

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): September 11, 2009

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

DELAWARE

(State of Incorporation)

001-16133

(Commission File Number)

06-1245881

(IRS Employer Identification No.)

600 FIFTH AVENUE, 23<sup>rd</sup> FLOOR  
NEW YORK, NEW YORK

(Address of Principal Executive Offices)

10020

(Zip Code)

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

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))

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Delcath Systems, Inc. (the "Company") has announced that, effective September 14, 2009, David A. McDonald has been appointed Chief Financial Officer of the Company.

Mr. McDonald, 49, was formerly the Senior Vice President of Business Development at AngioDynamics, Inc. (NASDAQ: ANGO), where he led the company's business development activities. Mr. McDonald founded Minneapolis-based Cornerstone Healthcare Advisors LLC in April 2005, which he led until joining AngioDynamics in July 2008. At Cornerstone he provided advisory and consulting services to emerging medical technology companies and their financial sponsors. Prior to 2005, Mr. McDonald was a Managing Director and leader of Medical Technology Investment Banking at RBC Capital Markets where he developed senior and Board level relationships with leading private, public and venture capital firms in the medical device and diagnostics industries. While at RBC and Cornerstone, Mr. McDonald advised on more than 50 banking deals.

In connection with his appointment, Mr. McDonald has entered into a two-year employment agreement ("Employment Agreement") with the Company commencing September 14, 2009. The agreement provides that Mr. McDonald i) will receive a base salary of \$325,000 per year, (ii) is eligible to receive an annual bonus based on performance, (iii) has been granted stock options under the Company's 2009 Stock Incentive Plan (the "Plan") to purchase 250,000 shares of the Company's common stock, which are exercisable ratably over the 24 months of the Employment Agreement in accordance with, and subject to, the terms of the stock option grant letter dated September 14, 2009 between the Company and McDonald (the "Stock Option Grant Letter"), (iv) has been granted 50,000 shares of restricted common stock of the Company under the Plan, and in accordance with, and subject to, the terms of a restricted stock agreement dated as of September 14, 2009 between the Company and McDonald (the "Restricted Stock Agreement"), (v) a special one-time starting bonus of \$125,000, which is subject to claw-back in certain circumstances, (vi) in the event of certain involuntary terminations, will receive, subject to the delivery of a general release, severance equal to one year's base salary, and (vii) will be eligible for certain customary benefits. The Employment Agreement also contains certain customary terms, including non-competition, non-solicitation, non-disparagement and confidentiality covenants.

The foregoing description of the Employment Agreement, the Stock Option Grant Letter and the Restricted Stock Agreement does not purport to be complete and is qualified in its entirety by reference to the full texts of these agreements, copies of which are filed as Exhibits 10.1, 10.2, and 10.3 to this Current Report on Form 8-K and are incorporated herein by reference. Copies of the stock option grant letters between the Company and Eamonn P. Hobbs, President and Chief Executive Officer of the Company, and entered into between the Company and Mr. Hobbs pursuant to his employment agreement with the Company previously reported, are filed as Exhibits 10.4 and 10.5 to this Current Report on Form 8-K and are incorporated herein by reference.

The Company issued a press release dated September 14, 2009 announcing the appointment of Mr. McDonald, a copy of press release is attached hereto as Exhibit 99.1, and is incorporated herein by reference.

**Item 8.01 Other Events.**

In a press release issued on September 11, 2009, the Company announced that the Data and Safety Monitory Board ("DSMB") has recommended the continuation of the Company's Phase III clinical trial. A copy of the press release is attached hereto as Exhibit 99.2, and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits. The following exhibits are filed with the report on Form 8-K:

Exhibit Number	Description of Exhibit
10.1	Employment Agreement between David A. McDonald and the Company
10.2	Stock Option Grant Letter - David A. McDonald
10.3	Restricted Stock Agreement - David A. McDonald
10.4	Stock Option Grant Letter - Eamonn P. Hobbs
10.5	Stock Option Grant Letter - Eamonn P. Hobbs
99.1	Press Release of Delcath Systems, Inc. dated September 14, 2009
99.2	Press Release of Delcath Systems, Inc. dated September 11, 2009

SIGNATURES

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

Date: September 16, 2009

DELCATH SYSTEMS, INC.

By: /s/ Eamonn Hobbs

\_\_\_\_\_  
Name: Eamonn Hobbs

Title: Chief Executive Officer

## EXHIBIT INDEX

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**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into this 13th day of September, 2009, by and between Delcath Systems, Inc., a Delaware corporation (the "Company"), and David A. McDonald (the "Executive").

**RECITALS**

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

- A. The Company desires to hire the Executive as its Chief Financial Officer on the terms and conditions set forth in this Agreement.
- B. This Agreement shall govern the employment relationship between the Executive and the Company from and after the Effective Date, and, as of the Effective Date, supersedes and negates any previous agreements or understandings with respect to such relationship.
- C. The Executive desires to be employed by the Company on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals incorporated herein and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

**1. Retention and Duties.**

**1.1 Retention.** The Company does hereby hire, engage and employ the Executive beginning on a date to be mutually agreed, not later than September 14, 2009 (such actual date of employment commencement, the "Effective Date"), and concluding on the last day of the Period of Employment (as such term is defined in Section 2) on the terms and conditions expressly set forth in this Agreement. The Executive does hereby accept and agree to such hiring, engagement and employment, on the terms and conditions expressly set forth in this Agreement.

**1.2 Duties.** During the Period of Employment, the Executive shall serve the Company as its Chief Financial Officer and shall have the powers, authorities, duties and obligations of management usually vested in the office of the Chief Financial Officer of a company of a similar size and similar nature as the Company, and such other powers, authorities, duties and obligations commensurate with such position as the Company's Chief Executive Officer may assign from time to time, all subject to the directives of the Company's Board of Directors (the "Board") and the corporate policies of the Company as they are in effect from time to time throughout the Period of Employment (including, without limitation, the Company's business conduct and ethics policies, as in effect from time to time). During the Period of Employment, the Executive shall report to the Chief Executive Officer.

**1.3 No Other Employment; Minimum Time Commitment.** During the Period of Employment, the Executive shall (i) devote substantially all of the Executive's business

time, energy and skill to the performance of the Executive's duties for the Company, (ii) perform such duties in a faithful, effective and efficient manner to the best of his abilities, and (iii) hold no other employment. The Company shall have the right to require the Executive to resign from any board or similar body (including, without limitation, any association, corporate, civic or charitable board or similar body) on which he may then serve, if the Board reasonably determines that the Executive's service in such capacity interferes with the effective discharge of the Executive's duties and responsibilities to the Company or that any business related to such service is then in competition with any business of the Company or any of its Affiliates (as such term is defined in [Section 5.5](#)), successors or assigns. The Executive's service on the boards of directors (or similar body) of other for-profit business entities is subject to the approval of the Board. It will not be a violation of this Agreement for the Executive to (i) serve on civic or charitable boards or committees or (ii) manage personal investments, so long as such activities do not materially interfere with the performance of the Executive's responsibilities to the Company.

**1.4 No Breach of Contract.** The Executive hereby represents to the Company that: (i) the execution and delivery of this Agreement by the Executive and the Company and the performance by the Executive of the Executive's duties hereunder do not and shall not constitute a breach of, conflict with, or otherwise contravene or cause a default under, the terms of any other agreement or policy to which the Executive is a party or otherwise bound or any judgment, order or decree to which the Executive is subject; (ii) the Executive has no information (including, without limitation, confidential information and trade secrets) relating to any other Person (as such term is defined in [Section 5.5](#)) which would prevent, or be violated by, the Executive entering into this Agreement or carrying out his duties hereunder; (iii) the Executive is not bound by any employment, consulting, non-compete, confidentiality, trade secret or similar agreement with any other Person that would prevent, or be violated by, the Executive entering into this Agreement or carrying out his duties hereunder; and (iv) the Executive understands the Company will rely upon the accuracy and truth of the representations and warranties of the Executive set forth herein and the Executive consents to such reliance.

**1.5 Location.** The Executive's principal place of employment shall be the Company's principal executive office as it may be located from time to time. The Executive agrees that he will be regularly present at that office. The Executive acknowledges that he will be required to travel from time to time in the course of performing his duties for the Company. As of the date of this Agreement, the Company's principal executive office is located at 600 Fifth Avenue in New York, New York, and any relocation shall require the approval of the Board.

**2. Period of Employment.** The "[Period of Employment](#)" shall be a period of two years commencing on the Effective Date and ending at the close of business on the second anniversary of the Effective Date. Any renewal will require the approval of the Chief Executive Officer and the compensation and stock option committee of the Board or its successor (the "[Compensation Committee](#)"). Renewal of this engagement must be discussed and agreed upon not later than ninety (90) days prior to the expiration of the current term. Notwithstanding the foregoing, the Period of Employment is subject to earlier termination as provided below in this Agreement. Failure of the Board to renew beyond the second anniversary of the Effective Date shall not constitute a breach of this Agreement and shall not constitute an Involuntary Termination (as such term is defined in [Section 5.5](#)) for purposes of this Agreement.

### 3. Compensation

3.1 **Base Salary.** During the Period of Employment, the Company shall pay the Executive a base salary (the "Base Salary"), which shall be paid in accordance with the Company's regular payroll practices in effect from time to time, but not less frequently than monthly. The Executive's minimum Base Salary shall be at an annualized rate of three hundred twenty five thousand dollars (\$325,000).

3.2 **Incentive Bonus.** The Executive shall be eligible to receive an incentive bonus ("Incentive Bonus") for each consecutive 12-month period that ends on an anniversary of the Effective Date (each, a "Bonus Year") during the Period of Employment; provided that the Executive must be employed by the Company on the anniversary date in order to be eligible for an Incentive Bonus with respect to the Bonus Year ending on such date (and, if the Executive is not so employed at such time, he shall not be considered to have "earned" any Incentive Bonus with respect to the Bonus Year in question). The target Incentive Bonus for each Bonus Year shall equal 30% of the total Base Salary paid in that Bonus Year, based on performance objectives (which may include corporate, business unit or division, financial, strategic, individual or other objectives) established with respect to that particular Bonus Year by the Compensation Committee. No Incentive Bonus shall be paid unless the applicable performance objectives have been attained, and the Compensation Committee shall determine whether and to what level an Incentive Bonus is merited in any given Bonus Year. The Compensation Committee has the right to decide that Incentive Bonuses shall not be paid depending upon the performance of the Company, or financial conditions of the Company and/or financial markets. Under no circumstances shall the Company pay the Executive an Incentive Bonus for a Bonus Year if his employment is terminated for Cause on or prior to the bonus payment date for such Bonus Year. Any Incentive Bonus earned for a Bonus Year will be paid to the Executive not later than sixty (60) days following the end of the calendar year during which such Bonus Year ends. ■

### 3.3 Stock Option Grant and Restricted Stock Award.

(a) On the Effective Date, the Company will grant the Executive a stock option to purchase 250,000 of the issued and outstanding shares of the Company's common stock at a price per share equal to the closing price on the date of grant (the "Option").

