

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

**FORM S-8  
REGISTRATION STATEMENT**  
*UNDER  
THE SECURITIES ACT OF 1933*

**DELCATH SYSTEMS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**06-1245881**  
(I.R.S. Employer  
Identification No.)

**1633 Broadway, Suite 22C  
New York, New York 10019**  
(Address of Principal Executive Offices) (Zip Code)

**Delcath Systems, Inc. 2021 Employee Stock Purchase Plan**  
(Full title of the plan)

**Gerard Michel  
Chief Executive Officer  
Delcath Systems, Inc.  
1633 Broadway, Suite 22C  
New York, New York 10019**  
(Name and address of agent for service)

**(212) 489-2100**  
(Telephone number, including area code, of agent for service)

*Copy to:*

**Veronica H. Montagna, Esq.  
McCarter & English, LLP  
100 Mulberry Street, Four Gateway Center  
Newark, New Jersey 07102**

**(973) 639-7948**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

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## **INTRODUCTION**

This Registration Statement on Form S-8 is filed by Delcath Systems, Inc. (the “Registrant” or the “Company”) to register the 260,295 shares of the common stock, par value \$0.01 per share (the “Common Stock”), of the Company reserved for issuance under the Delcath Systems, Inc. 2021 Employee Stock Purchase Plan (the “Plan”), which was approved by the Company’s stockholders at the Annual Meeting of Stockholders held on May 4, 2022. The Plan had been previously adopted by the Company’s Board of Directors on August 5, 2021, subject to stockholder approval.

### **PART I INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

The documents containing the employee benefit plan information specified by Part I, Item 1 of Form S-8 and the statement of availability of registrant information and any other information required by Part I, Item 2 of Form S-8 will be sent or given to participants as specified by Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with Rule 428 and the requirements of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the “Commission”) either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3 Incorporation of Documents by Reference.**

The following documents filed with the Commission by the Registrant, pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are incorporated herein by reference:

- (1) the Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2021 filed with the Commission on March 31, 2022;
- (2) the Registrant’s Quarterly Report on [Form 10-Q](#) for the quarterly period ended March 31, 2022 filed with the Commission on May 11, 2022;
- (3) the Registrant’s Current Reports on Form 8-K filed with the Commission on [January 6, 2022](#) and [May 6, 2022](#);
- (4) the Registrant’s [Definitive Proxy Statement](#) on Schedule 14A filed with the Commission on April 4, 2022;
- (5) the description of the Common Stock of the Registrant set forth in the Registrant’s registration statements pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, is furnished to, rather than filed with, the Commission, such information or exhibit is specifically not incorporated by reference in this Registration Statement.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4 Description of Securities.**

Not applicable.

**Item 5 Interests of Named Experts and Counsel.**

Not applicable.

## **Item 6 Indemnification of Directors and Officers.**

The Registrant is incorporated under the laws of the State of Delaware. Section 102(b)(7) of Delaware's General Corporation Law (the "DGCL") allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, other than for (i) any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) any unlawful payment of dividends, stock repurchases or redemption of shares or (iv) any transaction from which the director derived an improper personal benefit. Our amended and restated certificate of incorporation provides for this limitation of liability.

Section 145 of the DGCL, or Section 145, provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. Similar provisions apply to actions brought by or in the right of the corporation, except that no indemnification shall be made without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any indemnified person against any liability asserted against him or her and incurred by him or her in any such indemnified capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145.

Article SEVENTH of the Company's amended and restated certificate of incorporation provides that no person serving as a director of the Company shall be personally liable to the Company or its stockholders for breach of his or her fiduciary duty as a director, except where the director (i) breached his duty of loyalty to the Company or its stockholders, (ii) failed to act in good faith or engaged in intentional misconduct or a knowing violation of law, (iii) authorized the payment of a dividend or approved a stock repurchase or redemption in violation of the DGCL or (iv) obtained an improper personal benefit from any transaction.

Article EIGHTH of the Company's amended and restated certificate of incorporation requires the Company to indemnify any person who may be indemnified by a Delaware corporation pursuant to Section 145 of the DGCL in each situation where the Company is permitted to indemnify such persons.

