

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2012.

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-16133

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.)

810 Seventh Avenue, Suite 3505, New York, New York 10019
(Address of principal executive offices)

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

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of August 8, 2012, 66,949,413 shares of the Company's common stock, \$0.01 par value were outstanding.

DEL CATH SYSTEMS, INC.

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DELCATH SYSTEMS, INC.

**PART I:
FINANCIAL INFORMATION**

Item 1. Condensed Consolidated Financial Statements (Unaudited)

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DELCATH SYSTEMS, INC.

Condensed Consolidated Balance Sheets
(Unaudited)
(in thousands, except share data)

	<u>June 30, 2012</u>	<u>December 31, 2011</u>
Assets:		
Current assets		
Cash and cash equivalents	\$ 29,286	\$ 25,777
Investments – Certificates of deposit	–	4,980
Inventories	516	–
Accounts receivables	102	–
Prepaid expenses and other current assets	1,425	1,231
Total current assets	<u>31,329</u>	<u>31,988</u>
Property, plant and equipment		
Land	154	154
Furniture and fixtures	936	880
Machinery and equipment	1,454	1,371
Computer software and equipment	1,899	1,212
Leasehold improvements	1,574	1,148
	<u>6,017</u>	<u>4,765</u>
Less: accumulated depreciation	<u>(2,211)</u>	<u>(1,512)</u>
Property, plant and equipment, net	<u>3,806</u>	<u>3,253</u>
Total assets	<u>\$ 35,135</u>	<u>\$ 35,241</u>
Liabilities and Stockholders' Equity:		
Current liabilities		
Accounts payable and accrued expenses	\$ 7,412	\$ 6,398
Warrant liability	5,915	2,439
Total current liabilities	<u>13,327</u>	<u>8,837</u>
Deferred revenue	300	300
Commitments and contingencies	–	–
Stockholders' equity		
Preferred stock, \$.01 par value; 10,000,000 shares authorized; no shares issued and outstanding at June 30, 2012 and December 31, 2011	–	–
Common stock, \$.01 par value; 170,000,000 shares authorized; 65,744,017 and 48,237,630 shares issued and 65,715,917 and 48,209,534 outstanding at June 30, 2012 and December 31, 2011, respectively	657	482
Additional paid-in capital	197,243	172,613
Retained Earnings	(176,341)	(146,940)
Treasury stock, at cost; 28,100 shares at June 30, 2012 and December 31, 2011	(51)	(51)
Total stockholders' equity	<u>21,508</u>	<u>26,104</u>
Total liabilities and stockholders' equity	<u>\$ 35,135</u>	<u>\$ 35,241</u>

See accompanying notes to condensed consolidated financial statements.

DELCATH SYSTEMS, INC.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(in thousands, except share and per share data)

	<u>Three months ended June 30,</u> <u>2012</u>	<u>2011</u>	<u>Six months ended June 30,</u> <u>2012</u>	<u>2011</u>
Revenue	\$ 106	–	\$ 106	–
Cost of sales	–	–	–	–
Gross profit	<u>106</u>	<u>–</u>	<u>106</u>	<u>–</u>
Operating expenses				
Selling, general and administrative	\$ 7,218	\$ 5,238	\$ 14,643	\$ 9,404
Research and development	<u>8,204</u>	<u>5,248</u>	<u>15,335</u>	<u>8,896</u>
Total operating expenses	<u>15,422</u>	<u>10,486</u>	<u>29,978</u>	<u>18,300</u>
Operating loss	(15,316)	(10,486)	(29,872)	(18,300)
Change in fair value of warrant liability, net	917	5,027	579	10,992
Interest income	4	–	7	1
Other expense and interest expense	<u>(117)</u>	<u>–</u>	<u>(115)</u>	<u>–</u>
Net loss	<u>\$ (14,512)</u>	<u>\$ (5,459)</u>	<u>\$ (29,401)</u>	<u>\$ (7,307)</u>
Common share data:				
Basic and diluted loss per share	<u>\$ (0.26)</u>	<u>\$ (0.13)</u>	<u>\$ (0.57)</u>	<u>\$ (0.17)</u>
Weighted average number of basic and diluted common shares outstanding	54,847,807	42,988,240	51,582,458	42,971,148
Comprehensive loss	<u>\$ –</u>	<u>\$ (3,000)</u>	<u>\$ –</u>	<u>\$ (9,000)</u>

See accompanying notes to condensed consolidated financial statements.

DELCATH SYSTEMS, INC.

Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands, except share data)

	Six months ended June 30,	
	2012	2011
Cash flows from operating activities:		
Net loss	\$ (29,401)	\$ (7,307)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock option compensation expense	1,404	2,208
Restricted stock compensation expense	481	253
Depreciation expense	699	456
Warrant liability fair value adjustment	(579)	(10,992)
Non-cash interest income	3	-
Changes in assets and liabilities:		
Decrease (increase) in prepaid expenses and other current assets	(197)	300
Decrease (increase) in inventories	(516)	-
Decrease (increase) in accounts receivables	(102)	-
Increase (decrease) in accounts payable and accrued expenses	1,014	816
Net cash used in operating activities	<u>(27,194)</u>	<u>(14,266)</u>
Cash flows from investing activities:		
Purchase of property, plant and equipment	(1,252)	(1,879)
Proceeds from maturities of short-term investments	4,980	1,492
Net cash provided by (used in) investing activities	<u>3,728</u>	<u>(387)</u>
Cash flows from financing activities:		
Net proceeds from sale of stock and exercise of stock options and warrants	26,975	83
Net cash provided by financing activities	<u>26,975</u>	<u>83</u>
(Decrease) increase in cash and cash equivalents	3,509	(14,570)
Cash and cash equivalents at beginning of period	25,777	45,621
Cash and cash equivalents at end of period	<u>\$ 29,286</u>	<u>\$ 31,051</u>
Supplemental cash flow information:		
Cash paid for interest	<u>\$ -</u>	<u>\$ -</u>
Supplemental non-cash activities:		
Cashless exercise of stock options and shares surrendered upon restricted stock vesting	<u>\$ -</u>	<u>\$ 61</u>
Fair value of warrants issued	<u>\$ 4,055</u>	<u>\$ -</u>

See accompanying notes to condensed consolidated financial statements.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
*for the Three and Six Months Ended June 30, 2012 and 2011***Note 1: Description of Business and Summary of Significant Accounting Policies**

Delcath Systems, Inc. is a specialty pharmaceutical and medical device company focused on oncology. Delcath's proprietary system for chemosaturation is designed to administer high dose chemotherapy and other therapeutic agents to diseased organs or regions of the body, while controlling the systemic exposure of those agents. The Company's initial focus is on the treatment of primary and metastatic liver cancers. In 2010, Delcath announced that its randomized Phase III clinical trial for patients with metastatic melanoma in the liver had successfully achieved the study's primary endpoint of extended hepatic progression-free survival. The Company also completed a multi-arm Phase II trial to treat other liver cancers. The Company obtained authorization to affix a CE Mark for the Delcath Hepatic CHEMOSAT® delivery system in April 2011 and for the second generation hemofiltration cartridge for CHEMOSAT in April 2012. The Company continues with the preparation of its NDA submission and intends to seek FDA approval for commercial sale of its chemosaturation system with melphalan. The Company has not yet received FDA approval for commercial sale of its system in the United States, and there can be no assurance that the FDA will approve the Company's NDA once submitted. Delcath transitioned from a development stage company to a commercial organization with operational activities in April 2012. Accordingly, reporting as a development stage company is no longer deemed necessary.