(b) 10,417 of the shares covered by the Option will vest on each of the first twenty-three (23) monthly anniversaries of the Effective Date and 10,409 of the shares covered by the Option will vest on the twenty-fourth (24<sup>th</sup>) monthly anniversary of the Effective Date, subject to the Executive's continued employment by the Company through the respective monthly anniversary.

(c) On the Effective Date, the Company will also grant the Executive 50,000 shares of restricted stock ("the Restricted Stock Award").

(d) 25,000 shares of the Restricted Stock Award will vest on the six (6) month anniversary of the Effective Date and 25,000 shares of the Restricted Stock Award will vest on the one (1) year anniversary of the Effective Date, subject to the Executive's continued employment by the Company through the respective vesting date.

(e) The Option and the Restricted Stock Award shall be granted under the Company's 2009 Stock Incentive Plan and shall be subject to such further terms and conditions as set forth in a written stock option grant letter and restricted stock agreement to be provided by the Company to the Executive to evidence the Option and the Restricted Stock Award under the plan.

#### 3.4 **Special One-Time Bonus.**

The Executive shall receive a special one-time bonus of \$125,000 (the "**Special Bonus**") (this payment, like all the other payments and benefits set forth in this Agreement, will not be "grossed up" for any income taxes that the Executive will bear), payable within seven (7) business days following the Effective Date. The Special Bonus is intended to reduce the impact of the costs to the Executive in connection with his relocation, moving and temporary housing while he secures permanent housing in New York. Notwithstanding the foregoing, if the Executive is terminated for Cause or resigns without Good Reason prior to the first anniversary of the Effective Date, a pro rata portion of the Special Bonus (determined by multiplying the Special Bonus by a fraction, the numerator of which is the number of days from the Severance Date (as such term is defined in [Section 5.3](#)) to the second anniversary of the Effective Date and the denominator of which is 730) shall be due and payable to the Company immediately upon such employment termination, subject to offset, at the Company's election, against any Severance Benefit (as such term is defined in [Section 5.3](#)) or other amount otherwise due under this Agreement.

#### 4. **Benefits.**

4.1 **Retirement, Welfare and Fringe Benefits.** During the Period of Employment, the Executive shall be entitled to participate in all retirement and welfare benefit plans and programs, and fringe benefit plans and programs, made available by the Company to the Company's executive officers generally, in accordance with the eligibility and participation provisions of such plans and as such plans or programs may be in effect from time to time.

4.2 **Reimbursement of Business Expenses.** The Executive is authorized to incur reasonable expenses in carrying out the Executive's duties for the Company under this Agreement and shall be entitled to reimbursement for all reasonable business expenses that the Executive incurs during the Period of Employment in connection with carrying out the Executive's duties for the Company, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time.

#### 5. **Termination.**

5.1 **Termination by the Company.** The Executive's employment by the Company, and the Period of Employment, may be terminated at any time by the Company: (i) with Cause (as such term is defined in [Section 5.5](#)), or (ii) without Cause, or (iii) in the event of the Executive's death, or (iv) in the event that the Board determines in good faith that the Executive has a Disability (as such term is defined in [Section 5.5](#)).



5.2 **Termination by the Executive.** The Executive's employment by the Company, and the Period of Employment, may be terminated by the Executive with no less than ninety (90) days' advance written notice to the Company (such notice to be delivered in accordance with [Section 18](#)); provided, however, that in the case of a termination with Good Reason, the Executive may provide immediate written notice of termination once the applicable cure period (as contemplated by the definition of Good Reason) has lapsed if the Company has not reasonably cured the circumstances that gave rise to the basis for the termination with Good Reason.

5.3 **Benefits Upon Termination.** If the Executive's employment by the Company is terminated during the Period of Employment for any reason by the Company or by the Executive, or upon or following the expiration of the Period of Employment (in any case, the date that the Executive's employment by the Company terminates is referred to as the "[Severance Date](#)"), the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except as follows:

(a) The Company shall pay the Executive (or, in the event of his death, the Executive's estate) any Accrued Obligations (as such term is defined in [Section 5.5](#)):

(b) If, during the Period of Employment, the Executive's employment with the Company terminates as a result of an Involuntary Termination (as such term is defined in [Section 5.5](#)), the Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, Base Salary for 12 months (the "[Severance Period](#)"). Such amount is referred to hereinafter as the "[Severance Benefit](#)." Subject to [Section 5.8\(a\)](#), the Company shall pay the Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of 12 months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in [Section 5.5](#)) occurs.

(c) Each installment of the Severance Benefit (pursuant to the Company's standard payroll schedule and practices in the case of termination prior to a Change of Control) shall be treated and considered a separate payment for purposes of Section 409A of the Code. To the maximum extent permitted, each installment of the Severance Benefit shall be considered a payment under a "separation pay plan" as such term is defined in Treasury Regulation Section 1.409A-1(b)(9)(iii), subject to the limitations therein. Any installments in excess of the limitations of Treasury Regulation Section 1.409A-1(b)(9)(iii) shall be considered deferred compensation subject to [Section 5.8\(a\)](#).

(d) Notwithstanding the foregoing provisions of this [Section 5.3](#), if the Executive breaches his obligations under [Section 6](#) or under any other agreement that imposes restrictions with respect to the Executive's activities at any time, from and after the date of such breach and not in any way in limitation of any right or remedy otherwise available to the Company, the Executive will no longer be entitled to, and the Company will no longer be obligated to pay, any remaining unpaid portion of the Severance Benefit; provided that, if the Executive provides the release contemplated by [Section 5.4](#), in no event shall the Executive be entitled to a Severance Benefit payment of less than

\$5,000, which amount the parties agree is good and adequate consideration, standing alone, for the Executive's release contemplated by Section 5.4.

(e) The foregoing provisions of this Section 5.3 shall not affect: (i) the Executive's receipt of any benefits otherwise due terminated employees under group insurance coverage consistent with the terms of an applicable Company welfare benefit plan; (ii) the Executive's rights to continued health coverage under COBRA; (iii) the Executive's receipt of benefits otherwise due in accordance with the terms of the Company's 401(k) plan (if any); and (iv) the Executive's receipt of any accrued but unpaid Incentive Bonus for the immediately preceding Bonus Year, payable at the time provided in Section 3.2.

**5.4 Release; Exclusive Remedy.**

(a) This Section 5.4 shall apply notwithstanding anything else contained in this Agreement or any other agreement to the contrary. As a condition precedent to payment of the Severance Benefit on an Involuntary Termination, the Executive shall, upon or promptly following his last day of employment with the Company, provide the Company with a valid, executed general release agreement in a form acceptable to the Company substantially in the form attached as Exhibit A, and such release agreement shall have not been revoked by the Executive pursuant to any revocation rights afforded by applicable law.

(b) The Executive agrees that the payments and benefits contemplated by Section 5.3 shall constitute the exclusive and sole remedy for any termination of his employment and the Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. The Executive agrees to resign, on the Severance Date, as an officer of the Company and any Affiliate of the Company, and as a fiduciary of any benefit plan of the Company or any Affiliate of the Company, and to promptly execute and provide to the Company any further documentation, as requested by the Company, to confirm such resignation.

**5.5 Certain Defined Terms.**

(a) As used herein, "Accrued Obligations" means:

(i) any Base Salary that had accrued but had not been paid on or before the Severance Date;

(ii) any retirement, welfare, or other fringe benefits accrued by Executive on or before the Severance Date under any retirement, welfare or fringe benefit plan or program in which Executive was a participant during his employment with the Company, to the extent provided in such benefit plans; and

(iii) any reimbursement due to the Executive pursuant to Section 4.2 for expenses reasonably incurred by the Executive on or before the Severance Date and documented and pre-approved, to the extent applicable, in accordance with the Company's expense reimbursement policies in effect at the applicable time.

(b) As used herein, "Affiliate" of the Company means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. As used in this definition, the term "control,"

including the correlative terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.

(c) As used herein, “Cause” shall mean, as reasonably determined by the Board (excluding the Executive, if he is then a member of the Board) based on the information then known to it, that one or more of the following has occurred:

- (i) the Executive has committed a felony (under the laws of the United States or any relevant state, or a similar crime or offense under the applicable laws of any relevant foreign jurisdiction);
- (ii) the Executive has engaged in acts of fraud, dishonesty, or gross negligence that is injurious to the Company, its Affiliates or any of their customers, clients or employees;
- (iii) the Executive has engaged in gross misconduct, including abuse of controlled substances, that is injurious to the Company, its Affiliates or any of their customers, clients or employees;
- (iv) the Executive willfully fails to perform or uphold his duties under this Agreement and/or willfully fails to comply with reasonable and lawful directives of the Board; or
- (v) any breach by the Executive of any provision of Section 1 or Section 6, or any material breach by the Executive of any other contract he is a party to with the Company or any of its Affiliates including the Code of Ethics or another material written policy.

(d) As used herein, “Good Reason” shall mean a termination of the Executive’s employment by means of resignation by the Executive after the occurrence (without the Executive’s written consent) of any one or more of the following conditions:

- (i) a material diminution in the Executive’s rate of Base Salary;
- (ii) a material diminution in the Executive’s authority, duties, or responsibilities;
- (iii) a material change in the geographic location of the Executive’s principal office with the Company (for this purpose, in no event shall a relocation of such office to a new location that is not more than fifty (50) miles from the current location of the Company’s executive offices constitute a “material change”); or
- (iv) a material breach by the Company of this Agreement;

provided, however, that any such condition or conditions, as applicable, shall not constitute grounds for a termination with Good Reason unless (x) the Executive provides written notice to the Company of the condition claimed to constitute grounds for a termination with Good Reason within ninety (90) days after the initial existence of such condition(s) (such notice to be delivered in accordance with Section 18), and (y) the

Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof; and (z) the termination of the Executive's employment with the Company shall not constitute a termination with Good Reason unless such termination occurs not more than one hundred twenty (120) days following the initial existence of the condition claimed to constitute grounds for a termination with Good Reason.

(ae) As used herein, "Disability," shall mean a physical or mental impairment which, as reasonably determined by the Board, renders the Executive unable to perform the essential functions of his employment with the Company, even with reasonable accommodation that does not impose an undue hardship on the Company, for more than ninety (90) days in any 180-day period, unless a longer period is required by federal or state law, in which case that longer period would apply.

(f) As used herein, "Involuntary Termination" shall mean (i) a termination of the Executive's employment by the Company without Cause (and other than due to Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), or (ii) a termination with Good Reason.

(g) As used herein, the term "Person" shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

(h) As used herein, a "Separation from Service" occurs when the Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1).

**5.6 Notice of Termination.** Any termination of the Executive's employment under this Agreement shall be communicated by written notice of termination from the terminating party to the other party. This notice of termination must be delivered in accordance with Section 18 and must indicate the specific provision(s) of this Agreement relied upon in effecting the termination.

