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): December 9, 2020

DELCATH SYSTEMS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-16133**	**06-1245881**
(State or other jurisdiction of incorporation or organization)	**(Commission File Number)**	**(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.

On December 9, 2020, Delcath Systems, Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with Canaccord Genuity LLC and Roth Capital Partners, LLC (the "Underwriters"), pursuant to which the Company agreed to issue and sell to the Underwriters 1,460,027 shares of the Company's common stock, par value $0.01 per share (the "Common Stock"), plus up to 219,004 shares of Common Stock pursuant to an option to purchase additional shares (together, the "Shares"), at a price to the public of $13.25 per share (the "Offering"). The Underwriters exercised their option to purchase additional shares in full on December 9, 2020. The Offering closed on December 11, 2020. Gross proceeds from the Offering of 1,679,031 Shares were approximately $22.1 million, before deducting the underwriting discounts and commissions and other estimated Offering expenses. Under the terms of the Underwriting Agreement, the Company paid underwriting discounts and commissions of $0.795 per share (for a price to the Underwriters of $12.455 per share). After the closing of the Offering, the number of shares of Common Stock outstanding was 5,948,864.

Under the terms of the Underwriting Agreement, the Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). The Underwriting Agreement contains customary representations, warranties, covenants, obligations of the parties and termination provisions.

In addition, in connection with the Offering, the Company's directors and officers entered into a customary 90-day lock-up agreement with the Underwriters. The foregoing description of the Underwriting Agreement and the lock-up agreement is qualified in its entirety by reference to the Underwriting Agreement (including the form of lock-up agreement which is attached as Exhibit B to the Underwriting Agreement), a copy of which is filed as Exhibit 1.1 to this Current Report on Form 8-K and incorporated herein by reference.

The Offering is being made pursuant to a prospectus supplement dated December 9, 2020 and an accompanying prospectus dated December 21, 2018, pursuant to the Company's effective shelf registration statement on Form S-3 filed with the U.S. Securities and Exchange Commission and declared effective on December 21, 2018.

The legal opinion of McCarter & English, LLP relating to the legality of the issuance and sale of the Shares in the Offering is attached hereto as Exhibit 5.1 and is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any Shares, nor shall there be any offer, solicitation or sale of Shares in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

Item 8.01 — Other Events.

On December 9, 2020, the Company issued a press release announcing the pricing of the Offering and on December 11, 2020, the Company issued a press release announcing the exercise of the Underwriters' option to purchase additional shares in the Offering and the closing of the transaction, copies of which are attached hereto as Exhibits 99.1 and 99.2, respectively.

In connection with the Offering described in Item 1.01 above, Rosalind Master Fund L.P. and Rosalind Opportunities Fund I L.P. (together, "Rosalind") waived, solely with respect to the Offering, Rosalind's right, pursuant to that certain Support and Conversion Agreement, dated March 11, 2020, between Rosalind and the Company, as amended, to participate in any offer or sale of the Company's Common Stock by the Company occurring within a two-year period.

A copy of the waiver by Rosalind is attached to this report as Exhibit 99.3 and is incorporated by reference herein.

As of December 11, 2020, the outstanding Common Stock of the Company had increased to 5,948,864, an increase of more than 5% since the last reported Common Stock outstanding.

Item 9.01 — Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
1.1	Underwriting Agreement, dated December 9, 2020, among the Company, Canaccord Genuity LLC and Roth Capital Partners, LLC.
5.1	Opinion of McCarter & English, LLP, dated December 11, 2020.
10.1	Engagement Letter, dated as of November 25, 2020, between the Company and Canaccord Genuity LLC.
10.2	Amendment to Engagement Letter, dated as of December 8, 2020, between the Company and Canaccord Genuity LLC.
23.1	Consent of McCarter & English, LLP (included in Exhibit 5.1).
99.1	Press Release of the Company, dated December 9, 2020.
99.2	Press Release of the Company, dated December 11, 2020.
99.3	Limited Waiver, dated December 7, 2020, among the Company, Rosalind Master Fund L.P. and Rosalind Opportunities Fund I L.P.

SIGNATURE

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

Date: December 11, 2020

DELCATH SYSTEMS, INC.

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

Exhibit 1.1

Delcath Systems, Inc.
(a Delaware corporation)
1,460,027 Shares of Common Stock

UNDERWRITING AGREEMENT

December 9, 2020

Canaccord Genuity LLC
Roth Capital Partners, LLC
As Representatives of the several Underwriters

c/o Canaccord Genuity LLC
99 High Street, 12th Floor,
Boston, Massachusetts 02110

c/o Roth Capital Partners, LLC
888 San Clemente Drive
Newport Beach, California 92660

Ladies and Gentlemen:

Delcath Systems, Inc., a Delaware corporation (the "***Company***"), confirms its agreement with Canaccord Genuity LLC ("***Canaccord***") and Roth Capital Partners, LLC ("***Roth***") and each of the other underwriters named in Schedule A hereto (collectively, the "***Underwriters***," which term shall also include any underwriter substituted as provided in Section 10 hereof), for whom Canaccord and Roth are acting as representatives (in such capacity, the "***Representatives***") with respect to (i) the sale by the Company and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of shares of common stock, par value $0.01 per share, of the Company (the "***Common Stock***") set forth in Schedule A hereto and (ii) the grant by the Company to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of 219,004 additional shares of Common Stock pursuant to this Underwriting Agreement (this "***Agreement***"). The aforesaid 1,460,027 shares of Common Stock (the "***Initial Securities***") to be purchased by the Underwriters and all or any part of the 219,004 shares of Common Stock subject to the option described in Section 2(b) hereof (the "***Option Securities***") are herein called, collectively, the "***Securities***."

The Company understands that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered.

The Company has filed with the Securities and Exchange Commission (the "***Commission***") a registration statement on Form S-3 (No. 333-227970) covering the public offering and sale of certain securities, including the Securities, under the Securities Act of 1933, as amended (the "***1933 Act***"), and the rules and regulations promulgated thereunder (the "***1933 Act Regulations***"). As used herein "***Registration Statement***," means such registration statement as amended by any post-effective amendments thereto, including the exhibits and any schedules

thereto, the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act and the documents otherwise deemed to be a part thereof pursuant to Rule 430B under the 1933 Act Regulations (the "***Rule 430B Information***"). Each preliminary prospectus used in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as a "preliminary prospectus." Promptly after execution and delivery of this Agreement, the Company will prepare and file a final prospectus relating to the Securities in accordance with the provisions of Rule 424(b) ("***Rule 424(b)***") of the 1933 Act Regulations. Any registration statement filed pursuant to Rule 462(b) of the 1933 Act Regulations is herein called the "***Rule 462(b) Registration Statement***" and, after such filing, the term "Registration Statement" shall include the Rule 462(b) Registration Statement. The final prospectus, in the form first furnished or made available to the Underwriters for use in connection with the offering of the Securities, including the documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act, are collectively referred to herein as the "***Prospectus***." For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system or any successor system ("***EDGAR***").

As used in this Agreement:

"***Applicable Time***" means 7:30 A.M., New York City time, on December 9, 2020 or such other time as agreed by the Company and the Representatives.

"***General Disclosure Package***" means any Issuer Free Writing Prospectuses issued at or prior to the Applicable Time, the most recent preliminary prospectus that is distributed to investors prior to the Applicable Time and the information included on Schedule B-1 hereto, all considered together.

"***Issuer Free Writing Prospectus***" means any "issuer free writing prospectus," as defined in Rule 433 of the 1933 Act Regulations ("***Rule 433***"), including without limitation any "free writing prospectus" (as defined in Rule 405 of the 1933 Act Regulations ("***Rule 405***")) relating to the Securities that is (i) required to be filed with the Commission by the Company, (ii) a "road show that is a written communication" within the meaning of Rule 433(d)(8)(i), whether or not required to be filed with the Commission, or (iii) exempt from filing with the Commission pursuant to Rule 433(d)(5)(i) because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g).

"***Issuer General Use Free Writing Prospectus***" means any Issuer Free Writing Prospectus that is intended for general distribution to prospective investors (other than a "*bona fide* electronic road show," as defined in Rule 433), as evidenced by its being specified in Schedule B-2 hereto.

"***Issuer Limited Use Free Writing Prospectus***" means any Issuer Free Writing Prospectus that is not an Issuer General Use Free Writing Prospectus.

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" (or other references of like import) in the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include all such financial statements and schedules and other information incorporated or deemed incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, prior to the execution and delivery of this Agreement; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "***1934 Act***"), incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be, at or after the execution and delivery of this Agreement.

Section 1. Representations and Warranties.

(a) ***Representations and Warranties by the Company*.** The Company represents and warrants to each Underwriter as of the date hereof, the Applicable Time, the Closing Time (as defined below) and any Date of Delivery (as defined below), and agrees with each Underwriter, as follows:

(i) Registration Statement and Prospectuses. The Company meets the requirements for and use of Form S-3 (including General Instruction I.A and I.B) under the 1933 Act; the aggregate market value of securities sold by or on behalf of the Company, including the Securities, pursuant to General Instruction I.B.6 of Form S-3 during the 12 month period immediately prior to, and including, the date of this Agreement is no more than one-third of the aggregate market value of the voting and non-voting common equity held by non-affiliates of the Company, as determined pursuant to General Instruction I.B.6 of Form S-3. Each of the Registration Statement and any amendment thereto has been declared effective under the 1933 Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated. The Company has complied with each request (if any) from the Commission for additional information.

Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus, the Prospectus and any amendment or supplement thereto, at the time each was filed with the Commission, complied in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations. Each preliminary prospectus delivered by the Company to the Underwriters for use in connection with this offering and the Prospectus was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement, any preliminary prospectus and the Prospectus, when they became effective or at the time they were or hereafter are filed with the Commission, complied and will comply in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission under the 1934 Act (the "***1934 Act Regulations***").

(ii) Accurate Disclosure. Neither the Registration Statement nor any amendment thereto, at its effective time, at the Closing Time or at any Date of Delivery, contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Applicable Time, neither (A) the General Disclosure Package nor (B) any individual Issuer Limited Use Free Writing Prospectus, when considered together with the General Disclosure Package, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any amendment or supplement thereto (including any prospectus wrapper), as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b), at the Closing Time or at any Date of Delivery, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this Section 1(a)(ii) shall not apply to statements in or omissions from the Registration Statement (or any amendment thereto), the General Disclosure Package, the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus made in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives expressly for use therein. For purposes of this Agreement, the only information so furnished shall be (i) the first sentence of the first paragraph under "Commission and Expenses" and (ii) the paragraphs under "Price Stabilization and Short Positions", in each case under the heading "Underwriting" contained in the Prospectus (collectively, the "***Underwriter Information***").

(iii) Issuer Free Writing Prospectuses. No Issuer Free Writing Prospectus conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any document incorporated by reference therein, and any preliminary or other prospectus deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein.

(iv) Company Not Ineligible Issuer. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or another offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405, without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an ineligible issuer.

(v) [Reserved]

(vi) Enforceability of Agreements. All agreements between the Company and third parties expressly referenced in the Prospectus are legal, valid and binding obligations of the Company enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof.

(vii) Independent Accountant. Marcum LLP, who certified the financial statements and supporting schedules incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus is an independent registered public accounting firm as required by the 1933 Act, the 1933 Act Regulations and the Public Company Accounting Oversight Board. To the Company's knowledge, Marcum LLP is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***") with respect to the Company.

(viii) Financial Statements; Non-GAAP Financial Measures. The financial statements included in the Registration Statement, the General Disclosure Package and the Prospectus, together with the related schedules and notes, present fairly, in all material respects, the financial position of the Company and its consolidated subsidiaries at the dates indicated and its results of operations, stockholders' equity and cash flows for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("***GAAP***") applied on a consistent basis throughout the periods involved (except as set forth therein and except for any preparation of non-GAAP measures). The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included or incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus present fairly and accurately, in all material respects, the information shown therein and have been compiled on a basis consistent, in all material respects, with that of the books and records of the Company and the audited financial statements included or incorporated by reference therein. Except as included therein, no historical or *pro forma* financial statements or supporting schedules are required to be included in the Registration Statement, the General Disclosure Package or the Prospectus under the 1933 Act or the 1933 Act Regulations. The Company and its subsidiaries do not have any material liabilities or obligations, direct or contingent

(including any off-balance sheet obligations), not described in the Registration Statement (excluding the exhibits thereto) and the Prospectus. All disclosures contained in the Registration Statement, the General Disclosure Package or the Prospectus regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the 1934 Act, and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable.

(ix) No Material Adverse Change in Business. Except as otherwise stated therein, since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus (including the documents incorporated or deemed to be incorporated by reference therein), (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries, taken as a whole, whether or not arising in the ordinary course of business (a "***Material Adverse Effect***"), (B) there have been no transactions entered into by the Company, other than those in the ordinary course of business, which are material to the Company, (C) no obligation or liability, direct or contingent (including any off-balance sheet obligations), has been incurred by the Company or its subsidiaries, which is material to the Company and its subsidiaries taken as a whole, (D) there has not been any material change in the capital stock or outstanding long-term indebtedness of the Company or its subsidiaries, and (E) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(x) Good Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has requisite corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus and to enter into and perform its obligations under this Agreement; and the Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not reasonably be expected to have a Material Adverse Effect.

