Trademarks, Patents, Licenses, trade secrets, source codes, customer lists, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, skill, expertise, experience, processes, models, drawings, materials, records and goodwill associated with the foregoing.

**“Intellectual Property Security Agreement”** means any Intellectual Property Security Agreement executed and delivered by Borrower in favor of Lender, as the same may be amended, supplemented, or restated from time to time.

**“Inventory”** means any “inventory,” as such term is defined in the UCC, wherever located, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, and, in any event, shall include, without limitation, all inventory, goods and other personal property that are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service or that constitute raw materials, work in process or materials used or consumed or to be used or consumed in

Borrower's business, or the processing, packaging, promotion, delivery or shipping of the same, and all finished goods, whether or not the same is in transit or in the constructive, actual or exclusive possession of Borrower or is held by others for Borrower's account, including, without limitation, all goods covered by purchase orders and contracts with suppliers and all goods billed and held by suppliers and all such property that may be in the possession or custody of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents or other Persons.

**"Investment Property"** means any "investment property," as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**"Irish Companies Act"** means the Companies Act 2014 (as amended) of Ireland.

**"Irish Insolvency Proceeding"** means (a) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors; (b) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to make an application to or to file documents with a court or any registrar for, its winding-up, administration, examinership or dissolution or any such resolution is passed; (c) an order is made for its winding-up, administration, examinership or dissolution, or any Person presents a petition, or makes an application to or files documents with a court or any registrar, for its winding-up, administration, examinership or dissolution, or gives notice of an intention to appoint an administrator, examiner or receiver; (d) any liquidator, receiver, administrative receiver, administrator, examiner or similar officer is appointed in respect of it or any of its assets; or (e) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, receiver, administrator, examiner or similar officer.

**"Irish Share Charge"** means the Irish law governed share charge dated on or about the date hereof between the Lender and the Borrower in respect of the shares in Delcath Ireland.

**"Letter of Credit Rights"** means any "letter of credit rights," as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, including any right to payment under any letter of credit.

**"License"** means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any renewals or extensions thereof.

**"Lien"** means any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, levy, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, against any property, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and the filing of any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the UCC or comparable law of any jurisdiction.

**"Loan"** means an extension of credit by Lender under this Agreement.

**"Loan Documents"** means, individually and collectively, this Loan and Security Agreement, each Supplement, the Disclosure Letter, each Note, the Guaranty Documents, the Intellectual Property Security Agreement, the Security Documents and any other security or pledge agreement(s), any Warrant issued by Borrower in connection with this Agreement, and all other contracts, instruments, addenda and documents executed in connection with this Agreement or the extensions of credit which are the subject of this Agreement.

**"Material Adverse Effect"** or **"Material Adverse Change"** means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, or financial condition of Borrower; (b) a material impairment of the ability of Borrower to perform under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against Borrower of any Loan Document.

**"Mortgage Debenture"** means the Irish law governed debenture dated on or about the date hereof between the Lender and Delcath Ireland.

**"Note"** means a promissory note substantially in the form attached to the Supplement as Exhibit "A", executed by Borrower evidencing each Loan.

**"Obligations"** means all debts, obligations and liabilities of Borrower and each Guarantor to Lender now or hereafter made, incurred or created under, pursuant to or in connection with this Agreement or any other Loan Document (other than the Warrant), whether



voluntary or involuntary and however arising or evidenced, whether direct or acquired by Lender by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower or any Guarantor may be liable individually or jointly, or whether recovery upon such debt may be or become barred by any statute of limitations or otherwise unenforceable; and all renewals, extensions and modifications thereof; and all reasonable and invoiced attorneys' fees and out-of-pocket costs incurred by Lender in connection with the collection and enforcement thereof as provided for in any such Loan Document. Notwithstanding the foregoing, Borrower's obligations under any warrants (including the Warrants) issued to Lender or its designated affiliate shall not be "Obligations" hereunder.

**"Patent License"** means any written agreement granting any right with respect to any invention on which a Patent is in existence now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**"Patents"** means all of the following property now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all letters patent of, or rights corresponding thereto in, the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto in, the United States or any other country, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, continuations, continuations-in-part or extensions thereof; (c) all petty patents, divisionals, and patents of addition; and (d) all patents to be issued under any such applications.

**"Permitted Lien"** means:

(a) involuntary Liens which, in the aggregate, would not have a Material Adverse Effect and which in any event would not exceed, in the aggregate, the Threshold Amount;

(b) Liens for current taxes or other governmental or regulatory assessments which are not delinquent, or which are contested in good faith by the appropriate procedures and for which appropriate reserves are maintained;

(c) security interests on any property held or acquired by Borrower in the ordinary course of business securing Indebtedness incurred or assumed for

the purpose of financing all or any part of the cost of acquiring such property; provided, that such Lien attaches solely to the property acquired with such Indebtedness and that the principal amount of such Indebtedness does not exceed one hundred percent (100.00%) of the cost of such property;

(d) Liens in favor of Lender;

(e) bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business as long as an account control agreement (or equivalent) for each account in which such deposits are held in a form reasonably acceptable to Lender has been executed and delivered to Lender to the extent required under Section 6.11;

(f) materialmen's, mechanics', repairmen's, warehousemen's, carriers', landlord's (subject to Section 5.9(e) hereof), employees' or other like Liens arising in the ordinary course of business and which are not delinquent for more than forty-five (45) days or are being contested in good faith by appropriate proceedings;

(g) any judgment, attachment or similar Lien, unless the judgment it secures exceeds the Threshold Amount and has not been discharged or execution thereof effectively stayed and bonded against pending appeal within thirty (30) days of the entry thereof;

(h) licenses or sublicenses of Intellectual Property in accordance with the terms of Section 6.5 hereof;

(i) Liens securing Subordinated Debt;

(j) Liens which have been approved by Lender in writing prior to the Closing Date, as shown on Schedule 6.2 hereto;

(k) the interests of licensors under inbound licenses to Borrower;

(l) the interests of sub-lessees under subleases of real property;

(m) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(n) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases

(other than capital lease obligations), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature arising as a matter of law and incurred in the ordinary course of business;

(o) zoning restrictions, easements, rights of way, restrictions on use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries.

(p) Liens on cash and cash equivalents securing reimbursement obligations for letters of credit or credit cards; and

(q) Liens on insurance proceeds to the extent financed.

**“Person”** means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

**“Proceeds”** means “proceeds,” as such term is defined in the UCC and, in any event, shall include, without limitation, (a) any and all Accounts, Chattel Paper, Instruments, cash or other forms of money or currency or other proceeds payable to Borrower from time to time in respect of the Collateral, (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Borrower from time to time with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to Borrower from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority), (d) any claim of Borrower against third parties (i) for past, present or future infringement of any Copyright, Patent or Patent License or (ii) for past, present or future infringement or dilution of any Trademark or Trademark License or for injury to the goodwill associated with any Trademark, Trademark registration or Trademark licensed under any Trademark License and (e) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**“Receivables”** means all of Borrower’s Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, and letters of credit and Letter of Credit Rights.

**“Records”** means all Borrower’s computer programs, software, hardware, source codes and data processing information, all written documents, books, invoices, ledger sheets, financial information and statements, and all other writings concerning Borrower’s business.

**“Related Person”** means any Affiliate of Borrower, or any officer, employee, director or equity security holder of Borrower or any Affiliate.

**“Rights to Payment”** means all Borrower’s accounts, instruments, contract rights, documents, chattel paper and all other rights to payment, including, without limitation, the Accounts, all negotiable certificates of deposit and all rights to payment under any Patent License, any Trademark License, or any commercial or standby letter of credit.

**“Security Documents”** means this Loan and Security Agreement, the Supplement hereto, the Intellectual Property Security Agreement, the security agreement(s) (including but not limited to the Mortgage Debenture and the Irish Share Charge) executed in connection with the Guaranty Documents, and any and all account control agreements, collateral assignments, chattel mortgages, financing statements, amendments to any of the foregoing and other documents from time to time executed or filed to create, perfect or maintain the perfection of Lender’s Liens on the Collateral.

**“Shares”** means one hundred percent (100.00%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in any Subsidiary; provided that, except with respect to Delcath Ireland, in the event Borrower demonstrates to Lender’s reasonable satisfaction with respect to any controlled foreign corporation (as defined in the Internal Revenue Code), that the pledge of in excess of 65% of such capital stock, membership units or securities having ordinary voting rights would reasonably be expected to have a material adverse tax consequence, then with respect to such controlled foreign corporations, the pledge shall be limited to 65% of the issued and outstanding capital stock, membership units or other securities entitled to ordinary voting rights. For sake of clarity, with respect to Delcath Ireland, “Shares” means one hundred percent (100.00%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower in Delcath Ireland.

**“Subordinated Debt”** means Indebtedness (i) approved by Lender; and (ii) where the holder’s right to payment of such Indebtedness, the priority of any Lien securing the same, and the rights of the holder thereof to enforce remedies against Borrower following default have been made subordinate to the Liens of Lender and to the prior payment to Lender of the Obligations, either (A) pursuant to a written subordination agreement approved by Lender in its sole but reasonable discretion or (B) on terms otherwise approved by Lender in its sole but reasonable discretion.

**“Subsidiary”** means any Person a majority of the equity ownership or voting stock of which is directly or indirectly now owned or hereafter acquired by Borrower or by one or more other Subsidiaries.

**“Supplement”** means that certain supplement to the Loan and Security Agreement, as the same may be amended or restated from time to time, and any other supplements entered into between Borrower and Lender, as the same may be amended or restated from time to time.

**“Supporting Obligations”** means any “supporting obligations,” as such term is defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Termination Date”** has the meaning specified in the Supplement.

**“Threshold Amount”** has the meaning specified in the Supplement.

**“Trademark License”** means any written agreement granting any right to use any Trademark or Trademark registration now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

**“Trademarks”** means all of the following property now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all trademarks, tradenames, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof and (b) reissues, extensions or renewals thereof.

**“UCC”** means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions. Unless otherwise defined herein, terms that are defined in the UCC and used herein shall have the meanings given to them in the UCC.

**“Warrant”** has the meaning specified in the Supplement.

*[Signature page follows]*

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

**BORROWER:**

DELCATH SYSTEMS, INC.

By: /s/ Gerard Michel  
Name: Gerard Michel  
Title: Chief Executive Officer

**GUARANTOR:**

DELCATH SYSTEMS LIMITED

By: /s/ Michael Leen  
Name: Michael Leen  
Title: Director

**LENDER:**

AVENUE VENTURE OPPORTUNITIES FUND, L.P.

By: Avenue Venture Opportunities Partners, LLC  
Its: General Partner

By: /s/ Sonia Gardner  
Name: Sonia Gardner  
Title: Authorized Signatory

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SCHEDULE 2

POST-CLOSING DELIVERIES

1. Within ten (10) Business Days of the Closing Date or such other date as Lender may agree in its sole discretion, a fully executed Waiver covering Borrower's leased location at 1633 Broadway, Suite 22C, New York, New York 10019, in form and substance satisfactory to Lender.
2. Within three (3) Business Days of the Closing Date, a fully executed copy of that certain amendment to the 8% Senior Secured Promissory Notes.
3. Within ten (10) Business Days of the Closing Date or such other date as Lender may agree in its sole discretion, the fully executed (i) Unconditional Guaranty; (ii) Mortgage Debenture and related schedules and security notices; and (ii) Share Mortgage and related schedules and deliverables thereto.

**SUPPLEMENT**  
to the  
**Loan and Security Agreement**  
dated as of August 6, 2021  
between  
**DELCATH SYSTEMS, INC. (“Borrower”)**  
and  
**Avenue Venture Opportunities Fund, L.P. (“Lender”)**

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This is a Supplement identified in the document entitled Loan and Security Agreement, dated as of August 6, 2021 (as amended, restated, supplemented and modified from time to time, the **“Loan and Security Agreement”**), by and between Borrower and Lender. All capitalized terms used in this Supplement and not otherwise defined in this Supplement have the meanings ascribed to them in Article 10 of the Loan and Security Agreement, which is incorporated in its entirety into this Supplement. In the event of any inconsistency between the provisions of the Loan and Security Agreement and this Supplement, this Supplement is controlling.

In addition to the provisions of the Loan and Security Agreement, the parties agree as follows:

**Part 1 - Additional Definitions:**

**“Amortization Period”** means the period commencing on the first day of the first full calendar month following the Interest-only Period and continuing until the Maturity Date.

**“Blocked Account”** is defined in Part 2, Section 1(b) hereof.

**“Commitment”** means, subject to the terms and conditions set forth in the Loan and Security Agreement and this Supplement, Lender’s commitment to make Growth Capital Loans to Borrower in the original principal amount of Fifteen Million Dollars (\$15,000,000.00) (**“Tranche 1”**); provided that, subject to the conditions in Section 1(d) of Part 2 hereof, from October 1, 2022 through December 31, 2022, Lender shall make available to Borrower an additional original principal amount of Five Million Dollars (**“Tranche 2”**).

**“Designated Rate”** means, for each Growth Capital Loan, a variable rate of interest per annum equal to the sum of (i) the greater of (A) the Prime Rate and (B) three and one-quarters percent (3.25%), plus (ii) seven and seven-tenths percent (7.70%). Changes to the Designated Rate based on changes to the Prime Rate shall be effective as of the next scheduled interest payment date immediately following such change.

**“FDA”** means the U.S. Food and Drug Administration or any successor thereto.

**“Final Payment”** means a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) equal to four and one-quarter percent (4.25%) of the funded amount of Tranche 1 and Tranche 2.

**“Growth Capital Loan”** means any Loan requested by Borrower and funded by Lender under its Commitment for general corporate purposes of Borrower.

**“HEPZATO KIT”** means Borrower’s melphalan hydrochloride for injection/hepatic delivery system, a drug/device combination product.

**“Interest-only Period”** means the period commencing on the Closing Date and continuing until the fifteenth (15<sup>th</sup>) month anniversary of the Closing Date; *provided*, however, that such period shall be extended for three (3) months (the **“First Interest-only Period Extension”**) (i.e., a total Interest-only Period of eighteen (18) months from

the Closing Date) if as of the last day of the Interest-only Period then in effect Borrower has (a) achieved the Performance Milestone and (b) submitted the HEPZATO KIT NDA; *provided, further* however, that such period shall be extended for an additional six (6) months (i.e., a total Interest-only Period of twenty-four (24) months from the Closing Date) if as of the last day of the Interest-only Period then in effect, Borrower has (i) achieved the First Interest-only Period Extension, (ii) received FDA approval for HEPZATO KIT and (iii) received net proceeds (including in connection with the Performance Milestone) of at least Forty Million Dollars (\$40,000,000.00) from the sale and issuance of Borrower's equity securities after the Closing Date; in each case of subject to written evidence of the same, in form and content reasonably acceptable to Lender; *provided, further*, however, that the Interest-only Period shall not exceed twenty-four (24) months.