#### **5.7 Limitation on Benefits.**

(a) If any payment, benefit or distribution of any type to or for the benefit of the Executive by the Company or any of its affiliates, whether paid or payable, provided or to be provided, or distributed or distributable pursuant to the terms of this Agreement or otherwise (including, without limitation, any accelerated vesting of stock options or other equity-based awards or incentives) (collectively, the "Total Payments") would be subject to the excise tax imposed under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), then the Total Payments shall be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the excise tax imposed by Section 4999 of the Code. Unless the Executive shall have given prior written notice to the Company to effectuate a reduction in the Total Payments that complies with the requirements of Section 409A of the Code to avoid the imputation of

any tax, penalty or interest thereunder, the Company shall reduce or eliminate the Total Payments by first reducing or eliminating any cash severance benefits (with the payments to be made furthest in the future being reduced first), then by reducing or eliminating any accelerated vesting of stock options or similar awards, then by reducing or eliminating any other remaining Total Payments. The preceding provisions of this Section 5.7(a) shall take precedence over the provisions of any other plan, arrangement or agreement governing the Executive's rights and entitlements to any benefits or compensation.

(b) Any determination that Total Payments to the Executive must be reduced or eliminated in accordance with Section 5.7(a) and the assumptions to be utilized in arriving at such determination, shall be made by the Board in the exercise of its reasonable, good faith discretion based upon the advice of such professional advisors it may deem appropriate in the circumstances. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Board hereunder, it is possible that Total Payments to the Executive which will not have been made by the Company should have been made ("Underpayment"). If an Underpayment has occurred, the amount of any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive. In the event that any Total Payment made to the Executive shall be determined to otherwise result in the imposition of any tax under Section 4999 of the Code, then the Executive shall promptly repay to the Company the amount of any such Underpayment together with interest on such amount (at the same rate as is applied to determine the present value of payments under Section 280G of the Code or any successor thereto), from the date the reimbursable payment was received by the Executive to the date the same is repaid to the Company.

#### **5.8 Section 409A and Sarbanes-Oxley.**

(a) If the Executive is a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Executive's Separation from Service, the Executive shall not be entitled to any portion of the Severance Benefit that constitutes deferred compensation under Section 409A of the Code until the earlier of (i) the date which is six (6) months after his or her Separation from Service for any reason other than death, or (ii) the date of the Executive's death. The provisions of this paragraph shall apply only if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. Any amounts otherwise payable to the Executive upon or in the six (6) month period following the Executive's Separation from Service that are not so paid by reason of this Section 5.8(a), shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Executive's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the Executive's death).

(b) It is intended that any amounts payable under this Agreement and the Company's and the Executive's exercise of authority or discretion hereunder shall be exempt from or shall comply with the requirements of Section 409A of the Code and avoid the imputation of any tax, penalty or interest under Section 409A of the Code. This Agreement shall be construed and interpreted consistent with that intent. Nothing contained herein is intended to provide a guarantee of tax treatment to the Executive.

(c) To the extent required under Section 304 of the Sarbanes-Oxley Act of 2002, as amended, or other applicable law or rule, if the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, the Executive shall reimburse the issuer to the extent required by such authority, including for (i) any bonus or other incentive-based or equity-based compensation received by the Executive from the Company during the 12-month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and (ii) any profits realized from the sale of securities of the issuer during that 12-month period.

## **6. Protective Covenants.**

### **6.1 Confidential Information; Inventions.**

(a) The Executive shall not disclose or use at any time, either during the Period of Employment or thereafter, any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by him, except to the extent that such disclosure or use is directly related to and required by the Executive's performance in good faith of duties for the Company. The Executive will take all appropriate steps to safeguard Confidential Information in his possession and to protect it against disclosure, misuse, espionage, loss and theft. The Executive shall deliver to the Company at the termination of the Period of Employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its Affiliates which the Executive may then possess or have under his control. Notwithstanding the foregoing, the Executive may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof, shall, as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought, and shall assist the Company and such counsel in resisting or otherwise responding to such process.

(b) As used in this Agreement, the term "Confidential Information" means information that is not generally known to the public and that is used, developed or obtained by the Company in connection with its business, including, but not limited to, information, observations and data obtained by the Executive while employed by the Company or any predecessors thereof (including those obtained prior to the Effective Date) concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs, compensation and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form. Confidential Information will not include any information that has been published (other than a disclosure by the Executive in breach of this Agreement) in a form generally available to the public prior to the date the Executive proposes to disclose or use such

information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

(c) As used in this Agreement, the term “Work Product” means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company’s or any of its Affiliates’ actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by the Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its Affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that the Executive may have discovered, invented or originated during his employment by the Company or any of its Affiliates prior to the Effective Date, that he may discover, invent or originate during the Period of Employment or at any time in the period of twelve (12) months after the Severance Date, shall be the exclusive property of the Company and its Affiliates, as applicable, and Executive hereby assigns all of Executive’s right, title and interest in and to such Work Product to the Company or its applicable Affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its Affiliates’, as applicable) rights therein, and shall assist the Company, at the Company’s expense, in obtaining, defending and enforcing the Company’s (or any of its Affiliates’, as applicable) rights therein. The Executive hereby appoints the Company as his attorney-in-fact to execute on his behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company, the Company’s (and any of its Affiliates’, as applicable) rights to any Work Product.

**6.2 Restriction on Competition.** The Executive agrees that if the Executive were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Affiliates during the twelve (12) months following the Severance Date, it would be very difficult for the Executive not to rely on or use the Company’s and its Affiliates’ trade secrets and confidential information. Thus, to avoid the inevitable disclosure of the Company’s and its Affiliates’ trade secrets and confidential information, and to protect such trade secrets and confidential information and the Company’s and its Affiliates’ relationships and goodwill with customers, during the Period of Employment and for a period of twelve (12) months after the Severance Date, the Executive will not, without the prior consent of the Company, directly or indirectly through any other Person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase “directly or indirectly through any other Person engage in” shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, licensor of

technology or otherwise. For purposes of this Agreement, "Competing Business" means a Person anywhere in the continental United States or elsewhere in the world where the Company or any of its Affiliates engage in business, or reasonably and demonstrably anticipate engaging in business, on the Severance Date (the "Restricted Area") that at any time during the Period of Employment has directly competed, or at any time for the twelve (12) month period following the Severance Date directly competes, with the Company or any of its Affiliates in any of its or their material businesses, including, without limitation, the research, development, identification or marketing of targeted regional cancer or infectious disease drug delivery systems. Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation that is publicly traded, so long as the Executive has no active participation in the business of such corporation.

**6.3 Non-Solicitation of Employees and Consultants.** During the Period of Employment and for a period of twenty-four (24) months after the Severance Date, the Executive will not, without the prior consent of the Company, directly or indirectly through any other Person (i) induce or attempt to induce any employee or independent contractor of the Company or any Affiliate of the Company to leave the employ or service, as applicable, of the Company or such Affiliate, or in any way interfere with the relationship between the Company or any such Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand, or (ii) hire any person who was an employee of the Company or any Affiliate of the Company until twelve (12) months after such individual's employment relationship with the Company or such Affiliate has been terminated.

**6.4 Non-Solicitation of Customers.** During the Period of Employment and for a period of twenty-four (24) months after the Severance Date, the Executive will not, without the prior consent of the Company, directly or indirectly through any other Person influence or attempt to influence customers, vendors, suppliers, licensors, lessors, joint venturers, associates, consultants, agents, or partners of the Company or any Affiliate of the Company to divert their business away from the Company or such Affiliate, and the Executive will not otherwise interfere with, disrupt or attempt to disrupt the business or professional relationships, contractual or otherwise, between the Company or any Affiliate of the Company, on the one hand, and any of its or their customers, suppliers, vendors, lessors, licensors, joint venturers, government regulators, associates, officers, employees, consultants, managers, partners, members or investors, on the other hand.

**6.5 Non-Disparagement.** At all times following the date hereof, the Executive shall not, whether in writing or orally, disparage or denigrate the Company or any Affiliate, or any of their respective current or former affiliates, directors, officers, employees, members, partners, agents or representatives. At all times following the date hereof, the directors, officers and communications and human resources personnel of the Company shall not, whether in writing or orally, disparage or denigrate the Executive.

**6.6 Understanding of Covenants.** The Executive acknowledges that, in the course of his employment with the Company and/or its Affiliates and their predecessors, he has become familiar, or will become familiar, with the Company's and its Affiliates' and their predecessors' trade secrets and with other confidential and proprietary information concerning the Company, its Affiliates and their respective predecessors and that his services have been and will be of special, unique and extraordinary value to the Company and its Affiliates. The Executive agrees that the foregoing covenants set forth in this



Section 6 (together, the “Restrictive Covenants”) are reasonable and necessary to protect the Company’s and its Affiliates’ trade secrets and other confidential and proprietary information, good will, stable workforce, and customer relations.

Without limiting the generality of the Executive’s agreement in the preceding paragraph, the Executive (i) represents that he is familiar with and has carefully considered the Restrictive Covenants, (ii) represents that he is fully aware of his obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Affiliates currently conducts business throughout the Restricted Area, and (v) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 6 regardless of whether the Executive is then entitled to receive severance pay or benefits from the Company. The Executive understands that the Restrictive Covenants may limit his ability to earn a livelihood in a business similar to the business of the Company and any of its Affiliates, but he nevertheless believes that he has received and will receive sufficient consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive agrees that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to the detriment of the Executive.

**6.7 Enforcement.** The Executive agrees that the Executive’s services are unique and that he has access to Confidential Information and Work Product. Accordingly, without limiting the generality of Section 17, the Executive agrees that a breach by the Executive of any of the covenants in this Section 6 would cause immediate and irreparable harm to the Company that would be difficult or impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Executive agrees that in the event of any breach or threatened breach of any provision of this Section 6 or any similar provision, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 6 or any similar provision, as the case may be, or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of this Section 6 or any similar provision, as the case may be, if and when final judgment of a court of competent jurisdiction or arbitrator is so entered against the Executive. The Executive further agrees that the applicable period of time any Restrictive Covenant is in effect following the Severance Date, as determined pursuant to the foregoing provisions of this Section 6, such period of time shall be extended by the same amount of time that Executive is in breach of any Restrictive Covenant.

**6.8 Signing of Documents.** The Executive agrees to execute any additional documentation as may reasonably be requested by the Company in furtherance of the enforcement of any Restrictive Covenant.

7. **Withholding Taxes.** Notwithstanding anything else herein to the contrary, the Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or

payable under or pursuant to this Agreement such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

**8. Successors and Assigns.**

8.1 This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

8.2 This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any assignee or successor to all or substantially all of the Company's assets, as applicable, which assumes this Agreement by operation of law or otherwise.

9. **Rules of Construction.** Where the context requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all other genders. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. Unless otherwise expressly provided herein, all determinations to be made by the Compensation Committee or the Board under this Agreement shall be made in their sole discretion.

10. **Section Headings.** The section headings of, and titles of paragraphs and subparagraphs contained in, this Agreement are for the purpose of convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation thereof.