The Company has entered into indemnification agreements with its executive officers and directors pursuant to which the Company has agreed to indemnify such persons against all expenses and liabilities incurred or paid by such persons in connection with any proceedings arising from the fact that such persons are or were officers or directors of the Company, and to advance expenses as incurred by or on behalf of such persons in connection therewith.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

In addition, we maintain standard policies of insurance that provide coverage (i) to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act and (ii) to the Company with respect to indemnification payments that the Company may make to such directors and officers.

**Item 7 Exemption from Registration Claimed.**

Not applicable.

**Item 8 Exhibits.**

The following exhibits are furnished with this Registration Statement:

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
4.1	Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1/A filed with the Commission on September 25, 2019)
4.2	Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated October 17, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on October 23, 2019)
4.3	Certificate of Correction to Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated October 22, 2019 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the Commission on October 23, 2019)

- 4.4 Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc., effective December 24, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on December 30, 2019)
- 4.5 Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Delcath Systems, Inc. dated November 23, 2020 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on November 24, 2020)
- 4.6 Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on July 11, 2019)
- 4.7 Certificate of Designation of Preferences, Rights and Limitations of Series E-1 Convertible Preferred Stock of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on August 16, 2019)
- 4.8 Amended and Restated By-Laws of Delcath Systems, Inc. (incorporated by reference to Exhibit 3.2 to Amendment No. 1 to the Company's Registration Statement on Form SB-2 filed with the Commission on August 23, 2000)
- 4.9 Delcath Systems, Inc. 2020 Omnibus Equity Incentive Plan, as amended (incorporated by reference to Exhibit 4.9 to the Company's Registration Statement on Form S-8 filed with the Commission on January 5, 2022)
- 4.10 Delcath Systems, Inc. 2021 Employee Stock Purchase Plan
- 5.1 Opinion of McCarter & English, LLP
- 23.1 Consent of McCarter & English, LLP (included in Exhibit 5.1)
- 23.2 Consent of Marcum, LLP
- 24.1 Powers of Attorney (included on signature page of this Registration Statement)
- 107.1 Calculation of Filing Fee Table

**Item 9 Undertakings.**

- (a) The undersigned registrant hereby undertakes:
  - (1) To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act, and is therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## EXHIBIT INDEX

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- 107.1\* [Calculation of Filing Fee Table](#)

\* Filed herewith

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in City of New York, State of New York on the 25th day of May, 2022.

**DELCATH SYSTEMS, INC.**

By: /s/ Gerard Michel

Gerard Michel  
Chief Executive Officer

## POWER OF ATTORNEY AND SIGNATURES

KNOW ALL BY THESE PRESENT, that each individual whose signature appears below hereby constitutes and appoints each of Gerard Michel and John Purpura as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Commission

granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>SIGNATURE</b>	<b>TITLE</b>	<b>DATE</b>
<u>/s/ Gerard Michel</u> Gerard Michel	Chief Executive Officer and Director (Principal Executive Officer)	May 25, 2022
<u>/s/ Anthony Dias</u> Anthony Dias	Vice President of Finance (Principal Accounting Officer)	May 25, 2022
<u>/s/ Roger G. Stoll, Ph.D.</u> Roger G. Stoll, Ph.D.	Chairman of the Board	May 25, 2022
<u>/s/ Gilad Aharon</u> Gilad Aharon	Director	May 25, 2022
<u>/s/ Elizabeth Czerepak</u> Elizabeth Czerepak	Director	May 25, 2022
<u>/s/ Steven Salamon</u> Steven Salamon	Director	May 25, 2022
<u>/s/ John Sylvester</u> John Sylvester	Director	May 25, 2022

## DEL CATH SYSTEMS, INC.

## 2021 EMPLOYEE STOCK PURCHASE PLAN

(As adopted by the Board of Directors on August 5, 2021 and approved by the stockholders on May 4, 2022)

The purpose of the Delcath Systems, Inc. 2021 Employee Stock Purchase Plan (the “Plan”) is to provide eligible employees of Delcath Systems, Inc. (the “Company”) and each Designated Subsidiary (as defined in Section 11) with opportunities to purchase shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”). The Plan is intended to constitute an “employee stock purchase plan” within the meaning of Section 423(b) of the Internal Revenue Code of 1986, as amended (the “Code”), and shall be interpreted in accordance with that intent. Subject to adjustment pursuant to Section 17(a), the shares of Common Stock that may be sold pursuant to the Plan shall not exceed in the aggregate 260,295 shares of Common Stock.