**"Loan"** or **"Loans"** mean, as the context may require, individually a Growth Capital Loan, and collectively, the Growth Capital Loans.

**"Loan Commencement Date"** means, with respect to each Growth Capital Loan: (a) the first day of the first full calendar month following the Borrowing Date of such Loan if such Borrowing Date is not the first day of a month; or (b) the same day as the Borrowing Date if the Borrowing Date is the first day of a month.

**"Maturity Date"** means August 1, 2024.

**"NDA"** means a New Drug Application submitted to the FDA.

**"Performance Milestone"** means (1) Borrower (x) demonstrate positive FOCUS trial efficacy per the trial's predefined Statistical Analysis Plan (SAP), specifically the Overall Response Rate exceeds the prespecified threshold for success defined in the SAP by a statistically significant amount; and (y) based on data contained within the FOCUS trial database and appropriate for use with the FDA, safety and tolerability among FOCUS trial participants is within the range of currently approved and commonly used cytotoxic chemotherapeutic agents; and (2) receipt of net proceeds of at least Twenty Million Dollars (\$20,000,000.00) from the sale and issuance of Borrower's equity securities after the Closing Date (the **"Initial Equity Raise Requirement"**); with respect to (1) and (2), written evidence of which is provided to, and reviewed and approved by, Lender.

**"Prepayment Fee"** means, with respect to any prepayment of the Loans:

(i) if the prepayment occurs during the period commencing on the Closing Date and ending on (but including) the last day of the Interest-only Period, an amount equal to the principal amount of such Loans prepaid multiplied by three percent (3.00%); and

(ii) if the prepayment occurs during the period commencing on the day immediately following the Interest-only Period and ending on (but excluding) the Maturity Date, an amount equal to the principal amount of the Loans prepaid multiplied by one percent (1.00%).

Notwithstanding the foregoing or any other term herein or in any other Loan Document to the contrary, no Prepayment Fee shall be due in connection with (x) any mandatory prepayment made in accordance with Part 2, Section 1(c) hereof, (y) in respect of any application of insurance proceeds to the Obligations or (z) with respect to Tranche 2 only, any voluntary prepayment following Lender's Investment Committee declining to approve the Funding of a Tranche 2 advance requested by Borrower in accordance with the term herein and in the other Loan Documents.

**"Prime Rate"** is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Supplement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Lender, the "Prime Rate" shall mean the rate of interest per annum announced by Silicon Valley Bank as its prime rate in effect at its principal office in the State of California (such announced Prime Rate not being intended to be the lowest rate of interest charged by such institution in connection with extensions of credit to debtors); provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Supplement.

“SEC” means Securities and Exchange Commission or other equivalent governmental or regulatory authority having similar authority.

“**Termination Date**” means the earlier of: (i) the date Lender may terminate making Growth Capital Loans or extending other credit pursuant to the rights of Lender under Article 7 of the Loan and Security Agreement; and (ii) December 31, 2022.

“**Threshold Amount**” means Two Hundred Fifty Thousand Dollars (\$250,000.00).

“**Warrant**” is defined in Part 2, Section 3(a) hereof.

**Part 2 - Additional Covenants and Conditions:**

**1. Growth Capital Loan Facility.**

(a) **Additional Condition(s) Precedent Regarding Growth Capital Loan Commitments.** In addition to the satisfaction of all of the other applicable conditions precedent specified in Sections 4.1 and 4.2 of the Loan and Security Agreement and this Supplement, Lender shall fund the aggregate amount of Tranche 1 on the Closing Date as follows: (x) Eleven Million Dollars (\$11,000,000.00) into Borrower’s primary, U.S.-based operating account; and (y) Four Million Dollars (\$4,000,000.00) (“**Tranche 1(b)**”) into a U.S.-based blocked account maintained by Borrower (the “**Blocked Account**”); in each case of (x) and (y), subject to a control agreement in form and content reasonably acceptable to, and in favor of, Lender.

(b) Borrower may transfer the amount in the Blocked Account to Borrower’s primary, U.S.-based operating account, which shall be subject to a control agreement in form and content reasonably acceptable to, and in favor of, Lender, upon receipt by Lender of evidence that Borrower has achieved the Performance Milestone, as determined by Lender in its sole, reasonable discretion.

(c) Borrower shall maintain the full amount, and shall not transfer or otherwise dispose of any part, of the Tranche 1(b) Loan proceeds in the Blocked Account unless and until Borrower has achieved the Initial Equity Raise Requirement (the “**Release Condition**”); in the event Borrower does not achieve the Release Condition by June 30, 2022, Borrower hereby acknowledges and agrees that Lender may immediately exercise control over the Blocked Account and apply so much of the amount in such Blocked Account as is necessary to satisfy in full Tranche 1(b) as of such date.

(d) In addition to the satisfaction of all of the other applicable conditions precedent specified in Sections 4.1 and 4.2 of the Loan and Security Agreement and this Supplement, Lender’s obligation to fund Tranche 2 of its Commitment of Growth Capital Loans is subject to receipt by Lender of evidence that the following conditions precedent have been satisfied, as determined by Lender in its sole discretion:

(i) Borrower has made written request therefor, no later than thirty (30) days prior to the expiration of the availability of Tranche 2; and

(ii) Lender’s Investment Committee review and approval, in its sole reasonable discretion; provided that, as of the Closing Date, Tranche 2 shall not be considered as, and is not, committed hereunder by Lender.

(e) **Minimum Funding Amount; Maximum Number of Borrowing Requests.** Growth Capital Loans requested by Borrower to be made on a single Business Day shall be for a minimum aggregate, original principal amount of One Million Dollars (\$1,000,000.00); provided, however, that the initial Growth Capital Loan shall be funded on the Closing Date in a minimum original principal amount of Fifteen Million Dollars (\$15,000,000.00). Borrower shall not submit a Borrowing Request more frequently than once per calendar month.



**(f) Repayment of Growth Capital Loans.** Principal of, and interest on, each Growth Capital Loan shall be payable as set forth in a Note evidencing such Growth Capital Loan (substantially in the form attached hereto as Exhibit "A"), which Note shall provide substantially as follows: principal shall be fully amortized over the Amortization Period in equal, monthly principal installments plus, in each case, unpaid interest thereon at the Designated Rate, commencing after the Interest-only Period of interest-only installments at the Designated Rate. In particular, on the Borrowing Date applicable to such Growth Capital Loan, Borrower shall pay to Lender (i) if the Borrowing Date is earlier than the Loan Commencement Date, interest only at the Designated Rate, in advance, on the outstanding principal balance of the Growth Capital Loan for the period from the Borrowing Date through the last day of the calendar month in which such Borrowing Date occurs (it being understood that this clause (i) shall not apply in the case the Borrowing Date is on the same date as the Loan Commencement Date), and (ii) the first (1st) interest-only installment at the Designated Rate, in advance, on the outstanding principal balance of the Note evidencing such Loan for the ensuing month. Commencing on the first day of the second full month after the Borrowing Date and continuing on the first day of each month during the Interest-only Period thereafter, Borrower shall pay to Lender interest only at the Designated Rate, in advance, on the outstanding principal balance of the Loan evidenced by such Note for the ensuing month. Commencing on the first day of the first full month after the end of the Interest-only Period, and continuing on the first day of each consecutive calendar month thereafter, Borrower shall pay to Lender equal consecutive monthly principal installments in advance in an amount sufficient to fully amortize the Loan evidenced by such Note over the Amortization Period, plus interest at the Designated Rate for such month. On the Maturity Date, all principal and accrued interest then remaining unpaid and the Final Payment shall be due and payable.

**2. Prepayment.** The Growth Capital Loans may be prepaid as provided in this Section 2 only. Borrower may prepay all, but not less than all, outstanding Growth Capital Loans in whole, but not in part, at any time upon no less than five (5) Business Days' prior written notice to the Lender, by tendering to Lender a cash payment in respect of such Loans in an amount determined by Lender equal to the sum of: (i) the aggregate outstanding principal amount of such Loans; (ii) the accrued and unpaid interest on such Loans as of the date of prepayment; (iii) the Prepayment Fee; and (iv) the Final Payment; provided that, if Lender has not yet exercised its rights under Section 3(c) hereof, Borrower shall provide written notice of prepayment at least ten (10) days in advance of the proposed prepayment date and Lender shall have the option, with respect to the Conversion Option, to exercise its rights pursuant to Section 3(c) hereof by delivering written notice to Borrower at least two (2) Business Days in advance of the proposed prepayment date; provided, further, that Lender's failure to deliver such notice shall be deemed a waiver of Lender's rights pursuant to Section 3(c) hereof and such conversion right shall terminate.

### **3. Issuance of Warrant; Conversion Right.**

**(a) Warrant.** As additional consideration for the making of its Commitment, Lender has earned and is entitled to receive immediately upon the execution of the Loan and Security Agreement and this Supplement, a warrant instrument issued by Borrower (the "**Warrant**").

**(b) Warrant General.** The Warrant shall be in form and substance reasonably satisfactory to Lender.

**(c) Conversion Right.** Lender shall have the right, in its discretion, but not the obligation, at any time and from time to time, while the Loan is outstanding, to convert an amount of up to Three Million Dollars (\$3,000,000.00) of the principal amount of the outstanding Growth Capital Loans (the "**Conversion Option**") into Borrower's common stock (the "**Common Stock**") at a price per share equal to one hundred twenty percent (120.00%) of the Market Price set forth (and defined in clause "(1)" of the definition of such term) in the Warrant (the "**Conversion Price**;" the exercise of such Conversion Option, a "**Conversion**"); provided that the Conversion Option is subject to (i) the closing price of the shares of Common Stock as reported by Bloomberg, L.P. on the Nasdaq Stock Market for each of the seven (7) consecutive trading days immediately preceding the Conversion being greater than or equal to the Conversion Price; and (ii) the Common Stock issued in connection with any such Conversion not exceeding twenty percent (20%) of the total trading volume of the Common Stock for the twenty-two (22) consecutive trading days immediately prior to and including the effective date of such Conversion. The Conversion Option will be exercised by Lender delivering a written, signed conversion notice to Borrower in accordance with this Section 3(c) which will include (i) the date of which the conversion notice is given, (ii) a statement to the effect that the Lender is exercising the Conversion Option, (iii) the amount in respect of which the Conversion Option is being exercised

and the number of shares issued and (iv) a date on which the allotment and issuance of the shares is to take place. Notwithstanding the foregoing the Lender's right to exercise the Conversion Option shall be subject to the Beneficial Ownership Limitation provisions set forth in Section 4.8 of the Warrant. Within sixty (60) days from the Closing Date, Borrower will prepare and file with the SEC a registration statement on Form S-3 or, if Borrower is not then eligible to register for resale securities on Form S-3, on another appropriate form of registration statement, covering the resale of all of the shares of Common Stock issuable upon a Conversion and exercise of the Warrant for an offering to be made on a continuous basis pursuant to Rule 415(a)(1)(i). Borrower will use commercially reasonable efforts to cause the registration statement to be declared effective under the Securities Act of 1933, as amended (the "Securities Act"), as promptly as possible after the filing thereof, and will use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act, and prepare and file prospectus supplements that includes any information previously omitted from the prospectus filed as part of the initial registration statement and pre- and post-effective amendments as necessary, until the date that all of the shares of Common Stock issuable upon a Conversion and the exercise of the Warrant have been sold thereunder or pursuant to SEC Rule 144. The Lender agrees to furnish to Borrower and provide to Borrower such information requested by Borrower in connection with the preparation of the registration statement and understands that such information will be relied upon by Borrower in connection with the preparation or amendment of the registration statement and the related prospectus and any amendments or supplements thereto.

**4. Commitment Fee.** Borrower shall pay to Lender a commitment fee in the amount of one percent (1.00%) of the Fifteen Million Dollars (\$15,000,000.00) Tranche 1 Commitment due and payable on the Closing Date, of which Seventy-Five Thousand Dollars (\$75,000.00) has been paid by Borrower to Lender as an advance deposit prior to the date hereof. Borrower shall pay to Lender an additional commitment fee in the amount of one percent (1.00%) of the Five Million Dollars (\$5,000,000.00) Tranche 2 Loan commitment amount, which shall be due and payable, if at all, on the Funding Date (or any portion) thereof. As an additional condition precedent under Section 4.1 of the Loan and Security Agreement, Lender shall have completed to its satisfaction its due diligence review of Borrower's business and financial condition and prospects, and Lender's Commitment shall have been approved. If this condition is not satisfied, the Seventy-Five Thousand Dollars (\$75,000.00) advance deposit previously paid by Borrower shall be refunded. Except as set forth in this Section 4, the Commitment Fee is not refundable.

**5. Documentation Fee Payment.** On the Closing Date, Borrower shall reimburse Lender pursuant to Section 9.8(a) of the Loan and Security Agreement for (i) its reasonable and documented attorneys' fees, out-of-pocket costs and expenses incurred in connection with the preparation and negotiation of the Loan Documents and (ii) such Lender's costs and filing fees related to perfection of its Liens in the Collateral in any jurisdiction in which the same is located, recording a copy of the Intellectual Property Security Agreement with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and confirming the priority of such Liens.

**6. Debits to Account for ACH Transfers.** For purposes of Sections 2.2 and 5.10 of the Loan and Security Agreement, the Primary Operating Account shall be the bank account set forth in part 4 of the Disclosure Letter, unless and until such account is changed in accordance with Section 5.10 of the Loan and Security Agreement. Borrower hereby agrees that the Growth Capital Loans will be advanced to the account specified above and regularly scheduled payments of principal, interest and fees will be automatically debited from the same account. Borrower hereby confirms that the bank at which the Primary Operating Account is maintained uses that same ABA Number for incoming wires transfers to the Primary Operating Account and outgoing ACH transfers from the Primary Operating Account.

**Part 3 - [Reserved]**

**Part 4 - Additional Loan Documents:**

Form of Promissory Note	Exhibit "A"
Form of Borrowing Request	Exhibit "B"
Form of Compliance Certificate	Exhibit "C"

*[Remainder of this page intentionally left blank; signature page follows]*

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

**BORROWER:**

DELCATH SYSTEMS, INC.

By: /s/ Gerard Michel

Name: Gerard Michel

Title: Chief Executive Officer

Address for Notices:

1633 Broadway, Suite 22C

New York, NY 10019

Attn: Gerard Michel, CEO

Email: gmichel@delcath.com

**LENDER:**

AVENUE VENTURE OPPORTUNITIES FUND, L.P.