**11. Governing Law; Arbitration; Waiver of Jury Trial.**

11.1 THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF DELAWARE WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

11.2 Except for the limited purpose provided in Section 17, any legal dispute related to this Agreement and/or any claim related to this Agreement, or breach thereof, shall, in lieu of being submitted to a court of law, be submitted to arbitration, in accordance with the applicable dispute resolution procedures of the American Arbitration Association. The award of the arbitrator shall be final and binding upon the parties. The parties hereto agree that (i) one arbitrator shall be selected pursuant to the rules and procedures of the American Arbitration Association, (ii) the arbitrator shall have the power to award injunctive relief or to direct specific performance, (iii) each of the parties, unless otherwise required by applicable law, shall bear its own attorneys' fees, costs and

expenses and an equal share of the arbitrator's and administrative fees of arbitration, and (iv) the arbitrator shall award to the prevailing party a sum equal to that party's share of the arbitrator's and administrative fees of arbitration. Nothing in this Section 11 shall be construed as providing the Executive a cause of action, remedy or procedure that the Executive would not otherwise have under this Agreement or the law.

11.3 EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

12. **Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by an arbitrator or court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, and if the rights and obligations of any party under this Agreement will not be materially and adversely affected thereby, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
13. **Indemnification.** The Company will indemnify the Executive in connection with the Executive's duties and responsibilities for the Company, to the extent provided by and according to the terms set out in the Indemnification Agreement dated as of the same date as this Agreement (the "Indemnification Agreement").
14. **Entire Agreement.** This Agreement, the Indemnification Agreement and any agreements applicable to the Stock Option Grant and Restricted Stock Award described under Section 3.3 embody the entire agreement of the parties hereto respecting the matters within its scope. This Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bears upon the subject matter hereof, including, without limitation, any term sheet prepared in connection herewith. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein. Notwithstanding the foregoing integration provisions, the Executive acknowledges having received and read the Company's Code of Business Conduct and Ethics and agrees to conduct himself in accordance therewith as in effect from time to time.
15. **Modifications.** This Agreement may not be amended, modified or changed (in whole or in part), except by a formal, definitive written agreement expressly referring to this Agreement, which agreement is executed by both of the parties hereto.

16. **Waiver.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.
17. **Remedies.** Each of the parties to this Agreement and any such person or entity granted rights hereunder whether or not such person or entity is a signatory hereto shall be entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement. Each party shall be responsible for paying its own attorneys' fees, costs and other expenses pertaining to any such legal proceeding and enforcement regardless of whether an award or finding or any judgment or verdict thereon is entered against either party.
18. **Notices.** Any notice provided for in this Agreement must be in writing and must be either personally delivered, transmitted via telecopier, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the address below indicated or at such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder and received when delivered personally, when received if transmitted via telecopier, five days after deposit in the U.S. mail and one day after deposit on a weekday with a reputable overnight courier service.

if to the Company:

Delcath Systems, Inc.  
Rockefeller Center  
600 Fifth Avenue, 23rd Floor  
New York, NY 10020  
Facsimile: (212) 489-2102  
Attn: Chief Executive Officer

with a copy to:

Bond, Schoeneck & King, PLLC  
111 Washington Avenue  
Albany, New York 12210  
Facsimile: (518) 533-3265  
Attn: Gregory J. Champion, Esq.

if to the Executive, to the address most recently on file in the payroll records of the Company.



EMPLOYEE STOCK OPTION GRANT LETTER

DELCATH SYSTEMS, INC.

2009 STOCK INCENTIVE PLAN

September 14, 2009

David A. McDonald  
c/o Delcath Systems, Inc.  
Rockefeller Center  
600 Fifth Avenue, 23<sup>rd</sup> Floor  
New York, New York 10020

Dear Mr. McDonald:

This Grant Letter sets forth the terms and conditions of the stock option granted to you by Delcath Systems, Inc. (the "**Company**") on September 14, 2009 (the "**Grant Date**"), in accordance with the provisions of its 2009 Stock Incentive Plan (the "**Plan**"). You have been granted an option (the "**Option**") to purchase 250,000 shares of the Company's Common Stock ("**Common Stock**"). The Option is not intended to be an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**"). You are a party to an employment agreement entered into with the Company on September 13, 2009 (as the same may be amended or restated from time to time, the "**Employment Agreement**").

The Option is subject to the terms and conditions set forth in the Plan, any rules and regulations adopted by the Committee (as defined in the Plan) from time to time, and this Grant Letter. Any terms used in this Grant Letter and not defined herein have the meanings set forth in the Plan.

**1. Option Price**

The price at which you may purchase the shares of Common Stock covered by the Option is \$3.92 per share, which is the Fair Market Value of a share on the date of grant of your Option.

**2. Term of Option**

Your Option expires on September 14, 2019. However, your Option may terminate prior to such expiration date as provided in paragraph 6 of this Grant Letter or pursuant to the Plan. Regardless of the provisions of paragraph 6 and the Plan, in no event can your Option be exercised after the expiration date set forth in this paragraph 2.

### 3. Exercisability of Option

(a) Unless it becomes exercisable on an earlier date as provided in paragraph 6 or pursuant to the Plan, your Option will become exercisable in installments as follows, provided that you remain in continuous service as an employee of the Company or its Subsidiaries on such date:

Period	Number of shares Common Stock as to which the Option becomes exercisable
Each of the first 23 monthly anniversaries of the Grant Date, beginning October 14, 2009	10,417
September 14, 2011	10,409

(b) To the extent your Option has become exercisable, you may exercise the Option to purchase all or any part of such shares at any time on or before the date the Option expires or terminates.

### 4. Exercise of Option

You may exercise your Option by giving written notice to the Company of the number of shares of Common Stock you desire to purchase and paying the option price for such shares. The notice must be in the form provided by the Company from time to time (the "**Option Exercise Form**"), which may be obtained from the Company's Controller. The notice must be hand delivered or mailed to the Company at the address of its executive offices, 600 Fifth Avenue, 23<sup>rd</sup> Floor, New York, NY 10020; Attention: Controller, or may be provided electronically to the extent and in the manner provided under procedures adopted by the Company. Payment of the option price may be made in any manner permitted under paragraph 5. The cash, Common Stock or documentation described in the applicable provision of paragraph 5 must accompany the Option Exercise Form. Subject to Section 5, your Option will be deemed exercised on the date the Option Exercise Form (and payment of the option price) is hand delivered, received by electronic transmission (if permitted) received by overnight courier, or, if mailed, postmarked.

5. **Satisfaction of Option Price** Your Option may be exercised by payment of the option price in cash (including check, bank draft, money order, or wire transfer to the order of the Company). Unless prohibited by the Committee in its discretion (at any time prior to completion of the desire Option exercise), your Option may also be exercised using any of the following methods or a combination thereof:

(a) **Payment of Common Stock.** You may satisfy the option price by tendering shares of Common Stock that you own. For this purpose, the shares of Common Stock so

tendered shall be valued at the closing sales price of the Common Stock on The Nasdaq Capital Market (or the exchange or market determined by the Committee to be the primary market for the Common Stock) for the day before the date of exercise or, if no such sale of Common Stock occurs on such date, the closing sales price on the nearest trading date before such date. The certificate(s) evidencing shares tendered in payment of the option price must be duly endorsed or accompanied by appropriate stock powers. Only stock certificates issued solely in your name may be tendered to exercise your Option. Fractional shares may not be tendered in satisfaction of the option price; any portion of the option price that is in excess of the aggregate value (as determined under this paragraph 5(a)) of the number of whole shares tendered must be paid in cash. If a certificate tendered in exercise of the Option evidences more shares than are required pursuant to the immediately preceding sentence for satisfaction of the portion of the option price being paid in Common Stock, an appropriate replacement certificate will be issued to you for the number of excess shares.

(b) **Broker-Assisted Cashless Exercise.** You may satisfy the option price by delivering to the Company a copy of irrevocable instructions to a broker acceptable to the Company to sell shares of Common Stock (or a sufficient portion of such shares) acquired upon exercise of the Option and remit to the Company a sufficient portion of the sale proceeds to pay the total option price and withholding tax obligation resulting from such exercise. The broker must agree to deposit the entire sale proceeds into a Company-owned account pending delivery to the Company of the option price and tax withholding amount. Shares issued under this method of exercise will be issued to the designated brokerage firm for your account. The ability to use this method of exercise is subject to the Company's approval of the broker and of the specific mechanics of exercise.

(c) **Net Share Exercise.** You may satisfy the option price by delivering to the Company an Option Exercise Form that directs the Company to withhold a sufficient number of the shares acquired upon exercise to satisfy the aggregate option price and tax withholding obligation with respect to the shares as to which the Option is being exercised. For purposes of this provision, the shares of Common Stock applied to satisfy the option price and withholding obligation shall be valued in the same manner as provided under paragraph 5(a).

## 6. Termination of Employment

(a) **General.** The following special rules apply to your Option in the event of your death, disability, retirement, or other termination of employment. Following your employment termination, your Option will be exercisable only with respect to the number of shares you were entitled to purchase on the date of the termination of your employment and only for the period of time specified below. The Option shall terminate upon the date of the termination of your employment with respect to any shares that were not exercisable as of your employment termination date.

(i) **Termination of Employment for Cause.** If the Company or a Subsidiary terminates your employment for Cause, your Option will terminate on the date of such termination of employment. For this purpose, "Cause" shall have the meaning set forth in your Employment Agreement.



(ii) **Resignation.** If you resign from the Company or a Subsidiary other than upon Retirement (as defined below), your Option will terminate 90 days after such termination of employment.

(iii) **Termination Without Cause.** If the Company or a Subsidiary terminates your employment without Cause or if the Subsidiary or division in which you are employed is sold by the Company, your Option will terminate 90 days after such termination of employment.

(iv) **Death or Disability.** If your employment terminates by reason of death or Disability, your Option will terminate one year after such termination of employment. For purposes of this provision, "Disability" shall have the meaning set forth in the Employment Agreement.

(v) **Retirement.** Upon your Retirement from the Company, except as provided in the next sentence, you may exercise your Option for a period of one year following your Retirement, but not beyond the term of the Option. If you serve as a director of the Company immediately following your Retirement, your Option will terminate one year after the termination of your service as a director, but not beyond the term of the Option. For purposes of this provision, "Retirement" means termination of your employment with the Company and its Subsidiaries after you have attained age 60 and ten years of continuous employment with the Company and/or its Subsidiaries.

(vi) **Acceleration and Adjustments of Exercise Period.** The Committee may, in its discretion, declare all or any portion of your Option immediately exercisable and/or permit all or any part of your Option to remain exercisable for such period designated by it after the time when the Option would have otherwise terminated as provided in the applicable portion of this paragraph 6(a), but not beyond the expiration date of your Option as set forth in paragraph 2 above.

(b) **Committee Determinations.** The Committee shall have absolute discretion to make all determinations reserved to it under the Plan or this Grant Letter, including without limitation the date and circumstances of termination of your employment, and its determinations shall be final, conclusive and binding upon you and your beneficiaries.

#### 7. Tax Withholding

You must make arrangements satisfactory to the Company to satisfy any applicable federal, state, local or other withholding tax liability. If you exercise your Option by payment of cash or Common Stock, you can satisfy your withholding obligation by making a cash payment to the Company of the required amount. In addition, unless the Committee in its discretion prohibits such method, you may satisfy your withholding obligation by having the Company retain from the Common Stock otherwise deliverable to you upon exercise of your Option shares of Common Stock having a value equal to the minimum amount of any required tax withholding with respect to the exercise. If you exercise your Option using the broker-assisted cashless option exercise method, the Committee may require that any required tax withholding be retained by the Company from the proceeds of the sale of your shares. If you exercise your

Option using the net share exercise method, any required tax withholding will be retained by the Company from the shares acquired upon exercise. If you fail to satisfy your withholding obligation in a time and manner satisfactory to the Company, the Company or a Subsidiary shall have the right to withhold the required amount from your salary or other amounts payable to you.