(xi) Subsidiaries. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Schedule D hereto (each, a "***subsidiary***," and collectively, the "***subsidiaries***"). Each of the Company's subsidiaries has been duly organized and is validly existing as a corporation or other entity in good standing (or the foreign equivalent thereof) under the laws of its jurisdiction of organization, with requisite power and authority to own or lease its properties and conduct its business as described in the Registration Statement, the General Disclosure Package and the Prospectus. Each of the Company's subsidiaries is duly qualified to transact business in all jurisdictions in which the conduct of its business requires such qualification, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. All of the issued shares of capital stock or other ownership interest of each of the subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens, encumbrances, equities or claims as would not reasonably be expected to have a Material Adverse Effect.

(xii) Capitalization. The Company has an authorized capitalization as set forth in the Registration Statement, the General Disclosure Package and the Prospectus as of the date or dates set forth therein. The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company were issued in violation of the preemptive or other similar rights of any securityholder of the Company. Except as described in or expressly contemplated by the Registration Statement, the General Disclosure Package or the Prospectus, there are no outstanding rights (including, without limitation, pre-emptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest in the Company, or any contract, commitment, agreement, understanding or arrangement of any kind relating to the issuance of any capital stock of the Company, any such convertible or exchangeable securities or any such rights, warrants or options.

(xiii) Stock Options. With respect to the outstanding stock options (the "***Stock Options***") granted pursuant to the stock-based compensation plans of the Company (the "***Company Stock Plans***"), (i) each Stock Option intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "***Code***"), so qualified, (ii) each grant of a Stock Option was duly authorized no later than the date on which the grant of such Stock Option was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto, (iii) each such grant was made in accordance with the terms of the Company Stock Plans and all other applicable laws and regulatory rules or requirements, except where the failure to comply with such laws, regulatory rules or requirements would not reasonably be expected to have a Material Adverse Effect, and (iv) each such grant was properly accounted for in accordance with GAAP in the financial statements (including the related notes) of the Company included in the Registration Statement, the General Disclosure Package and the Prospectus, to the extent required under GAAP to be accounted for in such financial statements.

(xiv) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(xv) Authorization and Description of Securities. The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale to the Underwriters pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and non-assessable; and the issuance of the Securities is not subject to the preemptive or other similar rights of any securityholder of the Company. The capital stock of the Company conforms in all material respects to all statements relating thereto contained in the Registration Statement, the General Disclosure Package and the Prospectus. No holder of Securities will be subject to personal liability solely by reason of being such a holder.

(xvi) No Preferential Rights. Except for those rights that have been disclosed in the Registration Statement, the General Disclosure Package or the Prospectus and have been waived or satisfied, (A) no person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the 1933 Act, has the right, contractual or otherwise, to cause the Company to issue or sell to such person any Common Stock or shares of any other capital stock or other securities of the Company, (B) no person has any preemptive rights, resale rights, rights of first refusal, rights of co-sale, or any other rights (whether pursuant to a "poison pill" provision or otherwise) to purchase from the Company any Common Stock or shares of any other capital stock or other securities of the Company, (C) no person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Common Stock, and (D) no person has the right, contractual or otherwise, to require the Company to register under the 1933 Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement or the sale of the Common Stock as contemplated thereby or otherwise, which have not been waived with respect to the offering contemplated by this Agreement.

(xvii) Absence of Violations, Defaults and Conflicts. The Company and each of its subsidiaries is not (A) in violation of its charter or by-laws (or equivalent organizational and governing documents), (B) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or such subsidiary is a party or by which it may be bound or to which any of the properties or assets of the Company or such subsidiary is subject (collectively, "***Agreements and Instruments***"), except for such defaults that would not reasonably be expected to have a Material Adverse Effect, or (C) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or such subsidiary or any of their respective properties, assets or operations (each, a "***Governmental Entity***"), except for such violations that would not reasonably be expected to have a Material Adverse Effect. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein and in the Registration Statement, the General Disclosure Package and the Prospectus (including the issuance and sale of the Securities and the use of the proceeds from the sale of the Securities as described therein under the caption "Use of Proceeds") and compliance by the Company with its obligations hereunder have been duly authorized by all necessary corporate action and do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or its subsidiaries pursuant to, the Agreements and

Instruments (except for such conflicts, breaches, defaults or Repayment Events or liens, charges or encumbrances that would not reasonably be expected to have a Material Adverse Effect), nor will such action result in any violation of (i) the provisions of the charter or by-laws (or equivalent organizational and governing documents) of the Company or such subsidiaries or (ii) any law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity, except with respect to clause (ii), such violations as would not reasonably be expected to have a Material Adverse Effect. As used herein, a "***Repayment Event***" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or its subsidiaries.

(xviii) Absence of Labor Dispute. No labor dispute with the employees of the Company or its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company has no knowledge of any existing or imminent labor dispute by the employees of any of its or its subsidiaries' principal suppliers, manufacturers, customers or contractors, in each case except as would not reasonably be expected to have a Material Adverse Effect.

(xix) Absence of Proceedings. Except as disclosed in the Registration Statement, the General Disclosure Package and the Prospectus, there is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity or other third party, or any arbitration or dispute resolution process with any Governmental Entity or other third party, now pending or, to the knowledge of the Company, threatened against the Company or its subsidiaries which would reasonably be expected to have a Material Adverse Effect, or which would reasonably be expected to materially and adversely affect the consummation of the transactions contemplated in this Agreement or the performance by the Company of its obligations hereunder.

(xx) Accuracy of Exhibits. There are no contracts or documents which are required to be described in the Registration Statement, the General Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement which have not been so described and filed as required.

(xxi) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity is necessary or required for the performance by the Company of its obligations hereunder, in connection with the offering, issuance or sale of the Securities hereunder or the consummation of the transactions contemplated by this Agreement, except such as have been already obtained or as may be required under the 1933 Act, the 1933 Act Regulations, the 1934 Act, the 1934 Act Regulations, the rules of The Nasdaq Stock Market LLC ("***Nasdaq***"), state securities laws or the rules of the Financial Industry Regulatory Authority, Inc. ("***FINRA***").

(xxii) Possession of Licenses and Permits. The Company and each of its subsidiaries possesses such permits, licenses, certificates, registrations, orders, approvals, clearances, consents and other authorizations (collectively, "***Governmental Licenses***") issued by the appropriate Governmental Entities necessary for the ownership or lease of their respective properties or to conduct the business now operated by them in all material respects, including, without limitation, all such Governmental Licenses required by the United States Food and Drug Administration (the "***FDA***"), the United States Drug Enforcement Administration or any other foreign, federal, state, provincial, court or local government or regulatory authorities including self-regulatory organizations engaged in the regulation of clinical trials, pharmaceuticals, biologics or biohazardous substances or materials), and all such Governmental Licenses are valid and in full force and effect. The Company and each of its subsidiaries is in compliance in all material respects with the terms and conditions of all Governmental Licenses and, to the Company's knowledge, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or result in any other material impairment of the rights of the holder of any Governmental License, except where the failure so to comply would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries (a) has received notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any U.S. or non-U.S. Governmental Entity or third party alleging that any product, operation or activity is in violation of any Health Care Laws (as defined below) or the terms and conditions of any Governmental License and has no knowledge that any such Governmental Entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (b) has received notice that the FDA or any other Governmental Entity has taken, is taking or intends to take any form of regulatory action involving the Company or such subsidiary, including, without limitation, any FDA Form 483, warning letter, untitled letter or similar correspondence or notice alleging or asserting noncompliance with any Health Care Laws or comparable foreign laws, and has no knowledge that the FDA or any other Governmental Entity is considering such action; and (c) has, either voluntarily or involuntarily, initiated, conducted, or issued or caused to be initiated, conducted or issued any notice or action relating to any alleged product defect or violation of Health Care Laws and, to the Company's knowledge, no third party has initiated or conducted any such notice or action relating to any of the Company's or such subsidiary's products in development; and (d) is a party to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, or similar agreements, or has any reporting obligations pursuant to any such agreement, plan or correction or other remedial measure entered into with any Governmental Entity.

(xxiii) Compliance with Health Care Laws. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and each of its subsidiaries is conducting its business in compliance with all applicable health care laws, rules, and regulations of each jurisdiction in which it conducts its business (collectively, the "***Health Care Laws***"), including, without limitation, (A) the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq.), and the rules and regulations promulgated thereunder (as amended, collectively, the "***FFDCA***"), (B) all applicable federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the Stark Law (42 U.S.C. §1395nn), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations

promulgated pursuant to such statutes, (C) the Health Insurance Portability and Accountability Act of 1996 (18 U.S.C. §§669, 1035, 1347 and 1518; 42 U.S.C. §1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations promulgated thereunder, (D) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. §1395w-101 et seq.) and the regulations promulgated thereunder, (E) the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act of 2010, (F) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder, and (G) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder, each of such applicable laws, rules and regulations as may be amended from time to time.

(xxiv) Regulatory Filings. Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, neither the Company nor any of its subsidiaries has failed to file with the applicable Governmental Entities (including, without limitation, the FDA, or any foreign, federal, state, provincial or local Governmental Entity performing functions similar to those performed by the FDA) any required filing, declaration, listing, registration, report or submission, except for such failures that, individually or in the aggregate, would not have a Material Adverse Effect; except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, all such filings, declarations, listings, registrations, reports or submissions were in compliance with applicable laws when filed and no deficiencies have been asserted by any applicable regulatory authority with respect to any such filings, declarations, listings, registrations, reports or submissions, except for any deficiencies that, individually or in the aggregate, would not have a Material Adverse Effect.

(xxv) Clinical Studies. The clinical, pre-clinical and other studies and tests conducted by or on behalf of the Company or its subsidiaries or in which the Company or its subsidiaries or their respective product candidates have participated, were and, if still pending, are being conducted in all material respects in accordance with experimental protocols, procedures and controls and with all applicable local, state, federal and foreign laws, rules, regulations and guidances, including, without limitation, the FFDCA. None of the descriptions of the tests and preclinical and clinical studies, conducted by or on behalf of the Company contained in the Registration Statement, the General Disclosure Package or the Prospectus contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Company is not aware of any studies, tests or trials the results of which the Company believes reasonably call into question the study, test or trial results described or referred to in the Registration Statement, the General Disclosure Package and the Prospectus when viewed in the context in which such results are described and the clinical state of development. Except to the extent disclosed in the Registration Statement, the General Disclosure Package and the Prospectus or as would not reasonably be expected to have a Material Adverse Effect, no investigational device exemption filed by or on behalf of the Company or its subsidiaries with the FDA or a comparable foreign Governmental Entity has been terminated or suspended by the FDA or any other Governmental Entity, and neither the FDA nor any other Governmental Entity has commenced, or, to the knowledge of the Company, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate or suspend any ongoing studies, tests or preclinical or clinical trials or investigations conducted or proposed to be conducted by or on behalf of the Company or its subsidiaries.

(xxvi) FFDCA. As to each product subject to the jurisdiction of the FFDCA that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its subsidiaries (each such product, a "***Product***"), such Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FFDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. There is no pending, completed or threatened action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its subsidiaries, and none of the Company or any of its subsidiaries has received any written notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Product, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its subsidiaries, (iv) enjoins production at any facility of the Company or any of its subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its subsidiaries, in each case that would reasonably be expected to have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(xxvii) Fraud and Abuse. The Company and each of its subsidiaries is in compliance with all applicable laws, regulations and statutes in the jurisdictions in which it carries on business except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. The Company has not received a notice of non-compliance and, to the Company's knowledge, there is no pending change or contemplated change to any such applicable law or regulation or governmental position, except where such failure to be in compliance or such pending change would not reasonably be expected to have a Material Adverse Effect. Neither the Company, its subsidiaries nor, to the knowledge of the Company, any of their respective officers, directors or employees has been convicted of any crime or engaged in any conduct that

could result in a debarment or exclusion (A) under 21 U.S.C. Section 335a, or (B) any similar applicable law. Neither the Company, its subsidiaries nor their respective officers, directors or employees have been or are currently excluded from participation in the U.S. Medicare and Medicaid programs or any other state or federal health care program except as would not reasonably be expected to have a Material Adverse Effect. As of the date hereof, except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, no claims, actions, proceedings or investigations that would reasonably be expected to result in such a debarment or exclusion are pending against the Company, its subsidiaries or, to the knowledge of the Company, any of their respective officers, directors or employees, or, to the knowledge of the Company, threatened against the Company, its subsidiaries or any of their respective officers, directors or employees.

(xxviii) Title to Property. The Company and each of its subsidiaries has good and marketable title in fee simple to all real property owned by it and good title or valid leases to all personal property owned by it, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances (except for customary easements and rights of way) of any kind except such as (A) are described in the Registration Statement, the General Disclosure Package or the Prospectus or (B) do not, singly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or such subsidiary; and all of the leases and subleases material to the business of the Company and its subsidiaries and under which the Company or a subsidiary holds properties described in the Registration Statement, the General Disclosure Package or the Prospectus, are in full force and effect, and neither the Company not any of its subsidiaries has received any written notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Company or such subsidiaries under any of the leases or subleases mentioned above, or affecting or questioning the rights of the Company or its subsidiaries to the continued possession of the leased or subleased premises under any such lease or sublease. None of the Company or its subsidiaries has received from any Governmental Entities any notice of any condemnation of, or zoning change affecting, the properties of the Company and its subsidiaries, and the Company knows of no such condemnation or zoning change which is threatened, except for such that would not reasonably be expected to interfere in any material respect with the use made and proposed to be made of such property by the Company and its subsidiaries or otherwise have a Material Adverse Effect, individually or in the aggregate.