By: Avenue Venture Opportunities Partners, LLC

Its: General Partner

By: /s/ Sonia Gardner

Name: Sonia Gardner

Title: Authorized Signatory

Address for Notices:

11 West 42<sup>nd</sup> Street, 9<sup>th</sup> Floor

New York, New York 10036

Attn: Todd Greenbarg, Senior Managing Director

Email: tgreenbarg@avenuecapital.com

Phone # 212-878-3523

EXHIBIT "A"

FORM OF PROMISSORY NOTE

[Note No. X-XXX]

\$

August 6, 2021

The undersigned ("Borrower") promises to pay to the order of AVENUE VENTURE OPPORTUNITIES FUND, L.P., a Delaware limited partnership ("Lender"), at such place as Lender may designate in writing, in lawful money of the United States of America, the principal sum of Dollars (\$ ), with interest thereon from the date hereof until maturity, whether scheduled or accelerated, at a variable rate per annum equal to the sum of (i) the greater of (A) the Prime Rate and (B) three and one-quarters percent (3.25%), plus (ii) seven and seven-tenths percent (7.70%) (the "Designated Rate"), according to the payment schedule described herein, except as otherwise provided herein. In addition, on the Maturity Date, Borrower promises to pay to the order of Lender (i) all principal and accrued interest then remaining unpaid and (ii) the Final Payment (as defined in the Loan Agreement (as defined herein)).

This Note is one of the Notes referred to in, and is entitled to all the benefits of, a Loan and Security Agreement, dated as of August 6, 2021, between Borrower and Lender (as the same has been and may be amended, restated or supplemented from time to time, the "Loan Agreement"). Each capitalized term not otherwise defined herein shall have the meaning set forth in the Loan Agreement. The Loan Agreement contains provisions for the acceleration of the maturity of this Note upon the happening of certain stated events.

Principal of and interest on this Note shall be payable as provided under Section 2 of Part 2 of the Supplement to the Loan Agreement.

This Note may be prepaid only as permitted under Section 2 of Part 2 of the Supplement to the Loan Agreement.

Any unpaid payments of principal or interest on this Note shall bear interest from their respective maturities, whether scheduled or accelerated, at a rate per annum equal to the Default Rate, compounded monthly. Borrower shall pay such interest on demand.

Interest, charges and fees shall be calculated for actual days elapsed on the basis of a 360-day year, which results in higher interest, charge or fee payments than if a 365-day year were used. In no event shall Borrower be obligated to pay interest, charges or fees at a rate in excess of the highest rate permitted by applicable law from time to time in effect.

If Borrower is late in making any scheduled payment under this Note by more than five (5) days, Borrower agrees to pay a "late charge" of five percent (5.00%) of the installment due, but not less than Fifty Dollars (\$50.00) for any one such delinquent payment. This late charge may be charged by Lender for the purpose of defraying the expenses incidental to the handling of such delinquent amounts. Borrower acknowledges that such late charge represents a reasonable sum considering all of the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Lender due to the failure of Borrower to make timely payments. Borrower further agrees that proof of actual damages would be costly and inconvenient. Such late charge shall be paid without prejudice to the right of Lender to collect any other amounts provided to be paid or to declare a default under this Note or any of the other Loan Documents or from exercising any other rights and remedies of Lender.

This Note shall be governed by, and construed in accordance with, the laws of the State of California, excluding those laws that direct the application of the laws of another jurisdiction.

DELCATH SYSTEMS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT "B"

FORM OF BORROWING REQUEST

August 6, 2021

Avenue Venture Opportunities Fund, L.P.  
11 West 42nd Street, 9th Floor  
New York, New York 10036

Re: DELCATH SYSTEMS, INC.

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement, dated as of August 6, 2021 (as amended, restated or supplemented from time to time, the "Loan Agreement"; the capitalized terms used herein as defined therein), between Avenue Venture Opportunities Fund, L.P. ("Lender") and DELCATH SYSTEMS, INC. ("Borrower").

The undersigned is the \_\_\_\_\_ of Borrower and hereby requests on behalf of Borrower a Loan under the Loan Agreement, and in that connection certifies as follows:

1. The amount of the proposed Loan is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Borrowing Date of the proposed Loan is \_\_\_\_\_ (the "Borrowing Date").

(a) [On the Borrowing Date, the Lender will wire \$[ \_\_\_\_\_ ] less fees and expenses to be deducted on the Borrowing Date of (a) \$150,000.00 in respect to the Commitment Fee, of which \$75,000.00 has been paid to the Lender prior to the date hereof, (b) \$[ \_\_\_\_\_ ] in respect to the interest fee, and (c) \$[ \_\_\_\_\_ ] in respect to the legal fees for net proceeds of \$[ \_\_\_\_\_ ] to Borrower pursuant to the following wire instructions]1:

[On the Borrowing Date, the Lender will wire \$[ \_\_\_\_\_ ] less fees and expenses to be deducted on the Borrowing Date of (a) \$ \_\_\_\_\_ in respect to the Commitment Fee, (b) \$[ \_\_\_\_\_ ] in respect to the interest fee, and (c) \$[ \_\_\_\_\_ ] in respect to the legal fees for net proceeds of \$[ \_\_\_\_\_ ] to Borrower pursuant to the following wire instructions]2:

Institution Name:  
Address:  
ABA No.:  
Contact Name:  
Phone No.:  
E-mail:  
Account Title:  
Account No.:

1 Effective Date only.

2 Trance 2 Loan advance date only.

(b) On the Borrowing Date, the Lender will wire \$4,000,000.00 (representing Tranche 1(b)) into the following Blocked Account pursuant to the following wire instructions:<sup>3</sup>

Institution Name:  
Address:  
ABA No.:  
Contact Name:  
Phone No.:  
E-mail:  
Account Title:  
Account No.:

(c) On the Borrowing Date, the Lender will wire \$[ ] to Barnes & Thornburg LLP, and \$[ ] to Matheson, for fees and expenses pursuant to the following respective wire instructions.<sup>4</sup>

Institution Name: Fifth Third Bank, Indianapolis, IN  
ABA No.: 042000314  
Account Title: **Barnes & Thornburg LLP** Attorney Operating Account  
Account No.: 7653510706  
Reference: 82485-9  
Confirm remittance: wireconfirmations@btlaw.com

Institution Name: AIB International Banking Services Ashford House  
Matheson Matheson  
IBAN Number: IE74AIBK93006728440178  
Swift Code: AIBKIE2D  
Vat Registration IE 4611143 0  
Reference: Delcath  
Confirm remittance: remittances.mailbox@matheson.com

2. As of this date, no Default or Event of Default has occurred and is continuing, or will result from the making of the proposed Loan, the representations and warranties of Borrower contained in Article 3 of the Loan Agreement and in the Disclosure Letter are true and correct in all material respects other than those representations and warranties expressly referring to a specific date which are true and correct in all material respects as of such date, and the conditions precedent described in Sections 4.1 and/or 4.2 of the Loan Agreement and Part 2 of the Supplement, as applicable, have been met.

<sup>3</sup> To be included in the Borrowing Request on the Closing Date. The executed Borrowing Request must be delivered 2 Business Days prior to the Closing Date.

<sup>4</sup> To be included in the Borrowing Request on the Closing Date.

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3. No event has occurred that has had or could reasonably be expected to have a Material Adverse Change.

4. Borrower's most recent financial statements, financial projections or business plan dated \_\_\_\_\_, as reviewed by Borrower's Board of Directors, are enclosed herewith in the event such financial statements, financial projections or business plan have not been previously provided to Lender.

*Remainder of this page intentionally left blank; signature page follows*



Borrower shall notify you promptly before the funding of the Loan if any of the matters to which I have certified above shall not be true and correct on the Borrowing Date.

Very truly yours,

DELCATH SYSTEMS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:\* \_\_\_\_\_

\* Must be executed by Borrower's Chief Financial Officer or other executive officer.

EXHIBIT "C"

FORM OF  
COMPLIANCE CERTIFICATE

Avenue Venture Opportunities Fund, L.P.  
11 West 42nd Street, 9th Floor  
New York, New York 10036

Re: DEL CATH SYSTEMS, INC.

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement, dated as of August 6, 2021 (as the same has been and may be supplemented, amended and modified from time to time, the "Loan Agreement," the capitalized terms used herein as defined therein), between Avenue Venture Opportunities Fund, L.P. ("Lender") and DELCATH SYSTEMS, INC. ("Borrower").

The undersigned authorized representative of Borrower hereby certifies in such capacity that in accordance with the terms and conditions of the Loan Agreement, (i) no Default or Event of Default has occurred and is continuing, except as noted below, and (ii) Borrower is in compliance for the financial reporting period ending \_\_\_\_\_ with all required financial reporting under the Loan Agreement, except as noted below. Attached herewith are the required documents supporting the foregoing certification. The undersigned authorized representative of Borrower further certifies in such capacity that: (a) the accompanying financial statements have been prepared in accordance with Borrower's past practices applied on a consistent basis, or in such manner as otherwise disclosed in writing to Lender, throughout the periods indicated; and (b) the financial statements fairly present in all material respects the financial condition and operating results of Borrower and its Subsidiaries, if any, as of the dates, and for the periods, indicated therein, subject to the absence of footnotes and normal year-end audit adjustments (in the case of interim monthly financial statements), except as explained below.

***Please provide the following requested information and indicate compliance status by circling (or otherwise indicating) Yes/No under "Included/Complies":***

<u>REPORTING REQUIREMENT</u>	<u>REQUIRED</u>	<u>INCLUDED/COMPLIES</u>
Balance Sheet, Income Statement & Cash Flow Statement	Monthly, within 30 days	YES / NO / N/A
Operating Budgets, 409(A) Valuations & Updated Capitalization Tables	As modified	YES / NO / N/A
Annual Financial Statements	Annually, within 90 day of fiscal year-end	YES / NO / N/A
Board Packages	As modified	YES / NO / N/A
Date of most recent Board-approved budget/plan _____		
Any change in budget/plan since version most recently delivered to Lender <i>If Yes, please attach</i>		YES / NO / N/A

EQUITY & CONVERTIBLE NOTE FINANCINGS

*Please provide the following information (if applicable) regarding Borrower’s most-recent equity and/or convertible note financing each time this Certificate is delivered to Lender*

Date of Last Round Raised:

Has there been any new financing since the last Compliance Certificate submitted? YES / NO

*If “YES” please attach a copy of the Capitalization Table*

Date Closed: Series: Per Share Price: \$

Amount Raised: Post Money Valuation:

Any stock splits since date of last report? YES / NO

*If yes, please provide any information on stock splits which would affect valuation:*

Any dividends since date of last report? YES / NO

*If yes, please provide any information on dividends which would affect valuation:*

Any unusual terms? (i.e., Anti-dilution, multiple preference, etc.) YES / NO

*If yes, please explain:*

ACCOUNT CONTROL AGREEMENTS

Pursuant to Section 6.11 of the Loan Agreement, Borrower represents and warrants that: (i) as of the date hereof, it maintains only those deposit and investment accounts set forth below; and (ii) to the extent required by Section 6.11 of the Loan Agreement, a control agreement has been executed and delivered to Lender with respect to each such account [**Note: If Borrower has established any new account(s) since the date of the last compliance certificate, please so indicate**].

Deposit Accounts<sup>5</sup>

	<u>Name of Institution</u>	<u>Account Number</u>	<u>Control Agt. In place?</u>	<u>Complies</u>	<u>New Account</u>
1.)	[ ]	[ ]	YES / NO	YES / NO	YES / NO
2.)			YES / NO	YES / NO	YES / NO

<sup>5</sup> Company: Please complete with existing accounts.

Investment Accounts

	Name of Institution	Account Number	Control Agt. In place?	Complies	New Account
1.)	None		YES / NO	YES / NO	YES / NO
2.)			YES / NO	YES / NO	YES / NO
3.)			YES / NO	YES / NO	YES / NO
4.)			YES / NO	YES / NO	YES / NO

AGREEMENTS WITH PERSONS IN POSSESSION OF TANGIBLE COLLATERAL

Pursuant to Section 5.9(e) of the Loan Agreement, Borrower represents and warrants that: (i) as of the date hereof, tangible Collateral is located at the addresses set forth below; and (ii) to the extent required by Section 5.9(e) of the Loan Agreement, a Waiver has been executed and delivered to Lender, or such Waiver has been waived by Lender, **[Note: If Borrower has located Collateral at any new location since the date of the last compliance certificate, please so indicate].**

	Location of Collateral	Value of Collateral at such Locations	Waiver In place?	Complies?	New Location?
1.)		\$	YES / NO	YES / NO	YES / NO
2.)		\$	YES / NO	YES / NO	YES / NO
3.)		\$	YES / NO	YES / NO	YES / NO
4.)		\$	YES / NO	YES / NO	YES / NO

SUBSIDIARIES AND OTHER PERSONS

Pursuant to Section 6.14(a) of the Loan Agreement, Borrower represents and warrants that: (i) as of the date hereof, it has directly or indirectly acquired or created, or it intends to directly or indirectly acquire or create, each Subsidiary or other Person described below; and (ii) such Subsidiary or Person has been made a co-borrower under the Loan Agreement or a guarantor of the Obligations **[Note: If Borrower has acquired or created any Subsidiary since the date of the last compliance certificate, please so indicate].**

	Name:	Jurisdiction of formation or organization: <sup>6</sup>	Co-borrower or guarantor?	Complies?	New Subsidiary or Person?
1.)			YES / NO	YES / NO	YES / NO
2.)			YES / NO	YES / NO	YES / NO
3.)			YES / NO	YES / NO	YES / NO
4.)			YES / NO	YES / NO	YES / NO

<sup>6</sup> Under the "Explanations" heading (see below) please include a description of such Subsidiary's or Person's fully diluted capitalization and Borrower's purpose for its acquisition or creation of such Subsidiary if such information has not been previously furnished to Lender.

EXPLANATIONS

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*[Remainder of this page intentionally left blank; signature page follows]*

Very truly yours,

DELCATH SYSTEMS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:\* \_\_\_\_\_

\_\_\_\_\_  
\* Must be executed by Borrower's Chief Financial Officer or other executive officer.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE AND DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF (A) SUCH REGISTRATION, (B) AN OPINION OF COUNSEL IN A FORM REASONABLY ACCEPTABLE TO COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED DUE TO AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (C) DELCATH SYSTEMS, INC. OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS COMPLIANT WITH SUCH LAWS.