Any election to have shares withheld must be made on or before the date you exercise your Option. A copy of the withholding election form may be obtained from the Company's Controller. The election form does not apply to exercises under the cashless option exercise method or the net share exercise method. Share withholding is mandatory if you are using the net share method of exercise.

The amount of withholding tax retained by the Company or paid by you to the Company will be paid to the appropriate tax authorities in satisfaction of the withholding obligations under the tax laws. The total amount of income you recognize by reason of exercise of the Option will be reported to the tax authorities in the year in which you recognize income with respect to the exercise. Whether you owe additional tax will depend on your overall taxable income for the applicable year and the total tax remitted for that year through withholding or by estimated payments.

#### **8. Administration of the Plan**

The Plan is administered by the Committee. The Committee has authority to interpret the Plan, to adopt rules for administering the Plan, to decide all questions of fact arising under the Plan, and generally to make all other determinations necessary or advisable for administration of the Plan. All decisions and acts of the Committee are final and binding on all affected Plan participants.

#### **9. Non-transferability of Option**

The Option granted to you by this Grant Letter may be exercised only by you, and may not be assigned, pledged, or otherwise transferred by you, with the exception that in the event of your death the Option may be exercised (at any time prior to its expiration or termination as provided in paragraphs 2 and 6) by the executor or administrator of your estate or by a person who acquired the right to exercise your Option by bequest or inheritance or by reason of your death.

#### **10. Amendment and Adjustments to your Option**

The Plan authorizes the Board or the Committee to make amendments and adjustments to outstanding awards, including the Option granted by this Grant Letter, in specified circumstances, as provided in the Plan.

#### **11. Effect on Other Benefits**

Income recognized by you as a result of exercise of the Option will not be included in the formula for calculating benefits under the Company's other benefit plans.

**12. Regulatory Compliance**

Under the Plan, the Company is not required to deliver Common Stock upon exercise of your Option if such delivery would violate any applicable law or regulation or stock exchange requirement. If required by law or regulation, the Company may impose restrictions on your ability to transfer shares received under the Plan.

**13. Data Privacy**

By accepting this Option you expressly consent to the collection, use and transfer, in electronic or other form, of your personal data by and among the Company, its Subsidiaries and any broker or third party assisting the Company in administering the Plan or providing recordkeeping services for the Plan, for the purpose of implementing, administering and managing your participation in the Plan. By accepting this Option you waive any data privacy rights you may have with respect to such information. You may revoke the consent and waiver described in this paragraph by written notice to the Company's Controller; however any such revocation may adversely affect your ability to participate in the Plan and to exercise any stock options previously granted under the Plan.

**14. Consent to Jurisdiction**

Your Option and the Plan are governed by the laws of the State of Delaware without regard to any conflict of law rules. Any dispute arising out of this Option or the Plan may be resolved only in a state or federal court located within New York County, New York State, U.S.A. This Option is issued on the condition that you accept such venue and submit to the personal jurisdiction of any such court.

**15. Entire Agreement.**

This Grant Letter embodies the entire agreement of the parties hereto respecting the matters within its scope. This Grant Letter supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof, including, without limitation, the Employment Agreement. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Grant Letter, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

\* \* \* \* \*

If you have any questions regarding your Option or would like to obtain additional information about the Plan or its administration, please contact the Company's Controller, Delcath Systems, Inc., 600 Fifth Avenue, 23<sup>rd</sup> Floor, New York, NY 10020 (telephone (212) 489-2100).

This Grant Letter contains the formal terms and conditions of your award and accordingly should be retained in your files for future reference.

Very truly yours,

/s/ Eamonn P. Hobbs

Eamonn P. Hobbs, President and Chief Executive Officer

Acknowledged and Agreed:

/s/ David A. McDonald

David A. McDonald



## RESTRICTED STOCK AGREEMENT

This Restricted Stock Agreement ("Agreement") is made as of September 14, 2009 (the "Grant Date") between Delcath Systems, Inc. (the "Company") and David A. McDonald (the "Executive").

WHEREAS, the Company maintains the Delcath Systems, Inc. 2009 Stock Incentive Plan, as amended (the "Plan"), which is administered by a committee designated by the Company's Board of Directors (the "Committee"), and

WHEREAS, in consideration of the Executive's continued employment with the Company, the Committee has determined that the Executive shall be granted an award of Restricted Stock under the Plan, and

WHEREAS, to comply with the terms of the Plan and to further the interests of the Company and the Executive, the parties hereto have set forth the terms of such award in writing in this Agreement;

NOW, THEREFORE, the Company and the Executive agree as follows:

1. Award.

(a) Grant. The Executive is hereby granted 50,000 shares (the "Restricted Stock") of the Company's common stock, par value \$.01 per share ("Stock"), which shall be issued in the Executive's name subject to the restrictions contained in this Agreement. The Restricted Stock award pursuant to this Agreement is separate from and not in tandem with any other award(s) granted to the Executive under the Plan or otherwise.

(b) Plan Incorporated. The Executive acknowledges receipt of a copy of the Plan and agrees that this award of Restricted Stock shall be subject to all of the terms and conditions set forth in the Plan, including future amendments thereto, if any, pursuant to the terms thereof, which Plan is incorporated herein by reference as a part of this Agreement. Any terms used in this Agreement and not defined herein have the meanings set forth in the Plan.

2. Restrictions. The shares of Restricted Stock are subject to the following restrictions (collectively, the "Restrictions"):

(a) Forfeiture Restrictions. If the Executive's employment with the Company shall terminate for any reason other than death and Disability as provided in Section 3 below, the Executive shall forfeit the right to receive any shares of Restricted Stock with respect to which the Restrictions have not lapsed as provided in Section 3 below as of the effective date of termination of Executive's employment.

(b) Restrictions on Transfer. The Executive may not sell, assign, pledge, exchange, hypothecate or otherwise transfer, encumber or dispose of any shares of Restricted Stock with respect to which the Restrictions have not lapsed as provided in Section 3 below. Upon any

violation of this restriction, the shares of Restricted Stock with respect to which the Restrictions have not lapsed as provided in Section 3 below shall be forfeited.

3. **Lapse of Restrictions.** Unless otherwise accelerated pursuant to this Section 3 or otherwise by the Committee pursuant to its authority under the Plan, the Restrictions will lapse with respect to the shares of Restricted Stock in accordance with the following schedule:

<u>Number</u>	<u>Date</u>
25,000 shares	March 14, 2010
25,000 shares	September 14, 2010

Notwithstanding the above, in the event the Executive's employment is terminated by reason of the Executive's death or Disability, the Restrictions with respect to all shares of Restricted Stock will lapse immediately and automatically as of the date of the Executive's death or as of the effective date of the Executive's termination of employment by reason of his Disability. For purposes of this Agreement, the term "Disability" shall have the meaning set forth in the Employment Agreement dated September 13, 2009 between the Company and the Executive.

The shares of Restricted Stock with respect to which the Restrictions have lapsed shall cease to be subject to any Restrictions except as otherwise provided in the Plan.

4. **Custody of Restricted Stock.**

(a) **Custody.** One or more stock certificates evidencing the shares of Restricted Stock granted hereunder shall be registered in the Executive's name, however, such stock certificate(s) shall be delivered to and held by the Secretary of the Company until forfeiture occurs or the Restrictions lapse with respect to such shares of Restricted Stock pursuant to the terms of the Plan and this Agreement.

(b) **Additional Securities as Restricted Stock.** Any securities received as the result of ownership of shares of Restricted Stock, including without limitation, securities received as a stock dividend or stock split, or as a result of a recapitalization or reorganization (all such securities to be considered "Restricted Stock" for all purposes under this Agreement), shall be held in custody in the same manner and subject to the same conditions as the shares of Restricted Stock with respect to which they were issued.

(c) **Delivery to the Executive.** With respect to shares of Restricted Stock for which the Restrictions have lapsed (without forfeiture), the stock certificate(s) representing such unrestricted shares of Stock shall be released to the Executive. Notwithstanding any other provisions of this Agreement, the issuance or delivery of any shares of Stock (whether subject to restrictions or unrestricted) may be postponed for such period as may be required to comply with applicable requirements of any national securities exchange or any requirements of any regulation applicable to the issuance or delivery of such Stock. The Company shall not be obligated to issue or deliver any shares of Stock if the issuance or delivery thereof shall

constitute a violation of any provision of any law or of any regulation of any governmental authority or any securities exchange. The Company shall not be required to transfer on its books any shares of Stock (whether subject to restrictions or unrestricted) which shall have been sold or transferred in violation of any of the provisions set forth in this Agreement.

5. Status of Stock. Notwithstanding the Restrictions contained herein, and unless and until the shares of Restricted Stock are forfeited pursuant to the provisions of this Agreement, the Executive shall have all rights of a stockholder with respect to the shares of Restricted Stock, including the right to vote such shares and to receive dividends thereon.

6. Relationship to Company.

(a) No Affect on Company's Rights or Powers. The existence of this Restricted Stock Agreement shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganization or other changes in the Company's capital structure or its business, or any merger or consolidation of Company or any issue of bonds, debentures, preferred or prior preference stock ahead of or affecting the shares of Restricted Stock or the rights thereof, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(b) No Guarantee of Service. Neither this Restricted Stock Agreement nor the shares of Restricted Stock awarded hereby shall confer upon the Executive any right with respect to continuance of employment by the Company or any of the Company's affiliates, nor shall this Restricted Stock Agreement or the shares of Restricted Stock awarded hereby interfere in any way with any right the Company, or its directors or stockholders, would otherwise have to terminate the Executive's employment at any time.

7. Agreement with Respect to Taxes. The Executive shall be liable for any and all taxes, including withholding taxes, arising out of this Restricted Stock award or the lapse of the Restrictions hereunder. The Executive agrees that if he does not pay, or make arrangements for the payment of, such amounts, the Company, to the fullest extent permitted by law, rule or regulation shall have the right to deduct such amounts from any payments of any kind otherwise due to the Executive (including from the Executive's compensation) and that the Company shall have the right to withhold shares of Restricted Stock for which the Restrictions have lapsed such number of unrestricted shares of Stock having an aggregate market value at the time equal to the amount the Executive owes.

8. Committee's Powers. No provision contained in this Agreement shall in any way terminate, modify or alter, or be construed or interpreted as terminating, modifying or altering any of the powers, rights or authority vested in the Committee pursuant to the terms of the Plan, including, without limitation, the Committee's rights to make certain determinations and elections with respect to the shares of Restricted Stock granted hereby.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of any successors and assigns of the Company and all persons lawfully claiming under the Executive.



10. Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of a party's signature hereto by facsimile or PDF shall bind the parties hereto.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Delaware to be applied.