(xxix) Possession of Intellectual Property. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, the Company and its subsidiaries own, possess, license or have other rights to use all foreign and domestic patents, patent applications, trademarks and service marks, trademark and service mark applications and registrations, trade names, copyrights, licenses, inventions, trade secrets, technology, Internet domain names, know-how and other intellectual property (collectively, the “Intellectual Property”), necessary for the conduct of their respective businesses as now conducted except to the extent that the failure to own, possess, license or otherwise hold adequate rights to use such Intellectual Property would not, individually or in the aggregate, have a Material Adverse Effect. Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus (i) the

Company has not received any notice of infringement of or conflict with asserted rights of third parties with respect to any such Intellectual Property owned by the Company and its subsidiaries; (ii) to the Company's knowledge, there is no infringement by third parties of any such Intellectual Property; (iii) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's and its subsidiaries' rights in or to any such Intellectual Property, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property; (v) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company and its subsidiaries infringe or otherwise violate any patent, trademark, copyright, trade secret or other proprietary rights of others; (vi) to the Company's knowledge, there is no third-party U.S. patent or published U.S. patent application which contains claims for which an Interference Proceeding (as defined in 35 U.S.C. § 135) has been commenced against any patent or patent application described in the Prospectus as being owned by or licensed to the Company; and (vii) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or such subsidiary, and all such agreements are in full force and effect, except, in the case of any of clauses (i)-(vii) above, for any such infringement by third parties or any such pending or threatened suit, action, proceeding or claim as would not, individually or in the aggregate, result in a Material Adverse Effect.

(xxx) Environmental Laws. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus or would not reasonably be expected to have a Material Adverse Effect, (A) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products, asbestos-containing materials or mold (collectively, "***Hazardous Materials***") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "***Environmental Laws***"), (B) the Company and each of its subsidiaries has all material permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance in all material respects with their requirements, (C) there are no pending or, to the knowledge of the Company, threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its subsidiaries and (D) to the knowledge of the Company, there are no existing events, conditions or facts that would reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or Governmental Entity, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws.

(xxxi) Disclosure Controls. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, the Company maintains an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the 1934 Act) that complies in all material respects with the requirements of the 1934 Act and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(xxxii) Accounting Controls. Except as described in the Registration Statement, the General Disclosure Package or the Prospectus, the Company and each of its subsidiaries maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 of the 1934 Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and (E) the interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement, the General Disclosure Package and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto. The Company's internal control over financial reporting is effective and except as described in the Registration Statement, the General Disclosure Package or the Prospectus, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company has designed its disclosure controls and procedures to provide reasonable assurance that material information relating to the Company and each of its subsidiaries is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "***Evaluation Date***"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date and the disclosure controls and procedures were effective. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls.

(xxxiii) Payment of Taxes. All United States federal income tax returns of the Company and each of its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided other than as would not reasonably be expected to have a Material Adverse Effect. The Company and each of its subsidiaries has filed all other tax returns that are required to have been filed by them pursuant to applicable foreign, state, local or other law except insofar as the failure to file such returns would not reasonably be expected to have a Material Adverse Effect, and has paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company or such subsidiary, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company, other than as would not reasonably be expected to have a Material Adverse Effect. Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, the charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are believed to be adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined, except to the extent of any inadequacy that would not reasonably be expected to have a Material Adverse Effect.

(xxxiv) Insurance. The Company and each of its subsidiaries carries or is entitled to the benefits of insurance, with reputable insurers, in such amounts and covering such risks as is reasonably prudent and customary in the businesses in which it is engaged, and all such insurance is in full force and effect. The Company has no reason to believe that it will not be able (A) to renew its existing insurance coverage as and when such policies expire or (B) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to have a Material Adverse Effect. The Company has not been denied the issuance of any material insurance policies which it has sought or for which it has applied in the prior three years, except for any applications still pending.

(xxxv) Investment Company Act. Neither the Company nor any of its subsidiaries is required, and upon the issuance and sale of the Securities as herein contemplated and the application of the net proceeds therefrom as described in the Registration Statement, the General Disclosure Package and the Prospectus will not be required, to register as an “investment company” under the Investment Company Act of 1940, as amended.

(xxxvi) Broker/Dealer Relationships. Neither the Company nor any of its subsidiaries (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the 1933 Act or (ii) directly or indirectly through one or more intermediaries, controls or is a “person associated with a member” or “associated person of a member” (within the meaning set forth in the FINRA Manual).

(xxxvii) No Reliance. The Company has not relied upon the Underwriters or legal counsel for the Underwriters for any legal, tax or accounting advice in connection with the offering of the Common Stock contemplated by this Agreement.

(xxxviii) Absence of Manipulation. Neither the Company nor, to the Company's knowledge, any affiliate of the Company has taken, nor will the Company or, to the Company's knowledge, any affiliate take, directly or indirectly, any action which is designed, or would reasonably be expected, to cause or result in, or which constitutes, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xxxix) No Integration. The Company has not sold or issued any securities that would be integrated with the offering of the Common Stock contemplated by this Agreement pursuant to the Securities Act, the rules and regulations thereunder or the interpretations thereof by the Commission.

(xl) ERISA. Other than as would not reasonably be expected to have a Material Adverse Effect or except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, (i) no "employee benefit plan" (as defined in Section 3(3) of ERISA) for which the Company would have any liability (whether absolute or contingent) (each a "***Plan***") has experienced a failure to satisfy the "minimum funding standard" (as defined in Section 302 of the Employee Retirement Income Security Act of 1974, as amended, ("***ERISA***") or Section 412 of the Code, or other event of the kind described in Section 4043(c) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) or any similar minimum funding failure event with respect to any Plan (other than a Plan that under applicable law is required to be funded by a trust or funding vehicle maintained exclusively by a Governmental Entity) that is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens (ii) each Plan is in compliance with applicable law, including, without limitation, ERISA and the Code; (iii) other than in the ordinary course, neither the Company nor any trade or business, whether or not incorporated, that, together with the Company, would be deemed to be a "single employer" within the meaning of Section 4001(b)(1) of ERISA or Section 414(b), 414(c), 414(m) or 414(o) of the Code has incurred or reasonably expects to incur any liability with respect to any Plan (A) under Title IV of ERISA or (B) in respect of any post-employment health, medical or life insurance benefits for former, current or future employees of the Company, except as required to avoid excise tax under Section 4980B of the Code and except, on a case by case basis, limited extensions of health insurance benefits (for a period of no more than 18 months post-employment) to former employees receiving severance payments from the Company; and (iv) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would reasonably be expected to cause the loss of such qualification. The Company is not, nor at any time during the last three years has the Company been, a

party to any collective bargaining agreement or other labor agreement with respect to employees of the Company. There are no pending, or, to the Company's knowledge, threatened, activities or proceedings by any labor union or similar entity to organize any employees of the Company. No labor dispute with, or labor strike, work stoppage or other material labor disturbance by, the employees of the Company exists or to the Company's knowledge is imminent.

(xli) Foreign Corrupt Practices Act. (i) Neither the Company nor the subsidiaries, nor, to the Company's knowledge, any director, officer, or employee of the Company or any subsidiary nor, to the Company's knowledge, any agent, affiliate, or other person acting on behalf of the Company or any subsidiary has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of applicable law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any applicable law or of the character required to be disclosed in the Prospectus; (ii) no relationship, direct or indirect, exists between or among the Company or any subsidiary or any affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or any subsidiary, on the other hand, that is required by the 1933 Act to be described in the Registration Statement and the Prospectus that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company or any subsidiary or any affiliate of them, on the one hand, and the directors, officers, or stockholders of the Company or any subsidiary, on the other hand, that is required by the rules of FINRA to be described in the Registration Statement and the Prospectus that is not so described; (iv) except as described in the Registration Statement, the General Disclosure Package or the Prospectus, there are no material outstanding loans or advances or material guarantees of indebtedness by the Company or any subsidiary to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; (v) the Company has not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company or any subsidiary to alter the customer's or supplier's level or type of business with the Company or any subsidiary or (B) a trade journalist or publication to write or publish favorable information about the Company or any subsidiary or any of their respective products or services; and (vi) neither the Company nor any subsidiary nor, to the Company's knowledge, any director, officer, or employee of the Company or any subsidiary nor, to the Company's knowledge, any agent, affiliate, or other person acting on behalf of the Company or any subsidiary has (A) violated or is in violation of any applicable provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-bribery or anti-corruption law (collectively, "***Anti-Corruption Laws***"), (B) promised, offered, provided, attempted to provide, or authorized the provision of anything of value, directly or indirectly, to any person for the purpose of obtaining or retaining business, influencing any act or decision of the recipient, or securing any improper advantage; or (C) made any payment of funds of the Company or any subsidiary or received or retained any funds in violation of any Anti-Corruption Laws.

(xlii) Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance in all material respects with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "***Money Laundering Laws***"); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xliii) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company and/or any of its affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an "***Off-Balance Sheet Transaction***") that could reasonably be expected to affect materially the Company's liquidity or the availability of or requirements for its capital resources, including those Off-Balance Sheet Transactions described in the Commission's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Prospectus which have not been described as required.

(xliv) OFAC. Neither the Company, any of its subsidiaries nor, to the knowledge of the Company, its directors, officers, agents, employees, affiliates or representatives (each, a "***Person***") are currently the subject of sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("***OFAC***"), the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority applicable to the Company or such subsidiary, including, without limitation, designation on OFAC's Specially Designated Nationals and Blocked Persons List or OFAC's Foreign Sanctions Evaders List (collectively, "***Sanctions***"), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions; and the Company does not intend to, directly or indirectly, use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions.

(xlv) Lending Relationship. Except as disclosed in the Registration Statement, the General Disclosure Package or the Prospectus, the Company (A) does not have any material lending or other relationship with any bank or lending affiliate of any Underwriter and (B) does not intend to use any of the proceeds from the sale of the Securities to repay any outstanding debt owed to any affiliate of any Underwriter.

(xlvi) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement, the General Disclosure Package or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(xlvii) Accuracy of Descriptions. The statements set forth in the Registration Statement, the General Disclosure Package and the Prospectus under the caption "Description of Capital Stock," insofar as they purport to constitute a summary of the terms of the Common Stock, are accurate, complete and fair summaries.

(xlviii) Stock Exchange Listing. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the 1934 Act and is listed on Nasdaq under the trading symbol "DCTH"; the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the 1934 Act or delisting the Common Stock from Nasdaq; the Company has not received any notice that it is out of compliance with the listing or maintenance requirements of Nasdaq and the Company is, and will continue to be, in material compliance with all such listing and maintenance requirements; and the Company has not received any notification that the Commission or Nasdaq is contemplating terminating the registration of the Common Stock under the 1934 Act or delisting the Common Stock from Nasdaq.

(xlix) Maintenance of Rating. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Effect or any development that would reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Underwriters (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Common Stock on the terms and in the manner contemplated in the Prospectus.

(l) Related Party Transactions. There are no business relationships or related-party transactions involving the Company, any of its subsidiaries or any other person required to be described in the Registration Statement, any preliminary prospectus, the Prospectus and the General Disclosure Package which have not been described as required. The General Disclosure Package contains in all material respects the same description of the matters set forth in the preceding sentence contained in the Prospectus.

(li) Brokers. Except for the underwriting discounts, commissions and fees payable to the Underwriters and other parties as described in the Registration Statement, the General Disclosure Package or the Prospectus, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(lii) No Stabilization. The Company has not taken, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(liii) Margin Rules. The application of the proceeds received by the Company from the issuance, sale and delivery of the Securities as described in the Registration Statement, the General Disclosure Package and the Prospectus will not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(liv) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act) contained in the Registration Statement, the General Disclosure Package or the Prospectus has been made or reaffirmed by the Company without a reasonable basis or has been disclosed by the Company other than in good faith.

(lv) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provision of the Sarbanes-Oxley Act and the rules and regulations promulgated in connection therewith, including Section 402 related to loans. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(lvi) FINRA Affiliations. There are no affiliations or associations between any member of FINRA and any of the Company's officers, directors or, to the Company's knowledge, 5% or greater securityholders.

(lvii) Cyber Security; Data Protection. The Company's information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, "**IT Systems**") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company as currently conducted, and to the knowledge of the Company are free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company has implemented and maintained or caused to be implemented and maintained commercially reasonable controls, policies, procedures, and safeguards to maintain and protect its material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and

data (including all personal, personally identifiable, sensitive, confidential or regulated data ("**Personal Data**")) used in connection with its businesses, and there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company is presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification. The Company has taken all necessary actions to comply with the European Union General Data Protection Regulation and all other applicable laws and regulations with respect to Personal Data that have been announced as of the date hereof as becoming effective within 12 months after the date hereof, and for which any non-compliance with same would be reasonably likely to create a material liability.

(b) Officer's Certificates. Any certificate signed by any officer of the Company delivered to the Representatives or to counsel for the Underwriters shall be deemed a representation and warranty by the Company (and not by such officer in his or her personal capacity) to each Underwriter as to the matters covered thereby.

Section 2. Purchase of the Securities by the Underwriters.

(a) ***Initial Securities***. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Company, at the price per share set forth in Schedule A hereto, that number of Initial Securities set forth in Schedule A hereto opposite the name of such Underwriter, plus any additional number of Initial Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 10 hereof.