Date of Issuance: August 6, 2021

WARRANT TO PURCHASE

SHARES OF STOCK OF

DELCATH SYSTEMS, INC.

(Void after August 31, 2026)

This certifies that AVENUE VENTURE OPPORTUNITIES FUND, LP, a Delaware limited partnership, or permitted assigns ("Holder"), for value received, is entitled to purchase from DELCATH SYSTEMS, INC., a Delaware corporation ("Company"), the Applicable Number (hereinafter defined) of fully paid and nonassessable shares of the Company's Common Stock (the "Common Stock"), for cash, at a purchase price per share equal to the Stock Purchase Price (hereinafter defined). Holder may also exercise this Warrant on a cashless or "net issuance" basis as described in Section 1(b) below, and this Warrant shall be deemed to have been exercised in full on such basis on the Expiration Date (hereinafter defined), to the extent not fully exercised prior to such date. This Warrant is issued in connection with that certain Loan and Security Agreement and Supplement thereto, both of even date herewith (as amended, restated and supplemented from time to time, the "Loan Agreement" and the "Supplement", respectively), between Company, as borrower, and Holder, as lender ("Lender"). Capitalized terms used herein and not otherwise defined in this Warrant shall have the meaning(s) ascribed to them in the Loan Agreement and the Supplement, unless the context would otherwise require.

"Applicable Number" means (x) 127,755 shares of Common Stock, as of the Date of Issuance, *plus*, without any further action of Holder or Company, (y) as of the Funding Date of any of Tranche 2 under (and as defined in) the Supplement, if at all, (A) eight and one-half percent (8.50%) of such funded Tranche 2 by (B) the Market Price.

"Market Price" means (1) with respect to the Applicable Number to be determined as of the Date of Issuance, the five-day volume weighted average price per share, determined as of the end of trading on the last trading day before the Date of Issuance, which the parties agree is: \$9.98; and (2) with respect to the Applicable Number to be determined as of the Funding Date of Tranche 2, if at all, the five-day volume weighted average price per share, determined as of the end of trading on the last trading day before the Funding Date of Tranche 2.

"Stock Purchase Price" means \$0.01.

Subject to Sections 4.3 and 4.8, this Warrant may be exercised at any time or from time to time up to and including 5:00 p.m. (Pacific time) on August 31, 2026 (the "Expiration Date"), upon surrender to Company at its principal office at 1633 Broadway, Suite 22C, New York, NY 10019 (or at such other location as Company may

advise Holder in writing) of this Warrant properly endorsed with the Form of Subscription attached hereto duly completed and signed and upon payment in cash or by check of the aggregate Stock Purchase Price for the number of shares for which this Warrant is being exercised determined in accordance with the provisions hereof. The Stock Purchase Price and the number of shares purchasable hereunder are subject to further adjustment as provided in Section 4 of this Warrant.

This Warrant is subject to the following terms and conditions:

1. Exercise; Issuance of Certificates; Payment for Shares.

(a) Unless an election is made pursuant to clause (b) of this Section 1, this Warrant shall be exercisable at the option of Holder, at any time or from time to time, on or before the Expiration Date for all or any portion of the shares of Common Stock (but not for a fraction of a share) which may be purchased hereunder for the Stock Purchase Price multiplied by the number of shares to be purchased. Company agrees that the shares of Common Stock purchased under this Warrant shall be and are deemed to be issued to Holder as the record owner of such shares as of the close of business on the date on which the form of subscription shall have been delivered and payment made for such shares. Subject to the provisions of Section 2, certificates for the shares of Common Stock so purchased, together with any other securities or property to which Holder is entitled upon such exercise, shall be delivered to Holder by Company at Company's expense within a reasonable time after the rights represented by this Warrant have been so exercised. Except as provided in clause (b) of this Section 1, in case of a purchase of less than all the shares which may be purchased under this Warrant, Company shall cancel this Warrant and execute and deliver a new Warrant or Warrants of like tenor for the balance of the shares purchasable under this Warrant surrendered upon such purchase to Holder within a reasonable time. Each stock certificate so delivered shall be in such denominations of Common Stock as may be requested by Holder and shall be registered in the name of such Holder or such other name as shall be designated by such Holder, subject to the limitations contained in Section 2.

(b) Holder, in lieu of exercising this Warrant by the cash payment of the Stock Purchase Price pursuant to clause (a) of this Section 1, may elect, at any time on or before the Expiration Date, to surrender this Warrant and receive that number of shares of Common Stock computed using the following formula:

$$X = \frac{Y(A - B)}{A}$$

Where: X = the number of shares of Common Stock to be issued to Holder.

Y = the number of shares of Common Stock that Holder would otherwise have been entitled to purchase hereunder pursuant to Section 1(a) (or such lesser number of shares as Holder may designate in the case of a partial exercise of this Warrant).

A = the Closing Price.

B = the Stock Purchase Price then in effect.

Election to exercise under this Section 1(b) may be made by delivering a signed form of subscription to Company via facsimile, to be followed by delivery of this Warrant. Notwithstanding anything to the contrary contained in this Warrant, if as of the close of business on the last business day preceding the Expiration Date this Warrant remains unexercised as to all or a portion of the shares of Common Stock purchasable hereunder, then effective as 9:00 a.m. (Pacific time) on the Expiration Date, Holder shall be deemed, automatically and without need for notice to Company, to have elected to exercise this Warrant in full pursuant to the provisions of this Section 1(b), and upon surrender of this Warrant shall be entitled to receive that number of shares of Common Stock computed using the above formula, provided that the application of such formula as of the Expiration Date yields a positive number for "X".



2. Limitation on Transfer.

(a) This Warrant and the Common Stock shall not be transferable except upon the conditions specified in this Section 2, which conditions are intended to ensure compliance with the provisions of the Securities Act of 1933, as amended (the "Securities Act"). Each holder of this Warrant or the Common Stock issuable hereunder will cause any proposed transferee of the Warrant or Common Stock to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Section 2. Notwithstanding the foregoing and any other provision of this Section 2 but subject to the last sentence of Section 2(c), Holder may freely transfer all or part of this Warrant or the shares issuable upon exercise of this Warrant (or the securities issuable, directly or indirectly, upon conversion of the shares, if any) at any time to any affiliate of Lender under the Loan Agreement, by giving Company notice of the portion of the Warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this Warrant to Company for reissuance to the transferees(s) (and Holder, if applicable).

(b) Each certificate representing (i) this Warrant, (ii) the Common Stock, and (iii) any other securities issued in respect to the Common Stock issued upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of this Section 2 or unless such securities have been registered under the Securities Act or sold under Rule 144) be stamped or otherwise imprinted with a legend substantially in the following form (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE AND DISTRIBUTION THEREOF, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF (A) SUCH REGISTRATION, (B) AN OPINION OF COUNSEL IN A FORM REASONABLY ACCEPTABLE TO COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED DUE TO AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR (C) DELCATH SYSTEMS, INC. OTHERWISE SATISFIES ITSELF THAT SUCH TRANSACTION IS COMPLIANT WITH SUCH LAWS.

(c) Holder of this Warrant and each person to whom this Warrant is subsequently transferred represents and warrants to Company and agrees (by acceptance of such transfer) that it will not transfer this Warrant (or securities issuable upon exercise hereof unless a registration statement under the Securities Act was in effect with respect to such securities at the time of issuance thereof) unless (i) there is an effective registration statement under the Securities Act and applicable state securities laws covering any such transaction, (ii) pursuant to Rule 144 under the Securities Act (or any other rule under the Securities Act relating to the disposition of securities), (iii) Company receives an opinion of counsel, reasonably satisfactory to Company, that an exemption from such registration is available or (iv) the Company otherwise satisfies itself that such transaction is exempt from registration. Notwithstanding the foregoing or any other provision of this Section 2, Holder shall not transfer this Warrant (or securities issuable upon exercise hereof, or securities issuable, directly or indirectly, upon conversion of such securities, if any) to any competitor of Company, as determined in good faith by the Board of Directors of Company (the "Board"), without the prior written consent of Company.

3. Shares to be Fully Paid; Reservation of Shares. Company covenants and agrees that all shares of Common Stock which may be issued upon the exercise of the rights represented by this Warrant will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable and free from all preemptive rights of any stockholder and free of all taxes, liens and charges with respect to the issue thereof. Company further covenants and agrees that during the period within which the rights represented by this Warrant may be exercised, Company will at all times have authorized and reserved, for the purpose of issue or transfer upon exercise of the subscription rights evidenced by this Warrant, a sufficient number of shares of authorized but unissued Common Stock, or other securities and property, when and as required to provide for the exercise of the rights represented by this Warrant. Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any domestic

securities exchange upon which the Common Stock may be listed. Company will not take any action which would result in any adjustment of the Stock Purchase Price (as described in Section 4 hereof) (i) if the total number of shares of Common Stock issuable after such action upon exercise of all outstanding warrants, together with all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon exercise of all options and upon the conversion of all convertible securities then outstanding, would exceed the total number of shares of Common Stock then authorized by Company's Certificate of Incorporation, as amended and restated from time to time (the "Charter") or (ii) if the par value per share of the Common Stock would exceed the Stock Purchase Price.

4. Adjustment of Stock Purchase Price and Number of Shares. The Stock Purchase Price and the number of shares purchasable upon the exercise of this Warrant shall be subject to adjustment from time to time upon the occurrence of certain events described in this Section 4. Upon each adjustment of the Stock Purchase Price, Holder of this Warrant shall thereafter be entitled to purchase, at the Stock Purchase Price resulting from such adjustment, the number of shares obtained by multiplying the Stock Purchase Price in effect immediately prior to such adjustment by the number of shares purchasable pursuant hereto immediately prior to such adjustment, and dividing the product thereof by the Stock Purchase Price resulting from such adjustment.

4.1 Subdivision or Combination of Stock. In case Company shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Stock Purchase Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of Company shall be combined into a smaller number of shares, the Stock Purchase Price in effect immediately prior to such combination shall be proportionately increased.

4.2 Dividends. If at any time or from time to time the holders of Common Stock (or any shares of stock or other securities at the time receivable upon the exercise of this Warrant) shall have received or become entitled to receive,

(a) Common Stock, or any shares of stock or other securities whether or not such securities are at any time directly or indirectly convertible into or exchangeable for Common Stock, or any rights or options to subscribe for, purchase or otherwise acquire any of the foregoing by way of dividend or other distribution,

(b) any cash paid or payable including as a cash dividend, or

(c) Common Stock or other or additional stock or other securities or property (including cash) by way of spin off, split-up, reclassification, combination of shares or similar corporate rearrangement, (other than shares of Common Stock issued as a stock split, adjustments in respect of which shall be covered by the terms of Section 4.1 above),

then and in each such case, Holder hereof shall, upon the exercise of this Warrant, be entitled to receive, in addition to the number of shares of Common Stock receivable thereupon, and without payment of any additional consideration therefor, the amount of stock and other securities and property (including cash in the cases referred to in clauses (b) and (c) above) which such Holder would hold on the date of such exercise had it been the holder of record of such Common Stock as of the date on which holders of Common Stock received or became entitled to receive such shares and/or all other additional stock and other securities and property.

4.3 Change of Control. In the event of a Change of Control (as hereinafter defined), this Warrant shall be automatically exchanged for a number of shares of Company's securities, such number of shares being equal to the maximum number of shares issuable pursuant to the terms hereof (after taking into account all adjustments described herein) had Holder elected to exercise this Warrant immediately prior to the closing of such Change of Control and purchased all such shares pursuant to the cash exercise provision set forth in Section 1(a) hereof (as opposed to the cashless exercise provision set forth in Section 1(b)). Company acknowledges and agrees that Holder shall not be required to make any payment (cash or otherwise) for such shares as further consideration

for their issuance pursuant to the terms of the preceding sentence. “Change of Control” shall mean any sale, license, or other disposition of all or substantially all of the assets of Company, any reorganization, consolidation, merger or other transaction involving Company where the holders of Company’s securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction; provided that an issuance of equity securities for the primary purpose of raising capital shall not be considered a Change of Control under this Warrant. This Warrant shall terminate upon Holder’s receipt of the number of shares of Company’s equity securities described in this Section 4.3.

4.4 Reserved.

4.5 Notice of Adjustment. Upon any adjustment of the Stock Purchase Price, and/or any increase or decrease in the number of shares purchasable upon the exercise of this Warrant, Company shall give written notice thereof to Holder pursuant to Section 12. The notice, which may be substantially in the form of Exhibit “A” attached hereto, shall be signed by Company’s chief financial officer and shall state the Stock Purchase Price resulting from such adjustment and the increase or decrease, if any, in the number of shares purchasable at such price upon the exercise of this Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

4.6 Other Notices. If at any time:

- (a) Company shall declare any cash dividend upon its Common Stock;
- (b) Company shall declare any dividend upon its Common Stock payable in stock or make any special dividend or other distribution to the holders of its Common Stock;
- (c) Company shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;
- (d) there shall be any capital reorganization or reclassification of the capital stock of Company, or consolidation or merger of Company with, or sale of all or substantially all of its assets to, another entity;
- (e) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of Company; or
- (f) Company shall take or propose to take any other action, notice of which is actually provided to holders of the Common Stock;

then, in any one or more of said cases, Company shall give Holder, pursuant to Section 12, (i) at least 20 days’ prior written notice of the date on which the books of Company shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action and (ii) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action, at least 20 days’ written notice of the date when the same shall take place. Any notice given in accordance with the foregoing clause (i) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto. Any notice given in accordance with the foregoing clause (ii) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, or other action as the case may be.

4.7 Certain Events. If any change in the outstanding Common Stock of Company or any other event occurs as to which the other provisions of this Section 4 are not strictly applicable or if strictly applicable would not fairly effect the adjustments to this Warrant in accordance with the essential intent and principles of such provisions, then the Board shall make in good faith an adjustment in the number and class of shares issuable under this Warrant, the Stock Purchase Price and/or the application of such provisions, in accordance with such essential intent and principles, so as to protect such purchase rights as aforesaid. The adjustment shall be such as will give Holder of this Warrant upon exercise for the same aggregate Stock Purchase Price the total number, class and kind of shares as Holder would have owned had this Warrant been exercised prior to the event and had Holder continued to hold such shares until after the event requiring adjustment.

4.8 Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable notice of exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, the Conversion Option set forth in the Supplement) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4.8, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 4.8 applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a notice of exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4.8, in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the SEC, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one trading day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon written election by Holder which is delivered to the Company prior to the issuance of any Warrant Shares to such Holder, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 4.8, provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 4.8 shall continue to apply. Any increase in the Beneficial Ownership Limitation will not

be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4.8 to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

5. Issue Tax. The issuance of certificates for shares of Common Stock upon the exercise of this Warrant shall be made without charge to Holder of this Warrant for any issue tax in respect thereof; provided, however, that Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the then Holder of this Warrant being exercised.