The Company has incurred losses since inception and anticipates incurring additional losses until such time, if ever, that it can generate significant sales. Management anticipates that additional working capital will be required to continue operations. To the extent additional capital is not available when needed, the Company may be forced to abandon some or all of its development and commercialization efforts, which would have a material adverse effect on the prospects of the business. Operations of the Company are subject to certain risks and uncertainties, including, among others, uncertainty of product development; uncertainty regarding regulatory approval; technological uncertainty; uncertainty regarding patents and proprietary rights; comprehensive government regulations; limited commercial manufacturing, marketing or sales experience; and dependence on key personnel.

Note 2: Basis of Condensed Consolidated Financial Statement Presentation

The accompanying condensed consolidated financial statements are unaudited and were prepared by the Company in accordance with generally accepted accounting principles in the United States of America ("GAAP") and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Certain information and footnote disclosures normally included in the Company's annual financial statements have been condensed or omitted. The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make assumptions and estimates that impact the amounts reported in the Company's condensed consolidated financial statements. The condensed consolidated financial statements include the accounts of all entities controlled by Delcath. All significant inter-company accounts and transactions are eliminated. The unaudited interim condensed consolidated financial statements, in the opinion of management, reflect all adjustments (consisting of normal recurring accruals) necessary for a fair statement of the Company's results of operations, financial position and cash flows for the interim periods ended June 30, 2012 and 2011.

The results of operations and cash flows for the interim periods are not necessarily indicative of the results of operations to be expected for the fiscal year. These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited financial statements and notes thereto for the year ended December 31, 2011, which are contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2011 as filed with the Securities and Exchange Commission (the "SEC") on March 6, 2012.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
*for the Three and Six Months Ended June 30, 2012 and 2011***Note 3: Summary of Significant Accounting Policies*****Use of Estimates***

The Company bases its estimates and judgments on historical experience and on various other assumptions that it believes are reasonable under the circumstances. The amounts of assets and liabilities reported in the Company's condensed consolidated balance sheets and the amount of expenses reported for each of its periods presented are affected by estimates and assumptions, which are used for, but not limited to, the accounting for derivative instrument liabilities, stock-based compensation, income taxes and research and development costs. Such assumptions and estimates are subject to change in the future as additional information becomes available or as circumstances are modified. Actual results could differ from these estimates.

Selling, General and Administrative Costs

Selling, general and administrative costs include salaries and related expenses for the Company's sales, marketing, general management and administrative staff, recruitment and employee retention expenses, costs related to the Company's commercialization efforts in Europe, professional license and organizational fees, business development and certain general legal activities.

Research and Development Costs

Research and development costs include the costs of materials used for R&D and clinical trials, personnel costs associated with device and pharmaceutical R&D, clinical affairs and medical affairs, costs of outside services and applicable indirect costs incurred in the development of the Company's proprietary drug delivery system. All such costs are charged to expense when incurred.

Revenue Recognition

Revenue from product sales is generally recognized when all of the following criteria have been met: persuasive evidence of an arrangement exists; delivery has occurred; product price is fixed or determinable; and collection of the resulting receivable is reasonably assured.

Inventory

Prior to obtaining authorization to affix the CE Mark to its Generation 2 Delcath Hepatic CHEMOSAT[®] Delivery System in April 2012, the Company expensed all of its inventory costs as research and development. Inventory as of June 30, 2012 includes finished goods and components relating to Generation 2 of the Delcath Hepatic CHEMOSAT[®] Delivery System that have been purchased since April 2012. Therefore, as is common for companies transitioning from the development stage to commercial, to the extent that materials expensed prior to April 2012 are used in manufacturing finished goods for sale, the Company's cost of goods sold will be reduced accordingly.

Deferred Revenue Recognition

Deferred revenue on the accompanying condensed consolidated balance sheets includes payment received upon execution of a research and distribution agreement with Chi-Fu Trading Co, Ltd. The Company will amortize deferred revenue over the expected obligation period of the agreement once this amount is reasonably determinable.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
*for the Three and Six Months Ended June 30, 2012 and 2011***Recently Adopted Accounting Pronouncements**

In May 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2011-04 which was issued to provide a consistent definition of fair value and ensure that the fair value measurement and disclosure requirements are similar between U.S. GAAP and IFRS. ASU 2011-04 changes certain fair value measurement principles and enhances the disclosure requirements particularly for Level 3 fair value measurements. The Company adopted this guidance on January 1, 2012, and its adoption did not significantly impact the Company's consolidated financial statements.

In June 2011, the FASB issued ASU 2011-05 which provides new guidance on the presentation of comprehensive income. ASU 2011-05 eliminates the option to report other comprehensive income and its components in the statement of changes in stockholders' equity and instead requires an entity to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement or in two separate but consecutive statements. This guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. The adoption of this ASU only requires a change in the format of the current presentation. The Company adopted this guidance on January 1, 2012, and its adoption did not significantly impact the Company's condensed consolidated financial statements.

In December 2011, the Financial Accounting Standards Board ("FASB") issued ASU 2011-12, "*Comprehensive Income*". This update amends certain pending paragraphs in ASU No. 2011-05 "*Presentation of Comprehensive Income*", to effectively defer only those changes that relate to the presentation of reclassification adjustments out of accumulated other comprehensive income for annual and interim financial statements for public, private, and non-profit entities. The Company adopted this guidance on January 1, 2012, and its adoption did not significantly impact the Company's condensed consolidated financial statements.

Note 4: Cost of Goods Sold

The majority of the Company's inventory was purchased prior to obtaining authorization to affix the CE Mark to its Generation 2 Delcath Hepatic CHEMOSAT® Delivery System in April 2012, including all of the components used in kits sold during the quarter ended June 30, 2012. Additionally, the kits were built during the quarter ended March 31, 2012 and accordingly, all labor and overhead related to the kits was expensed during the first quarter. As a result, the costs of sales related to recognized revenue was \$0.

Note 5: Stock Option Plans

The Company established the 2004 Stock Incentive Plan and the 2009 Stock Incentive Plan (collectively, the "Plans") under which 3,000,000, and 6,500,000 shares, respectively, were reserved for the issuance of stock options, stock appreciation rights, restricted stock, stock grants and other equity awards. In May 2012, the total number of shares of Delcath common stock reserved for issuance under the 2009 Stock Incentive Plan was increased by 2,300,000 shares, from 4,200,000 to 6,500,000 upon a favorable vote by the Company's stockholders. A stock option grant allows the holder of the option to purchase a share of the Company's common stock in the future at a stated price. The Plans are administered by the Compensation and Stock Option Committee of the board of directors which determines the individuals to whom awards shall be granted as well as the type, terms and conditions of each award, the option price and the duration of each award.

DEL CATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
for the Three and Six Months Ended June 30, 2012 and 2011

During 2004 and 2009, respectively, the 2004 and 2009 Stock Incentive Plans became effective. Options granted under the Plans vest as determined by the Company's Compensation and Stock Option Committee and expire over varying terms, but not more than ten years from the date of grant. Stock option activity for the six month period ended June 30, 2012 is as follows:

	Stock Option Activity under the Plans			
	Stock Options	Exercise Price per Share	Weighted Average Exercise Price	Weighted Average Remaining Life (Years)
Outstanding at December 31, 2011	4,129,749	\$1.23-\$15.54	\$ 5.09	6.38
Granted	1,088,280	\$1.43 - \$4.60	3.99	
Expired	(400,000)	\$3.90 - \$5.85	4.95	
Forfeited	(84,320)	\$2.26 - \$9.18	4.75	
Outstanding at June 30, 2012	<u>4,733,709</u>	\$1.23-\$15.54	\$ 4.86	7.20

For the three and six months ended June 30, 2012, the Company recognized compensation expense of approximately \$0.3 million and \$0.8 million, respectively, relating to options granted in previous years and \$0.4 million and \$0.6 million, respectively, relating to options granted during 2012.

The Company uses an option pricing model to determine the fair value of stock options awarded to employees on the date of grant. The Company has expensed its stock-based compensation for share-based payments granted under the ratable method, which treats each vesting tranche as if it were an individual grant.