12. Severability. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

13. Acceptance of Terms and Conditions. This Restricted Stock award will not be effective until the Executive has acknowledged and agreed to the terms and conditions set forth herein by executing this Agreement in the space provided below and returning the same to the Company.

Awarded subject to the terms and conditions stated above:

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DELCATH SYSTEMS, INC.

Accepted under the terms and conditions stated above:

By: /s/ Eamonn P. Hobbs

/s/ David A. McDonald

Eamonn P. Hobbs, President and Chief Executive Officer

David A. McDonald

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FORM OF EMPLOYEE STOCK OPTION GRANT LETTER

DELCATH SYSTEMS, INC.

2004 STOCK INCENTIVE PLAN

July 6, 2009

Eamonn Hobbs  
c/o Delcath Systems, Inc.  
Rockefeller Center  
600 Fifth Avenue, 23rd Floor  
New York, NY 10020

Dear Mr. Hobbs:

This letter sets forth the terms and conditions of the stock option granted to you by Delcath Systems, Inc. (the "**Company**") on July 6, 2009, in accordance with the provisions of its 2004 Stock Incentive Plan (the "**Plan**"). You have been granted an option (the "**Option**") to purchase 300,000 shares of the Company's Common Stock ("**Common Stock**"). The Option is not intended to be an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**"). You are party to an employment agreement entered into with the Company on July 4, 2009 (as the same may be amended or restated from time to time, the "**Employment Agreement**"). This letter constitutes the "Award Agreement" as such term is used in the Plan.

The Option is subject to the terms and conditions set forth in the Plan, any rules and regulations adopted by the Committee (as defined in the Plan) from time to time, and this letter. Any terms used in this letter and not defined herein have the meanings set forth in the Plan.

**1. Option Price**

The price at which you may purchase the shares of Common Stock covered by the Option is \$3.36 per share, which is the Fair Market Value of a share on the date of grant of your Option.

**2. Term of Option**

Your Option expires on July 6, 2019. However, your Option may terminate prior to such expiration date as provided in paragraph 6 of this letter or pursuant to the Plan. Regardless of the provisions of paragraph 6 and the Plan, in no event can your Option be exercised after the expiration date set forth in this paragraph 2.

**3. Exercisability of Option**

(a) Unless it becomes exercisable on an earlier date as provided in paragraph 6 or pursuant to the Plan, your Option will become exercisable in installments as provided below.

(b) Provided that you remain in continuous service as an employee of the Company or its Subsidiaries on such date:

Date	Number of shares as to which Option becomes exercisable
July 6, 2010	100,000
July 6, 2011	100,000
July 6, 2012	100,000

(c) If earlier than provided in Section 3(a) (and, without duplication, reduced by any shares that have previously become exercisable pursuant to Section 3(a)), provided you remain in continuous service as an employee of the Company or its Subsidiaries on such date: (i) 75,000 of the shares subject to the Option shall become exercisable upon receipt by the Company of financing from third party investors of \$15 million or more (gross proceeds), (ii) 75,000 of the shares subject to the Option shall become exercisable on submission to the U.S. Food and Drug Administration (the "FDA"), with the consent of the Board, of a Premarket Approval or New Drug Approval (as such terms are used by the FDA) for the Company's percutaneous hepatic perfusion treatment system, and (iii) 150,000 of the shares subject to the Option shall become exercisable upon the FDA's formal written notice of such approval including FDA-approved labeling language for the percutaneous hepatic perfusion treatment.

(d) Notwithstanding the foregoing, all shares subject to the Option shall immediately become exercisable upon (i) your Involuntary Termination (as defined in the Employment Agreement) after July 6, 2010 or (ii) a Change of Control (as such term is defined in subsections (a)-(d) of the definition of "Change of Control" contained in the Company's ~~2009~~ Stock Incentive Plan). Upon your Involuntary Termination between July 6, 2009 and July 6, 2010, an additional number of shares subject to the Option shall become exercisable such that the Option shall be exercisable as to a total of 150,000 shares as of your employment termination date.

(e) To the extent your Option has become exercisable, you may exercise the Option to purchase all or any part of such shares at any time on or before the date the Option expires or terminates.

#### 4. Exercise of Option

You may exercise your Option by giving written notice to the Company of the number of shares of Common Stock you desire to purchase and paying the option price for such shares. The notice must be in the form available from the Company from time to time (the "Option Exercise Form"), which may be obtained from the Company's Controller. The notice must be hand delivered or mailed to the Company at the address of its executive offices, 600 Fifth Avenue, 23<sup>rd</sup> Floor, New York, NY 10020; Attention: Controller, or may be provided electronically to the extent and in the manner provided under procedures adopted by the Company. Payment of the option price may be made in any manner permitted under paragraph 5. The cash, Common Stock or documentation described in the applicable provision of paragraph 5 must accompany the Option Exercise Form. Subject to Section 5, your Option will be deemed exercised on the

date the Option Exercise Form (and payment of the option price) is hand delivered, received by electronic transmission (if permitted), received by overnight courier, or if mailed, postmarked.

5. **Satisfaction of Option Price.** Your Option may be exercised by payment of the option price in cash (including check, bank draft, money order, or wire transfer to the order of the Company). Unless prohibited by the Committee in its discretion, your Option may also be exercised using any of the following methods or a combination thereof:

(a) **Payment of Common Stock.** You may satisfy the option price by tendering shares of Common Stock that you own. For this purpose, the shares of Common Stock so tendered shall be valued at the closing sales price of the Common Stock on The Nasdaq Capital Market (or the exchange or market determined by the Committee to be the primary market for the Common Stock) for the day before the date of exercise or, if no such sale of Common Stock occurs on such date, the closing sales price on the nearest trading date before such date. The certificate(s) evidencing shares tendered in payment of the option price must be duly endorsed or accompanied by appropriate stock powers. Only stock certificates issued solely in your name may be tendered to exercise your Option. Fractional shares may not be tendered in satisfaction of the option price; any portion of the option price that is in excess of the aggregate value (as determined under this paragraph 5(a)) of the number of whole shares tendered must be paid in cash. If a certificate tendered in exercise of the Option evidences more shares than are required pursuant to the immediately preceding sentence for satisfaction of the portion of the option price being paid in Common Stock, an appropriate replacement certificate will be issued to you for the number of excess shares.

(b) **Broker-Assisted Cashless Exercise.** You may satisfy the option price by delivering to the Company a copy of irrevocable instructions to a broker acceptable to the Company to sell shares of Common Stock (or a sufficient portion of such shares) acquired upon exercise of the Option and remit to the Company a sufficient portion of the sale proceeds to pay the total option price and withholding tax obligation resulting from such exercise. The broker must agree to deposit the entire sale proceeds into a Company-owned account pending delivery to the Company of the option price and tax withholding amount. Shares issued under this method of exercise will be issued to the designated brokerage firm for your account. The ability to use this method of exercise is subject to the Company's approval of the broker and of the specific mechanics of exercise.

(c) **Net Share Exercise.** You may satisfy the option price by delivering to the Company an Option Exercise Form that directs the Company to withhold a sufficient number of the shares acquired upon exercise to satisfy the aggregate option price and tax withholding obligation with respect to the shares as to which the Option is being exercised. For purposes of this provision, the shares of Common Stock applied to satisfy the option price and withholding obligation shall be valued in the same manner as provided under paragraph 5(a).

6. **Termination of Employment**

(a) **General.** The following special rules apply to your Option in the event of your death, disability, retirement, or other termination of employment. Following your employment

termination, your Option will be exercisable only with respect to the number of shares you were entitled to purchase on the date of the termination of your employment and only for the period of time specified below. The Option shall terminate upon the date of the termination of your employment with respect to any shares that were not exercisable as of your employment termination date.

(i) **Termination of Employment for Cause.** If the Company or a Subsidiary terminates your employment for Cause, your Option will terminate on the date of such termination of employment. For this purpose, "Cause" shall have the meaning set forth in the Employment Agreement.

(ii) **Resignation.** If you resign from the Company or a Subsidiary other than upon Retirement (as defined below), your Option will terminate 90 days after such termination of employment.

(iii) **Termination Without Cause.** If the Company or a Subsidiary terminates your employment without Cause or if the Subsidiary or division in which you are employed is sold by the Company, your Option will terminate 90 days after such termination of employment.

(iv) **Death or Disability.** If your employment terminates by reason of death or Disability, your Option will terminate one year after such termination of employment. For purposes of this provision, "Disability" means that as of the date of your termination of employment, you suffer from a medically determinable physical or mental impairment that renders you unable to perform substantially all of the duties of your position and can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

(v) **Retirement.** Upon your Retirement from the Company, except as provided in the next sentence, you may exercise your Option for a period of one year following your Retirement, but not beyond the term of the Option. If you serve as a director of the Company immediately following your Retirement, your Option will terminate one year after the termination of your service as a director, but not beyond the term of the Option. For purposes of this provision, notwithstanding the definition set forth in the Plan, "Retirement" means termination of your employment with the Company and its Subsidiaries after you have attained age 60 and ten years of continuous employment with the Company and/or its Subsidiaries.

(vi) **Acceleration and Adjustments of Exercise Period.** The Committee may, in its discretion, declare all or any portion of your Option immediately exercisable and/or permit all or any part of your Option to remain exercisable for such period designated by it after the time when the Option would have otherwise terminated as provided in the applicable portion of this paragraph 6(a), but not beyond the expiration date of your Option as set forth in paragraph 2 above.

(b) **Committee Determinations.** The Committee shall have absolute discretion to make all determinations reserved to it under the Plan or this letter, including without limitation

the date and circumstances of termination of your employment, and its determinations shall be final, conclusive and binding upon you and your beneficiaries.

#### **7. Tax Withholding**

You must make arrangements satisfactory to the Company to satisfy any applicable federal, state, local or other withholding tax liability. If you exercise your Option by payment of cash or Common Stock, you can satisfy your withholding obligation by making a cash payment to the Company of the required amount. In addition, unless the Committee in its discretion prohibits such method, you may satisfy your withholding obligation by having the Company retain from the Common Stock otherwise deliverable to you upon exercise of your Option shares of Common Stock having a value equal to the minimum amount of any required tax withholding with respect to the exercise. If you exercise your Option using the broker-assisted cashless option exercise method, the Committee may require that any required tax withholding be retained by the Company from the proceeds of the sale of your shares. If you fail to satisfy your withholding obligation in a time and manner satisfactory to the Company, the Company or a Subsidiary shall have the right to withhold the required amount from your salary or other amounts payable to you.

Any election to have shares withheld must be made on or before the date you exercise your Option. A copy of the withholding election form may be obtained from the Company's Controller. The election form does not apply to exercises under the cashless option exercise method or the net share exercise method. Share withholding is mandatory if you are using the net share method of exercise.

The amount of withholding tax retained by the Company or paid by you to the Company will be paid to the appropriate tax authorities in satisfaction of the withholding obligations under the tax laws. The total amount of income you recognize by reason of exercise of the Option will be reported to the tax authorities in the year in which you recognize income with respect to the exercise. Whether you owe additional tax will depend on your overall taxable income for the applicable year and the total tax remitted for that year through withholding or by estimated payments.