6. Closing of Books. Company will at no time close its transfer books against the transfer of this Warrant or of any shares of Warrant Stock issued or issuable upon the exercise of this Warrant in any manner which interferes with the timely exercise of this Warrant.

7. No Voting Rights; Limitation of Liability. Nothing contained in this Warrant shall be construed as conferring upon Holder hereof the right to vote or to consent as a stockholder in respect of meetings of stockholders for the election of directors of Company or any other matters or any rights whatsoever as a stockholder of Company. No dividends or interest shall be payable in respect of this Warrant or the interest represented hereby or the shares purchasable hereunder until, and only to the extent that, this Warrant shall have been exercised; provided, however, that if any dividends are due or paid at any time on the underlying securities for which this Warrant is exercisable, then upon exercise, the securities issued to Holder shall be deemed to have accrued dividends and be paid identical dividends from the same time as the outstanding shares for which this Warrant is exercisable were first issued (or, if later, the date of this Warrant). No provisions hereof, in the absence of affirmative action by Holder to purchase shares of Common Stock, and no mere enumeration herein of the rights or privileges of Holder hereof, shall give rise to any liability of such Holder for the Stock Purchase Price or as a stockholder of Company, whether such liability is asserted by Company or by its creditors.

8. Amendment of Charter. Unless Holder consents thereto in writing, Company shall not amend its Charter prior to the exercise of this Warrant if the Common Stock would be adversely affected by such amendment in a manner that would be more adverse to Holder with respect to the shares of Common Stock issuable upon the exercise of this Warrant than, and substantially dissimilar to, such amendment's effect on the other holders of Common Stock.

9. Registration Rights. Holder shall be entitled, with respect to the shares of Common Stock issued upon exercise hereof, to the registration rights set forth in Section 3(c) of the Supplement.

10. Rights and Obligations Survive Exercise of Warrant. The rights and obligations of Company, of Holder of this Warrant and of the holder of shares of Common Stock issued upon exercise of this Warrant, contained in Sections 6, 8, 9 and 18 shall survive the exercise of this Warrant.

11. Modification and Waiver. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the same is sought.

12. Notices. Any notice, request or other document required or permitted to be given or delivered to Holder or Company shall be deemed to have been given (i) upon receipt if delivered personally or by courier (ii) upon confirmation of receipt if by telecopy or (iii) three business days after deposit in the US mail, with postage prepaid and certified or registered, to each such Holder at its address as shown on the books of Company or to Company at the address indicated therefor in the opening paragraphs of this Warrant (or at such other location as Company may advise Holder in writing).

13. Survival of Certain Obligations. All of the obligations of Company relating to the Common Stock issuable upon the exercise of this Warrant shall survive the exercise and termination of this Warrant. All of the covenants and agreements of Company shall inure to the benefit of and be binding upon the successors and permitted assigns of Holder. Company will, at the time of the exercise of this Warrant, in whole or in part, upon request of Holder but at Company's expense, acknowledge in writing its continuing obligation to Holder in respect of any rights (including, without limitation, any right to registration of the shares of Common Stock) to which Holder shall continue to be entitled after such exercise in accordance with this Warrant; provided, that the failure of Holder to make any such request shall not affect the continuing obligation of Company to Holder in respect of such rights.

14. Descriptive Headings and Governing Law. The descriptive headings of the several sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Delaware.

15. Lost Warrants or Stock Certificates. Company agrees that upon receipt of evidence reasonably satisfactory to Company of the loss, theft, destruction, or mutilation of any Warrant or stock certificate and, in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to Company, or in the case of any such mutilation upon surrender and cancellation of such Warrant or stock certificate, Company at its expense will make and deliver a new Warrant or stock certificate, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Warrant or stock certificate.

16. Fractional Shares. No fractional shares shall be issued upon exercise of this Warrant. Company shall, in lieu of issuing any fractional share, pay the holder entitled to such fraction a sum in cash equal to such fraction multiplied by the then effective Stock Purchase Price.

17. Representations of Holder. With respect to this Warrant, Holder represents and warrants to Company as follows:

17.1 Experience. It is experienced in evaluating and investing in companies engaged in businesses similar to that of Company; it understands that investment in this Warrant involves substantial risks; it has made detailed inquiries concerning Company, its business and services, its officers and its personnel; the officers of Company have made available to Holder any and all written information it has requested; the officers of Company have answered to Holder's satisfaction all inquiries made by it; in making this investment it has relied upon information made available to it by Company; and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investment in Company and it is able to bear the economic risk of that investment.

17.2 Investment. It is acquiring this Warrant for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. It understands that this Warrant and the shares of Common Stock issuable upon exercise of this Warrant, have not been registered under the Securities Act, nor qualified under applicable state securities laws.

17.3 Rule 144. It acknowledges that this Warrant and the Common Stock issuable upon exercise of this Warrant must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. It has been advised or is aware of the provisions of Rule 144 promulgated under the Securities Act.

17.4 Access to Data. It has had an opportunity to discuss Company's business, management and financial affairs with Company's management and has had the opportunity to inspect Company's facilities.

17.5 Accredited Investor. It is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.

18. Additional Representations and Covenants of Company. Company hereby represents, warrants and agrees as follows:

18.1 Corporate Power. Company has all requisite corporate power and corporate authority to issue this Warrant and to carry out and perform its obligations hereunder.

18.2 Authorization. All corporate action on the part of Company, its directors and stockholders necessary for the authorization, execution, delivery and performance by Company of this Warrant has been taken. This Warrant is a valid and binding obligation of Company, enforceable in accordance with its terms.

18.3 Offering. Subject in part to the truth and accuracy of Holder's representations set forth in Section 17 hereof, the offer, issuance and sale of this Warrant is, and the Common Stock issuable upon exercise of this Warrant will be, exempt from the registration requirements of the Securities Act, and are exempt from the qualification requirements of any applicable state securities laws; and neither Company nor anyone acting on its behalf will take any action hereafter that would cause the loss of such exemptions.

18.4 Listing; Stock Issuance. Company shall use its best efforts to secure and maintain the listing of the Common Stock or other securities issuable upon exercise of this Warrant, upon each securities exchange or over-the-counter market upon which securities of the same class or series issued by Company are listed, if any. Upon exercise of this Warrant, Company will use commercially reasonable efforts to cause the issuance of the shares of Common Stock purchased pursuant to the exercise to be issued in book-entry form in the names of Holder, its nominees or assignees, as appropriate at the time of such exercise.

18.5 Charter Documents. Company has provided Holder with true and complete copies of Company's Charter, By-Laws, and each Certificate of Designation or other charter document setting forth any rights, preferences and privileges of Company's capital stock, each as amended and in effect on the date of issuance of this Warrant.

18.6 Reserved.

18.7 Financial and Other Reports. Until the earlier of (a) the Expiration Date, and (b) the termination of this Warrant pursuant to Section 4.3, Company agrees to provide Holder at any time and from time to time with such information as Holder may reasonably request for purposes of Holder's compliance (as determined by Holder in its reasonable discretion) with regulatory, accounting and reporting requirements applicable to Holder (e.g., Fair Value Accounting Standard 157), including any 409A valuation reports (or equivalent reports) and budgets. Notwithstanding the foregoing, Company shall not be required to furnish to Holder the financial information described in this Section 18.7 in the event such financial information has been previously delivered to Lender pursuant to the Loan Agreement.

19. Counterparts; Facsimile. Holder's execution and delivery of Holder's counterpart signature page to this Warrant via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docusign.com) shall constitute Holder's effective execution and delivery of this Warrant and agreement to and acceptance of the terms hereof for all purposes.

*[Remainder of this page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, Company has caused this Warrant to be duly executed by its officer, thereunto duly authorized as of the date of issuance set forth on the first page hereof.

DELCATH SYSTEMS, INC.

By: /s/ Gerard Michel  
Name: Gerard Michel  
Title: Chief Executive Officer

AGREED AND ACCEPTED:

HOLDER:

AVENUE VENTURE OPPORTUNITIES FUND, LP

By: Avenue Venture Opportunities Partners, LLC  
Its: General Partner

By: /s/ Sonia Gardner  
Name: Sonia Gardner  
Title: Authorized Signatory



FORM OF SUBSCRIPTION

(To be signed only upon exercise of Warrant)

To: \_\_\_\_\_

- The undersigned, the holder of the within Warrant, hereby irrevocably elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, (1) \_\_\_\_\_ ( ) shares<sup>1</sup> (the "Shares") of Stock of \_\_\_\_\_ and herewith makes payment of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) therefor, and requests that the certificates for such shares be issued in the name of, and delivered to, \_\_\_\_\_, whose address is \_\_\_\_\_.
- The undersigned hereby elects to convert \_\_\_\_\_ percent ( % ) of the value of the Warrant pursuant to the provisions of Section 1(b) of the Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 17 of this Warrant and by its signature below hereby makes such representations and warranties to Company.

Dated \_\_\_\_\_

Holder: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> Insert here the number of shares called for on the face of the Warrant (or, in the case of a partial exercise, the portion thereof as to which the Warrant is being exercised), in either case without making any adjustment for additional Warrant Stock or any other stock or other securities or property or cash which, pursuant to the adjustment provisions of the Warrant, may be issuable upon exercise.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned, the holder of the within Warrant, hereby sells, assigns and transfers all of the rights of the undersigned under the within Warrant, with respect to the number of shares of Common Stock covered thereby set forth herein below, unto:

Name of Assignee

Address

No. of Shares

Dated \_\_\_\_\_

Holder: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT "A"

[On letterhead of Company]

Reference is hereby made to that certain Warrant dated August 6, 2021 issued by DELCATH SYSTEMS, INC., a Delaware corporation (the "Company"), to AVENUE VENTURE OPPORTUNITIES FUND, LP, a Delaware limited partnership (the "Holder").

[IF APPLICABLE] The Warrant provides that the actual number and type of shares of Company's capital stock issuable upon exercise of the Warrant and the initial exercise price per share are to be determined by reference to one or more events or conditions subsequent to the issuance of the Warrant. Such events or conditions have now occurred or lapsed, and Company wishes to confirm the actual number of shares issuable and the initial exercise price. The provisions of this Supplement to Warrant are incorporated into the Warrant by this reference, and shall control the interpretation and exercise of the Warrant.

[IF APPLICABLE] Notice is hereby given pursuant to Section 4.5 of the Warrant that the following adjustment(s) have been made to the Warrant: [describe adjustments, setting forth details regarding method of calculation and facts upon which calculation is based].

This certifies that Holder is entitled to purchase from Company \_\_\_\_\_, at the Holder's option, either (i) ( \_\_\_\_\_ ) fully paid and nonassessable shares of Company's \_\_\_\_\_ Stock at a price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) per share or (ii) ( \_\_\_\_\_ ) fully paid and nonassessable shares of Company's \_\_\_\_\_ Stock at a price of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) per share. The applicable Stock Purchase Price and the number of shares purchasable under the Warrant remain subject to adjustment as provided in Section 4 of the Warrant.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

DELCATH SYSTEMS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SECOND NOTE AMENDING AGREEMENT**  
**(SURVIVING NOTES)**

**THIS AGREEMENT** is made as of the 6th day of August, 2021, between ROSALIND OPPORTUNITIES FUND I L.P. (“**ROFI**”), an Ontario limited partnership, ROSALIND MASTER FUND L.P. (“**RMF**”, and together with ROFI, the “**Holders**”), a Cayman Islands exempted limited partnership, and DELCATH SYSTEMS, INC. (the “**Company**”), a Delaware corporation.

**WHEREAS** the Company issued (i) an 8% Senior Secured Promissory Note on July 15<sup>th</sup>, 2019 to RMF in the principal amount of \$1,000,000 (as amended by that certain Note Amending Agreement dated July 15, 2019 between the Company and the Holders (the “**Note Amending Agreement**”), the “**RMF Note**”), and (ii) an 8% Senior Secured Promissory Note on July 15<sup>th</sup>, 2019 to ROFI in the principal amount of \$1,000,000 (as amended by the Note Amending Agreement, the “**ROFI Note**”, and together with the RMF Note, the “**Notes**”), which Notes have a maturity date of July 15, 2021;

**AND WHEREAS**, pursuant to a Loan and Security Agreement dated the 6th day of August, 2021, Avenue Venture Opportunities Fund, L.P. (“**Avenue**”) has agreed to provide the Company with a loan in the principal amount of up to \$20,000,000.00 (the “**Senior Debt**”);

**AND WHEREAS**, in order to induce Avenue to extend the Senior Debt and other credit accommodations to the Company from time to time, the Holder, Avenue and the Company entered into that certain subordination agreement dated as of the 6th day of August, 2021, pursuant to which the holder subordinated the Company’s indebtedness and obligations to the Holder under the Notes to the Senior Debt;

**AND WHEREAS** the Holders and the Company have agreed to further amend the Notes to provide for, among other things, an extension to the maturity date of the Notes and an adjustment to the conversion price of the Notes, on the terms and conditions set out herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties hereby agree as follows:

1. **Definitions.** For the purposes hereof, in addition to the terms defined elsewhere in this Agreement, capitalized terms not otherwise defined herein shall have the meanings set forth in the Notes.
2. **Amendment of Notes.** Effective as of the date hereof, each of the Notes is hereby amended as follows:
  - 2.1.1 The references to “July 15, 2021” in the title, recitals and the definition of “Maturity Date” on the first page of the Note shall be replaced with “October 30, 2024”.
  - 2.1.2 The definition of “Surviving Note Factor” in Section 1 of the Note shall be deleted in its entirety and replaced with the following:  
“**Surviving Note Factor**” means 1.198.
3. **Confirmation of Security.** The Company hereby confirms that each of the Transaction Documents which it has delivered to the Holders (a) remains in full force and effect as

general and continuing collateral security over all of the assets, property and undertaking of the Company, whether now or in the future owned or acquired, and the security interests, mortgages, charges, liens, assignments, transfers and pledges granted in favour of the Holders pursuant to the Transaction Documents continue to secure all of the debts, liabilities and obligations of the Company to the Holders in connection with the Transaction Documents, now or hereafter arising; and (b) is enforceable against the Company by the Holders in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, liquidation, reorganization, and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court.