The Company accounts for stock-based compensation expense for non-employees using the fair-value method which requires the award to be re-measured at each reporting date until the award is vested. The Company estimates the fair value using an option pricing model. The Company has expensed its share-based compensation for non-employees under the ratable method.

The assumptions used in the option pricing model to determine the fair value of stock options awarded to employees are as follows:

	Six Months Ended June 30,	
	2012	2011
Dividend yield	None	None
Expected volatility	77.37% - 80.3%	73.90% - 79.11%
Weighted average volatility	78.91%	74.40%
Risk-free interest rates	0.78% - 1.49%	1.9% - 2.54%
Expected life (in years)	6.0	6.0

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
for the Three and Six Months Ended June 30, 2012 and 2011

No dividend yield was assumed because the Company has never paid a cash dividend on its common stock. Volatilities were developed using the Company's historical volatility. The risk-free interest rate was developed using the U.S. Treasury yield for periods equal to the expected life of the stock options on the grant date. The expected holding period was developed based on the mid-point between the vesting date and the expiration date of each respective grant as permitted under FASB ASC 718. This method of determining the expected holding period was utilized because the Company does not have sufficient historical experience from which to estimate the period.

Restricted stock activity for the six month period ended June 30, 2012 is as follows:

	Restricted Stock Activity	
	Restricted Stock	Weighted Average Grant Date Fair Value
Non-vested at December 31, 2011	193,532	5.84
Granted	427,970	1.54
Vested	(79,843)	6.14
Forfeited	(13,786)	4.15
Outstanding at June 30, 2012	<u>527,873</u>	<u>3.40</u>

For the three and six months ended June 30, 2012, the Company recognized compensation expense of \$0.1 million and \$0.3 million, respectively, relating to restricted stock granted in previous years. For the three and six months ended June 30, 2012, the Company recognized approximately \$0.1 million and \$0.2 million, respectively, relating to restricted stock granted during 2012.

Note 6: Assets and Liabilities Measured at Fair Value

Derivative warrant liability

The Company allocated part of the proceeds of a private placement and two public offerings of the Company's common stock to warrants issued in connection with those transactions. The Company determined that these warrants should be classified as liabilities rather than equity. The valuation of the warrants is determined using an option pricing model. This model uses inputs such as the underlying price of the shares issued when the warrant is exercised, volatility, risk free interest rate and expected life of the instrument. The Company has determined that the warrant derivative liability should be classified within Level 3 of the fair-value hierarchy by evaluating each input for the model against the fair-value hierarchy criteria and using the lowest level of input as the basis for the fair-value classification as called for in FASB ASC 820-10-35. There are six inputs: the closing price of the Company's common stock on the day of evaluation; the exercise price of the warrants; the remaining term of the warrants; the volatility of Delcath's stock over that term; annual rate of dividends; and the riskless rate of return. Of those inputs, the exercise price of the warrants and the remaining term are readily observable in the warrant agreements. The annual rate of dividends is based on our historical practice of not granting dividends. The closing price of the Company's common stock would fall under Level 1 of the fair-value hierarchy as it is a quoted price in an active market (820-10-35-40). The riskless rate of return is a Level 2 input as defined in FASB ASC 820-10-35-48, while the historical volatility is a Level 3 input as defined in FASB ASC 820-10-55-22. Since the lowest level input is a Level 3, the Company determined the warrant derivative liability is most appropriately classified within Level 3 of the fair value hierarchy.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
for the Three and Six Months Ended June 30, 2012 and 2011

In May 2012, the Company completed the sale of 15,333,340 shares of its common stock and the issuance of warrants to purchase 4,600,002 common shares (the "2012 Warrants") pursuant to an underwriting agreement. The Company received proceeds of \$21.5 million, with net cash proceeds after related expenses from this transaction of approximately \$21.1 million. Of those proceeds, the Company allocated an estimated fair value of \$3.4 million to the 2012 Warrants. At June 30, 2012, the 2012 Warrants were exercisable at \$1.65 per share with 4,600,002 warrants outstanding. The 2012 Warrants have a three-year term. The shares and warrants were issued pursuant to an effective registration statement on Form S-3.

In June 2009, the Company completed the sale of 869,565 shares of its common stock and the issuance of warrants to purchase 1,043,478 common shares (the "2009 Warrants") pursuant to a subscription agreement with a single investor. The Company received proceeds of \$3.0 million, with net cash proceeds after related expenses from this transaction of approximately \$2.7 million. Of those proceeds, the Company allocated an estimated fair value of \$2.2 million to the 2009 Warrants (see below). As required by the 2009 Warrant agreement, the exercise price of the warrants was adjusted following the Company's May 31, 2012 sale of common stock and warrants. At June 30, 2012, the 2009 Warrants were exercisable at \$1.33 per share with 1,043,478 warrants outstanding. The 2009 Warrants have a five-year term. The shares and warrants were issued pursuant to an effective registration statement on Form S-3.

In September 2007, the Company completed the sale of 3,833,108 shares of its common stock and the issuance of warrants to purchase 1,916,554 common shares (the "2007 Warrants") in a private placement to institutional and accredited investors. The Company received net proceeds of \$13.3 million in this transaction. The Company allocated \$4.3 million of those proceeds to the 2007 Warrants (see below). The 2007 Warrants were initially exercisable at \$4.53 per share beginning six months after the issuance thereof and will expire on September 21, 2012. As required by the 2007 Warrant agreement, both the exercise price and number of warrants were adjusted following the Company's May 31, 2012 sale of common stock and warrants. At June 30, 2012, the 2007 Warrants were exercisable at \$1.49 per share with 3,392,592 warrants outstanding. The shares and warrants were issued pursuant to an effective registration statement on Form S-3.

The \$3.4 million in proceeds allocated to the 2012 Warrants, the \$2.2 million in proceeds allocated to the 2009 Warrants and the \$4.3 million in proceeds allocated to the 2007 Warrants are classified as derivative instrument liabilities. The terms of the warrants provide for potential adjustment in the exercise price and are therefore considered to be derivative instrument liabilities that are subject to mark-to-market adjustment each period. As a result, for the six month period ended June 30, 2012, the Company recorded pre-tax derivative instrument income of \$0.6 million. The resulting derivative instrument liabilities totaled \$5.9 million at June 30, 2012. Management expects that the warrants will either be exercised or expire worthless, at which point the then existing derivative instrument liabilities will be credited to stockholders' equity. The fair value of the Warrants at June 30, 2012 was determined by using an option pricing model assuming the following:

DELGATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
for the Three and Six Months Ended June 30, 2012 and 2011

	2012 Warrants	2009 Warrants	2007 Warrants
Expected volatility	81.01%	86.40%	85.37%
Risk-free interest rates	0.41%	0.33%	0.09%
Expected life (in years)	2.92	1.96	0.24

Money Market Funds

Cash and cash equivalents includes a money market account valued at \$5.8 million.

The table below presents the Company's assets and liabilities measured at fair value on a recurring basis as of June 30, 2012, aggregated by the level in the fair value hierarchy within which those measurements fall:

Assets and Liabilities Measured at Fair Value on a Recurring Basis at June 30, 2012
(in thousands)

	Level 1	Level 2	Level 3	Balance at June 30, 2012
Assets				
Money market funds	\$ 5,785	-	-	\$ 5,785
Total Assets	\$ 5,785	-	-	\$ 5,785
Liabilities				
Warrant liability	-	-	\$ 5,915	\$ 5,915
Total Liabilities	-	-	\$ 5,915	\$ 5,915

Fair Value Measurements Using Significant Unobservable Inputs (Level 3)
(in thousands)

	Warrant Liability
Beginning balance	\$ 2,439
Total change in the fair value of the liability included in earnings	(579)
Fair value of warrants issued	4,055
Ending balance	\$ 5,915

Note 7: Common Stock

In May 2012, the Company completed the sale of 15,333,340 shares of its common stock and the issuance of warrants to purchase 4,600,002 common shares (the "2012 Warrants") pursuant to an underwriting agreement. The Company received proceeds of \$21.5 million, with net cash proceeds after related expenses from this transaction of approximately \$21.1 million. The shares and warrants were issued pursuant to an effective registration statement on Form S-3.