#### **8. Administration of the Plan**

The Plan is administered by the Committee. The Committee has authority to interpret the Plan, to adopt rules for administering the Plan, to decide all questions of fact arising under the Plan, and generally to make all other determinations necessary or advisable for administration of the Plan. All decisions and acts of the Committee are final and binding on all affected Plan participants.

#### **9. Non-transferability of Option**

The Option granted to you by this letter may be exercised only by you, and may not be assigned, pledged, or otherwise transferred by you, with the exception that in the event of your death the Option may be exercised (at any time prior to its expiration or termination as provided in paragraph 2 and 6) by the executor or administrator of your estate or by a person who acquired the right to exercise your Option by bequest or inheritance or by reason of your death.

**10. Amendment and Adjustments to your Option**

The Plan authorizes the Board or the Committee to make amendments and adjustments to outstanding awards, including the Option granted by this letter, in specified circumstances, as provided in the Plan.

**11. Effect on Other Benefits**

Income recognized by you as a result of exercise of the Option will not be included in the formula for calculating benefits under the Company's other benefit plans.

**12. Regulatory Compliance**

Under the Plan, the Company is not required to deliver Common Stock upon exercise of your Option if such delivery would violate any applicable law or regulation or stock exchange requirement. If required by law or regulation, the Company may impose restrictions on your ability to transfer shares received under the Plan.

**13. Data Privacy**

By accepting this Option you expressly consent to the collection, use and transfer, in electronic or other form, of your personal data by and among the Company, its Subsidiaries and any broker or third party assisting the Company in administering the Plan or providing recordkeeping services for the Plan, for the purpose of implementing, administering and managing your participation in the Plan. By accepting this Option you waive any data privacy rights you may have with respect to such information. You may revoke the consent and waiver described in this paragraph by written notice to the Company's Controller; however, any such revocation may adversely affect your ability to participate in the Plan and to exercise any stock options previously granted under the Plan.

**14. Consent to Jurisdiction**

Your Option and the Plan are governed by the laws of the State of Delaware without regard to any conflict of law rules. Any dispute arising out of this Option or the Plan may be resolved only in a state or federal court located within New York County, New York State, U.S.A. This Option is issued on the condition that you accept such venue and submit to the personal jurisdiction of any such court.

**15. Entire Agreement.**

This letter embodies the entire agreement of the parties hereto respecting the matters within its scope. This Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof, including, without limitation, the Employment Agreement. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or



effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

\* \* \* \* \*

If you have any questions regarding your Option or would like to obtain additional information about the Plan or its administration, please contact the Company's Controller, Delcath Systems, Inc., 600 Fifth Avenue, 23rd Floor, New York, NY 10020 (telephone (212) 489-2100).

This letter contains the formal terms and conditions of your award and accordingly should be retained in your files for future reference.

Very truly yours,

\_\_\_\_\_  
/s/ Barbra C. Keck

Name: Barbra Keck  
Title: Controller

Acknowledged and Agreed:

\_\_\_\_\_  
/s/ Eamonn Hobbs

Eamonn Hobbs



FORM OF EMPLOYEE STOCK OPTION GRANT LETTER

DELCATH SYSTEMS, INC.

2009 STOCK INCENTIVE PLAN

July 6, 2009

Eamonn Hobbs  
c/o Delcath Systems, Inc.  
Rockefeller Center  
600 Fifth Avenue, 23rd Floor  
New York, NY 10020

Dear Mr. Hobbs:

This letter sets forth the terms and conditions of the stock option granted to you by Delcath Systems, Inc. (the "**Company**") on July 6, 2009, in accordance with the provisions of its 2009 Stock Incentive Plan (the "**Plan**"). You have been granted an option (the "**Option**") to purchase 500,000 shares of the Company's Common Stock ("**Common Stock**"). The Option is not intended to be an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**"). You are party to an employment agreement entered into with the Company on July 4, 2009 (as the same may be amended or restated from time to time, the "**Employment Agreement**").

The Option is subject to the terms and conditions set forth in the Plan, any rules and regulations adopted by the Committee (as defined in the Plan) from time to time, and this letter. Any terms used in this letter and not defined herein have the meanings set forth in the Plan.

**1. Option Price**

The price at which you may purchase the shares of Common Stock covered by the Option is \$3.36 per share, which is the Fair Market Value of a share on the date of grant of your Option.

**2. Term of Option**

Your Option expires on July 6, 2019. However, your Option may terminate prior to such expiration date as provided in paragraph 6 of this letter or pursuant to the Plan. Regardless of the provisions of paragraph 6 and the Plan, in no event can your Option be exercised after the expiration date set forth in this paragraph 2.

**3. Exercisability of Option**

(a) Unless it becomes exercisable on an earlier date as provided in paragraph 6 or pursuant to the Plan, your Option will become exercisable in installments as provided below.

(b) Provided that you remain in continuous service as an employee of the Company or its Subsidiaries on such date:

Date	Number of shares as to which Option becomes exercisable
July 6, 2009	50,000 (vested at grant)
July 6, 2010	150,000
July 6, 2011	150,000
July 6, 2012	150,000

(c) If earlier than provided in Section 3(a) (and, without duplication, reduced by any shares that have previously become exercisable pursuant to Section 3(a)), provided you remain in continuous service as an employee of the Company or its Subsidiaries on such date: (i) 112,500 of the shares subject to the Option shall become exercisable upon receipt by the Company of financing from third party investors of \$15 million or more (gross proceeds), (ii) 112,500 of the shares subject to the Option shall become exercisable on submission to the U.S. Food and Drug Administration (the "FDA"), with the consent of the Board, of a Premarket Approval or New Drug Approval (as such terms are used by the FDA) for the Company's percutaneous hepatic perfusion treatment system, and (iii) 225,000 of the shares subject to the Option shall become exercisable upon the FDA's formal written notice of such approval including FDA-approved labeling language for the percutaneous hepatic perfusion treatment.

(d) Notwithstanding the foregoing, all shares subject to the Option shall immediately become exercisable upon (i) your Involuntary Termination (as defined in the Employment Agreement) after July 6, 2010 or (ii) a Change of Control (as such term is defined in subsections (a)-(d) of the definition of "Change of Control" contained in the Plan). Upon your Involuntary Termination between July 6, 2009 and July 6, 2010, an additional number of shares subject to the Option shall become exercisable such that the Option shall be exercisable as to a total of 250,000 shares as of your employment termination date.

(e) To the extent your Option has become exercisable, you may exercise the Option to purchase all or any part of such shares at any time on or before the date the Option expires or terminates.

#### 4. Exercise of Option

You may exercise your Option by giving written notice to the Company of the number of shares of Common Stock you desire to purchase and paying the option price for such shares. The notice must be in the form provided by the Company from time to time (the "Option Exercise Form"), which may be obtained from the Company's Controller. The notice must be hand delivered or mailed to the Company at the address of its executive offices, 600 Fifth Avenue, 23<sup>rd</sup> Floor, New York, NY 10020; Attention: Controller, or may be provided electronically to the extent and in the manner provided under procedures adopted by the Company. Payment of the option price may be made in any manner permitted under paragraph 5. The cash, Common Stock or documentation described in the applicable provision of paragraph 5 must accompany the Option Exercise Form. Subject to Section 5, your Option will be deemed exercised on the

date the Option Exercise Form (and payment of the option price) is hand delivered, received by electronic transmission (if permitted), received by overnight courier, or if mailed, postmarked.

5. **Satisfaction of Option Price.** Your Option may be exercised by payment of the option price in cash (including check, bank draft, money order, or wire transfer to the order of the Company). Unless prohibited by the Committee in its discretion (at any time prior to completion of the desired Option exercise), your Option may also be exercised using any of the following methods or a combination thereof:

(a) **Payment of Common Stock.** You may satisfy the option price by tendering shares of Common Stock that you own. For this purpose, the shares of Common Stock so tendered shall be valued at the closing sales price of the Common Stock on The Nasdaq Capital Market (or the exchange or market determined by the Committee to be the primary market for the Common Stock) for the day before the date of exercise or, if no such sale of Common Stock occurs on such date, the closing sales price on the nearest trading date before such date. The certificate(s) evidencing shares tendered in payment of the option price must be duly endorsed or accompanied by appropriate stock powers. Only stock certificates issued solely in your name may be tendered to exercise your Option. Fractional shares may not be tendered in satisfaction of the option price; any portion of the option price that is in excess of the aggregate value (as determined under this paragraph 5(a)) of the number of whole shares tendered must be paid in cash. If a certificate tendered in exercise of the Option evidences more shares than are required pursuant to the immediately preceding sentence for satisfaction of the portion of the option price being paid in Common Stock, an appropriate replacement certificate will be issued to you for the number of excess shares.

(b) **Broker-Assisted Cashless Exercise.** You may satisfy the option price by delivering to the Company a copy of irrevocable instructions to a broker acceptable to the Company to sell shares of Common Stock (or a sufficient portion of such shares) acquired upon exercise of the Option and remit to the Company a sufficient portion of the sale proceeds to pay the total option price and withholding tax obligation resulting from such exercise. The broker must agree to deposit the entire sale proceeds into a Company-owned account pending delivery to the Company of the option price and tax withholding amount. Shares issued under this method of exercise will be issued to the designated brokerage firm for your account. The ability to use this method of exercise is subject to the Company's approval of the broker and of the specific mechanics of exercise.

(c) **Net Share Exercise.** You may satisfy the option price by delivering to the Company an Option Exercise Form that directs the Company to withhold a sufficient number of the shares acquired upon exercise to satisfy the aggregate option price and tax withholding obligation with respect to the shares as to which the Option is being exercised. For purposes of this provision, the shares of Common Stock applied to satisfy the option price and withholding obligation shall be valued in the same manner as provided under paragraph 5(a).

6. **Termination of Employment**

(a) **General.** The following special rules apply to your Option in the event of your death, disability, retirement, or other termination of employment. Following your employment

termination, your Option will be exercisable only with respect to the number of shares you were entitled to purchase on the date of the termination of your employment and only for the period of time specified below. The Option shall terminate upon the date of the termination of your employment with respect to any shares that were not exercisable as of your employment termination date.

(i) **Termination of Employment for Cause.** If the Company or a Subsidiary terminates your employment for Cause, your Option will terminate on the date of such termination of employment. For this purpose, "Cause" shall have the meaning set forth in the Employment Agreement.

(ii) **Resignation.** If you resign from the Company or a Subsidiary other than upon Retirement (as defined below), your Option will terminate 90 days after such termination of employment.

(iii) **Termination Without Cause.** If the Company or a Subsidiary terminates your employment without Cause or if the Subsidiary or division in which you are employed is sold by the Company, your Option will terminate 90 days after such termination of employment.

(iv) **Death or Disability.** If your employment terminates by reason of death or Disability, your Option will terminate one year after such termination of employment. For purposes of this provision, "Disability" means that as of the date of your termination of employment, you suffer from a medically determinable physical or mental impairment that renders you unable to perform substantially all of the duties of your position and can be expected to result in death or can be expected to last for a continuous period of not less than 12 months.