1. *Administration.* The Plan is administered by the person or persons appointed by the Company’s Board of Directors (the “Board”) for such purpose or, in the event of no such appointment, the Compensation and Stock Option Committee of the Board (the “Administrator”). The Administrator has authority at any time to: (a) adopt, alter and repeal such rules, guidelines and practices for the administration of the Plan and for its own acts and proceedings as it shall deem advisable; (b) interpret the terms and provisions of the Plan; (c) make all determinations it deems advisable for the administration of the Plan; (d) decide all disputes arising in connection with the Plan; (e) generally, to exercise such powers and to perform such acts as set forth in the Plan and to exercise such other powers and to perform such other acts as it deems necessary or expedient to promote the best interests of the Company and its affiliates and to carry out the intent that the Plan be treated as an “employee stock purchase plan” under Section 423(b) of the Code; and (f) to adopt such rules, procedures and sub-plans relating to the operation and administration of the Plan as are necessary or appropriate under applicable local laws, regulations and procedures to permit or facilitate participation in the Plan by employees of the Company or any Designated Subsidiary who are foreign nationals or employed or located outside the United States. All interpretations and decisions of the Administrator shall be final, binding and conclusive on all persons, including the Company and the Participants. No member of the Board or the Administrator or any other individual exercising administrative authority with respect to the Plan shall be liable for any action or determination made in good faith with respect to the Plan or any option granted hereunder.

2. *Offerings.* The Company will make one or more offerings to eligible employees to purchase Common Stock under the Plan (each, an “Offering”). Any Offering may, as determined by the Administrator, consist of one or more periods of time specified in the Offering beginning on the first day of the Offering or on the next day following an Exercise Date (as defined in Section 8) within an Offering and ending on the next-following Exercise Date (each, a “Purchase Period”). The Administrator shall designate the duration, frequency, and start and end dates of each Offering (which may overlap with another Offering) and the number and duration of Purchase Periods within an Offering, provided that no Offering shall exceed twenty-seven (27) months. The

Administrator shall have the authority to set such other terms of each Offering, consistent with the Plan, and subject to compliance with the requirement of Section 423(b)(5) of the Code that all employees granted the right to purchase shares of Common Stock pursuant to the any Offering shall have the same rights and privileges. The provisions of separate Offerings need not be identical. The Administrator may, in its sole discretion, structure an Offering so that if the Fair Market Value of the Common Stock on the first day of a new Purchase Period within the period of such Offering is less than or equal to the Fair Market Value of the Common Stock on the Offering Date, then (i) that Offering will terminate immediately (after giving effect to the exercise and purchase of shares of Common Stock for the Purchase Period within such Offering that just ended), and (ii) the Participants in such terminated Offering will be automatically enrolled in a new Offering beginning on the first day of the new Purchase Period.

3. *Eligibility.* All individuals classified as employees on the payroll records of the Company and each Designated Subsidiary are eligible to participate in any one or more of the Offerings under the Plan, provided that as of the first day of the applicable Offering (the “Offering Date”) they have completed at least 30 days of employment, and further provided that, unless otherwise specified in an Offering, employees whose customary employment is 20 hours or less per week shall not be eligible. Notwithstanding any other provision herein, individuals who are not contemporaneously (with the first day of the applicable Offering) classified as employees of the Company or a Designated Subsidiary for purposes of the Company’s or applicable Designated Subsidiary’s payroll system are not considered to be eligible employees of the Company or any Designated Subsidiary and shall not be eligible to participate in the Plan. In the event any such individuals are reclassified as employees of the Company or a Designated Subsidiary for any purpose, including, without limitation, common law or statutory employees, by any action of any third party, including, without limitation, any government agency, or as a result of any private lawsuit, action or administrative proceeding, such individuals shall, notwithstanding such reclassification, remain ineligible for participation. The exclusive means for individuals who are not contemporaneously classified as employees of the Company or a Designated Subsidiary on the Company’s or Designated Subsidiary’s payroll system to become eligible to participate in the Plan is through an amendment to this Plan, duly executed by the Company, which specifically renders such individuals eligible to participate herein.