4. **Effect of Amendment.** This Agreement is an amendment to the Notes. Unless the context of this Agreement otherwise requires, each Note and this Agreement shall be read together and shall have effect as if the provisions of such Note and this Agreement were contained in one agreement.
5. **No Merger or Novation.** Save as expressly amended by this Agreement, the terms of the Notes remain unamended and in full force and effect and are hereby ratified and affirmed. All Transaction Documents and obligations of the Company thereunder remain in full force and effect, there being no novation or merger of the Notes, the other Transaction Documents or such obligations.
6. **No Waiver.** The execution, delivery and performance of this Agreement shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Holders under the Notes or any of the other Transaction Documents other than as expressly provided herein.
7. **Notices.** All notices, requests, demands and other communications hereunder shall be subject to the notice provision of the Notes.
8. **Further Assurances.** The parties shall promptly, from time to time, upon the request of the other party, take all such action, and execute and deliver such further agreements and other documents, as may be necessary or desirable to give effect to the provisions and intent of this Agreement.
9. **Miscellaneous.** This Agreement (a) shall, for purposes of the Notes, be considered a Transaction Document; (b) shall be governed by and construed and enforced in accordance with the internal law of the State of New York; (c) may not be amended except by a writing duly executed by the parties; (d) shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns; (e) may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document, all of which counterparts shall be construed together and shall constitute one Agreement; and (f) may be executed by email, .pdf or telecopy transmission of an executed counterpart of or signature page to this Agreement and an email, .pdf, telecopy or photocopy of an executed counterpart of or signature page to this Agreement shall be given the same effect as the original.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**DELCATH SYSTEMS, INC.**

by /s/ Gerard Michel

Name: Gerard Michel

Title: Chief Executive Officer

**ROSALIND OPPORTUNITIES FUND I L.P.**, by its  
advisor, **ROSALIND ADVISORS, INC.**

by /s/ Steven Salamon

Name: Steven Salamon

Title: President

**ROSALIND MASTER FUND L.P.**, by its advisor,  
**ROSALIND ADVISORS, INC.**

by /s/ Steven Salamon

Name: Steven Salamon

Title: President

*Signature Page to Second Note Amending Agreement*

**NOTE AMENDING AGREEMENT**  
**(SURVIVING NOTES)**

**THIS AGREEMENT** is made as of the 15<sup>th</sup> day of July, 2019, between ROSALIND OPPORTUNITIES FUND I L.P. (“**ROFI**”), an Ontario limited partnership, ROSALIND MASTER FUND L.P. (“**RMF**”, and together with ROFI, the “**Holders**”), a Cayman Islands exempted limited partnership, and DELCATH SYSTEMS, INC. (the “**Company**”), a Delaware corporation.

**WHEREAS** the Company issued (i) an 8% Senior Secured Promissory Note (the “**RMF Note**”) on July 15<sup>th</sup>, 2019 to RMF in the principal amount of \$1,000,000, and (ii) an 8% Senior Secured Promissory Note (the “**ROFI Note**”, and together with the RMF Note, the “**Notes**”) on July 15<sup>th</sup>, 2019 to ROFI in the principal amount of \$1,000,000, which Notes are due and payable on July 15<sup>th</sup>, 2021;

**AND WHEREAS** the Company has entered into that certain Securities Purchase Agreement dated as of July 15, 2019 (the “**Purchase Agreement**”) by and among the Company, the Holders and the other purchasers identified on the signature pages thereto;

**AND WHEREAS** the Holders and the Company have agreed that, immediately following the completion of the transactions contemplated by the Purchase Agreement, the Notes shall be amended so that the outstanding principal amount of the Notes and any accrued and unpaid interest thereon shall be convertible, at the option of the Holder, into shares of Preferred Stock (as defined below) in the capital of the Company, all on the terms, conditions and price set out in the Purchase Agreement in respect of the Surviving Notes (as defined in the Purchase Agreement);

**AND WHEREAS** it is intended that the amendment of the Notes to provide the Holders with the conversion right does not result in a novation of the Notes and does not give rise to a disposition of the Notes for the purposes of the *Income Tax Act* (Canada);

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties hereby agree as follows:

1. **Definitions.** For the purposes hereof, in addition to the terms defined elsewhere in this Agreement, capitalized terms not otherwise defined herein shall have the meanings set forth in the Notes.
2. **Amendment of Notes.** Effective as of the date hereof, each of the Notes is hereby amended as follows:
  - 2.1.1 The following definitions are added in alphabetical order to the list of definitions in Section 1 of the Note:
    - “**Common Stock**” means the common stock of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed;
    - “**Conversion Amount**” shall have the meaning set forth in Section 3(a);

“**Conversion Date**” means the effective date of conversion specified in the Conversion Notice;

“**Conversion Notice**” means a written notice in the form attached hereto as Schedule A;

“**Preferred Stock**” means the Series E Convertible Preferred Stock of the Company;

“**Purchase Agreement**” means the Securities Purchase Agreement dated July 15, 2019 between the Company, the Holder and the other purchasers identified on the signature pages thereto;

“**Stated Value**” means \$1,000 per share of Preferred Stock; and

“**Surviving Note Factor**” means 1.5.

2.1.2 A new Section 3 shall be added to the Note and replace the existing Section 3 of the Note, and will state as follows:

“Section 3. Conversion Right.

(a) The Holder shall be entitled to convert the outstanding principal amount of this Note and any accrued and unpaid interest thereon at the time of conversion (the “**Conversion Amount**”) into the appropriate number of shares of Preferred Stock equal to the Conversion Amount divided by the product of the Stated Value and the Surviving Note Factor.

(b) The Holder shall exercise its conversion rights under this Section 3 by (i) delivering to the Company a duly completed Conversion Notice, and (ii) surrendering this Note to the Company with such Conversion Notice.

(c) On the Conversion Date the Company shall issue or cause to be issued to the Holder a certificate registered in the name of the Holder evidencing the number of shares of Preferred Stock issuable upon such conversion, as determined in accordance with Section 3(a). The Holder shall be deemed to have become the holder of record of such shares of Preferred Stock as of the Conversion Date.”

2.1.3 The Conversion Notice in the form attached hereto as Schedule A shall be annexed to the Note as a new Schedule A.

3. **Confirmation of Security.** The Company hereby confirms that each of the Transaction Documents which it has delivered to the Holders (a) remains in full force and effect as general and continuing collateral security over all of the assets, property and undertaking of the Company, whether now or in the future owned or acquired, and the security interests, mortgages, charges, liens, assignments, transfers and pledges granted in favour of the Holders pursuant to the Transaction Documents continue to secure all of the debts, liabilities and obligations of the Company to the Holders in connection with the Transaction Documents, now or hereafter arising; and (b) is enforceable against the Company by the Holders in accordance with its terms, except as may be limited by



applicable bankruptcy, insolvency, liquidation, reorganization, and other similar laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court.

4. **Holding Period.** The Holders hereby acknowledge that, for purposes of calculating the holding period required under Rule 144 promulgated under the Securities Act of 1933, as amended, with respect to the shares of Preferred Stock issuable on conversion of the Notes, such holding period shall commence on the Conversion Date.
5. **Effect of Amendment.** This Agreement is an amendment to the Notes. Unless the context of this Agreement otherwise requires, each Note and this Agreement shall be read together and shall have effect as if the provisions of such Note and this Agreement were contained in one agreement.
6. **No Merger or Novation.** Save as expressly amended by this Agreement, the terms of the Notes remain unamended and in full force and effect and are hereby ratified and affirmed. All Transaction Documents and obligations of the Company thereunder remain in full force and effect, there being no novation or merger of the Notes, the other Transaction Documents or such obligations.
7. **No Waiver.** The execution, delivery and performance of this Agreement shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Holders under the Notes or any of the other Transaction Documents other than as expressly provided herein.
8. **Notices.** All notices, requests, demands and other communications hereunder shall be subject to the notice provision of the Notes.
9. **Further Assurances.** The parties shall promptly, from time to time, upon the request of the other party, take all such action, and execute and deliver such further agreements and other documents, as may be necessary or desirable to give effect to the provisions and intent of this Agreement.
10. **Miscellaneous.** This Agreement (a) shall, for purposes of the Notes, be considered a Transaction Document; (b) shall be governed by and construed and enforced in accordance with the internal law of the State of New York; (c) may not be amended except by a writing duly executed by the parties; (d) shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns; (e) may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document, all of which counterparts shall be construed together and shall constitute one Agreement; and (f) may be executed by email, .pdf or telecopy transmission of an executed counterpart of or signature page to this Agreement and an email, .pdf, telecopy or photocopy of an executed counterpart of or signature page to this Agreement shall be given the same effect as the original.

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF the parties have executed this Agreement.

**DELCATH SYSTEMS, INC.**

by /s/ Jennifer K. Simpson

Name: Jennifer K. Simpson

Title: President & CEO

**ROSALIND OPPORTUNITIES FUND I L.P.**, by its  
advisor, **ROSALIND ADVISORS, INC.**

by /s/ Steven Salamon

Name: Steven Salamon

Title: President

**ROSALIND MASTER FUND L.P.**, by its advisor,  
**ROSALIND ADVISORS, INC.**

by /s/ Steven Salamon

Name: Steven Salamon

Title: President

*Signature Page to Note Amending Agreement (Surviving Notes)*

**SCHEDULE A**

**CONVERSION NOTICE**

**To: Delcath Systems, Inc. (the "Company")**

The undersigned hereby elects to convert all of the principal amount and any accrued and unpaid interest outstanding under the Note issued by the Company as of July 15, 2019, as amended by a Note Amending Agreement dated as of July 15, 2019, in exchange for delivery of shares of Preferred Stock in the capital of the Company, as of the date written and as specified below.

Effective date of conversion:

\_\_\_\_\_

Principal amount of Note owed prior to conversion:

\_\_\_\_\_

Number of shares of Preferred Stock to be issued on the basis of \$1,500 (being the product of the Stated Value and the Surviving Note Factor) of principal amount and accrued and unpaid interest outstanding under the Note per share:

\_\_\_\_\_

**ROSALIND MASTER FUND L.P.**, by its advisor,  
**ROSALIND ADVISORS, INC.**

by \_\_\_\_\_

Name:

Title:

**ROSALIND OPPORTUNITIES FUND I L.P.**, by its  
advisor, **ROSALIND ADVISORS, INC.**

by \_\_\_\_\_

Name:

Title:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION D OR AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY.

**Original Issue Date: July 15, 2019**

**Original Principal Amount: \$1,000,000**

**8% SECURED PROMISSORY NOTE  
DUE JULY 15, 2021**

THIS 8% SECURED PROMISSORY NOTE is one of a series of duly authorized and validly issued 8% Secured Promissory Notes of Delcath Systems, Inc., a Delaware corporation (the "Company"), having its principal place of business at 1633 Broadway, Suite 22C, New York, NY 10019, designated as its 8% Secured Promissory Note due July 15, 2021, (this "Note", or collectively with the other Notes of such series, the "Notes").

FOR VALUE RECEIVED, the Company promises to pay to ROSALIND OPPORTUNITIES FUND I LP (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of \$1,000,000 on July 15, 2021 (the "Maturity Date") or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate then outstanding principal amount of this Note in accordance with the provisions hereof. This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Note, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement (as defined below) and (b) the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X for purposes of this definition) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within sixty (60) days after commencement, (c) the Company or any Significant Subsidiary

thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within sixty (60) calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of thirty-three percent (33%) of the voting securities of the Company; (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the aggregate voting power of the Company or the successor entity of such transaction; (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the aggregate voting power of the acquiring entity immediately after the transaction; (d) a replacement at one time or within a one (1) year period of more than one-half (1/2) of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date); or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“DTC” means the Depository Trust Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Event of Default” shall have the meaning set forth in Section 6(a).

“Excluded Taxes” means, in relation to a Holder, (i) any Taxes of a Holder imposed on the net capital or income of the Holder by a governmental authority as a result of the Holder (a) carrying on a trade or business or having a permanent establishment in any jurisdiction or political subdivision thereof; (b) being organized under the laws of such jurisdiction or political subdivision thereof; or (c) being or being deemed to be resident in such jurisdiction or political subdivision thereof;.

“Indemnified Taxes” means all Taxes other than Excluded Taxes.

“Mandatory Default Amount” means the payment of one hundred twenty-five percent (125%) of the outstanding principal amount of this Note and accrued and unpaid interest hereon, in addition to the payment of all other amounts, costs, expenses and liquidated damages due in respect of this Note.

“New York Courts” shall have the meaning set forth in Section 8(d). “Note Register” shall have the meaning set forth in Section 2(b).

“Original Issue Date” means the date of the first issuance of this Note, regardless of any transfers of any Note and regardless of the number of instruments which may be issued to evidence such Note.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Note.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Purchase Agreement” means that certain Note Purchase Agreement, dated the date hereof, by and among the Company, the original Holder and the other parties named therein, if any, as amended, modified or supplemented from time to time in accordance with its terms.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Senior Indebtedness” shall have the meaning set forth in Section 7.

“Subsidiary” means any subsidiary of the Company as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Taxes” includes all present and future income, corporation, capital gains, capital and value-added and goods and services or harmonized sales taxes and all stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever imposed by any governmental authority, together with interest thereon and penalties with respect thereto, if any, and charges, fees and other amounts made on or in respect thereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American; the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; any level of the OTC Markets operated by OTC Markets Group, Inc. or the OTC Bulletin Board (or any successors to any of the foregoing).

## Section 2. Interest.

a) Payment of Interest in Cash. The Company shall pay interest to the Holder on the aggregate principal amount of this Note at the rate of eight percent (8%) per annum on a quarterly basis in arrears commencing second quarter 2019. Following the Closing Date, all interest payments hereunder shall be payable in cash, except as otherwise set forth herein. Accrued and unpaid interest shall be due and payable on each Conversion Date, on the Maturity Date or as otherwise set forth herein on any remaining principal balance of the Note.

b) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve (12) thirty (30) calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest hereunder will be paid to the Person in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note (the “Note Register”).

c) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall entail a late fee at an interest rate equal to the lesser of eighteen percent (18%) per annum or the maximum rate permitted by applicable law (the “Late Fees”) which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full.

d) Voluntary Prepayment. So long as no Event of Default (as defined in Section 6(a)) hereof exists, at any time upon ten (10) days written notice to the Holder, the Company may prepay any portion of the then outstanding principal amount of this Note, any accrued and unpaid interest, and any other amounts due under this Note. If the Company exercises its right to prepay the Note, the Company shall make payment to the Holder of an amount in cash equal to the sum of the then outstanding principal amount of this Note, any accrued and unpaid interest and any other amounts due under this Note multiplied by one hundred percent (100%).

e) Mandatory Prepayment. During the term of the Note, if (in one or more transactions) the Company (i) sells any of its material assets or, subject to paragraph (ii)

below, consummates an offering of equity or debt (or otherwise incurs any indebtedness), the Company shall make payment to the Holder of an amount in cash equal to 100% of the proceeds of such sale or offering (or other incurrence) to be applied by the Holder to repay the then outstanding obligations of the Company hereunder, or (ii) is a party to any Change of Control Transaction or offering of equity or debt (or otherwise incurs any indebtedness) in which the Company receives net proceeds of at least \$10,000,000, the Company shall make payment to the Holder of an amount in cash equal to the Principal Amount, any accrued but unpaid interest and any other amounts due under this Note multiplied by one hundred percent (100%).