(b) ***Option Securities***. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 219,004 shares of Common Stock at the price per share set forth in Schedule A hereto, less an amount per share equal to any dividends or distributions declared by the Company and payable on the Initial Securities but not payable on the Option Securities. The option hereby granted will expire 30 days after the date hereof and may be exercised in whole or in part at any time upon notice by the Representatives to the Company setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and date of delivery (a "***Date of Delivery***") shall be determined by the Representatives, but shall not be later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule A hereto opposite the name of such Underwriter bears to the total number of Initial Securities, subject, in each case, to such adjustments as the Representatives, in their sole discretion shall make to eliminate any sales or purchases of fractional shares.

(c) ***Payment***. Payment of the purchase price for, and delivery of, the Initial Securities shall be made at the offices of Goodwin Procter LLP, The New York Times Building, 620 8th Avenue, New York, NY 10018, or at such other place as shall be agreed upon by the Representatives and the Company, at 10:00 A.M. (New York City time) on December 11, 2020 (unless postponed in accordance with the provisions of Section 10 hereof), or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Company (such time and date of payment and delivery being herein called "***Closing Time***"). Delivery of the Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives and the Company, on each Date of Delivery as specified in the notice from the Representatives to the Company.

Payment shall be made to the Company by wire transfer of immediately available funds to bank accounts designated by the Company against delivery to the Representatives for the respective accounts of the Underwriters of the Securities to be purchased by them. It is understood that each Underwriter has authorized the Representatives, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Initial Securities and the Option Securities, if any, which it has agreed to purchase. The Representatives, individually and not as representatives of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Initial Securities or the Option Securities, if any, to be purchased by any Underwriter whose funds have not been received by the Closing Time or the relevant Date of Delivery, as the case may be, but such payment shall not relieve such Underwriter from its obligations hereunder.

(d) ***Denominations; Registration***. The Initial Securities and the Option Securities, if any, shall be in such denominations and registered in such names as the Representatives may request in writing at least one full business day before the Closing Time or the relevant Date of Delivery, as the case may be.

Section 3. Covenants of the Company. The Company covenants with each Underwriter as follows:

(a) ***Compliance with Securities Regulations and Commission Requests***. The Company, subject to Section 3(b) hereof, will comply with the requirements of Rule 430B, and will notify the Representatives promptly, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall have been filed or been declared effective or any amendment or supplement to the Prospectus, any Issuer Free Writing Prospectus shall have been filed or distributed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus, including any document incorporated by reference

therein, or for additional information, including, but not limited to, any request for information concerning any oral or written communication with potential investors and undertaken in reliance on Section 5(d) of the Securities Act, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment or of any order preventing or suspending the use of any preliminary prospectus, the Prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes or of any examination pursuant to Section 8(d) or 8(e) of the 1933 Act concerning the Registration Statement, (v) of the occurrence of any event or development at any time when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172 of the 1933 Act Regulations ("***Rule 172***"), would be) required by the 1933 Act to be delivered in connection with sales of the Securities (the "***Prospectus Delivery Period***") as a result of which the Prospectus, the General Disclosure Package, any Issuer Free Writing Prospectus as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Prospectus, the General Disclosure Package, any such Issuer Free Writing Prospectus is delivered to a purchaser, not misleading; and (vi) if the Company becomes the subject of a proceeding under Section 8A of the 1933 Act in connection with the offering of the Securities. The Company will effect all filings required under Rule 424(b), in the manner and within the time period required by Rule 424(b) (without reliance on Rule 424(b)(8)), and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Company will use commercially reasonable efforts to prevent the issuance of any such order suspending the effectiveness of the Registration Statement, preventing or suspending the use of any preliminary prospectus, the Prospectus or suspending any such qualification of the Securities and, if any such order is issued, will use commercially reasonable efforts to obtain as soon as possible the withdrawal thereof.

(b) ***Continued Compliance with Securities Laws***. The Company will comply with the 1933 Act and the 1933 Act Regulations during the Prospectus Delivery Period so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Registration Statement, the General Disclosure Package and the Prospectus. If at any time during the Prospectus Delivery Period any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to (i) amend the Registration Statement in order that the Registration Statement will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) amend or supplement the General Disclosure Package or the Prospectus in order that the General Disclosure Package or the Prospectus, as the case may be, will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser or (iii) amend the Registration Statement or amend or supplement the General Disclosure Package or the Prospectus, as the case may be, in order to comply with the requirements of the 1933 Act or the 1933 Act Regulations, the Company will promptly (A) give the Representatives notice of such event, (B) prepare any amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement, the General Disclosure Package or the Prospectus comply with such requirements and, a reasonable amount of time prior to any

proposed filing or use, furnish the Representatives with copies of any such amendment or supplement and (C) file with the Commission any such amendment or supplement; provided that the Company shall not file or use any such amendment or supplement to which the Representatives or counsel for the Underwriters shall reasonably object unless the Company reasonably believes that the failure to file or use such amendment or supplement would constitute a violation of law or subject it to liability. The Company will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request. The Company has given the Representatives notice of any filings made pursuant to the 1934 Act or 1934 Act Regulations within 48 hours prior to the Applicable Time; the Company will give the Representatives notice of its intention to make any such filing from the Applicable Time to the Closing Time and will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object unless the Company reasonably believes that the failure to file or use such amendment or supplement would constitute a violation of law or subject it to liability.

(c) ***Delivery of Registration Statements***. The Company has furnished or will deliver to the Representatives and to counsel for the Underwriters, without charge, conformed copies of the Registration Statement as originally filed and each amendment thereto (including exhibits filed therewith). The copies of the Registration Statement and each amendment thereto furnished to the Underwriters are identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) ***Delivery of Prospectuses***. The Company has delivered to each Underwriter, without charge, as many copies of each preliminary prospectus as the Representatives may reasonably request on behalf of the Underwriters, and the Company hereby consents to the use of such copies for purposes permitted by the 1933 Act. The Company will furnish to each Underwriter, without charge, during the period when a prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, such number of copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) ***Blue Sky Qualifications***. The Company will use its commercially reasonable efforts, in cooperation with the Underwriters, to qualify the Securities for offering and sale under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Representatives may designate and to maintain such qualifications in effect so long as required to complete the distribution of the Securities; provided, however, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(f) ***Rule 158***. The Company will timely file such reports pursuant to the 1934 Act as are necessary in order to make generally available to its securityholders as soon as practicable an earnings statement for the purposes of, and to provide to the Underwriters the benefits contemplated by, the last paragraph of Section 11(a) of the 1933 Act.

(g) ***Use of Proceeds***. The Company will use the net proceeds received by it from the sale of the Securities in the manner specified in the Prospectus under "Use of Proceeds."

(h) ***Listing***. The Company will use its commercially reasonable efforts to cause the Securities to be listed on Nasdaq, subject to notice of issuance, and to maintain the listing of the Common Stock (including the Securities) on Nasdaq.

(i) ***Restriction on Sale of Securities***. During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of the Representatives, (i) directly or indirectly, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise transfer or dispose of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock or file any registration statement under the 1933 Act with respect to any of the foregoing or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of shares of Common Stock, whether any such swap or transaction described in clause (i) or (ii) above is to be settled by delivery of shares of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Securities to be sold hereunder, (B) any shares of Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date hereof and referred to in the Registration Statement, the General Disclosure Package or the Prospectus, (C) shares of Common Stock issued by the Company as a result of anti-dilution provisions in the Company's amended and restated certificate of incorporation, as amended, as then in effect, or (D) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to employee benefit plans of the Company referred to in the Registration Statement, the General Disclosure Package or the Prospectus or otherwise to prospective employees; provided that, in each case, if required to do so by the terms of this Agreement, the recipient of such shares of Common Stock or other securities has executed a Lock-Up Agreement in the form of Exhibit B.

(j) ***Reporting Requirements***. The Company, during the period when a Prospectus relating to the Securities is (or, but for the exception afforded by Rule 172, would be) required to be delivered under the 1933 Act, will file all documents required to be filed with the Commission pursuant to the 1934 Act within the time periods required by the 1934 Act and 1934 Act Regulations.

(k) ***Issuer Free Writing Prospectuses***. The Company agrees that, unless it obtains the prior written consent of the Representatives, it will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus," or a portion thereof, required to be filed by the Company with the Commission or retained by the Company under Rule 433; provided that the Representatives will be deemed to have consented to the Issuer Free Writing Prospectuses listed on Schedule B-2 hereto and any "road show that is a written communication" within the meaning of Rule 433(d)(8)(i) that has been reviewed by the Representatives. The Company represents that

it has treated or agrees that it will treat each such free writing prospectus consented to, or deemed consented to, by the Representatives as an "issuer free writing prospectus," as defined in Rule 433. The Company represents that it has complied and will comply with the applicable requirements of Rule 433 with respect thereto, including timely filing with the Commission where required, legending and record keeping. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted or would conflict with the information contained in the Registration Statement, any preliminary prospectus or the Prospectus or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

Section 4. Payment of Expenses.

(a) ***Expenses***. The Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of copies of each preliminary prospectus, each Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Underwriters to investors, (iii) the preparation, issuance and delivery of the Securities pursuant to this Agreement, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Underwriters or the sale of the Securities by the Underwriters, (iv) the fees and disbursements of the Company's counsel, accountants and other advisors, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of a blue sky survey and any supplement thereto, (vi) the fees and expenses of any transfer agent or registrar for the Securities, (vii) the reasonable out-of-pocket costs and expenses of the Company relating to investor presentations or any "road show" undertaken in connection with the marketing of the Securities, including without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged by the Company in connection with the road show presentations, travel and lodging expenses of the representatives and employees of the Company and any such consultants, (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review by, and clearance of the offering with, FINRA of the terms of the sale of the Securities, (ix) the fees and expenses incurred in connection with the listing of the Securities on Nasdaq, (x) the reasonable fees and disbursements of counsel to the Underwriters in an amount not to exceed $75,000 and (xi) the costs and expenses (including, without limitation, any damages or other amounts payable in connection with legal or contractual liability) associated with the reforming of any contracts for sale of the Securities made by the Underwriters caused by a breach of the representation contained in the third sentence of Section 1(a)(ii). It is understood and agreed that except as otherwise provided in this Section 4(a), the Underwriters shall pay all of their costs and expenses, including fees and disbursements of their counsel, stock transfer taxes payable on their resale of any of the Securities, travel and lodging costs and expenses of the Representatives related to the road show and any advertising expenses connected with any offers made.

(b) ***Termination of Agreement***. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 5, Section 9(a)(i), 9(a)(iii) or Section 11 hereof, the Company shall reimburse the Underwriters for their documented out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

Section 5. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder are subject to the accuracy of the representations and warranties of the Company contained herein or in certificates of any officer of the Company delivered pursuant to the provisions hereof, to the performance by the Company of the covenants and other obligations hereunder, and to the following further conditions:

(a) ***Effectiveness of Registration Statement; Rule 430B Information***. The Registration Statement, including any Rule 462(b) Registration Statement, has been declared effective and, at the Closing Time, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued under the 1933 Act, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to the Company's knowledge, contemplated; and the Company has complied with each request (if any) from the Commission for additional information to the reasonable satisfaction of counsel to the Company and counsel to the Underwriters. A prospectus containing the Rule 430B Information shall have been filed with the Commission in the manner and within the time frame required by Rule 424(b) without reliance on Rule 424(b)(8) or a post-effective amendment providing such information shall have been filed with, and declared effective by, the Commission in accordance with the requirements of Rule 430B.

(b) ***Opinion of Counsel for Company***. At the Closing Time, the Representatives shall have received the opinion and negative assurance statement, dated as of the Closing Time and relating to the Initial Securities, of McCarter & English, LLP, counsel for the Company, in the form and substance set forth in Exhibit A hereto.

(c) ***Opinion of Counsel for Underwriters***. At the Closing Time, the Representatives shall have received the opinion, dated the Closing Time, of Goodwin Procter LLP, counsel for the Underwriters, together with signed or reproduced copies of such letter for each of the other Underwriters, in form and substance reasonably satisfactory to the Representatives, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(d) ***Officers' Certificate***. At the Closing Time, there shall not have been, since the date hereof or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package or the Prospectus, any Material Adverse Effect, and the Representatives shall have received a certificate of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company, dated the Closing Time, to the effect that (i) there has been no such Material Adverse Effect, (ii)

the representations and warranties of the Company in this Agreement are true and correct with the same force and effect as though expressly made at and as of the Closing Time, (iii) the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time, and (iv) no stop order suspending the effectiveness of the Registration Statement under the 1933 Act has been issued, no order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued and no proceedings for any of those purposes have been instituted or are pending or, to their knowledge, contemplated.

(e) ***Accountant's Comfort Letter***. At the time of the execution of this Agreement, the Representatives shall have received from Marcum LLP a letter, dated such date, in form and substance satisfactory to the Representatives, together with signed or reproduced copies of such letter for each of the other Underwriters containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the General Disclosure Package and the Prospectus.

(f) ***Bring-down Comfort Letter***. At the Closing Time, the Representatives shall have received from Marcum LLP a letter, dated as of the Closing Time, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (e) of this Section 5, except that the specified date referred to shall be a date not more than three business days prior to the Closing Time.

(g) ***No Objection***. FINRA has confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements relating to the offering of the Securities.

(h) ***Lock-up Agreements***. At the date of this Agreement, the Representatives shall have received an agreement substantially in the form of Exhibit B hereto signed by the persons listed on Schedule C hereto.