#### 4. *Participation.*

(a) *Enrollment.* An eligible employee who is not a Participant on any Offering Date may participate in such Offering by submitting an enrollment form (which may be in written or electronic form) to his or her appropriate payroll location at least 15 business days before the Offering Date (or by such means, at such place or by such other deadline as shall be established by the Administrator for the Offering). The enrollment form will (a) state a whole percentage or the amount to be deducted from an eligible employee’s Compensation (as defined in Section 11) per pay period, (b) authorize the purchase of Common Stock in each Offering in accordance with the terms of the Plan and (c) specify the exact name or names in which shares of Common Stock purchased for such individual are to be issued pursuant to Section 10. An employee who does not enroll in accordance with these procedures will be deemed to have waived the right to participate. Unless a Participant files a new enrollment form or withdraws from the Plan, such Participant’s deductions and purchases will continue at the same percentage or amount of Compensation for future Offerings, provided he or she remains an eligible employee.

(b) Notwithstanding the foregoing, participation in the Plan will neither be permitted nor be denied contrary to the requirements of the Code.

5. *Employee Contributions.* Each eligible employee may authorize payroll deductions in either a dollar amount or as a percentage of Compensation, and subject to such minimums and maximums, as determined by the Administrator and set forth in the Offering or enrollment form applicable to such Offering. The Company will maintain book accounts showing the amount of payroll deductions made by each Participant for each Offering. No interest will accrue or be paid on payroll deductions.

6. *Deduction Changes.* Except as provided in Section 7, a Participant may not increase or decrease his or her payroll deduction during any Offering, but may increase or decrease his or her payroll deduction with respect to the next Offering (subject to the limitations of Section 5) by filing a new enrollment form at least 15 business days before the next Offering Date (or by such other deadline as shall be established by the Administrator for the Offering).

7. *Withdrawal.* A Participant may withdraw from participation in the Plan by delivering a written notice of withdrawal to his or her appropriate payroll location. The Participant's withdrawal will be effective as of the next business day. Following a Participant's withdrawal, the Company will promptly refund all payroll deductions accumulated on behalf of such Participant under the Plan that have not been used to purchase shares of Common Stock (without interest) as soon as administratively practicable. Partial withdrawals are not permitted. Such an employee may not begin participation again during the remainder of the Offering, but may enroll in a subsequent Offering in accordance with Section 4.

8. *Grant of Options.* On each Offering Date, the Company will grant to each eligible employee who is then a Participant in the Plan an option ("Option") to purchase on the last day of such Offering (or, where there are multiple Purchase Periods within the period of an Offering, the last day of a Purchase Period) (the "Exercise Date"), at the Option Price hereinafter provided for, the lowest of (a) a number of shares of Common Stock determined by dividing such Participant's accumulated payroll deductions on such Exercise Date by the lower of (i) 85 percent of the Fair Market Value of the Common Stock on the Offering Date, or (ii) 85 percent of the Fair Market Value of the Common Stock on the Exercise Date, or (b) the maximum number of shares as shall be established by the Administrator in advance of and set forth in the Offering; provided, however, that such Option shall be subject to the limitations set forth below. Each Participant's Option shall be exercisable only to the extent of such Participant's accumulated payroll deductions on the Exercise Date. The purchase price for each share purchased under each Option (the "Option Price") will not be lower than the lesser of 85 percent of the Fair Market Value of the Common Stock on the Offering Date or the Exercise Date.

Notwithstanding the foregoing, no Participant may be granted an Option hereunder if such Participant, immediately after the option was granted, would be treated as owning stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the Company or any Parent or Subsidiary (as defined in Section 11). For purposes of the preceding sentence, the attribution rules of Section 424(d) of the Code shall apply in determining the stock ownership of a Participant, and all stock which the Participant has a contractual right to purchase shall be treated as stock owned by the Participant. In addition, no Participant may be granted an Option which permits his or her rights to purchase stock under the Plan, and any other “employee stock purchase plan” (under Section 423(b) of the Code) of the Company and its Parents and Subsidiaries (which, for the avoidance of doubt, does not include the Company’s 2020 Omnibus Equity Incentive Plan), to accrue at a rate which exceeds \$25,000 of the fair market value of such stock (determined on the option grant date or dates) for each calendar year in which the Option is outstanding at any time. The purpose of the limitation in the preceding sentence is to comply with Section 423(b)(8) of the Code and shall be applied taking Options into account in the order in which they were granted.