On December 29, 2011, the Company entered into a sales agreement (the "Sales Agreement") with Cowen and Company, LLC to sell shares of the Company's common stock, par value \$.01 per share, having aggregate sales proceeds of \$39,750,000, from time to time, through an "at the market" equity offering program under which Cowen and Company, LLC will act as sales agent. As of June 30, 2012, the Company had sold approximately 1.8 million shares of its common stock through the program for net proceeds after related expenses of approximately \$5.8 million. The net proceeds were used for general corporate purposes, including, but not limited to, commercialization of our products, obtaining regulatory approvals, funding of our clinical trials, capital expenditures and working capital. As of June 30, 2012, there was approximately \$33.6 million available under this program.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
*for the Three and Six Months Ended June 30, 2012 and 2011***Note 8: Net Loss**

Basic net loss per common share is calculated by dividing net loss by the weighted-average number of common shares outstanding for the period, without consideration for potentially dilutive securities. For the periods presented, basic and diluted net loss per common share are identical. Potentially dilutive securities from stock options and warrants would be antidilutive as the Company incurred a net loss. The number of shares of common stock potentially issuable at June 30, 2012 and 2011 upon exercise or conversion that were not included in the computation of net loss per share totaled 13,769,781 and 6,706,063 shares, respectively.

Note 9: Taxes

As discussed in Note 4 to the Company's audited financial statements contained in the 2011 Annual Report on Form 10-K, the Company has a valuation allowance against the full amount of its net deferred tax assets. The Company currently provides a valuation allowance against deferred tax assets when it is more likely than not that some portion or all of its deferred tax assets will not be realized. The Company has not recognized any unrecognized tax benefits in its balance sheet.

The Company is subject to income tax in the United States, the Republic of Ireland, and certain state jurisdictions. The Company has not been audited by the United States Internal Revenue Service (the "IRS"), international tax authorities, or any states in connection with income taxes. The periods from December 31, 2004 to December 31, 2011 remain open to examination by the IRS and state tax authorities. The period ending December 31, 2011 remains open to examination by the international tax authorities. Also note that the federal, state, and international tax authorities can generally reduce a net operating loss (but not create taxable income) for a period outside the statute of limitations in order to determine the correct amount of net operating loss which may be allowed as a deduction against income for a period within the statute of limitations.

For the six months ended June 30, 2012, the Company recorded a state capital tax benefit of \$125,000. This benefit is primarily the result of State of New York legislation, which provides refundable tax credits to companies that create and maintain new jobs or make significant financial investments within the State of New York. This benefit is offset by quarter to date capital-based taxes of approximately \$14,000. Since the benefit is not determined based on income, it is reflected as a component of general and administrative expenses.

DELCATH SYSTEMS, INC.

Notes to Condensed Consolidated Financial Statements
*for the Three and Six Months Ended June 30, 2012 and 2011***Note 10: Subsequent Events**

During the third quarter through August 8, 2012, the Company sold approximately 1.2 million shares of our common stock under the Sales Agreement through an “at the market” equity offering program for net proceeds of approximately \$2.5 million. The net proceeds will be used for general corporate purposes, including, but not limited to, commercialization of our products, obtaining regulatory approvals, funding of our clinical trials, capital expenditures and working capital. As of August 8, 2012, the Company has approximately \$31.0 million remaining under the program.

The Company completed an evaluation of the impact of any subsequent events through the date financial statements were issued and determined there were no other subsequent events requiring disclosure in or adjustment to these financial statements.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of the Company’s financial condition and results of operations should be read in conjunction with the unaudited interim condensed consolidated financial statements and notes thereto contained in Item 1 of Part I of this Quarterly Report on Form 10-Q and the audited financial statements and notes thereto as of and for the year ended December 31, 2011 included in the Company’s 2011 Annual Report on Form 10-K to provide an understanding of its results of operations, financial condition and cash flows.

Special Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q, including the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section, contains “forward-looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995 with respect to Delcath’s business, financial condition, liquidity and results of operations. Words such as “anticipates,” “expects,” “intends,” “plans,” “predicts,” “believes,” “seeks,” “estimates,” “could,” “would,” “will,” “may,” “can,” “continue,” “potential,” “should,” and the negative of these terms or other comparable terminology often identify forward-looking statements. Statements in this Quarterly Report on Form 10-Q that are not historical facts are hereby identified as “forward-looking statements” for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended (the “Exchange Act”). These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements, including the risks discussed in the Company’s Annual Report on Form 10-K in Item 1A under “Risk Factors” as well as in this report under “Risk Factors” in Part II, Item 1A and Part I, Item 3 “Qualitative and Quantitative Disclosures About Market Risk”. These forward-looking statements include, but are not limited to, statements about:

- the progress and results of the Company’s research and development programs;
- the Company’s estimates regarding sufficiency of cash resources, anticipated capital requirements and need for additional financing;
- the commencement of future clinical trials and the timing and results of those clinical trials;
- submission and timing of applications for regulatory approval and approval thereof;
- the Company’s ability to successfully source certain components of the system and enter into supplier contracts;
- the Company’s ability to successfully manufacture and supply the Delcath chemosaturation system;
- the Company’s ability to successfully commercialize the Delcath Chemosaturation system; and
- the Company’s ability to successfully negotiate and enter into agreements with strategic and corporate partners.

Many of the important factors that will determine these results are beyond the Company’s ability to control or predict. You are cautioned not to put undue reliance on any forward-looking statements contained in this Quarterly Report on Form 10-Q, which speak only as of the date of this report. Except as otherwise required by law, Delcath does not assume any obligation to publicly update or release any revisions to these forward-looking statements to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect the occurrence of unanticipated events.

Overview

The following section should be read in conjunction with Part I, Item 1: Condensed Consolidated Financial Statements of this report and Part I, Item 1: Business; and Part II, Item 8: Financial Statements and Supplementary Data of the Company’s Annual Report on Form 10-K.

Delcath Systems, Inc. is a specialty pharmaceutical and medical device company focused on oncology. Delcath's proprietary system for chemosaturation is designed to administer high dose chemotherapy and other therapeutic agents to diseased organs or regions of the body, while controlling the systemic exposure of those agents. The Company's initial focus is on the treatment of primary and metastatic liver cancers. In 2010, Delcath announced that its randomized Phase III clinical trial for patients with metastatic melanoma in the liver had successfully achieved the study's primary endpoint of extended hepatic progression-free survival. The Company also completed a multi-arm Phase II trial to treat other liver cancers. The Company obtained authorization to affix a CE Mark for the Delcath Hepatic CHEMOSAT® delivery system in April 2011 and for the second generation hemofiltration cartridge for CHEMOSAT in April 2012. The right to affix the CE mark allows the Company to market and sell the CHEMOSAT system in Europe. The Company continues with the preparation of its New Drug Application (NDA) submission and intends to seek United States Food and Drug Administration (FDA) approval for commercial sale of its chemosaturation system with melphalan. The Company has not yet received FDA approval for commercial sale of its system in the United States and there can be no assurance that the FDA will approve the Company's NDA once submitted.