(i) ***Conditions to Purchase of Option Securities***. In the event that the Underwriters exercise their option provided in Section 2(b) hereof to purchase all or any portion of the Option Securities, the representations and warranties of the Company contained herein and the statements in any certificates furnished by the Company hereunder shall be true and correct as of each Date of Delivery and, at the relevant Date of Delivery, the Representatives shall have received:

(i) Officers' Certificate. A certificate, dated such Date of Delivery, of the Chief Executive Officer or the President of the Company and of the chief financial or chief accounting officer of the Company confirming that the certificate delivered at the Closing Time pursuant to Section 5(e) hereof remains true and correct as of such Date of Delivery.

(ii) Opinion of Counsel for Company. If requested by the Representatives, the opinion and negative assurance statement of McCarter & English, LLP, counsel for the Company, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(b) hereof.

(iii) Opinion of Counsel for Underwriters. If requested by the Representatives, the opinion of Goodwin Procter LLP, counsel for the Underwriters, dated such Date of Delivery, relating to the Option Securities to be purchased on such Date of Delivery and otherwise to the same effect as the opinion required by Section 5(c) hereof.

(iv) Bring-down Comfort Letter. If requested by the Representatives, a letter from Marcum LLP, in form and substance satisfactory to the Representatives and dated such Date of Delivery, substantially in the same form and substance as the letter furnished to the Representatives pursuant to Section 5(e) hereof, except that the "specified date" in the letter furnished pursuant to this paragraph shall be a date not more than three business days prior to such Date of Delivery.

(v) Interim Principal Accounting Officer's Certificate. On such Date of Delivery, the Company shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of its interim principal accounting officer with respect to certain financial data contained in the Registration Statement, the General Disclosure Package and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to the Representatives.

(vi) Secretary's Certificate. On such Date of Delivery, the Company shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of the Secretary of the Company and attested to by an executive officer of the Company certifying as to (i) the Certificate of Incorporation of the Company, (ii) the By-laws of the Company, (iii) the resolutions of the Board of Directors of the Company and/or an authorized committee thereof authorizing the execution, delivery and performance of this Agreement and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement.

(j) ***Additional Documents***. At the Closing Time and at each Date of Delivery (if any), the Representatives and counsel for the Underwriters shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Securities as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of the Securities as herein contemplated shall be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters.

(k) ***Termination of Agreement***. If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement, or, in the case of any condition to the purchase of Option Securities on a Date of Delivery which is after the Closing Time, the obligations of the several Underwriters to purchase the relevant Option Securities, may

be terminated by the Representatives by notice to the Company at any time at or prior to the Closing Time or such Date of Delivery, as the case may be, and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof and except that Sections 1, 6, 7, 8, 15 and 16 shall survive any such termination and remain in full force and effect.

(l) ***Delivery of Prospectuses***. The Company shall have complied with the provisions of Section 3(d) hereof with respect to the furnishing of prospectuses on the business day next succeeding the date hereof.

(m) ***Approval of Listing***. At the Closing Time, the Securities shall have been approved for listing on Nasdaq, subject only to official notice of issuance.

(n) **Interim Principal Accounting Officer's *Certificate.*** On the date of this Agreement and at the Closing Time, the Company shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of its interim principal accounting officer with respect to certain financial data contained in the Registration Statement, the General Disclosure Package and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to the Representatives.

(o) ***Secretary's Certificate***. At the Closing Time, the Company shall have furnished to the Representatives a certificate, dated the Date of Delivery and addressed to the Underwriters, of the Secretary of the Company and attested to by an executive officer of the Company certifying as to (i) the Certificate of Incorporation of the Company, (ii) the By-laws of the Company, (iii) the resolutions of the Board of Directors of the Company and/or an authorized committee thereof authorizing the execution, delivery and performance of this Agreement and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement.

Section 6. Indemnification.

(a) ***Indemnification of Underwriters***. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates (as such term is defined in Rule 501(b) under the 1933 Act (each, an "***Affiliate***")), its selling agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430B Information, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) or (B) in any materials or information provided to investors by, or

with the prior written approval of, the Company in connection with the marketing of the offering of the Securities ("***Marketing Materials***"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission in any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package, the Prospectus or in any Marketing Materials of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided* that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Company;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of one counsel (in addition to any relevant local counsel) chosen by the Representatives), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, *however*, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in the Registration Statement (or any amendment thereto), including the Rule 430B Information, any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(b) ***Indemnification of Company, Directors and Officers***. Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430B Information, any preliminary prospectus, any Issuer Free Writing Prospectus, the General Disclosure Package or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Underwriter Information.

(c) ***Actions against Parties; Notification***. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability

hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 6(a) above, counsel to the indemnified parties shall be selected by the Representatives, and, in the case of parties indemnified pursuant to Section 6(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; *provided*, *however*, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any relevant local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 or Section 7 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) ***Settlement without Consent if Failure to Reimburse***. If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) hereof effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

Section 7. Contribution. If the indemnification provided for in Section 6 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discount received by the Underwriters, on the other hand, in each case as set forth on the cover of the Prospectus, bear to the aggregate public offering price of the Securities as set forth on the cover of the Prospectus.

The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 7 shall be deemed to include any reasonable legal or other expenses incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Securities underwritten by it and distributed to the public.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 7, each person, if any, who controls an Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and each Underwriter's Affiliates and selling agents shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company. The Underwriters' respective obligations to contribute pursuant to this Section 7 are several in proportion to the number of Initial Securities set forth opposite their respective names in Schedule A hereto and not joint.

Section 8. Representations, Warranties and Agreements to Survive. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company submitted pursuant hereto, shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of any Underwriter or its Affiliates or selling agents, any person controlling any Underwriter, its officers and directors, or any person controlling the Company and (ii) delivery of and payment for the Securities.

Section 9. Termination of Agreement.

(a) ***Termination***. The Representatives may terminate this Agreement, by notice to the Company, at any time at or prior to the Closing Time (i) if there has been, in the judgment of the Representatives, since the time of execution of this Agreement or since the respective dates as of which information is given in the Registration Statement, the General Disclosure Package and the Prospectus, a Material Adverse Effect, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable or inadvisable to proceed with the completion of the offering or to enforce contracts for the sale of the Securities, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or Nasdaq, or (iv) if trading generally on the New York Stock Exchange or on Nasdaq has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other Governmental Entity, or (v) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or with respect to Clearstream or Euroclear systems in Europe, or (vi) if a banking moratorium has been declared by either federal or New York authorities.

(b) ***Liabilities***. If this Agreement is terminated pursuant to this Section 9, such termination shall be without liability of any party to any other party except as provided in Section 4 hereof, and provided further that Sections 1, 6, 7, 8, 9(b), 15 and 16 shall survive such termination and remain in full force and effect.

Section 10. Default by One or More of the Underwriters. If one or more of the Underwriters shall fail at the Closing Time or a Date of Delivery to purchase the Securities which it or they are obligated to purchase under this Agreement (the "***Defaulted Securities***"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters reasonably satisfactory to the Company, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Securities to be purchased on such date, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities equals or exceeds 10% of the number of Securities to be purchased on such date, this Agreement or, with respect to any Date of Delivery which occurs after the Closing Time, the obligation of the Underwriters to purchase, and the Company to sell, the Option Securities to be purchased and sold on such Date of Delivery shall terminate without liability on the part of any non-defaulting Underwriter. Any termination of this Agreement pursuant to this Section 10 shall be without liability on the part of the Company, except that the Company will continue to be liable for the payment of expenses as set forth in Section 4 hereof and provided further that Sections 1, 6, 7, 8, 9(b), 15 and 16 shall survive such termination and remain in full force and effect.

No action taken pursuant to this Section 10 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement or, in the case of a Date of Delivery which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Company to sell the relevant Option Securities, as the case may be, either (i) the Representatives or (ii) the Company shall have the right to postpone the Closing Time or the relevant Date of Delivery, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement, the General Disclosure Package or the Prospectus or in any other documents or arrangements.

Section 11. Default by the Company. If the Company shall fail at the Closing Time or a Date of Delivery, as the case may be, to sell the number of Securities that it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any nondefaulting party; provided, however, that the provisions of Sections 1, 4, 6, 7, 8, 9(b), 15 and 16 shall remain in full force and effect. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

Section 12. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representatives c/o Canaccord Genuity LLC, 99 High Street, 12th floor, Boston, MA 02110, Attention: Syndicate Department and c/o Roth Capital Partners, LLC, 888 San Clemente Drive, Newport Beach, CA 92660, Attention: Syndicate Department; and notices to the Company shall be directed to it at Delcath Systems, Inc., 1633 Broadway, Suite 22C, New York, NY 10019, Attention: Chief Executive Officer.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

Section 13. No Advisory or Fiduciary Relationship. The Company acknowledges and agrees that (a) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the public offering price of the Securities and any related discounts and commissions, is an arm’s-length commercial transaction between the Company, on the one hand,

and the several Underwriters, on the other hand, (b) in connection with the offering of the Securities and the process leading thereto, each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company or its respective stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering of the Securities or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering of the Securities except the obligations expressly set forth in this Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering of the Securities and the Company has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

Section 14. Parties. This Agreement shall each inure to the benefit of and be binding upon the Underwriters, the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Underwriters, the Company and their respective successors and the controlling persons and officers and directors referred to in Sections 6 and 7 and their successors, heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Underwriters, the Company and their respective successors, and said controlling persons and officers and directors and their successors, heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Securities from any Underwriter shall be deemed to be a successor by reason merely of such purchase. In all dealings hereunder, the Representatives shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representatives.

Section 15. Recognition of the U.S. Special Resolution Regimes. In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States. In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 15, a "**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). "**Covered Entity**" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is

defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). "**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. "**U.S. Special Resolution Regime**" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Section 16. Trial by Jury. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters 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 Agreement or the transactions contemplated hereby.

Section 17. GOVERNING LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF, THE STATE OF NEW YORK WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

Section 18. TIME. TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME.

Section 19. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

Section 21. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

Section 22. Entire Agreement. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters with respect to the subject matter hereof.

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

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters and the Company in accordance with its terms.

Very truly yours,
DELCATH SYSTEMS, INC.

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

CONFIRMED AND ACCEPTED,
as of the date first above written:

CANACCORD GENUITY LLC

By: /s/ Eugene Rozelman
Name: Eugene Rozelman
Title: Manager Director
For itself and as Representative of the other Underwriters named in Schedule A hereto.

ROTH CAPITAL PARTNERS, LLC

By: /s/ Aaron M. Gurewitz
Name: Aaron M. Gurewitz
Title: Head of Equity Markets
For itself and as Representative of the other Underwriters named in Schedule A hereto.

Schedule A

Name of Underwriter	Number of Initial Securities
Canaccord Genuity LLC	905,217
Roth Capital Partners, LLC	554,810
Total	1,460,027

Price per share: $12.455

PRICING TERMS

Issuer: Delcath Systems, Inc. (Nasdaq: DCTH) (the “Company”)
Shares offered by the Company: 1,460,027
Shares offered by the Company included in Underwriters’ option to purchase additional shares: 219,004
Price to Public: $13.25

FREE WRITING PROSPECTUSES

None.

Schedule C

LIST OF PERSONS AND ENTITIES SUBJECT TO LOCK-UP

Gerard Michel
John Purpura
Christine Padula
Dr. Roger G. Stoll
John Sylvester
Elizabeth Czerepak
Steven Salamon
Gil Aharon

Subsidiaries

Delcath Holdings Limited*
Delcath Systems, B.V.
Delcath Systems GmbH
Delcath Systems Limited
Delcath Systems UK Limited*

* Subsidiary is inactive; dissolution in process.

Exhibit A

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
www.mccarter.com

December 11, 2020

Canaccord Genuity LLC
Roth Capital Partners, LLC
As Representatives of the several Underwriters

c/o Canaccord Genuity LLC
99 High Street, 12th Floor,
Boston, Massachusetts 02110

c/o Roth Capital Partners, LLC
888 San Clemente Drive
Newport Beach, California 92660

Re: Delcath Systems, Inc.

Ladies and Gentlemen:

Please be advised that this firm is counsel to Delcath Systems, Inc., a Delaware corporation (the "Company"). We have been requested to furnish you our opinion with respect to the issuance of 1,679,031 shares (the "Shares") of the Company's common stock, par value $0.01 per share (the "Common Stock") currently registered pursuant to the Registration Statement on Form S-3 (the "Registration Statement"), which was declared effective by the Securities and Exchange Commission on December 21, 2018 (File No. 333-227970).

The Shares are to be issued by the Company to Canaccord Genuity LLC and Roth Capital Partners, LLC (collectively, the "Underwriters"), pursuant to that certain Underwriting Agreement, dated December 9, 2020, between the Company and the Underwriters (the "Underwriting Agreement"). All terms not otherwise defined herein shall have the meanings ascribed to them in the Underwriting Agreement.

For purposes of this letter, we have examined (i) the Registration Statement, (ii) the Underwriting Agreement and (iii) the prospectus supplement, dated December 9, 2020 (the "Prospectus Supplement").

In our capacity as counsel to the Company in connection with the matters referred to above, we have also examined copies of the following: (i) the Amended and Restated Certificate of Incorporation of the Company, as amended, (ii) the Amended and Restated By-laws of the Company and (iii) records of certain of the Company's corporate proceedings as reflected in its minute books. We have also examined such other documents and records, instruments and certificates of public officials, officers and representatives of the Company, and have made such other investigations as we have deemed necessary or appropriate under the circumstances.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such documents. As to certain facts material to this opinion, we have relied upon oral or written statements and representations of officers and other representatives of the Company and public officials, and such other documents and information as we have deemed necessary or appropriate to enable us to render the opinions expressed below. We have not undertaken any independent investigation to determine the accuracy of any such facts.