9. *Exercise of Option and Purchase of Shares.* The Option of each employee who continues to be a Participant in the Plan on the Exercise Date shall be automatically exercised on such date and he or she shall acquire from the Company such number of whole shares of Common Stock reserved for the purpose of the Plan as his or her accumulated payroll deductions on such date will purchase at the Option Price, subject to any other limitations contained in the Plan. Any amount remaining in a Participant’s account at the end of an Offering solely by reason of the inability to purchase a fractional share will be carried forward to the next Offering; if the amount remaining in the Participant’s account after the purchase of shares of Common Stock is at least equal to the amount required to purchase one (1) whole share of Common Stock on the Exercise Date of the Offering, then such remaining amount shall be distributed in full to such Participant at the end of the Offering without interest. If any Option granted under the Plan shall for any reason terminate without having been exercised, the shares of Common Stock not purchased under such Option shall again become available for issuance under the Plan.

10. *Issuance of Common Stock.* Shares of Common Stock purchased under the Plan may be issued only in the name of the employee, in the name of the employee and another person of legal age as joint tenants with rights of survivorship, or in the name of a broker authorized by the employee to be his, her or their, nominee for such purpose.

11. *Certain Definitions.*

The term “Compensation” means the amount of base pay, prior to salary reduction pursuant to Sections 125, 132(f) or 401(k) of the Code, but excluding overtime, incentive or bonus awards, imputed income, allowances and reimbursements for expenses such as relocation allowances or travel expenses, income or gains on the exercise of Company stock options, and similar items.

The term “Designated Subsidiary” means any present or future Subsidiary (as defined below) that has been designated by the Board to participate in the Plan. The Board may so designate any Subsidiary, or revoke any such designation, at any time and from time to time, either before or after the Plan is approved by the stockholders.

The term “Fair Market Value of the Common Stock” on any given date means the fair market value of the Common Stock determined in good faith by the Administrator; provided, however, that if the Common Stock is admitted to quotation on the Nasdaq Stock Market or another national securities exchange, the determination shall be made by reference to the closing price on such date. If there is no closing price for such date, the determination shall be made by reference to the last date preceding such date for which there is a closing price.

The term “Parent” means a “parent corporation” with respect to the Company, as defined in Section 424(e) of the Code.

The term “Participant” means an individual who is eligible as determined in Section 3 and who has complied with the provisions of Section 4.

The term “Subsidiary” means a “subsidiary corporation” with respect to the Company, as defined in Section 424(f) of the Code.

12. *Rights on Termination of Employment.* If a Participant’s employment terminates for any reason before the Exercise Date for any Offering (or any Purchase Period within the period of an Offering), no payroll deduction will be taken from any pay due and owing to the Participant and the balance in the Participant’s account will be paid (without interest) to such Participant or, in the case of such Participant’s death, to his or her designated beneficiary as if such Participant had withdrawn from the Plan under Section 7. Notwithstanding the foregoing, an Offering may provide that if a Participant’s employment terminates under specified circumstances other than by the Company for cause (as determined in the sole discretion of the Company), then the Participant will continue to participate in the Offering (or any Purchase Period within the Offering) that ends (and the Exercise Date of which occurs) within three months following the Participant’s termination of employment. An employee will be deemed to have terminated employment, for purposes of this section, if the corporation that employs him or her, having been a Designated Subsidiary, ceases to be a Subsidiary, or if the employee is transferred to any corporation other than the Company or a Designated Subsidiary. An employee will not be deemed to have terminated employment for this purpose if the employee is on an approved leave of absence for military service or sickness or for any other purpose approved by the Company, if the employee’s right to reemployment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise provides in writing.

13. *Special Rules.* Notwithstanding anything herein to the contrary, the Administrator may adopt special rules applicable to the employees of a particular Designated Subsidiary whenever the Administrator determines that such rules are necessary or appropriate for the implementation of the Plan in a jurisdiction where such Designated Subsidiary has employees; provided that such rules are consistent with the requirements of Section 423(b) of the Code. Any special rules established pursuant to this Section 13 shall, to the extent possible, result in the employees subject to such rules having substantially the same rights as other Participants in the Plan.

14. *Optionees Not Stockholders.* Neither the granting of an Option to a Participant nor the deductions from his or her pay shall constitute such Participant a holder of the shares of Common Stock covered by an Option under the Plan until such shares have been purchased by and issued to him or her upon an Exercise Date.

15. *Rights Not Transferable.* Rights under the Plan are not transferable by a Participant other than by will or the laws of descent and distribution, and are exercisable during the Participant's lifetime only by the Participant. Any attempt at transferring rights under the Plan in violation of the foregoing shall be null and void without effect.