Challenge of Treating Liver Dominant Disease

There are two types of liver cancer: primary and metastatic. Primary liver cancer (hepatocellular carcinoma or HCC) originates in the liver and is particularly prevalent in populations where the primary risk factors for the disease (hepatitis-B, hepatitis-C, high levels of alcohol consumption, aflatoxin, cigarette smoking and exposure to industrial pollutants) are present. Metastatic, or secondary, liver cancer is characterized by microscopic cancer cell clusters that detach from the primary site of disease and travel via the blood stream and lymphatic system into the liver, where they grow into new tumors. These metastases often continue to grow even after the primary cancer in another part of the body has been removed. Given the vital biological function of the liver, including processing nutrients from food and filtering toxins from the blood, it is common for metastases to settle in the liver. In many cases patients die not as a result of their primary cancer, but from the tumors that metastasize in their liver. In the United States, metastatic liver cancer is more prevalent than primary liver cancer.

The Delcath system for hepatic chemosaturation allows the administration of concentrated regional chemotherapy to the liver. This "whole organ" therapy is administered by first isolating the circulatory system of the liver, saturating the entire organ with chemotherapeutic agent, and filtering the blood prior to returning it to the patient. The Delcath system involves three catheters placed percutaneously through standard interventional radiology techniques. The catheters temporarily isolate the liver from the body's circulatory system, deliver a 30 minute infusion of chemotherapeutic agent (currently melphalan hydrochloride) directly to the liver, and collect drug-laden blood exiting the liver for filtration by proprietary filters. The filters reduce the concentration of chemotherapeutic agent in the blood, thereby minimizing systemic exposure to the drug and related side-effects before the filtered blood is returned to the patient's circulatory system.

The procedure is minimally invasive and repeatable, allowing for multiple courses of treatment with chemotherapeutic drugs and the potential for concomitant use in conjunction with other cancer therapies. The Company believes that the Delcath chemosaturation system may play an important role in the management of cancers in the liver, potentially providing time and additional options for treatment of a patient's primary disease. The Company also believes that the Delcath system is a platform technology that in the future may include the use of other drugs to treat cancers in the liver, as well as for the treatment of cancers in other organs and regions of the body.

European Market Commercialization

In April 2011, the Company obtained the right to affix the CE Mark to its first generation commercial product: the Delcath Hepatic CHEMOSAT® Delivery System (CHEMOSAT System). Delcath believes the CHEMOSAT System may ultimately fulfill an annual unmet clinical need for as many as 59,000 patients with cancers in the liver in this region. In the EEA, the CHEMOSAT System is regulated as a medical device indicated for the intra-arterial administration of chemotherapeutic agent (melphalan hydrochloride) to the liver with additional extracorporeal filtration of the venous blood return.

In the EEA, the Company is focusing its initial commercialization efforts on seven target markets: Germany, United Kingdom, France, the Netherlands, Italy, Spain and Ireland. The Company believes these countries represent a majority of the total potential liver cancer market in the EEA. The Company's commercialization strategy for these markets involves the establishment of initial training and launch centers at prestigious cancer hospitals. Medical teams at these centers are trained in the performance of the CHEMOSAT procedure and proctored for their initial cases by experienced physicians, and are provided additional logistical support by Delcath. The Company believes that as the CHEMOSAT teams at these centers gain experience, they will form a European base of key opinion leadership that will help educate other physicians about the potential of chemosaturating therapy with CHEMOSAT and foster initial market acceptance. To further drive adoption, the Company is using a combination of direct and indirect sales channels to market and distribute the CHEMOSAT System in Europe. In addition, the Company has retained Quintiles to provide a third party medical science liaison force to educate medical oncologists in the target markets about the CHEMOSAT system. To support commercialization efforts, the Company established its EU headquarters in Galway, Ireland.

In November 2011, the Company announced that it had entered into its first initial training and launch agreement with the European Institute of Oncology (IEO) in Milan, Italy. The Company has since entered into 12 additional initial launch and training agreements with leading European cancer centers, and has established a presence in five of its seven target markets. In February 2012, the first European patient treatments with the Generation 1 CHEMOSAT System were performed at IEO in Italy and Frankfurt University Hospital in Germany. The initial patients involved were treated for inoperable liver-dominant metastases from ocular melanoma, cutaneous melanoma, breast cancer and gastric cancer.

In April 2012, the Company announced it received CE Mark approval for the second generation hemofiltration cartridge of the CHEMOSAT System. The Generation 2 system has demonstrated filter efficiency greater than 98% during drug infusion of melphalan in an in vivo study; the same study also showed that the Generation 2 filter removes fewer blood platelets. Upon approval of the Generation 2 filter, the Company began supplying its early launch and training centers exclusively with the Generation 2 CHEMOSAT system. The first patient treatment with the Generation 2 CHEMOSAT system was performed at the IEO in April 2012, and subsequently at the Frankfurt University Hospital, Institut Gustav Roussy in France, and Galway University Hospital in Ireland. In March 2012, Delcath announced that it had received its first commercial order for the Company's CHEMOSAT System from the IEO. This order was fulfilled with Generation 2 systems in April 2012 following the receipt of the CE Mark.

Regulatory

International Regulations

Having obtained the CE Mark for the CHEMOSAT System, the Company believes the right to affix the CE Mark can result in an accelerated regulatory approval in a number of countries outside the EEA and the United States. Delcath recently received regulatory approval for the CHEMOSAT System in Australia and completed the product notification process in New Zealand, where the Company expects to launch the CHEMOSAT System in the second half of 2012 through authorized distributors. The Company has submitted applications for regulatory approval as a device for the CHEMOSAT System in Hong Kong, South Korea, Singapore, Canada and Israel and intends to submit regulatory applications in Mexico, Argentina, Brazil, Russia, India, Japan, China, and Taiwan. Delcath is in the process of determining the regulatory pathway in some of these countries subject to negotiations with the applicable health authority. It is Delcath's intention to leverage the CE Mark in some or all of these countries to commercialize the Delcath CHEMOSAT System, where appropriate. Delcath Systems Limited's facility in Galway, Ireland has obtained certificates of free sale from the Irish Medicines Board as many markets require country of origin manufacturing, such as Mexico, Argentina, Brazil, Japan, China, and Taiwan, as a prerequisite to obtain regulatory approval.

United States

In the United States, the Delcath chemosaturation system for the administration of melphalan hydrochloride is considered a combination drug and device product and is regulated as a drug by the FDA. In December 2010, the Company submitted its Section 505(b)(2) NDA, to the FDA, seeking an indication for the percutaneous intra-arterial administration of melphalan for use in the treatment of patients with metastatic melanoma in the liver. In February 2011, Delcath received a Refusal to File (RTF) letter from the FDA for the NDA. The FDA will issue an RTF if it determines, upon an initial review, that the NDA is not sufficiently complete to permit a substantive review. Neither the acceptance nor non-acceptance of an NDA for filing is a determination of the ultimate approvability of the drug product at issue. The RTF requested information on a number of items, including manufacturing plant inspection timing, product and sterilization validations, statistical analysis clarification concerning randomization and additional safety information regarding patient hospitalization data in order to allow the FDA to properly assess the risk-benefit profile of the product candidate. On January 12, 2012, the Company held a pre-NDA meeting with the FDA to discuss our NDA submission and provide an update on the items identified in the RTF. Based upon the meeting, FDA correspondence received in response to our meeting request and the briefing packet submitted, the Company is satisfied with the responses received from the FDA to certain questions regarding the NDA submission.

The very substantive work of clinical and safety data gathering from all of the clinical sites that participated in the Company's Phase I, II and III clinical trials and the migration to FDA compliant clinical and safety databases is complete and the Company is in the final stages of preparing its NDA submission. The database was locked on May 25th, final statistical analysis and report writing is being conducted and the final NDA submission package is being prepared. The Company expects the NDA to be submitted in mid-August. The database lock is also important with respect to publications. Once the clinical report is finalized, the primary investigators will have the complete information needed to incorporate the data for the Phase 3 trial and multi-arm Phase 2 trials into their manuscripts and then submit them for publication.