**Section 3. [Reserved].**

**Section 4. Registration of Transfers and Exchanges.**

- a) **Different Denominations.** This Note is exchangeable for an equal aggregate principal amount of Note of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.
- b) **Investment Representations.** This Note has been issued subject to certain investment representations of the original Holder and may be transferred or exchanged only in compliance with applicable federal and state securities laws and regulations.
- c) **Reliance on Note Register.** Prior to due presentment for transfer to the Company of this Note, the Company and any agent of the Company may treat the Person in whose name this Note is duly registered on the Note Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

**Section 5. Taxes.**

a) **Payments Subject to Taxes.** All payment by the Company hereunder shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes (including Other Taxes) paid or payable by the Holder or required to be withheld from a payment to the Holder, unless such Indemnified Taxes or Other Taxes are required by law or the administration thereof to be withheld or deducted. If the Holder is required by applicable law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of the Company hereunder, then (i) the sum payable by the Company shall be increased by such amount as is necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section 5) the Holder receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Company shall make any such deductions required to be made by it under applicable law and (iii) the Company shall timely pay the full amount required to be deducted to the relevant governmental authority in accordance with applicable law.



b) Payment of Other Taxes by the Company. Without limiting the provisions of Section 5(a), the Company shall timely pay any Other Taxes to the relevant governmental authority in accordance with applicable law.

c) Indemnification by the Company. Without duplication of any gross-up by the Company pursuant to Section 5(a), the Company shall indemnify the Holder, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5) paid by the Holder and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to the Company by the Holder shall be conclusive absent manifest error.

d) Evidence of Payment. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Company to a governmental authority, the Company shall deliver to the Holder the original or a certified copy of a receipt issued by such governmental authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Holder.

e) If the Holder determines, in its sole discretion, that it has received a refund of Taxes or Other Taxes as to which it has been indemnified by the Company or with respect to which the Company has paid additional amounts pursuant to this Section 5, it shall pay to the Company an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under this Section 5 with respect to Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Holder, and without interest (other than any net after-Tax interest paid by the relevant governmental authority with respect to such refund). The Company, upon the request of the Holder, agrees to repay the amount paid over to the Company (plus any penalties, interest or other charges imposed by the relevant governmental authority) to the Holder if the Holder is required to repay such refund or reduction to such governmental authority. This paragraph shall not be construed to require the Holder to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

f) Survival. The provisions of this Section 5 shall survive repayment of all obligations under this Note and the termination of this Note.

Section 6. Events of Default.

a) “Event of Default” means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of this Note or (B) accrued but unpaid interest, liquidated damages and other amounts owing to the Holder on this Note, as and when the same shall become due and payable by acceleration, which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within three (3) Trading Days;

ii. the Company shall fail to observe or perform any other covenant, provision, or agreement contained in this Note which failure is not cured, if possible to cure, within the earlier to occur of (A) five (5) Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) ten (10) Trading Days after the Company has become or should have become aware of such failure;

iii. a material default or material event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur (A) under any of the Transaction Documents or (B) any other material agreement, contract, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Note, any other Transaction Documents, any written statement pursuant hereto or thereto, any other agreement, contract, lease, document or instrument to which the Company or any Subsidiary is obligated (including those covered by clause (vi) below), or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$100,000 whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five (5) Trading Days or the transfer of shares of Common Stock through the DTC is no longer available or “chilled”;

viii. the Company shall be a party to any Change of Control Transaction or shall agree to sell or dispose of all or in excess of 50% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. **[Reserved];**

x. **[Reserved];**

xi. the Company or any Subsidiary shall: (A) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its properties; (B) admit in writing its inability to pay its debts as they mature; (C) make a general assignment for the benefit of creditors; (D) be adjudicated as bankrupt or insolvent or be the subject of an order for relief under Title 11 of the United States Code or any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute of any other jurisdiction or foreign country; or (E) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or (F) take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;

xii. if any order, judgment or decree shall be entered, without the application, approval or consent of the Company or any Subsidiary, by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Company or any Subsidiary, or appointing a receiver, trustee, custodian or liquidator of the Company or any Subsidiary, or of all or any substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days;

xiii. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Company or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of \$100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within thirty (30) days after the date thereof;

xiv. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any Subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of forty-five (45) calendar days;

xv. any provision of this Note or any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall

be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document; or

xvi. the occurrence of any event described in Rule 506(d)(1) under the Securities Act, (2) the Company or any Subsidiary is indicted, charged with or convicted of any crime, (3) any Affiliate of the Company or any person who is an officer, director or member of senior management of the Corporation or any Subsidiary is arrested, indicted, charged with or convicted of any felony other crime involving moral turpitude, (4) the Commission, Department of Justice, Food and Drug Administration, or any similar government enforcement or regulatory agency files a complaint in any court or institutes administrative proceedings in any jurisdiction against the Corporation, any Affiliate, or any member of management.

b) Remedies Upon Event of Default. If any Event of Default occurs, then the outstanding principal amount of this Note, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. After the occurrence of any Event of Default that results in the eventual acceleration of this Note, the interest rate on this Note shall accrue at an additional interest rate equal to the lesser of one and one-half percent (1.5%) per month (eighteen percent (18.0%) per annum) or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Note to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind (other than the Holder's election to declare such acceleration), and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 6(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

**[Section 7. [Reserved].**

#### Section 8. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder shall be in writing and delivered personally, by email or facsimile, or sent by a nationally recognized overnight courier service, addressed to the Company at 1633 Broadway, Suite 22C, New York, NY 10019, 917-591-5970, [bkeck@delcath.com](mailto:bkeck@delcath.com) or such other address, facsimile number, or email address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 8(a). Any and all notices or other communications or deliveries to be

provided by the Company hereunder shall be in writing and delivered personally, by email or facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address, facsimile number, or address of the Holder appearing on the books of the Company, or if no such email address, facsimile number, or address appears on the books of the Company, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address set forth on the signature pages attached hereto prior to 12:00 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 12:00 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Company. Unless otherwise agreed by the Holder this Note ranks *pari passu* with those promissory notes hereafter issued under the terms of the Purchase Agreement.

c) Lost or Mutilated Note. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the Principal Amount so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), 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 such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note 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 other manner permitted by applicable law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.** If any party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of the Company or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Amendments. The prior written consent of 50.1% in interest of the Holders, which shall be calculated based on the principal amount of all Notes outstanding at the time of such consent, shall be required for any change or amendment to the Notes.

g) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal or interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

h) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and

nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

i) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

j) Payment of Collection, Enforcement and Other Costs. If (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (ii) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable and documented out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

k) Headings. The headings contained herein are for convenience only, do not constitute a part of this Note and shall not be deemed to limit or affect any of the provisions hereof.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by a duly authorized officer as of the date first above indicated.

**DELCATH SYSTEMS, INC.**

By: /s/ Jennifer K. Simpson

Name: Jennifer K. Simpson

Title: President & CEO



THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO REGULATION D OR AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY.

**Original Issue Date: July 15, 2019**

**Original Principal Amount: \$1,000,000**

**8% SECURED PROMISSORY NOTE  
DUE JULY 15, 2021**

THIS 8% SECURED PROMISSORY NOTE is one of a series of duly authorized and validly issued 8% Secured Promissory Notes of Delcath Systems, Inc., a Delaware corporation (the "Company"), having its principal place of business at 1633 Broadway, Suite 22C, New York, NY 10019, designated as its 8% Secured Promissory Note due July 15, 2021, (this "Note", or collectively with the other Notes of such series, the "Notes").

FOR VALUE RECEIVED, the Company promises to pay to ROSALIND MASTER FUND LP (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of \$1,000,000 on July 15, 2021 (the "Maturity Date") or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate then outstanding principal amount of this Note in accordance with the provisions hereof. This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Note, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement (as defined below) and (b) the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X for purposes of this definition) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any

Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within sixty (60) days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within sixty (60) calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of thirty-three percent (33%) of the voting securities of the Company; (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the aggregate voting power of the Company or the successor entity of such transaction; (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than fifty percent (50%) of the aggregate voting power of the acquiring entity immediately after the transaction; (d) a replacement at one time or within a one (1) year period of more than one-half (1/2) of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date); or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“DTC” means the Depository Trust Company.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Event of Default” shall have the meaning set forth in Section 6(a).

“Excluded Taxes” means, in relation to a Holder, (i) any Taxes of a Holder imposed on the net capital or income of the Holder by a governmental authority as a result of the Holder (a) carrying on a trade or business or having a permanent establishment in any jurisdiction or political subdivision thereof; (b) being organized under the laws of such jurisdiction or political subdivision thereof; or (c) being or being deemed to be resident in such jurisdiction or political subdivision thereof;.

“Indemnified Taxes” means all Taxes other than Excluded Taxes.

“Mandatory Default Amount” means the payment of one hundred twenty-five percent (125%) of the outstanding principal amount of this Note and accrued and unpaid interest hereon, in addition to the payment of all other amounts, costs, expenses and liquidated damages due in respect of this Note.

“New York Courts” shall have the meaning set forth in Section 8(d).

“Note Register” shall have the meaning set forth in Section 2(b).

“Original Issue Date” means the date of the first issuance of this Note, regardless of any transfers of any Note and regardless of the number of instruments which may be issued to evidence such Note.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Note.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Purchase Agreement” means that certain Note Purchase Agreement, dated the date hereof, by and among the Company, the original Holder and the other parties named therein, if any, as amended, modified or supplemented from time to time in accordance with its terms.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Senior Indebtedness” shall have the meaning set forth in Section 7.

“Subsidiary” means any subsidiary of the Company as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Taxes” includes all present and future income, corporation, capital gains, capital and value-added and goods and services or harmonized sales taxes and all stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever imposed by any governmental authority, together with interest thereon and penalties with respect thereto, if any, and charges, fees and other amounts made on or in respect thereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American; the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; any level of the OTC Markets operated by OTC Markets Group, Inc. or the OTC Bulletin Board (or any successors to any of the foregoing).

## Section 2. Interest.

a) Payment of Interest in Cash. The Company shall pay interest to the Holder on the aggregate principal amount of this Note at the rate of eight percent (8%) per annum on a quarterly basis in arrears commencing second quarter 2019. Following the Closing Date, all interest payments hereunder shall be payable in cash, except as otherwise set forth herein. Accrued and unpaid interest shall be due and payable on each Conversion Date, on the Maturity Date or as otherwise set forth herein on any remaining principal balance of the Note.

b) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve (12) thirty (30) calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest hereunder will be paid to the Person in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note (the “Note Register”).

c) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall entail a late fee at an interest rate equal to the lesser of eighteen percent (18%) per

annum or the maximum rate permitted by applicable law (the "Late Fees") which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full.

d) Voluntary Prepayment. So long as no Event of Default (as defined in Section 6(a)) hereof exists, at any time upon ten (10) days written notice to the Holder, the Company may prepay any portion of the then outstanding principal amount of this Note, any accrued and unpaid interest, and any other amounts due under this Note. If the Company exercises its right to prepay the Note, the Company shall make payment to the Holder of an amount in cash equal to the sum of the then outstanding principal amount of this Note, any accrued and unpaid interest and any other amounts due under this Note multiplied by one hundred percent (100%).

e) Mandatory Prepayment. During the term of the Note, if (in one or more transactions) the Company (i) sells any of its material assets or, subject to paragraph (ii) below, consummates an offering of equity or debt (or otherwise incurs any indebtedness), the Company shall make payment to the Holder of an amount in cash equal to 100% of the proceeds of such sale or offering (or other incurrence) to be applied by the Holder to repay the then outstanding obligations of the Company hereunder, or (ii) is a party to any Change of Control Transaction or offering of equity or debt (or otherwise incurs any indebtedness) in which the Company receives net proceeds of at least \$10,000,000, the Company shall make payment to the Holder of an amount in cash equal to the Principal Amount, any accrued but unpaid interest and any other amounts due under this Note multiplied by one hundred percent (100%).

Section 3. [Reserved].

Section 4. Registration of Transfers and Exchanges.

a) Different Denominations. This Note is exchangeable for an equal aggregate principal amount of Note of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Note has been issued subject to certain investment representations of the original Holder and may be transferred or exchanged only in compliance with applicable federal and state securities laws and regulations.

c) Reliance on Note Register. Prior to due presentment for transfer to the Company of this Note, the Company and any agent of the Company may treat the Person in whose name this Note is duly registered on the Note Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 5. Taxes.

a) Payments Subject to Taxes. All payment by the Company hereunder shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes (including Other Taxes) paid or payable by the Holder or required to be withheld from a payment to the Holder, unless such Indemnified Taxes or Other Taxes are required by law or the administration thereof to be withheld or deducted. If the Holder is required by applicable law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of the Company hereunder, then (i) the sum payable by the Company shall be increased by such amount as is necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section 5) the Holder receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Company shall make any such deductions required to be made by it under applicable law and (iii) the Company shall timely pay the full amount required to be deducted to the relevant governmental authority in accordance with applicable law.

b) Payment of Other Taxes by the Company. Without limiting the provisions of Section 5(a), the Company shall timely pay any Other Taxes to the relevant governmental authority in accordance with applicable law.

c) Indemnification by the Company. Without duplication of any gross-up by the Company pursuant to Section 5(a), the Company shall indemnify the Holder, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5) paid by the Holder and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to the Company by the Holder shall be conclusive absent manifest error.

d) Evidence of Payment. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Company to a governmental authority, the Company shall deliver to the Holder the original or a certified copy of a receipt issued by such governmental authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Holder.

e) If the Holder determines, in its sole discretion, that it has received a refund of Taxes or Other Taxes as to which it has been indemnified by the Company or with respect to which the Company has paid additional amounts pursuant to this Section 5, it shall pay to the Company an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Company under

this Section 5 with respect to Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Holder, and without interest (other than any net after-Tax interest paid by the relevant governmental authority with respect to such refund). The Company, upon the request of the Holder, agrees to repay the amount paid over to the Company (plus any penalties, interest or other charges imposed by the relevant governmental authority) to the Holder if the Holder is required to repay such refund or reduction to such governmental authority. This paragraph shall not be construed to require the Holder to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Company or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

f) Survival. The provisions of this Section 5 shall survive repayment of all obligations under this Note and the termination of this Note.