(v) **Retirement.** Upon your Retirement from the Company, except as provided in the next sentence, you may exercise your Option for a period of one year following your Retirement, but not beyond the term of the Option. If you serve as a director of the Company immediately following your Retirement, your Option will terminate one year after the termination of your service as a director, but not beyond the term of the Option. For purposes of this provision, "Retirement" means termination of your employment with the Company and its Subsidiaries after you have attained age 60 and ten years of continuous employment with the Company and/or its Subsidiaries.

(vi) **Acceleration and Adjustments of Exercise Period.** The Committee may, in its discretion, declare all or any portion of your Option immediately exercisable and/or permit all or any part of your Option to remain exercisable for such period designated by it after the time when the Option would have otherwise terminated as provided in the applicable portion of this paragraph 6(a), but not beyond the expiration date of your Option as set forth in paragraph 2 above.

(b) **Committee Determinations.** The Committee shall have absolute discretion to make all determinations reserved to it under the Plan or this letter, including without limitation

the date and circumstances of termination of your employment, and its determinations shall be final, conclusive and binding upon you and your beneficiaries.

#### **7. Tax Withholding**

You must make arrangements satisfactory to the Company to satisfy any applicable federal, state, local or other withholding tax liability. If you exercise your Option by payment of cash or Common Stock, you can satisfy your withholding obligation by making a cash payment to the Company of the required amount. In addition, unless the Committee in its discretion prohibits such method, you may satisfy your withholding obligation by having the Company retain from the Common Stock otherwise deliverable to you upon exercise of your Option shares of Common Stock having a value equal to the minimum amount of any required tax withholding with respect to the exercise. If you exercise your Option using the broker-assisted cashless option exercise method, the Committee may require that any required tax withholding be retained by the Company from the proceeds of the sale of your shares. If you fail to satisfy your withholding obligation in a time and manner satisfactory to the Company, the Company or a Subsidiary shall have the right to withhold the required amount from your salary or other amounts payable to you.

Any election to have shares withheld must be made on or before the date you exercise your Option. A copy of the withholding election form may be obtained from the Company's Controller. The election form does not apply to exercises under the cashless option exercise method or the net share exercise method. Share withholding is mandatory if you are using the net share method of exercise.

The amount of withholding tax retained by the Company or paid by you to the Company will be paid to the appropriate tax authorities in satisfaction of the withholding obligations under the tax laws. The total amount of income you recognize by reason of exercise of the Option will be reported to the tax authorities in the year in which you recognize income with respect to the exercise. Whether you owe additional tax will depend on your overall taxable income for the applicable year and the total tax remitted for that year through withholding or by estimated payments.

#### **8. Administration of the Plan**

The Plan is administered by the Committee. The Committee has authority to interpret the Plan, to adopt rules for administering the Plan, to decide all questions of fact arising under the Plan, and generally to make all other determinations necessary or advisable for administration of the Plan. All decisions and acts of the Committee are final and binding on all affected Plan participants.

#### **9. Non-transferability of Option**

The Option granted to you by this letter may be exercised only by you, and may not be assigned, pledged, or otherwise transferred by you, with the exception that in the event of your death the Option may be exercised (at any time prior to its expiration or termination as provided in paragraph 2 and 6) by the executor or administrator of your estate or by a person who acquired the right to exercise your Option by bequest or inheritance or by reason of your death.

**10. Amendment and Adjustments to your Option**

The Plan authorizes the Board or the Committee to make amendments and adjustments to outstanding awards, including the Option granted by this letter, in specified circumstances, as provided in the Plan.

**11. Effect on Other Benefits**

Income recognized by you as a result of exercise of the Option will not be included in the formula for calculating benefits under the Company's other benefit plans.

**12. Regulatory Compliance**

Under the Plan, the Company is not required to deliver Common Stock upon exercise of your Option if such delivery would violate any applicable law or regulation or stock exchange requirement. If required by law or regulation, the Company may impose restrictions on your ability to transfer shares received under the Plan.

**13. Data Privacy**

By accepting this Option you expressly consent to the collection, use and transfer, in electronic or other form, of your personal data by and among the Company, its Subsidiaries and any broker or third party assisting the Company in administering the Plan or providing recordkeeping services for the Plan, for the purpose of implementing, administering and managing your participation in the Plan. By accepting this Option you waive any data privacy rights you may have with respect to such information. You may revoke the consent and waiver described in this paragraph by written notice to the Company's Controller; however, any such revocation may adversely affect your ability to participate in the Plan and to exercise any stock options previously granted under the Plan.

**14. Consent to Jurisdiction**

Your Option and the Plan are governed by the laws of the State of Delaware without regard to any conflict of law rules. Any dispute arising out of this Option or the Plan may be resolved only in a state or federal court located within New York County, New York State, U.S.A. This Option is issued on the condition that you accept such venue and submit to the personal jurisdiction of any such court.

**15. Entire Agreement.**

This letter embodies the entire agreement of the parties hereto respecting the matters within its scope. This Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof, including, without limitation, the Employment Agreement. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or



effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

\* \* \* \* \*

If you have any questions regarding your Option or would like to obtain additional information about the Plan or its administration, please contact the Company's Controller, Delcath Systems, Inc., 600 Fifth Avenue, 23rd Floor, New York, NY 10020 (telephone (212) 489-2100).

This letter contains the formal terms and conditions of your award and accordingly should be retained in your files for future reference.

Very truly yours,

\_\_\_\_\_  
/s/ Barbra C. Keck

Name: Barbra Keck  
Title: Controller

Acknowledged and Agreed:

\_\_\_\_\_  
/s/ Eamonn Hobbs

Eamonn Hobbs





**Delcath Systems, Inc. Appoints David McDonald Chief Financial Officer**

*-- New CFO to Spearhead Business Development and Strategic Alliance Initiatives --*

NEW YORK, NY – September 14, 2009 -- Delcath Systems, Inc. (Nasdaq: DCTH), a medical technology company testing its proprietary treatment method for primary and metastatic cancers to the liver, announced that has appointed David Alan McDonald Chief Financial Officer of the Company, effective today. McDonald, 49, was formerly the Senior Vice President of Business Development at AngioDynamics, Inc. (Nasdaq: ANGO), where he led the firm's business development activities.

"David brings a broad base of business knowledge to Delcath," said Eamonn Hobbs, President and CEO of the company. "He has an extensive financial and business development background and understands the dynamics of commercializing new technologies, international licensing, marketing and strategic development. We are excited to have David onboard. He will be an asset to our team as it prepares for FDA submission by mid-2010, gains CE Mark approval and pursues strategic relationships with outside parties."

The CFO role at Delcath had been vacant since December 2008, when the previous CFO resigned to pursue other interests.

McDonald founded Minneapolis-based Cornerstone Healthcare Advisors LLC in April 2005, which he led until joining AngioDynamics in July 2008. At Cornerstone he provided advisory and consulting services to emerging medical technology companies and their financial sponsors.

Prior to 2005, McDonald was a Managing Director and leader of Medical Technology Investment Banking at RBC Capital Markets where he developed senior and Board level relationships with leading private, public and venture capital firms in the medical device and diagnostics industries. While at RBC and Cornerstone, Mr. McDonald advised on more than 50 banking deals.

Before his involvement with these companies, Mr. McDonald was a Senior Vice President and Equity Portfolio Manager at Investment Advisers, Inc as well as a research analyst covering the healthcare industry for more than a dozen years. He received a Bachelor of Arts Degree in Economics from St. Olaf College in Northfield, Minnesota in 1982.

**About Delcath Systems, Inc.**

Delcath Systems, Inc. is a medical device company specializing in cancer treatment. The Company is testing a proprietary, patented drug delivery system for the treatment of liver cancers. Delcath's novel drug delivery platform is testing the delivery of ultra-high doses of anti-cancer drugs to the liver while preventing these high doses of drug from entering the patient's bloodstream. The Company is currently enrolling patients in Phase III and Phase II clinical studies for the treatment of liver cancers using high doses of melphalan. The Company's intellectual property portfolio consists of twenty-seven patents on a worldwide basis including the U.S., Europe, Asia and Canada. For more information, please visit the Company's website at [www.delcath.com](http://www.delcath.com).

*The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements made by the Company or on its behalf. This news release contains forward-looking statements, which are subject to certain risks and uncertainties that can cause actual results to differ materially from those described. Factors that may cause such differences include, but are not limited to, uncertainties relating to our ability to successfully complete Phase III clinical trials and secure regulatory approval of our current or future drug-delivery system and uncertainties regarding our ability to obtain financial and other resources for any research, development and commercialization activities. These factors, and others, are discussed from time to time in our filings with the Securities and Exchange Commission. You should not place undue reliance on these forward-looking statements, which speak only as of the date they are made. We undertake no obligation to publicly update or revise these forward-looking statements to reflect events or circumstances after the date they are made.*

**Contact Information:**

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**Data Safety Monitoring Board Unanimously Recommends  
Continuation of Delcath's Phase III Clinical Trial  
-- Enrollment Reaches 95% Accrual --**

**Final -- NEW YORK, NY, September 11, 2009, --** Delcath Systems, Inc. (Nasdaq:DCTH), a medical technology company testing its proprietary treatment method for primary and metastatic cancers to the liver, announced that the Data and Safety Monitoring Board ("DSMB") reviewed clinical data on 77 patients enrolled in its pivotal Phase III clinical trial and unanimously recommended that the trial continue to enroll patients with the goal of reaching the 92 patients required to complete the study. In addition, the Company announced it now expects enrollment to be completed by mid-October.

Eamonn Hobbs, President and CEO of Delcath Systems stated, "We are pleased by the successful review of our safety data and the recent, accelerated pace of enrollment, which has put us in the trial's home stretch. This is an exciting time for the Company. With current enrollment trends, we now expect to complete enrollment by the middle of October and are still on track for an FDA submission by mid-2010."

The DSMB is an independent group of experts with the responsibility for reviewing and evaluating the safety and response data generated from the Company's Phase III trial. The primary responsibilities of the DSMB are to ensure the safety of all patients enrolled in the trial, the quality of the data collected and the continued scientific validity of the trial design. The DSMB reviews data periodically in order to make an informed risk versus benefit recommendation concerning the continuation, modification, or termination of the trial due to safety concerns. This DSMB review was triggered upon randomization of the 77th patient which marks the 75% enrollment point for the trial.

**About the Phase III Study**

This clinical study is testing the Delcath PHP System™ for the regional delivery of melphalan to the liver to treat patients with metastatic cutaneous and ocular melanoma who have unresectable tumors in the liver. The Delcath PHP System™ is designed to deliver significantly higher doses of anti-cancer drugs to a patient's liver while minimizing entry of the drugs into the rest of the patient's circulation. This isolation limits toxicities which result from systemic chemotherapy treatments.

Patients in the Phase III trial are randomized into one of two treatment arms, including immediate treatment with melphalan via the Delcath PHP System™ or treatment with best alternative care. The study is designed to evaluate the duration of tumor response in each of the two study arms. Following guidelines established by U.S. Food and Drug Administration under a Special Protocol Assessment (SPA), patients are permitted to "cross-over" from the best alternative care arm to receive treatment with the Delcath System at the time of disease progression.

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