In addition to the ongoing work on the NDA submission, the Company believes that it is in the best interest of patients to explore ways of accelerating the availability of its Generation 2 product to patients in the United States and therefore has submitted to the FDA an amendment to its Investigational New Drug application to include Generation 2 in the FDA's expanded access program, as well as all future clinical trials and compassionate use cases. The Company announced acceptance of these amendments on June 18, 2012. Additionally, the Company is in dialogue with the FDA to discuss the optimal approval path for Generation 2 in the United States. Based upon these discussions, the Company intends to include additional data related to Generation 2 in the upcoming NDA dossier to ensure that its NDA submission is prepared in the best possible manner to support Generation 2.

Results of Operations

The Company recorded the first sales of its CHEMOSAT System in Europe during the quarter ended June 30, 2012, resulting in net sales of \$0.1 million. As discussed in Note 4 to the Company's condensed consolidated financial statements contained in this Quarterly Report on Form 10-Q, the Company did not recognize any cost associated with the reported revenue. Had cost of sales been recognized, the gross margin on these sales would have been approximately 80%. All units were sold directly to end customers. As the Company expands its commercialization efforts to include distributors, whose purchase prices will be lower than direct to end customer prices, the average selling price and gross margin are expected to be impacted by the mix of direct and indirect sales channels.

As Delcath continues to expand its commercialization in Europe, the Company expects to see a certain amount of volatility in both the average selling price and gross margin for the next several quarters. This volatility will be related to several factors, including: the expected use of third party distributors, whose purchase prices will be lower than direct to end user customer prices; the gradual increase in cost of goods sold as the Company exhausts raw materials that were purchased and expensed in prior periods and begins to recognize the actual costs of materials, labor and overhead; and an improvement in efficiencies as the Company increases its production of the CHEMOSAT system.

The Company has incurred net losses since it was founded and expects to continue incurring net losses over the year. Although the Company expects the amount of capital required to commercialize the CHEMOSAT System in Europe will continue to increase over the coming months, the Company believes that this increase will be offset by a reduction in expenses related to its NDA filing and that it has access to sufficient capital for operations through 2012.

Three Months Ended June 30, 2012 and June 30, 2011

The Company had a net loss for the three months ended June 30, 2012, of \$14.5 million, which is a \$9.1 million increase in the net loss for the same period in 2011. The increase in net loss is due to an increase of \$4.9 million in total costs and a \$4.1 million change in the fair value of the warrant liability.

The Company's operating loss for the three months ended June 30, 2012 was \$15.3 million, of which \$1.0 million is non-cash expense related to stock option and restricted stock grants made under the Company's 2004 and 2009 Stock Option Plans as discussed in more detail in Note 5 of this filing. This compares to an operating loss for the three months ended June 30, 2011 of \$10.5 million, of which \$1.2 million was non-cash expense related to stock option and restricted stock grants made under the Company's 2004 and 2009 Stock Option Plans.

At June 30, 2012 the Company had 94 full-time employees compared to 51 at June 30, 2011. The increase in total costs is commensurate with this growth, which has led to an increase in payroll and overhead expenses. Additionally, the Company's ongoing commercialization efforts in the European Union and continued efforts to prepare its submission to the FDA have contributed to the increase in total costs and expenses. As the Company continues to advance its business strategy, it will continue to incur losses for the foreseeable future.

For the three months ended June 30, 2012, selling, general and administrative expenses increased to \$7.2 million from \$5.2 million for the three months ended June 30, 2011. A significant portion of the increase is related to the Company's continued expansion, particularly as Delcath has continued executing on its commercialization plans by hiring staff for sales and support positions across Europe. This has led to an increase in personnel-related expenses, as well as all other expenses related to maintaining an office and supporting employees.

For the three months ended June 30, 2012, research and development expenses increased to \$8.2 million from \$5.2 million for the three months ended June 30, 2011. The increase in expenses is primarily related to continued preparation of the NDA submission to the FDA and the training and deployment of third party medical science liaisons.

Interest income is from a money market account and certificates of deposit. During the three months ended June 30, 2012, the Company had interest income of \$3,955, as compared to \$106 for the same period in 2011.

Six Months Ended June 30, 2012 and June 30, 2011

The Company had a net loss for the six months ended June 30, 2012, of \$29.4 million, which is a \$22.1 million increase in the net loss for the same period in 2011. The increase in net loss is due to an increase of \$11.7 million in total costs and a \$10.4 million change in the fair value of the warrant liability.

The Company's operating loss for the six months ended June 30, 2012 was \$29.8 million, of which \$1.9 million is non-cash expense related to stock option and restricted stock grants made under the Company's 2004 and 2009 Stock Option Plans as discussed in more detail in Note 5 of this filing. This compares to an operating loss for the six months ended June 30, 2011 of \$18.3 million, of which \$2.5 million was non-cash expense related to stock option and restricted stock grants made under the Company's 2004 and 2009 Stock Option Plans.

At June 30, 2012 the Company had 94 full-time employees compared to 51 at June 30, 2011. The increase in total costs is commensurate with this growth, which has led to an increase in payroll and overhead expenses. Additionally, the Company's ongoing commercialization efforts in the European Union, continued efforts to prepare its submission to the FDA, as well as research and development activities, such as the recently approved Generation 2 filter, have contributed to the increase in total costs and expenses. As the Company continues to advance its business strategy, it will continue to incur losses for the foreseeable future.

For the six months ended June 30, 2012, selling, general and administrative expenses increased to \$14.6 million from \$9.4 million for the six months ended June 30, 2011. A significant portion of the increase is related to the Company's continued expansion, particularly as Delcath has continued executing on its commercialization plans by hiring staff for sales and support positions across Europe. This has led to an increase in personnel-related expenses, as well as all other expenses related to maintaining an office and supporting employees.

For the six months ended June 30, 2012, research and development expenses increased to \$15.3 million from \$8.9 million for the six months ended June 30, 2011. The increase in expenses is primarily related to global regulatory efforts including continued preparation of the NDA submission to the FDA, securing CE Mark for the Generation 2 filter and the expansion of addressable markets through the pursuit of additional regional regulatory approvals, as well as the training and deployment of third party medical science liaisons.

Interest income is from a money market account and certificates of deposit. During the six months ended June 30, 2012, the Company had interest income of \$7,189, as compared to \$665 for the same period in 2011.

Liquidity and Capital Resources

The Company's future results are subject to substantial risks and uncertainties. Delcath has operated at a loss for its entire history and anticipates that losses will continue over the coming year. There can be no assurance that Delcath will ever generate significant revenues or achieve profitability. The Company expects to use cash, cash equivalents and investment proceeds to fund its operating activities. Delcath's future liquidity and capital requirements will depend on numerous factors, including the progress of research and product development programs, obtaining approvals and complying with regulations; the timing and effectiveness of product commercialization activities, including marketing arrangements; the timing and costs involved in preparing, filing, prosecuting, defending and enforcing intellectual property rights; and the effect of competing technological and market developments.

At June 30, 2012, the Company had cash, cash equivalents and certificates of deposit totaling \$29.3 million, as compared to \$31.1 million at June 30, 2011. During the six months ended June 30, 2012, the Company used \$27.2 million of cash in its operating activities, which compares to \$14.3 million used for operating activities during the comparable six month period in 2011. The increase of \$12.9 million is primarily driven by NDA submission related costs, an increase in compensation related expenses as the Company grew from 51 employees at June 30, 2011 to 94 employees at June 30, 2012, expenses related to the Company's ongoing commercialization efforts in Europe, and research and development activities, such as the recently approved Generation 2 filter. After the NDA is submitted to the FDA, the Company expects to reduce its monthly cash spend for the remainder of 2012. The Company believes it has access to sufficient capital to fund operating activities through 2012. Assuming Delcath receives FDA approval in 2013, the Company anticipates additional resources will be required to support full U.S commercialization.