16. *Application of Funds.* All funds received or held by the Company under the Plan may be combined with other corporate funds and may be used for any corporate purpose; the Company shall not be required to segregate any payroll deductions made under the Plan.

17. *Adjustment in Case of Changes Affecting Common Stock; Dissolution or Liquidation; Change in Control.*

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the Company's structure affecting the Common Stock occurs without the receipt of consideration by the Company, then the Board shall, in such manner as it deems equitable, adjust the number of shares and class of Common Stock that may be delivered under the Plan, the Exercise Price per share and the number of shares of Common Stock covered by each outstanding Option under the Plan, and the numerical limits of the preamble hereof and/or in Section 8.

(b) Dissolution or Liquidation. Unless otherwise determined by the Administrator, in the event of a proposed dissolution or liquidation of the Company, any Offering then in progress will be shortened by setting a new Exercise Date and the Offering will end immediately prior to the proposed dissolution or liquidation. The new Exercise Date will be before the date of the Company's proposed dissolution or liquidation. Before the new Exercise Date, the Administrator will provide each Participant with written notice, which may be in electronic form, of the new Exercise Date and that the Participant's Option will be exercised automatically on such date, unless before such time, the Participant has withdrawn from the Offering in accordance with Section 7.

(c) Change in Control. In the event of a Change in Control, each outstanding Option may (if approved by the Board) be assumed or an equivalent option substituted by the surviving corporation or the acquiring corporation (or the Parent or Subsidiary of such surviving or acquiring corporation). If such surviving or successor corporation does not (or will not) assume or substitute the Option, the Offering with respect to which the Option relates will be shortened by setting a new Exercise Date on which the Offering will end. The new Exercise Date will occur before the date of such Change in Control and prior to the new Exercise Date, the Administrator will provide each Participant with written notice, which may be in electronic form, of the new Exercise Date and that the Participant's Option will be exercised automatically on such date, unless before such time, the Participant has withdrawn from the Offering in accordance with Section 7. For purposes hereof, "Change in Control" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

- (i) The consummation of any consolidation or merger of the Company with any other entity, other than a transaction which would result in the voting power of the securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such consolidation or merger;
- (ii) Any one Person, or more than one Person acting as a group, acquires ownership of the stock of the Company that, together with the stock held by such Person or group, constitutes more than 50% of the total voting power of the stock of the Company; provided, however, that for purposes of this subsection, (A) the acquisition of additional stock by any one Person or group, who is considered to own more than 50% of the total voting power of the stock of the Company will not be considered a Change in Control, and (B) if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, the direct or indirect beneficial ownership of 50% or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event will not be considered a Change in Control under this subsection (ii). For this purpose, indirect beneficial ownership will include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities;
- (iii) A majority of the Company directors is replaced during any 12-month period by Company directors whose appointment or election is not endorsed by a majority of the Company directors prior to the date of the appointment or election; or
- (iv) Any one Person, or more than one Person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iv), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a Person described in subsection (3) above. For purposes of this subsection (iv), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

(d) For purposes of this definition, (i) “**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint share company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof, and (ii) Persons will be considered to be acting as a group if they are owners of an entity that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

18. *Designation of Beneficiary.*

(a) A Participant may file a written designation of a beneficiary who is to receive any shares of Common Stock and/or cash, if any, from the Participant’s account under the Plan in the event of such Participant’s death subsequent to the end of an Offering but prior to delivery to the Participant of such shares of Common Stock or cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant’s account under the Plan in the event of such Participant’s death during an Offering. Any such designation shall be on a form provided by the Administrator, which may be electronic.

(b) The Participant may change such designation of beneficiary at any time by written notice to the Company, on a form provided by the Administrator, which may be electronic. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant’s death, the Company shall deliver such shares of Common Stock and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

19. *No Continued Service Rights.* Neither the Plan nor any right granted under the Plan shall confer on any Participant any right to continuation of the Participant’s employment with the Company or any Designated Subsidiary, nor shall it interfere in any way with the right of the Company or Designated Subsidiary to terminate such employment relationship, with or without cause.