Based upon, assuming and subject to the validity of the information provided to us and the representations set forth in the Registration Statement, the Prospectus Supplement and the Underwriting Agreement (and in this regard we have assumed that such information and representations given or dated earlier than this opinion letter have remained accurate from such earlier date to the date of this opinion letter), it is our opinion that:

1. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted (as described in the Registration Statement and the Prospectus Supplement).

2. The Underwriting Agreement has been duly and validly authorized, executed and delivered by the Company.

3. The Shares have been duly authorized and, when issued and paid for pursuant to the terms of the Underwriting Agreement, will be validly issued, fully paid and nonassessable and free of any preemptive rights arising by operation of the General Corporation Law of the State of Delaware (the "DGCL") or rights of first refusal or other similar rights to subscribe for the Shares pursuant to the Company's amended and restated certificate of incorporation, as amended, amended and restated bylaws or

the DGCL, or under any material agreement listed in the exhibit index to the Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2019 filed with the Commission on March 25, 2020 and any quarterly report on Form 10-Q or current report on Form 8-K of the Company subsequently filed with the Commission (each, a "Material Agreement").

4. The Registration Statement is currently effective under the Securities Act of 1933, as amended (the "Securities Act"), and no stop order suspending the effectiveness of the Registration Statement under the Securities Act has been issued and no proceedings for that purpose have been instituted or, to our knowledge, threatened. Any required filing of the Prospectus pursuant to Rule 424(b) under the Securities Act has been made in the manner and within the time required by Rule 424(b).

5. The Registration Statement and the Prospectus Supplement (other than the financial statements and schedules and other financial data included or incorporated by reference therein, as to which we express no opinion), complied as of their respective effective or filing dates in all material respects as to form with the requirements of the Securities Act and the rules and regulations of the Commission promulgated thereunder.

6. The Registration Statement, when it was filed with the Commission, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder.

7. The execution, delivery and performance by the Company of, and the compliance by the Company with the terms of, the Underwriting Agreement and the issuance, sale and delivery of the Shares pursuant to the Underwriting Agreement do not (a) conflict with or result in a violation of any provision of law, rule or regulation or any rule or regulation of any securities exchange applicable to the Company or of the amended and restated certificate of incorporation, as amended, or amended and restated bylaws of the Company, (b) conflict with, result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in or permit the termination or modification of, a Material Agreement, (c) conflict with or result in any breach or violation of or constitute a default under any order, writ, judgment or decree known to us to which the Company is a party or is subject, or (d) to our knowledge, result in the creation or imposition of any lien, claim or encumbrance on any of the assets or properties of the Company.

8. To our knowledge, except as set forth in the Company's filings with the Commission, there is (i) no claim, action, suit, proceeding, arbitration, investigation or inquiry, pending or threatened, before any Governmental Entity against the Company, or any of its officers, directors or employees (in connection with the discharge of their duties as officers, directors and employees), of the Company, or affecting any of its properties or assets and (ii) no indenture, contract, lease, mortgage, deed of trust, note agreement, loan or other agreement or instrument of a character required to be filed as an exhibit to the Registration Statement, which is not filed as required by the Securities Act and the rules thereunder.

9. In connection with the valid execution, delivery and performance by the Company of the Underwriting Agreement, or the offer, sale, issuance or delivery of the Shares or the consummation of the transactions contemplated thereby, no consent, license, permit, waiver, approval or authorization of, or designation, declaration, registration or filing with, any Governmental Entity is required, other than (a) registration pursuant to the Securities Act, (b) approval for listing of the Shares on Nasdaq and (c) review and no objection from FINRA with respect to the terms of the sale of the Shares.

10. The Company is not, and after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Prospectus Supplement will not be, required to register as an Investment Company within the meaning of the Investment Company Act of 1940, as amended.

11. The information included in the Registration Statement and the Prospectus Supplement under the caption "Description of Capital Stock," as such information has been revised and updated, to the extent that each of them constitutes matters of law, summaries of legal matters, documents referred to therein or legal conclusions, have been reviewed by us and fairly summarize the matters set forth therein in all material respects.

12. Except as set forth in the Registration Statement and the Prospectus Supplement, no holders of securities of the Company have rights to require the registration under the Securities Act of resales of such securities under any Material Agreement.

We are qualified to practice law in the State of New York and do not purport to be experts on any law other than the laws of the State of New York, the General Corporation Law of the State of Delaware and the Federal law of the United States. We express no opinion regarding any state securities laws or regulations. This opinion letter is limited to the specific legal matters expressly set forth herein and is limited to present statutes, regulations and administrative and judicial interpretations as of the date hereof. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or regulations.

This opinion is rendered solely for your benefit and may not be relied upon by any person or entity other than the addressee hereof. Without our prior written consent, except in a legal proceeding regarding the contents hereof, this opinion may not be quoted in whole or in part or otherwise referred to in any report or document furnished to any person or entity. This opinion is limited to the matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly so stated. We disclaim any requirement to update this opinion subsequent to the date hereof or to advise you of any change in any matter set forth herein.

Very truly yours,

McCARTER & ENGLISH, LLP

Exhibit B

LOCK-UP AGREEMENT

December ___, 2020

CANACCORD GENUITY LLC
ROTH CAPITAL PARTNERS, LLC

As Representatives of the Several Underwriters

c/o Canaccord Genuity LLC
99 High Street, 12th Floor
Boston, Massachusetts 02110

c/o Roth Capital Partners, LLC
888 San Clemente Drive
Newport Beach, California 92660

Ladies and Gentlemen:

The undersigned understands that Canaccord Genuity LLC ("Canaccord") and Roth Capital Partners, LLC ("Roth" and together with Canaccord, the "Representatives"), as representatives of the several underwriters (the "Underwriters"), propose to enter into an Underwriting Agreement (the "Underwriting Agreement") with Delcath Systems, Inc., a Delaware corporation (the "Company"), providing for the public offering (the "Public Offering") by the Underwriters of shares of the Company's common stock, par value $0.01 per share (the "Common Stock").

To induce the Underwriters to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final prospectus supplement relating to the Public Offering (the "Lock-Up Period"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) the sale of shares of Common Stock to the Underwriters pursuant to the Underwriting Agreement; (b) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering; (c) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift, by will or intestacy or to a family member, trust, family limited partnership or limited liability company for the benefit of the undersigned or a family member of the undersigned; (d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for the transfer of shares of Common Stock, *provided* that (i) such plan does not provide for the transfer of Common Stock during the Lock-Up Period and (ii) no public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan; and (e) transfers to Affiliates (as defined in the Underwriting Agreement); *provided* that in the case of any transfer or distribution pursuant to clauses (c) and (e), each donee, distributee or other transferee shall sign and deliver a lock-up letter substantially in the form of this letter agreement. In addition, the

undersigned agrees that, without the prior written consent of the Representatives, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

No provision in this letter agreement shall be deemed to restrict or prohibit the exercise or exchange by the undersigned of any option or warrant to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into Common Stock, *provided that* the undersigned does not transfer the Common Stock acquired on such exercise or exchange during the Lock-Up Period, unless otherwise permitted pursuant to the terms of this letter agreement.

The undersigned understands that the Company and the Underwriters are relying upon this letter agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this letter agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

The undersigned understands that, if (i) the Underwriting Agreement is not executed by January 31, 2021, (ii) the Company notifies the Underwriters in writing that it does not intend to proceed with the Public Offering or (iii) the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, the undersigned shall be released from all obligations under this letter agreement.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

This letter agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Very truly yours,

_____

(Name)

_____

(Address)

Exhibit 5.1

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
www.mccarter.com

December 11, 2020

Canaccord Genuity LLC
Roth Capital Partners, LLC
As Representatives of the several Underwriters

c/o Canaccord Genuity LLC
99 High Street, 12th Floor,
Boston, Massachusetts 02110

c/o Roth Capital Partners, LLC
888 San Clemente Drive
Newport Beach, California 92660

Re: Delcath Systems, Inc.

Ladies and Gentlemen:

Please be advised that this firm is counsel to Delcath Systems, Inc., a Delaware corporation (the "Company"). We have been requested to furnish you our opinion with respect to the issuance of 1,679,031 shares (the "Shares") of the Company's common stock, par value $0.01 per share (the "Common Stock") currently registered pursuant to the Registration Statement on Form S-3 (the "Registration Statement"), which was declared effective by the Securities and Exchange Commission on December 21, 2018 (File No. 333-227970).

The Shares are to be issued by the Company to Canaccord Genuity LLC and Roth Capital Partners, LLC (collectively, the "Underwriters"), pursuant to that certain Underwriting Agreement, dated December 9, 2020, between the Company and the Underwriters (the "Underwriting Agreement"). All terms not otherwise defined herein shall have the meanings ascribed to them in the Underwriting Agreement.

For purposes of this letter, we have examined (i) the Registration Statement, (ii) the Underwriting Agreement and (iii) the prospectus supplement, dated December 9, 2020 (the "Prospectus Supplement").

In our capacity as counsel to the Company in connection with the matters referred to above, we have also examined copies of the following: (i) the Amended and Restated Certificate of Incorporation of the Company, as amended, (ii) the Amended and Restated By-laws of the Company and (iii) records of certain of the Company's corporate proceedings as reflected in its minute books. We have also examined such other documents and records, instruments and certificates of public officials, officers and representatives of the Company, and have made such other investigations as we have deemed necessary or appropriate under the circumstances.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such documents. As to certain facts material to this opinion, we have relied upon oral or written statements and representations of officers and other representatives of the Company and public officials, and such other documents and information as we have deemed necessary or appropriate to enable us to render the opinions expressed below. We have not undertaken any independent investigation to determine the accuracy of any such facts.

Based upon, assuming and subject to the validity of the information provided to us and the representations set forth in the Registration Statement, the Prospectus Supplement and the Underwriting Agreement (and in this regard we have assumed that such information and representations given or dated earlier than this opinion letter have remained accurate from such earlier date to the date of this opinion letter), it is our opinion that:

1. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted (as described in the Registration Statement and the Prospectus Supplement).

2. The Underwriting Agreement has been duly and validly authorized, executed and delivered by the Company.

3. The Shares have been duly authorized and, when issued and paid for pursuant to the terms of the Underwriting Agreement, will be validly issued, fully paid and nonassessable and free of any preemptive rights arising by operation of the General Corporation Law of the State of Delaware (the "DGCL") or rights of first refusal or other similar rights to subscribe for the Shares pursuant to the Company's amended and restated certificate of incorporation, as amended, amended and restated bylaws or

the DGCL, or under any material agreement listed in the exhibit index to the Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2019 filed with the Commission on March 25, 2020 and any quarterly report on Form 10-Q or current report on Form 8-K of the Company subsequently filed with the Commission (each, a "Material Agreement").

4. The Registration Statement is currently effective under the Securities Act of 1933, as amended (the "Securities Act"), and no stop order suspending the effectiveness of the Registration Statement under the Securities Act has been issued and no proceedings for that purpose have been instituted or, to our knowledge, threatened. Any required filing of the Prospectus pursuant to Rule 424(b) under the Securities Act has been made in the manner and within the time required by Rule 424(b).

5. The Registration Statement and the Prospectus Supplement (other than the financial statements and schedules and other financial data included or incorporated by reference therein, as to which we express no opinion), complied as of their respective effective or filing dates in all material respects as to form with the requirements of the Securities Act and the rules and regulations of the Commission promulgated thereunder.

6. The Registration Statement, when it was filed with the Commission, complied as to form in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission promulgated thereunder.

7. The execution, delivery and performance by the Company of, and the compliance by the Company with the terms of, the Underwriting Agreement and the issuance, sale and delivery of the Shares pursuant to the Underwriting Agreement do not (a) conflict with or result in a violation of any provision of law, rule or regulation or any rule or regulation of any securities exchange applicable to the Company or of the amended and restated certificate of incorporation, as amended, or amended and restated bylaws of the Company, (b) conflict with, result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in or permit the termination or modification of, a Material Agreement, (c) conflict with or result in any breach or violation of or constitute a default under any order, writ, judgment or decree known to us to which the Company is a party or is subject, or (d) to our knowledge, result in the creation or imposition of any lien, claim or encumbrance on any of the assets or properties of the Company.

8. To our knowledge, except as set forth in the Company's filings with the Commission, there is (i) no claim, action, suit, proceeding, arbitration, investigation or inquiry, pending or threatened, before any Governmental Entity against the Company, or any of its officers, directors or employees (in connection with the discharge of their duties as officers, directors and employees), of the Company, or affecting any of its properties or assets and (ii) no indenture, contract, lease, mortgage, deed of trust, note agreement, loan or other agreement or instrument of a character required to be filed as an exhibit to the Registration Statement, which is not filed as required by the Securities Act and the rules thereunder.

9. In connection with the valid execution, delivery and performance by the Company of the Underwriting Agreement, or the offer, sale, issuance or delivery of the Shares or the consummation of the transactions contemplated thereby, no consent, license, permit, waiver, approval or authorization of, or designation, declaration, registration or filing with, any Governmental Entity is required, other than (a) registration pursuant to the Securities Act, (b) approval for listing of the Shares on Nasdaq and (c) review and no objection from FINRA with respect to the terms of the sale of the Shares.