Because Delcath's business does not generate positive cash flow from operating activities, the Company will need to raise additional capital in order to fully commercialize the product or to fund development efforts relating to additional indications. The Company believes it will be able to raise additional capital in the event it is in its best interest to do so. The Company anticipates raising such additional capital by either borrowing money, selling shares of Delcath's capital stock, or entering into strategic alliances with appropriate partners. To the extent additional capital is not available when needed, the Company may be forced to abandon some or all of its development and commercialization efforts, which would have a material adverse effect on the prospects of our business. Further, the Company's assumptions relating to its cash requirements may differ materially from its actual requirements because of a number of factors, including significant unforeseen delays in the regulatory approval process, changes in the focus and direction of clinical trials and costs related to commercializing the product.

The Company has funded its operations through a combination of private placements of its securities, public offerings in 2000, 2003, 2009, 2010, 2011 and 2012, registered direct offerings in 2007 and 2009, and an “at the market” equity offering program initiated in 2012. For a detailed discussion of the Company’s various sales of securities and the “at the market” equity offering program see Note 3 to the Company’s audited financial statements contained in the 2011 consolidated financial statements in the 2011 Annual Report on Form 10-K and Note 7 to the Company’s condensed consolidated financial statements contained in this Quarterly Report on Form 10-Q.

In March 2010, the Company filed a registration statement on Form S-3 with the SEC, which allows the Company to offer and sell, from time to time in one or more offerings up to \$100,000,000 of common stock, preferred stock, warrants, debt securities and stock purchase contracts as it deems prudent or necessary to raise capital at a later date. The registration statement became effective on April 13, 2010 (333-165677). The Company used this registration statement for its August 2010 and July 2011 public offerings detailed in Note 3 to the Company’s audited financial statements contained in the 2011 Annual Report on Form 10-K and for establishing an "at the market" equity offering program detailed in Note 7 to the Company’s condensed consolidated financial statements contained in the Quarterly Report on Form 10-Q. As of June 30, 2012, Delcath had approximately \$33.6 million available under its “at the market” equity offering program. The Company intends to use the net proceeds from any future offerings for general corporate purposes, including, but not limited to, obtaining regulatory approvals, commercialization of its products, funding of clinical trials, capital expenditures and working capital.

In December 2011, the Company filed an additional registration statement on Form S-3 with the SEC, which allows the Company to offer and sell, from time to time in one or more offerings, up to \$100,000,000 of common stock, preferred stock, warrants, debt securities and stock purchase contracts as it deems prudent or necessary to raise capital at a later date. The registration statement became effective on February 13, 2012 (333-178819). The Company used this registration statement for its May 2012 public offering detailed in Note 7 to the Company’s condensed consolidated financial statements contained in this Quarterly Report on Form 10-Q.

Critical Accounting Estimates

The Company’s financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). Certain accounting policies have a significant impact on amounts reported in the financial statements. A summary of those significant accounting policies can be found in Note 1 to the Company’s financial statements contained in the 2011 Annual Report on Form 10-K. The Company is still in the development stage and has no revenues, trade receivables, inventories, or significant fixed or intangible assets, and therefore has very limited opportunities to choose among accounting policies or methods. In many cases, the Company must use an accounting policy or method because it is the only policy or method permitted under GAAP.

Additionally, the Company devotes substantial resources to obtaining regulatory approvals for the Delcath chemosaturation system as well as its research and development activities, the cost of which is required to be charged to expense as incurred. This further limits the Company’s choice of accounting policies and methods. Similarly, management believes there are very limited circumstances in which the Company’s financial statement estimates are significant or critical.

The Company considers the valuation allowance for the deferred tax assets to be a significant accounting estimate. In applying FASB ASC 740 management estimates future taxable income from operations and tax planning strategies in determining if it is more likely than not that the Company will realize the benefits of its deferred tax assets. Management believes the Company does not have any uncertain tax positions.

The Company has adopted the provisions of FASB ASC 718, which establishes accounting for equity instruments exchanged for employee services. Under the provisions of FASB ASC 718, share-based compensation is measured at the grant date, based upon the fair value of the award, and is recognized as an expense over the option holders' requisite service period (generally the vesting period of the equity grant). The Company expenses its share-based compensation under the ratable method, which treats each vesting tranche as if it were an individual grant.

The Company has adopted the provisions of FASB ASC 505-50, which establishes accounting for equity-based payments to non-employees. Measurement of compensation cost related to common shares issued to non-employees for services is based on the value of the services provided or the fair value of the shares issued. Each transaction is reviewed to determine the more reliably measurable basis for the valuation. The measurement of non-employee stock-based compensation is subject to periodic adjustment as the underlying equity instrument vests. Non-employee stock-based compensation charges are amortized over the vesting period or period of performance of the services.

The Company has adopted the provisions of FASB ASC 820, which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements.

FASB ASC 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement. Therefore, a fair value measurement should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, FASB ASC 820 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy).

Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. Level 2 inputs are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs may include quoted prices for similar assets and liabilities in active markets, as well as inputs that are observable for the asset or liability (other than quoted prices), such as interest rates, foreign exchange rates, and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability which are typically based on an entity's own assumptions, as there is little, if any, related market activity. In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy within which the entire fair value measurement falls is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability. See Note 6 to the Company's condensed consolidated financial statements contained in this Quarterly Report on Form 10-Q for assets and liabilities the Company has evaluated under FASB ASC 820.

Item 3. Quantitative and Qualitative Disclosure about Market Risk

The Company may be exposed to market risk through changes in market interest rates that could affect the value of its investments. However, the Company's marketable securities consist of short-term and/or variable rate instruments and, therefore, a change in interest rates would not have a material impact on the fair value of the Company's investment portfolio or related income.

The Company measures all derivatives, including certain derivatives embedded in contracts, at fair value and recognizes them on the balance sheet as an asset or a liability, depending on the Company's rights and obligations under the applicable derivative contract.

In May 2012, the Company completed the sale of 15,333,340 shares of its common stock and the issuance of warrants to purchase 4,600,002 common shares (the "2012 Warrants") pursuant to an underwriting agreement. The Company received proceeds of \$21.5 million, with net cash proceeds after related expenses from this transaction of approximately \$21.1 million. Of those proceeds, the Company allocated an estimated fair value of \$3.4 million to the 2012 Warrants. At June 30, 2012, the 2012 Warrants were exercisable at \$1.65 per share with 4,600,002 warrants outstanding. The 2012 Warrants have a three-year term. The shares and warrants were issued pursuant to an effective registration statement on Form S-3.

In June 2009, the Company completed the sale of 869,565 shares of its common stock and the issuance of warrants to purchase 1,043,478 common shares (the "2009 Warrants") pursuant to a subscription agreement with a single investor. The Company received proceeds of \$3.0 million, with net cash proceeds after related expenses from this transaction of approximately \$2.7 million. Of those proceeds, the Company allocated an estimated fair value of \$2.2 million to the warrant liability. As required by the 2009 Warrant agreement, the exercise price of the warrants was adjusted following the Company's March 19, 2012 sale of common stock under the "at the market" equity offering program as discussed in more detail in Note 5 of this filing. At June 30, 2012, the 2009 Warrants were exercisable at \$1.33 per share with 1,043,478 shares outstanding. The 2009 Warrants have a five-year term.