20. *Amendment of the Plan.* The Board may at any time and from time to time amend the Plan in any respect, except that, without the approval within 12 months of such Board action by the stockholders, no amendment shall be made increasing the number of shares approved for the Plan or making any other change that would require stockholder approval in order for the Plan, as amended, to qualify as an “employee stock purchase plan” under Section 423(b) of the Code.

21. *Insufficient Shares.* If the total number of shares of Common Stock that would otherwise be purchased on any Exercise Date plus the number of shares purchased under previous Offerings (or previous Purchase Periods within the current Offering) under the Plan exceeds the maximum number of shares issuable under the Plan, the shares then available shall be apportioned among Participants in proportion to the amount of payroll deductions accumulated on behalf of each Participant that would otherwise be used to purchase Common Stock on such Exercise Date.

22. *Termination of the Plan.* The Plan may be terminated at any time by the Board. Upon termination of the Plan, all amounts in the accounts of Participants shall be promptly refunded. If the Plan is terminated, the Administrator may elect to terminate all outstanding Offerings either immediately or once shares of Common Stock have been purchased on the next Exercise Date (which may, in the discretion of the Administrator, be accelerated) or permit Offerings to expire in accordance with their terms. If any Offering is terminated before its scheduled expiration, all payroll deductions accumulated on behalf of each Participant under the Plan that have not been used to purchase shares of Common Stock will be returned to each Participant (without interest, except as otherwise required by law) as soon as administratively practicable.

23. *Governmental Regulations.* The Company's obligation to sell and deliver Common Stock under the Plan is subject to obtaining all governmental approvals required in connection with the authorization, issuance, or sale of such stock. No Option may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act of 1933, as amended, and the Plan is in material compliance with all applicable federal, state, and foreign laws, and any other securities laws and other laws applicable to the Plan, and the requirements of any stock exchange upon which the shares of Common Stock may then be listed. If on an Exercise Date the shares of Common Stock are not so registered or the Plan is not in such compliance, no Option shall be exercised on such Exercise Date, and the Exercise Date shall be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in such compliance, except that the Exercise Date shall not be delayed more than twelve (12) months and the Exercise Date shall in no event be more than twenty-seven (27) months from the Offering Date. If, on the Exercise Date under any Offering hereunder, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in such compliance, no Options shall be exercised and all payroll amounts accumulated during the Offering (reduced to the extent, if any, such contributions have been used to acquire shares of Common Stock) shall be distributed to the Participants without interest (unless required by applicable law).

24. *Governing Law.* All issues concerning this Plan 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 conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Delaware.

25. *Issuance of Shares.* Shares may be issued upon exercise of an Option from authorized but unissued Common Stock, from shares held in the treasury of the Company, or from any other proper source.

26. *Tax Withholding.* Participation in the Plan is subject to any minimum required tax withholding on income of the Participant in connection with the Plan. Each Participant agrees, by entering the Plan, that the Company and its Subsidiaries shall have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant, including shares issuable under the Plan.

27. *Certain Tax Matters.*

(a) *Code Section 409A.* Rights granted under the Plan are intended to be exempt from the application of Section 409A of the Code under U.S. Treasury Regulation Section 1.409A-1(b)(5)(ii).

(b) *No Guarantee of Tax Treatment.* Although the Company may endeavor to qualify a right granted under the Plan for special tax treatment under the laws of the United States or jurisdictions outside the United States or avoid adverse tax treatment (e.g., under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain special or to avoid unfavorable tax treatment, notwithstanding anything to the contrary in the Plan. Neither the Company, any Designated Subsidiary, any other affiliate of the Company, nor any of their respective employees, officers or directors, shall have any liability whatsoever to any Participant or beneficiary thereof in the event rights granted under the Plan do not qualify for special tax treatment under the law of the United States or any other jurisdiction or in the event any adverse tax treatment applies with respect to participation in the Plan.

28. *Notification Upon Sale of Shares.* Each Participant agrees, by entering the Plan, to give the Company prompt notice of any disposition of shares purchased under the Plan where such disposition occurs within two years after the Offering Date of the Option pursuant to which such shares were purchased or within one year after the Exercise Date of such Option.

29. *Successors and Assigns.* The Plan shall be binding on the Company and its successors and assigns.

30. *Captions.* The captions in the Plan are for convenience of reference only, and are not intended to narrow, limit or affect the substance or interpretation of the provisions contained herein.