10. The Company is not, and after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Prospectus Supplement will not be, required to register as an Investment Company within the meaning of the Investment Company Act of 1940, as amended.

11. The information included in the Registration Statement and the Prospectus Supplement under the caption "Description of Capital Stock," as such information has been revised and updated, to the extent that each of them constitutes matters of law, summaries of legal matters, documents referred to therein or legal conclusions, have been reviewed by us and fairly summarize the matters set forth therein in all material respects.

12. Except as set forth in the Registration Statement and the Prospectus Supplement, no holders of securities of the Company have rights to require the registration under the Securities Act of resales of such securities under any Material Agreement.

We are qualified to practice law in the State of New York and do not purport to be experts on any law other than the laws of the State of New York, the General Corporation Law of the State of Delaware and the Federal law of the United States. We express no opinion regarding any state securities laws or regulations. This opinion letter is limited to the specific legal matters expressly set forth herein and is limited to present statutes, regulations and administrative and judicial interpretations as of the date hereof. We assume no obligation to revise or supplement this opinion in the event of future changes in such laws or regulations.

This opinion is rendered solely for your benefit and may not be relied upon by any person or entity other than the addressee hereof. Without our prior written consent, except in a legal proceeding regarding the contents hereof, this opinion may not be quoted in whole or in part or otherwise referred to in any report or document furnished to any person or entity. This opinion is limited to the matters expressly set forth herein, and no opinion is to be implied or may be inferred beyond the matters expressly so stated. We disclaim any requirement to update this opinion subsequent to the date hereof or to advise you of any change in any matter set forth herein.

Very truly yours,

McCARTER & ENGLISH, LLP

Exhibit 10.1

Canaccord Genuity LLC
99 High Street
Suite 1200
Boston, MA
USA 02110

T1: 1.617.371.3900
T2: 1.800.225.6201
cgf.com

CONFIDENTIAL

November 25, 2020

Delcath Systems, Inc.
1633 Broadway
22nd Floor, Suite C
New York, NY 10019

Attn: Gerard Michel
Chief Executive Officer

Dear Mr. Michel,

This letter (the "Agreement") will confirm the basis upon which Delcath Systems, Inc. ("Client") has engaged Canaccord Genuity LLC (together with its affiliates, control persons, directors, officers, employees and agents, "CG") to act as Client's exclusive agent and financial advisor in connection with a registered public offering, on a best efforts basis or in a firm commitment underwriting, of one or more classes or series of securities of Client (the "Securities"). The Securities may take the form of common stock or other equity-related securities, including warrants and convertible debt. The offering of the Securities shall be referred to as the "Offering."

As of the date of this Agreement, Client intends to sell approximately $20 million in Securities. The number or amount and price of the Securities Client shall ultimately agree to sell is entirely within Client's sole discretion.

1. Services to be Rendered. In performing its services hereunder, CG will:

   (a) familiarize itself with the business, operations, properties, financial condition and prospects of Client;

   (b) assist Client in the development of descriptive textual and financial materials for filing with the SEC and other applicable regulatory authorities and distribution to potential investors; and

   (c) coordinate the marketing and distribution of the Securities to potential investors, including determination of the terms and pricing of the Securities.

2. Type of Offering. It is understood that the form of the Offering undertaken by Client and CG shall be subject to the mutual agreement of Client and CG, and that the consummation of any Offering will be subject to, among other things, market conditions. The Offering will be subject to the execution of an underwriting or placement agency agreement between Client and CG in a form customary for such transactions and mutually satisfactory to each party. It is understood that neither Client nor CG shall have any obligation to undertake an Offering

except pursuant to such an agreement. Any Offering undertaken not as a firm commitment underwriting will be undertaken strictly on a best efforts basis. Any Offering hereunder shall further be subject to the approval of CG's internal committee, in its sole discretion, in accordance with its usual practices.

CG will act as a lead left bookrunner of the Offering and will be entitled to a minimum of 62% of the aggregate underwriting discounts, commissions or other fees (collectively, the "Underwriting Fees").

3. Fees. In consideration for its services hereunder, Client shall pay to CG the following fees with such Cash amounts payable by wire transfer of immediately available funds, upon and subject to the closing of the Offering, a placement fee or underwriting discount (the "Offering Fee") equal to (A) 6.0% of (i) Gross Proceeds, in the case of a best efforts offering or (ii) the aggregate price to the public, in the case of a firm commitment underwriting, in each case of (i) and (ii) from sales of common stock or other equity-related securities, including warrants; plus (B) 4.0% of the aggregate principal amount of convertible debt securities sold in the Offering. For purposes hereof, the term "Gross Proceeds" shall mean the aggregate proceeds received by Client at the closing (or closings if there shall be more than one) of the Offering.

4. Expenses. In addition to any fees that may be payable to CG hereunder and regardless of whether any Offering is proposed or closed, the Company hereby agrees, from time to time upon request, to reimburse CGfor all of its reasonable expenses arising out of the engagement hereunder (including travel and related expenses, the costs of document preparation, production and distribution (such as printing and binding, and photocopies), and third party research and database services). In addition, the Company agrees to reimburse the reasonable fees and disbursements of independent counsel retained by CG in connection with this Agreement, which shall include, without limitation, legal expenses incurred to initially set up the Offering, provided that such expenses shall not exceed $75,000. In the event that the Company advances payment for expenses to CG pursuant to this Section 4, and such expenses are not ultimately incurred by CG, CG agrees to reimburse the Company for such unincurred expenses upon the earlier of (a) the closing of the Offering, or (b) the date CG's engagement terminates pursuant to Section 8 hereof. Nothing herein will be deemed to limit in any manner the indemnification, expense reimbursement, and other obligations of the Company pursuant to the provisions set forth in Annexes A, which is incorporated by reference into this Agreement.

5. Confidentiality. Client acknowledges that this Agreement and all opinions and advice (whether written or oral) given by CG to Client in connection with CG's engagement are confidential and are intended solely for the benefit and use of Client. Client further acknowledges that neither the terms of this Agreement nor CG's engagement hereunder nor any of CG's opinions or financial advice will be disclosed to any third party, without the prior written consent of CG, except as required by law. CG agrees that any non-public information relating to Client or any potential Investor received by CG from or at the direction of Client will be used by CG solely for the purpose of performing its agency and

advisory roles and that CG will maintain the confidentiality thereof. Notwithstanding the foregoing, CG may disclose confidential information hereunder (i) to such of its employees and advisors as CG determines have a need to know and who are bound to hold such information confidential, and (ii) to the extent necessary to comply with any order or other action of a court or administrative agency of competent jurisdiction.

6. Due Diligence. It is understood that CG's role in the Offering will be subject to the satisfactory completion of investigation and inquiry into the affairs of Client as CG deems appropriate and necessary under the circumstances ("Due Diligence"). CG shall have the right, in its sole discretion, to terminate its involvement in the Offering if the outcome of the Due Diligence is not to its satisfaction or if approval of its internal committee is not obtained ("Early Termination"). In the event of an Early Termination by CG, the Client shall not be required to reimburse CG for its expenses incurred pursuant to Section 4 of this Agreement.

7. Exclusivity. During the term of this Agreement Client will not, and will not permit its representatives, to: (i) contact or solicit institutions, corporations or other entities as potential purchasers of the Securities; or (ii) pursue any financing transaction which would be in lieu of the contemplated Offering. Furthermore, Client agrees that during the term of this Agreement, all inquiries, whether direct or indirect, from prospective Investors will be referred to CG and will be deemed to have been contacted by CG in connection with the Offering. Client may reject any potential Investor if, in its discretion, Client believes that the inclusion of such Investor as a purchaser of the Securities would be incompatible with the best interests of Client. Client shall not be obligated to sell the Securities or to accept any offer thereof, and the terms of such Securities and the final decision to issue the same shall be subject to the discretionary approval of Client.

8. Term and Termination of Engagement. The term of this Agreement shall extend from the date hereof until terminated under this Section 8. CG's engagement hereunder shall terminate upon the earliest to occur of: (i) Early Terminaton; (ii) the closing of the Offering; (iii) the termination of this Agreement by either Client or CG at any time for any reason, upon ten (10) days written notice to the other party. In the event this Agreement expires or is terminated prior to the closing of the Offering, the rights and obligations of the parties shall cease except as set forth in Sections 8(a) and 8(b) below.

(a) Unless terminated by CG for any reason, or unless terminated by the Company for Cause, (i) CG will be entitled to its full fee under Section 3 hereof in the event that at any time prior to the expiration of six (6) months after the termination or expiration of this Agreement a Client completes an Offering of Securities for cash; and

(b) the provisions of this Section 8 and of Sections 3, 4, 5, 9, 10, and 11 hereof shall survive such termination.

Upon any termination of this Agreement by the Company for Cause, the Company shall have no further obligation to CG with respect to the payment of termination fees or future Offerings under this Section 8.

For purposes of this Agreement, "Cause" shall mean CG's material failure to provide the underwriting services contemplated by this Agreement.

9. Indemnification; Contribution. In consideration of and as a condition precedent to CG undertaking the engagement contemplated by this letter, Client agrees to the indemnification provisions and other matters set forth in Annex A, which is incorporated by reference into this Agreement.

10. Reliance on Others. Client confirms that it will rely on its own counsel and accountants for legal, tax and accounting advice.

11. Miscellaneous. Nothing in this Agreement is intended to obligate or commit CG to provide any services other than as set forth above. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall be considered a single instrument. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all prior agreements and understandings (both written and oral) of the parties hereto with respect to the subject matter hereof, and cannot be amended or otherwise modified except in writing executed by the parties hereto. Neither party may assign its rights or delegate its obligations hereunder without the prior written consent of the other party. Client and CG represent and warrant that each has the requisite power and authority to enter into and carry out the terms and provisions of this Agreement and that the execution, delivery and performance of this Agreement does not breach or conflict with any agreement, document or instrument to which it is a party or bound.

If you are in agreement with the foregoing, please sign where indicated below, whereupon this Agreement shall become effective as of the date hereof.

Sincerely,

CANACCORD GENUITY LLC

By: /s/ Eugene Rozelman
Eugene Rozelman
Co-Head of Healthcare, Head of U.S. Biotech & Spec Pharma

ACCEPTED AND AGREED:

DELCATH SYSTEMS, INC.

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

ANNEX A

In the event that Canaccord Genuity LLC or any of its affiliates ("Canaccord Genuity"), the respective shareholders, directors, officers, agents or employees of Canaccord Genuity, or any other person controlling Canaccord Genuity (collectively, together with Canaccord Genuity, "Indemnified Persons") becomes involved in any capacity in any action, claim, suit, investigation or proceeding, actual or threatened, brought by or against any person, including stockholders of Delcath Systems, Inc. (the "Company"), in connection with or as a result of (i) the engagement contemplated by the letter agreement to which this Annex A is attached (the "engagement"), or (ii) any untrue statement or alleged untrue statement of a material fact contained in any offering materials, including but not limited to any registration statement, prospectus and any prospectus supplement used to offer securities of the Company in a transaction subject to the engagement as such materials may be amended or supplemented (and including but not limited to any documents deemed to be incorporated therein by reference) (collectively, the "Offering Materials"), or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Company will reimburse such Indemnified Person for its legal and other expenses (including without limitation the costs and expenses incurred in connection with investigating, preparing for and responding to third party subpoenas or enforcing the engagement) incurred in connection therewith as such expenses are incurred; provided, however, that with respect to clause (i) above if it is finally determined by a court or arbitral tribunal in any such action, claim, suit, investigation or proceeding that any loss, claim damage or liability of Canaccord Genuity or any other Indemnified Person has resulted primarily and directly from the gross negligence or willful misconduct of Canaccord Genuity in performing the services that are the subject of the engagement, then Canaccord Genuity will repay such portion of reimbursed amounts that is attributable to expenses incurred in relation to the act or omission of Canaccord Genuity which is the subject of such determination. The Company will also indemnify and hold harmless each Indemnified Person from and against any losses, claims, damages or liabilities (including actions or proceedings in respect thereof) (collectively, "Losses") related to or arising out of (i) the engagement, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Offering Materials, or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except, with respect to clause (i) above, to the extent any such Losses are finally determined by a court or arbitral tribunal to have resulted primarily and directly from the willful misconduct or gross negligence of Canaccord Genuity in performing the services that are the subject of the engagement.

If such indemnification is for any reason not available or insufficient to hold an Indemnified Person harmless (except by reason of the gross negligence or willful misconduct of Canaccord Genuity as described above), the Company and Canaccord Genuity shall contribute to the Losses involved in such proportion as is appropriate to reflect the relative benefits received (or anticipated to be received) by the Company, on the one hand, and by Canaccord Genuity, on the other hand, with respect to the engagement or, if such allocation is determined by a court or arbitral tribunal to be unavailable, in such proportion as is appropriate to reflect other

equitable considerations such as the relative fault of the Company on the one hand and of Canaccord Genuity on the other hand; provided, however, that in no event shall the amounts to be contributed by Canaccord Genuity exceed the fees actually received by Canaccord Genuity in the engagement. Relative benefits to the Company, on the one hand, and Canaccord Genuity, on the other hand, shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid or received or proposed to be received by the Company or its security holders, as the case may be, pursuant to the transaction(s), whether or not consummated, contemplated by the engagement, bears to (ii) all fees actually received by Canaccord Genuity in the engagement.