#### Section 6. Events of Default.

a) “Event of Default” means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of this Note or (B) accrued but unpaid interest, liquidated damages and other amounts owing to the Holder on this Note, as and when the same shall become due and payable by acceleration, which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within three (3) Trading Days;

ii. the Company shall fail to observe or perform any other covenant, provision, or agreement contained in this Note which failure is not cured, if possible to cure, within the earlier to occur of (A) five (5) Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) ten (10) Trading Days after the Company has become or should have become aware of such failure;

iii. a material default or material event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur (A) under any of the Transaction Documents or (B) any other material agreement, contract, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below);

iv. any representation or warranty made in this Note, any other Transaction Documents, any written statement pursuant hereto or thereto, any other agreement, contract, lease, document or instrument to which the Company or any Subsidiary is obligated (including those covered by clause (vi) below), or any other

report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$100,000 whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five (5) Trading Days or the transfer of shares of Common Stock through the DTC is no longer available or "chilled";

viii. the Company shall be a party to any Change of Control Transaction or shall agree to sell or dispose of all or in excess of 50% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. **[Reserved];**

x. **[Reserved];**

xi. the Company or any Subsidiary shall: (A) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of it or any of its properties; (B) admit in writing its inability to pay its debts as they mature; (C) make a general assignment for the benefit of creditors; (D) be adjudicated as bankrupt or insolvent or be the subject of an order for relief under Title 11 of the United States Code or any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute of any other jurisdiction or foreign country; or (E) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or (F) take or permit to be taken any action in furtherance of or for the purpose of effecting any of the foregoing;



xii. if any order, judgment or decree shall be entered, without the application, approval or consent of the Company or any Subsidiary, by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Company or any Subsidiary, or appointing a receiver, trustee, custodian or liquidator of the Company or any Subsidiary, or of all or any substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days;

xiii. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Company or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of \$100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within thirty (30) days after the date thereof;

xiv. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any Subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of forty-five (45) calendar days;

xv. any provision of this Note or any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document; or

xvi. the occurrence of any event described in Rule 506(d)(1) under the Securities Act, (2) the Company or any Subsidiary is indicted, charged with or convicted of any crime, (3) any Affiliate of the Company or any person who is an officer, director or member of senior management of the Corporation or any Subsidiary is arrested, indicted, charged with or convicted of any felony other crime involving moral turpitude, (4) the Commission, Department of Justice, Food and Drug Administration, or any similar government enforcement or regulatory agency files a complaint in any court or institutes administrative proceedings in any jurisdiction against the Corporation, any Affiliate, or any member of management.

b) **Remedies Upon Event of Default.** If any Event of Default occurs, then the outstanding principal amount of this Note, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. After the occurrence of any Event of Default that results in the eventual acceleration of this Note, the interest rate on this Note shall accrue at an additional interest rate equal to the lesser of one and one-half percent (1.5%) per month (eighteen percent (18.0%) per annum) or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Note to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind (other than the Holder's election to declare such acceleration), and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 6(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

**Section 7. [Reserved].**

**Section 8. Miscellaneous.**

a) **Notices.** Any and all notices or other communications or deliveries to be provided by the Holder hereunder shall be in writing and delivered personally, by email or facsimile, or sent by a nationally recognized overnight courier service, addressed to the Company at 1633 Broadway, Suite 22C, New York, NY 10019, 917-591-5970, [bkeck@delcath.com](mailto:bkeck@delcath.com) or such other address, facsimile number, or email address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 8(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by email or facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address, facsimile number, or address of the Holder appearing on the books of the Company, or if no such email address, facsimile number, or address appears on the books of the Company, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address set forth on the signature pages attached hereto prior to 12:00 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 12:00 p.m. (New York City

time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Company. Unless otherwise agreed by the Holder this Note ranks *pari passu* with those promissory notes hereafter issued under the terms of the Purchase Agreement.

c) Lost or Mutilated Note. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the Principal Amount so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), 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 such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note 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 other manner permitted by applicable law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF**

**OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY.** If any party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of the Company or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Amendments. The prior written consent of 50.1% in interest of the Holders, which shall be calculated based on the principal amount of all Notes outstanding at the time of such consent, shall be required for any change or amendment to the Notes.

g) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

h) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with

respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

i) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

j) Payment of Collection, Enforcement and Other Costs. If (i) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (ii) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable and documented out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

k) Headings. The headings contained herein are for convenience only, do not constitute a part of this Note and shall not be deemed to limit or affect any of the provisions hereof.

***[Signature Pages Follow]***

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by a duly authorized officer as of the date first above indicated.

**DELCATH SYSTEMS, INC.**

**By:** /s/ Jennifer K. Simpson

Name: Jennifer K. Simpson

Title: President & CEO

**Delcath Systems Announces Second Quarter 2021 Results**

NEW YORK August 10, 2021 (GLOBE NEWSWIRE) — Delcath Systems, Inc. (Nasdaq: **DCTH**), an interventional oncology company focused on the treatment of rare primary and metastatic cancers of the liver, today reported business highlights and financial results for the second quarter ended June 30, 2021.

**Recent Business Highlights**

*During and since the second quarter the company:*

- Had positive efficacy results presented from its FOCUS Phase III trial of HEPZATO™ KIT (melphalan hydrochloride for injection/hepatic delivery system) in patients with liver dominant metastatic ocular melanoma (mOM) at the American Society of Clinical Oncology (ASCO) Annual Meeting. The oral presentation by the study's Lead Investigator, Dr. Jonathan Zager, Chief Academic Officer, Chair, USF Department of Oncologic Sciences, Moffitt Cancer Center, included data based on 79 of 91 treated HEPZATO patients showing an overall response rate of 29.2% with a 95% confidence interval lower bound of 20%. Given the magnitude by which the lower bound exceeded the 8.3% prespecified threshold for success, the primary endpoint of the trial has been met regardless of the outcome of patients who have not yet been evaluated. Patient level response data were also presented for this same patient set, indicating that 44% of evaluable patients in the HEPZATO arm had a 30% or greater reduction in target tumor lesions at one or more time points versus 17% for patients enrolled in the Best Alternative Care arm.
- Announced that the United Kingdom's National Institute for Health and Care Excellence, has updated its guidance for the Delcath CHEMOSAT® Hepatic Delivery System for Melphalan (CHEMOSAT) in the treatment of patients with metastases in the liver from Ocular Melanoma. Under this designation, private insurance may be more likely to fund treatment with CHEMOSAT, some regional funding may be more accessible, and a process is now available to seek national reimbursement.

- Entered into a debt facility with Avenue Venture Opportunities Fund, L.P. providing up to \$20 million with an initial \$15 million funded at close
- Was added to the Russell Microcap® Index. Membership in the Russell Microcap® Index, which remains in place for one year, means automatic inclusion in the appropriate growth and value style indexes. FTSE Russell determines membership for its Russell indexes primarily by objective, market-capitalization rankings and style attributes.

“During the quarter we announced new patient level data at ASCO that further strengthens the case that HEPZATO would offer a compelling clinical benefit to patients were it approved by the FDA,” said Gerard Michel, CEO of Delcath. “With additional capital from the just closed transaction with Avenue Venture Opportunities Fund, Delcath has the required resources to accomplish its strategic priorities – the filing of the HEPZATO NDA in early 2022, preparing for the subsequent US launch when approved, and expanding the development of HEPZATO into additional areas of high unmet need.”

#### **First Quarter 2021 Financial Results:**

##### *Income Statement Highlights.*

Product revenue for the three months ended June 30, 2021 was approximately \$536 thousand, compared to \$379 thousand for the prior year period from our sales of CHEMOSAT procedures in Europe. Selling, general and administrative expenses were approximately \$3.3 million compared to \$2.3 million in the prior year quarter. Research and development expenses for the quarter were \$3.5 million compared to \$2.2 million in the prior year quarter. Total operating expenses for the quarter were \$6.8 million compared with \$4.5 million in the prior year quarter. Expenses for the quarter included approximately \$1.6 million of stock option expense compared to no stock option expense in the prior year quarter.



The company recorded a net loss for the three months ended June 30, 2021, of \$6.4 million, compared to a net income of \$4.3 million for the same period in 2020

*Balance Sheet Highlights.*

On June 30, 2021, we had cash, cash equivalents and restricted cash totaling \$19.4 million, as compared to cash, cash equivalents and restricted cash totaling \$16.2 million at June 30, 2020. During the three months ended June 30, 2021 and June 30, 2020, we used \$11.7 million and \$13.1 million, respectively, of cash in our operating activities.

On August 6<sup>th</sup>, we closed a \$20 million venture debt financing transaction with Avenue Venture Opportunities Fund (“Avenue Venture Fund”). The initial tranche of the Loan is \$15 million, including \$4 million which has been funded into a restricted account and will be released upon achievement of certain milestones. The Company may request an additional \$5 million of gross proceeds between October 1, 2022 and December 31, 2022, which will be funded at Avenue Venture Fund’s discretion.

Also, on August 6<sup>th</sup>, we amended two existing convertible notes through an extension of the term of the notes until 2024 and lowered the conversion factor in consideration for the notes becoming subordinate to the Avenue Venture Fund debt.

Additional details concerning the Avenue Venture Fund facility and modification of the existing convertible notes will be contained in the company’s Current Report on Form 8-K to be filed with the Securities and Exchange Commission.

Conference Call Information

To participate in this event, dial approximately 5 to 10 minutes before the beginning of the call.

Date: August 10, 2021

Time: 8:30 AM Eastern Time

Toll Free: 877-545-0523; Entry Code: 148562

International: 973-528-0016; Entry Code: 148562

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The call will also be available over the Internet and accessible at:

<https://www.webcaster4.com/Webcast/Page/2475/42376>

#### **About Delcath Systems, Inc.**

Delcath Systems, Inc. is an interventional oncology company focused on the treatment of primary and metastatic liver cancers. The company's proprietary percutaneous hepatic perfusion (PHP) system is designed to administer high-dose chemotherapy to the liver while controlling systemic exposure and associated side effects. In the United States, the PHP system is being developed under the tradename HEPZATO KIT (melphalan hydrochloride for injection/hepatic delivery system), or HEPZATO, and is considered a combination drug and device product regulated by the United States Food and Drug Administration (FDA).

In Europe, the PHP system is regulated as a Class IIb medical device and is approved for sale under the trade name CHEMOSAT Hepatic Delivery System for Melphalan, or CHEMOSAT, where it has been used at major medical centers to treat a wide range of cancers of the liver. CHEMOSAT is being marketed under an exclusive licensing agreement with medac GmbH, a privately held multi-national pharmaceutical company headquartered in Germany that specializes in the treatment and diagnosis of oncological, urological and autoimmune diseases.

#### **Safe Harbor / Forward-Looking Statements**

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: the timing and results of the Company's clinical trials, including without limitation the mOM and ICC clinical trial programs, as well as the receipt of additional data and the performance of additional analyses with respect to the mOM clinical trial, our determination whether to continue the ICC clinical trial program or to focus on other alternative indications, and timely monitoring and treatment of patients in the global

Phase 3 mOM clinical trial and the impact of the COVID-19 pandemic on the completion of our clinical trials; the impact of the presentations at major medical conferences and future clinical results consistent with the data presented; approval of Individual Funding Requests for reimbursement of the CHEMOSAT procedure; the impact, if any, of ZE reimbursement on potential CHEMOSAT product use and sales in Germany; clinical adoption, use and resulting sales, if any, for the CHEMOSAT system to deliver and filter melphalan in Europe including the key markets of Germany and the UK; the Company's ability to successfully commercialize the HEPZATO KIT/CHEMOSAT system and the potential of the HEPZATO KIT/CHEMOSAT system as a treatment for patients with primary and metastatic disease in the liver; our ability to obtain reimbursement for the CHEMOSAT system in various markets; approval of the current or future HEPZATO KIT/CHEMOSAT system for delivery and filtration of melphalan or other chemotherapeutic agents for various indications in the U.S. and/or in foreign markets; actions by the FDA or foreign regulatory agencies; the Company's ability to successfully enter into strategic partnership and distribution arrangements in foreign markets and the timing and revenue, if any, of the same; uncertainties relating to the timing and results of research and development projects; and uncertainties regarding the Company's ability to obtain financial and other resources for any research, development, clinical trials 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.

**Contact:**

*Delcath Investor Relations*

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*Hayden IR*

James Carbonara

(646)-755-7412

[james@haydenir.com](mailto:james@haydenir.com)

**Delcath Systems Secures Up to a \$20.0 Million Debt Facility with Avenue Venture Opportunities Fund, L.P.**

NEW YORK, Aug. 09, 2021 (GLOBE NEWSWIRE) — Delcath Systems, Inc. (Nasdaq: **DCTH**), an interventional oncology company focused on the treatment of rare primary and metastatic cancers of the liver, announced today that it has entered into a debt facility with Avenue Venture Opportunities Fund, L.P. (“Avenue Venture Fund”) providing up to \$20 million with an initial \$15 million funded at close. Additional details concerning the debt facility will be contained in the company’s Current Report on Form 8-K to be filed shortly with the Securities and Exchange Commission.

“We are pleased to partner with Avenue Venture Fund ahead of major upcoming milestones,” said Gerard Michel, CEO of Delcath. “These loan facilities provide, at a low cost of capital, funding to support the planned filing of our NDA in early 2022 for the use of HEPZATO™ in the treatment of hepatic-dominant metastatic ocular melanoma as well as expanding the development of HEPZATO into additional areas of high unmet need.”

Chad Norman, Senior Portfolio Manager with Avenue Venture Fund, commented, “We are pleased to partner with Delcath and support its efforts to bring a highly innovative and unique modality of cancer treatment to patients suffering from liver dominant cancers.”

Reedland Capital Partners, acting through Weild & Co., member FINRA/SIPC, served as financial advisor to Delcath in connection with this transaction. For more information, please visit [www.reedland.com](http://www.reedland.com).

**About Avenue Venture Opportunities**

The Avenue Venture Opportunities Fund seeks to provide creative financing solutions to high-growth, venture capital-backed technology and life science companies. The Avenue Venture Opportunities Fund focuses generally on companies within the underserved segment of the market created by the widening financing gap between commercial banks and larger debt funds. For additional information on Avenue Capital Group, which is a global investment firm with assets estimated to be approximately \$11.6 billion as of June 30, 2021, please visit [www.avenuecapital.com](http://www.avenuecapital.com).

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