31. *Effective Date and Approval of Shareholders.* The Plan shall take effect on the date it is adopted by the Board (and an Offering may commence at any time on or after such date) but no Option shall be exercised unless and until the Plan has been approved by the stockholders of the Company in accordance with Section 423(b) of the Code within twelve (12) months after the date the Plan is adopted by the Board. If the Plan is not so approved by the stockholders of the Company, all payroll deductions accumulated on behalf of each Participant under the Plan will be returned to each Participant (without interest, except as otherwise required by law) as soon as administratively practicable.

McCarter & English, LLP  
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100 Mulberry Street  
Newark, NJ 07102-4056  
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May 25, 2022

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

Re: Delcath Systems, Inc., Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Delcath Systems, Inc., a Delaware corporation (the "Company"), in connection with the registration, pursuant to a Registration Statement on Form S-8 (the "Registration Statement") of the Company, to be filed with the Securities and Exchange Commission on or about May 25, 2022 under the Securities Act of 1933, as amended (the "Securities Act"), of up to 260,295 shares of the Company's common stock, par value \$0.01 per share (the "Shares"), to be issued under the Delcath Systems, Inc. 2021 Employee Stock Purchase Plan (the "Plan").

In so acting, we have examined and relied as to matters of fact upon, the originals, or copies certified or otherwise identified to our satisfaction, of (i) the Amended and Restated Certificate of Incorporation of the Company, including all amendments thereto, (ii) the Amended and Restated By-laws of the Company, (iii) the Plan and (iv) such other documents, records and instruments of the Company and certificates of officers of the Company and of public officials, and have made such other and further investigations, as we have deemed necessary or appropriate to enable us to express the opinion set forth below. In such examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such latter documents.

Based upon the foregoing and in reliance thereon, and subject to the assumptions, limitations, qualifications and exceptions set forth in this opinion letter, we are of the opinion that upon issuance of the Shares and the payment, in cash or other consideration permitted under the Delaware General Corporation Law (the "DGCL"), of the purchase price therefor in accordance

with the terms of the Plan and relevant agreements duly authorized by and in accordance with the terms of the Plan, and the delivery of the Shares in accordance with the terms of the Plan, and either (a) the countersigning of the certificate or certificates representing the Shares by a duly authorized signatory of the registrar for the Company's common stock or (b) the book-entry of the Shares by the transfer agent for the Company's common stock in the name of The Depository Trust Company or its nominee, the Shares issued under the Plan will be validly issued, fully paid and non-assessable.

Our opinion as to the Shares issued under the Plan is subject to the continuing effectiveness of the Registration Statement and the qualification, or exemption from registration, of such Shares under certain state securities laws.

We have made no investigation as to, and we express no opinion concerning, any laws other than the DGCL, and we do not express any opinion herein concerning any other laws. Without limiting the effect of the immediately preceding qualification, we note that we express no opinion as to compliance with the securities or "blue sky" laws or principles of conflicts of laws of the State of Delaware or any other jurisdiction. This opinion letter is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters. The foregoing opinion is rendered as of the date hereof and the facts known to us on the date hereof and we assume no obligations to update or supplement this opinion letter to reflect any facts or circumstances that arise after the date of this opinion letter and come to our attention or any future changes in laws.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving the foregoing consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ McCarter & English, LLP

MCCARTER & ENGLISH, LLP

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Delcath Systems Inc. and Subsidiaries on Form S-8, of our report dated March 30, 2022, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Delcath Systems, Inc. and Subsidiaries as of December 31, 2021 and 2020 and for the years ended December 31, 2021 and 2020 appearing in the Annual Report on Form 10-K of Delcath Systems, Inc. and Subsidiaries for the year ended December 31, 2021.

/s/ Marcum LLP

Marcum LLP

New York, NY

May 25, 2022

**Calculation of Filing Fee Table**

**FORM S-8**  
(Form Type)

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

**Table 1: Newly Registered Securities**

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.01 per share	457(a)	260,295	\$4.51	\$1,173,930.45	0.0000927	\$108.82

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of Common Stock which become issuable under the above-named plan by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of shares of our outstanding Common Stock.
- (2) The proposed maximum offering price per share is based on the average of the high and low price of the Registrant's Common Stock on May 23, 2022 as reported on the Nasdaq Capital Market, used solely for the purpose of calculating the registration fee in accordance with paragraphs (c) and (h)(1) of Rule 457 under the Securities Act of 1933, as amended.