The Company also agrees that neither Canaccord Genuity nor any other Indemnified Person shall have any liability to the Company or any person asserting claims on behalf or in right of the Company in connection with or as a result of the engagement or any matter referred to in the engagement, except to the extent that any Losses incurred by the Company are finally determined by a court or arbitral tribunal to have resulted primarily and directly from the willful misconduct or gross negligence of Canaccord Genuity in performing the services that are the subject of the engagement. In no event shall Canaccord Genuity or any other Indemnified Person be responsible for any indirect, special or consequential damages, even if advised of the possibility thereof.

In the event that an Indemnified Person is requested or required to appear as a witness in any action brought by or on behalf of or against the Company relating to the engagement in which such Indemnified Person is not named as a defendant, the Company agrees to promptly reimburse Canaccord on a monthly basis for all expenses incurred by it in connection with such Indemnified Person’s appearing and preparing to appear as such a witness, including, without limitation, the reasonable fees and disbursements of its legal counsel.

The Company’s obligations hereunder shall be in addition to any rights that any Indemnified Person may have at common law or otherwise. The letter to which this Annex A is attached, including this Annex A, and any other agreements relating to the engagement shall be governed by and construed in accordance with the laws of the State of New York, applicable to contracts made and to be performed therein and, in connection therewith, the parties hereto consent to the exclusive jurisdiction of the state and federal courts of the State of New York, located in Manhattan. Notwithstanding the foregoing, solely for purposes of enforcing the Company’s obligations hereunder, the Company consents to personal jurisdiction, service and venue in any court proceeding in which any claim subject to this Annex A is brought by or against any Indemnified Person. CANACCORD GENUITY HEREBY AGREES, AND THE COMPANY HEREBY AGREES ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS SECURITY HOLDERS, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION ARISING OUT OF THE ENGAGEMENT OR CANACCORD GENUITY’S PERFORMANCE OF SERVICES THAT ARE THE SUBJECT THEREOF.

The provisions of this Annex A shall apply to the engagement (including related activities prior to the date hereof) and any modification thereof and shall remain in full force and effect regardless of the completion or termination of the engagement. If any term, provision, covenant or restriction herein is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Exhibit 10.2

Canaccord Genuity LLC
99 High Street
Suite 1200
Boston, MA
USA 02110

T1: 1.617.371.3900
T2: 1.800.225.6201
cgf.com

CONFIDENTIAL

December 8, 2020

Delcath Systems, Inc.
1633 Broadway
22nd Floor, Suite C
New York, New York 10019

Attention: Gerard Michel
Chief Executive Officer

Dear Mr. Michel:

Reference is made to that certain letter agreement dated November 25, 2020 (the "Agreement") between Canaccord Genuity LLC (together with its affiliates, control persons, directors, officers, employees, and agents, "CG") and Delcath Systems, Inc. (the "Client"), pursuant to which the Client engaged CG to act as its exclusive agent and financial advisor in connection with a registered public Offering of Securities of the Client. Capitalized terms used and not defined in this letter shall have the respective meanings ascribed to them in the Agreement. The parties desire to amend the Agreement (this "Amendment") as follows:

1. Section 3 of the Agreement (Fees) shall be amended to add the following paragraph after the last sentence of the Section:

   In consideration of CG's entering into this Agreement, the Client hereby grants CG a right of first offer under which CG shall have the right until May 1, 2021 (a) to act as managing or lead underwriter of any public offerings of any form of security, and/or (b) to act as a financial advisor for any private placements of any form of security. As used herein, a right of first offer shall mean, prior to offering any party other than CG the right to provide the foregoing services during the period provided above, the Client shall be obligated to make an offer to CG under which CG would provide such services, which offer shall clearly identify its terms and conditions, and CG shall have thirty (30) days to accept such offer; provided that such offer shall specify that, and CG shall be entitled to, a minimum of 62% of the aggregate underwriting discounts, commissions, or other fees in connection with such offering or placement of securities. If CG does not accept such offer, then the Client shall be free to negotiate and contract with any other party with respect to such rights. Any engagement of CG to provide services arising from any such circumstances is subject to the negotiation and execution by CG and the Client of a separate letter agreement setting forth the terms and conditions with respect to CG's engagement for that transaction. However, unless specifically covered by a separate agreement setting forth such arrangement, the indemnification provisions contained in Section 9 hereof shall apply to each such engagement. The foregoing right of first offer shall not apply in the event that the Client terminates CG's engagement for Cause (as defined below) or CG terminates its engagement for any reason. For purposes of this

Agreement, “Cause” shall mean CG’s material failure to provide the underwriting services contemplated by this Agreement. CG acknowledges that it has been provided copies of those certain Engagement Letters dated August 14, 2019 and January 13, 2020 (the “ROTH Engagement Letters”), as extended by the Underwriting Agreement dated May 1 2020 (the “ROTH Underwriting Agreement”), between Client and ROTH Capital Partners, LLC (“ROTH”), that such Engagement Letters require the Client to offer to ROTH the opportunity to act as placement agent or underwriter with respect to any additional Financing (as defined therein), and to receive a minimum of 35% of the fees paid to the agents or underwriters for such Financing, and that the provisions of this Agreement shall be interpreted in a manner which is in conformity with the obligations of the Client pursuant to the ROTH Engagement Letters .

Except as amended hereby, all terms and conditions of the Agreement shall remain in full force and effect and shall continue in accordance with their respective terms. The Agreement, together with this Amendment, shall constitute the entire agreement among the parties with respect to the subject matter hereof and thereof. Please indicate your acceptance of the foregoing amendment to the Agreement by signing a copy of the letter in the space provided and returning the same to CG.

CANACCORD GENUITY LLC

By: /s/ Eugene Rozelman
Eugene Rozelman
Managing Director

DELCATH SYSTEMS, INC.

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

Delcath Systems Announces Pricing of Public Offering of Common Stock

New York, December 9, 2020 (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 announced the pricing of an underwritten public offering of 1,460,027 shares of its common stock at a public offering price of $13.25 per share. The gross proceeds of the offering to the Company are expected to be approximately $19.3 million, before deducting the underwriting discounts and commissions and other estimated offering expenses.

The closing of the offering is expected to occur on or about December 11, 2020, subject to the satisfaction of customary closing conditions.

Delcath intends to use the net proceeds from this offering for (i) the completion of its FOCUS Clinical Trial for Patients with Hepatic Dominant Ocular Melanoma (the "Focus Trial"), a global registration clinical trial that is investigating the primary endpoint of objective response rate, as well as other secondary and exploratory endpoints, in metastatic ocular melanoma, or mOM; (ii) preparation of the federal regulatory application for the HEPZATO™ KIT (melphalan hydrochloride for injection/hepatic delivery system), or HEPZATO™, a drug/device combination product regulated as a drug, designed to administer high-dose chemotherapy to the liver while controlling systemic exposure and associated side effects; (iii) preparation for the commercial launch of HEPZATO; (iv) continued clinical development, including additional indications and expanded access trials in metastatic ocular melanoma; and (v) general corporate purposes, which may include capital expenditures and other operating expenses.

Canaccord Genuity and Roth Capital Partners are acting as joint book-running managers for the proposed offering.

A shelf registration statement relating to these securities has been filed with the U.S. Securities and Exchange Commission (SEC) and became effective on December 21, 2018. A preliminary prospectus supplement relating to the offering was filed with the SEC on December 8, 2020 and is available on the SEC's website at http://www.sec.gov. The final prospectus supplement relating to and describing the terms of the offering will be filed with the SEC and also will be available on the SEC's website. Before investing in the offering, you should read the prospectus supplement and the accompanying prospectus in their entirety as well as the other documents that the Company has filed with the SEC that are incorporated by reference in the prospectus supplement and the accompanying prospectus, which provide more information about the Company and the offering. Copies of the final prospectus supplement and the accompanying prospectus relating to this offering may be obtained, when available, by contacting Canaccord Genuity LLC, Attention: Syndicate Department, 99 High Street, Suite 1200, Boston, MA 02110, by telephone at (617) 371-3900 or by email at prospectus@cgf.com or Roth Capital Partners, LLC, 888 San Clemente, Newport Beach, CA 92660, Attention: Prospectus Department, or by telephone at (800) 678-9147.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

About Delcath Systems, Inc.

Delcath Systems, Inc. is an interventional oncology company focused on the treatment of primary and metastatic liver cancers. Our investigational product, HEPZATO KIT (melphalan hydrochloride for injection/hepatic delivery system), is designed to administer high-dose chemotherapy to the liver while controlling systemic exposure and associated side effects. HEPZATO KIT has not been approved by the U.S. Food & Drug Administration (FDA) for sale in the U.S. In Europe, our system is marketed under the trade name Delcath CHEMOSAT® Hepatic Delivery System for Melphalan (CHEMOSAT) and has been CE Marked and 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, 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 product; 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

Email: investorrelations@delcath.com

Hayden IR

James Carbonara
(646)-755-7412
james@haydenir.com

Exhibit 99.2

Delcath Systems Announces Completion of Underwritten Public Offering

New York, December 11, 2020 (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 announced the completion of an underwritten public offering of 1,679,031 shares of its common stock, including 219,004 shares sold pursuant to the full exercise of an option previously granted to the underwriters to purchase additional shares of common stock. All of the shares were offered by Delcath at a price to the public of $13.25 per share. The Company now estimates that the gross proceeds of the offering to the Company are expected to be approximately $22.2 million, before deducting the underwriting discounts and commissions and other estimated offering expenses.

Delcath intends to use the net proceeds from this offering for (i) the completion of its FOCUS Clinical Trial for Patients with Hepatic Dominant Ocular Melanoma (the "Focus Trial"), a global registration clinical trial that is investigating the primary endpoint of objective response rate, as well as other secondary and exploratory endpoints, in metastatic ocular melanoma, or mOM; (ii) preparation of the federal regulatory application for the HEPZATO™ KIT (melphalan hydrochloride for injection/hepatic delivery system), or HEPZATO™, a drug/device combination product regulated as a drug, designed to administer high-dose chemotherapy to the liver while controlling systemic exposure and associated side effects; (iii) preparation for the commercial launch of HEPZATO; (iv) continued clinical development, including additional indications and expanded access trials in metastatic ocular melanoma; and (v) general corporate purposes, which may include capital expenditures and other operating expenses.

Canaccord Genuity and Roth Capital Partners acted as joint book-running managers for the offering.

A shelf registration statement relating to these securities has been filed with the U.S. Securities and Exchange Commission (SEC) and became effective on December 21, 2018. A final prospectus supplement relating to and describing the terms of the offering was filed with the SEC on December 9, 2020 and is available on the SEC's website at http://www.sec.gov. Copies of the final prospectus supplement and the accompanying prospectus relating to this offering may be obtained by contacting Canaccord Genuity LLC, Attention: Syndicate Department, 99 High Street, Suite 1200, Boston, MA 02110, by telephone at (617) 371-3900 or by email at prospectus@cgf.com or Roth Capital Partners, LLC, 888 San Clemente, Newport Beach, CA 92660, Attention: Prospectus Department, or by telephone at (800) 678-9147.

This press release shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

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Contact:

Delcath Investor Relations

Email: investorrelations@delcath.com

Hayden IR

James Carbonara
(646)-755-7412
james@haydenir.com

Exhibit 99.3

LIMITED WAIVER

This Limited Waiver, dated December 7, 2020 (this "***Agreement***"), is to provide for a limited waiver of certain provisions of that certain Support and Conversion Agreement dated March 11, 2020, as amended by the Amendment dated April 8 2020 (the "***Support and Conversion Agreement***"), by and among Delcath Systems, Inc. ("***Delcath***"), certain executives of Delcath, and Rosalind Master Fund L.P. and Rosalind Opportunities Fund I L.P. (collectively, "***Rosalind***"). Delcath and Rosalind may be referred to herein individually or collectively as the "***Parties***". Capitalized terms used but not defined herein shall have the meaning given such terms in the Support and Conversion Agreement.

Pursuant to Section 5 of the Support and Conversion Agreement, the Parties agreed that, among other things, during the period ending on the second anniversary of the Closing of the Offering (the "***Tail Period***"), Delcath shall offer to Rosalind the opportunity to participate in any Financing (the "***Participation Provisions***").

Delcath now proposes to engage Canaccord Genuity LLC and ROTH Capital Partners LLC to serve as joint bookrunners in connection with a Confidentially Marketed Public Offering (the "***Proposed Financing***"), and seeks to have Rosalind waive the Participation Provisions in the Support and Conversion Agreement solely with respect to the Proposed Financing.

Section 1: Limited Waiver

Rosalind hereby waives the Participation Provisions in connection with the Proposed Financing during the Tail Period. The Parties hereto acknowledge and agree that, except with respect to the foregoing waiver, the Participation Provisions set forth in the Support and Conversion Agreement remain in full force and effect.

Section 2: Amendment and Modification

This Agreement may not be amended or modified except by a written agreement executed by the Parties and specifically referencing the provisions hereof to be so amended or modified.

Section 3: Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Delivery of such counterpart signature pages by facsimile or other electronic transmission shall be effective as delivery of an original executed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Limited Waiver as of the date first written above.

ROSALIND MASTER FUND L.P.

BY: ROSALIND ADVISORS, INC. - ADVISOR

By: /s/ Steven Salamon
Name: Steven Salamon
Title: President

ROSALIND OPPORTUNITIES FUND I L.P.

BY: ROSALIND ADVISORS, INC. - ADVISOR

By: /s/ Steven Salamon
Name: Steven Salamon
Title: President

DELCATH SYSTEMS, INC.

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