In September 2007, the Company completed the sale of 3,833,108 shares of its common stock and the issuance of warrants to purchase 1,916,554 common shares (the "2007 Warrants" and together with the 2009 Warrants, the "Warrants") in a private placement to institutional and accredited investors. The Company received net proceeds of \$13.3 million in this transaction. The Company allocated \$4.3 million of the total proceeds to the 2007 Warrants. The 2007 Warrants were initially exercisable at \$4.53 per share beginning six months after the issuance thereof and will expire on September 21, 2012. As required by the 2007 Warrant agreement, both the exercise price and number of warrants were adjusted following the Company's June 9, 2009 sale of common stock and were further adjusted following the Company's March 19, 2012 sale of common stock under the "at the market" equity offering program as discussed in more detail in Note 7 of this filing. At June 30, 2012, the 2007 Warrants were exercisable at \$1.49 per share with 3,392,592 warrants outstanding. The shares were issued pursuant to an effective registration statement on Form S-3.

The \$3.4 million in proceeds allocated to the 2012 Warrants, the \$2.2 million in proceeds allocated to the 2009 Warrants and the \$4.3 million in proceeds allocated to the 2007 Warrants are classified as derivative instrument liabilities. The terms of the warrants provide for potential adjustment in the exercise price and are therefore considered to be derivative instrument liabilities that are subject to mark-to-market adjustment each period. As a result, for the six month period ended June 30, 2012, the Company recorded pre-tax derivative instrument income of \$0.6 million. The resulting derivative instrument liabilities totaled \$5.9 million at June 30, 2012. Management expects that the warrants will either be exercised or expire worthless, at which point the then existing derivative instrument liabilities will be credited to stockholders' equity. The fair value of the Warrants at June 30, 2012 was determined by using an option pricing model assuming the following:

	<u>2012 Warrants</u>	<u>2009 Warrants</u>	<u>2007 Warrants</u>
Expected volatility	81.01%	86.40%	85.37%
Risk-free interest rates	0.41%	0.33%	0.09%
Expected life (in years)	2.92	1.96	0.24

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Delcath's management, with the participation of its Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of its disclosure controls and procedures (as defined in Rule 13a-15(e) or 15d-15(e) of the Exchange Act. Based on that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that Delcath's disclosure controls and procedures as of June 30, 2012 (the end of the period covered by this Quarterly Report on Form 10-Q), have been designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in the Company's reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including the Company's Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Controls

There was no change in our internal control over financials reporting that occurred during the quarter ended June 30, 2012 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II:
OTHER INFORMATION**

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

Delcath's 2011 Annual Report on Form 10-K, in Part 1, Item 1A. "Risk Factors," contains a detailed discussion of factors that could materially adversely affect our business, operating results and/or financial condition. There have been no material changes in these risk factors since such disclosure.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Not Applicable.

Item 3. Defaults upon Senior Securities

Not Applicable.

Item 5. Other Information

Not Applicable.

Item 6. Exhibits

Exhibit No.	Description
10.1	** Loan and Security Agreement dated April 20, 2012 between Silicon Valley Bank and Delcath Systems, Inc.
31.1	** Certification by Principal executive officer Pursuant to Rule 13a 14.
31.2	** Certification by Principal financial officer Pursuant to Rule 13a 14.
32.1	*** Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	*** Certification of Principal financial officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

** Filed herewith.

*** Furnished herewith.

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 thereunto duly authorized.

August 8, 2012

DELCATH SYSTEMS, INC.
(Registrant)

/s/Graham G. Miao
Graham G. Miao
Chief Financial Officer
(Principal Financial Officer)

Exhibit Index

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** Filed herewith.

*** Furnished herewith.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this “**Agreement**”) dated as of April 20, 2012 (the “**Effective Date**”) between **SILICON VALLEY BANK**, a California corporation with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 (“**Bank**”), and **DELICATH SYSTEMS, INC.**, a Delaware corporation with offices located at 810 Seventh Avenue, 35th Floor, New York, New York 10019 (“**Borrower**”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Except as set forth herein, accounting terms not defined in this Agreement shall be construed following GAAP or adjusted GAAP as may be agreed by Bank and Borrower. Except as set forth herein, calculations and determinations must be made following GAAP or adjusted GAAP as may be agreed by Bank and Borrower. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 **Promise to Pay.** Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 **Revolving Advances.**

(a) **Availability.** Subject to the terms and conditions of this Agreement and to deduction of Reserves, and provided that a Cash Reserve Period is not in effect, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid without fees, premiums or penalties, and prior to the Revolving Line Maturity Date, so long as a Cash Reserve Period is not in effect, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) **Termination; Repayment.** The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.2 **Overadvances.** If, at any time, the sum the outstanding principal amount of any Advances exceeds the lesser of either the Revolving Line or the Borrowing Base (such excess amount being an “**Overadvance**”), Borrower shall immediately pay to Bank in cash such Overadvance. Without limiting Borrower’s obligation to repay Bank any amount of the Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

2.3 **Payment of Interest on the Credit Extensions.**

(a) **Interest Rate; Advances.** Subject to Section 2.3(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the Prime Rate plus two percent (2.00%); provided, that during a Performance Pricing Period, the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the Prime Rate plus one percent (1.00%). Such interest shall in any event be payable monthly, in arrears, in accordance with Section 2.3(f) below.

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”) unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Such Default Rate will remain in effect until the Bank waives the event or condition giving rise to the application of such Default Rate, or such earlier date as Bank shall determine, in its reasonable discretion, and provided further that the Default Rate portion of any payment shall be waived in the event the Event of Default giving rise to such Default Rate is cured during any applicable grace or cure period. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Computation; 360-Day Year. In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

(e) Debit of Accounts. Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due.

(f) Payment; Interest Computation. Unless otherwise provided herein, Interest is payable monthly on the last calendar day of each month. In computing interest on the Obligations, all Payments received after 12:00 noon Pacific time on any day shall be deemed received on the next Business Day. Bank shall not, however, be required to credit Borrower's account for the amount of any item of payment which is unsatisfactory to Bank in its good faith business judgment, and Bank may charge Borrower's Designated Deposit Account for the amount of any item of payment which is returned to Bank unpaid.

2.4 Fees. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of One Hundred Thousand Dollars (\$100,000), payable on the Effective Date;

(b) Unused Revolving Line Facility Fee. A fee (the "**Unused Revolving Line Facility Fee**"), payable quarterly, in arrears, on the last Business Day of each quarter, on a calendar year basis, in an amount equal to one-quarter percent (0.25%) per annum of the average unused portion of the Revolving Line. The unused portion of the Revolving Line, for purposes of this calculation, shall equal the difference between (x) the Revolving Line amount and (y) the average for the period of the daily closing balance of the Revolving Line outstanding. Borrower shall not be entitled to any credit, rebate or repayment of any Unused Revolving Line Facility Fee previously earned by Bank pursuant to this Section notwithstanding any termination of the Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder; and

(c) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.5 Payments; Application of Payments. All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 noon Pacific time on the date when due. Payments of principal and/or interest received after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Effectiveness. The effectiveness of this Agreement is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed original signature pages to the Loan Documents;

(b) [Reserved];

(c) Borrower's Operating Documents and a good standing certificate of Borrower certified by the Secretary of State of the State of Delaware, together with a certificate of foreign qualification from each jurisdiction in which the Borrower is qualified as such, in each case dated as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) duly executed original signature pages to the Secretary's Certificate with completed Borrowing Resolutions for Borrower;

(e) [reserved];

(f) [reserved];

(g) [reserved];

(h) certified copies, dated as of a recent date, of financing statement searches, as Bank shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(i) the Perfection Certificate of Borrower, together with the duly executed original signature page thereto;

(j) a legal opinion of Borrower's counsel, in form and substance acceptable to Bank, in its reasonable discretion, dated as of the Effective Date together with the duly executed original signature thereto;

(k) evidence satisfactory to Bank that the insurance policies required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses and cancellation notice to Bank (or endorsements reflecting the same) in favor of Bank; and

(l) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

3.2 Conditions Precedent to all Credit Extensions. Bank's obligation to make each Credit Extension, including the Initial Borrowing, is subject to the following conditions precedent:

(a) duly executed original signatures to the Control Agreements;

(b) except as otherwise provided in Section 3.4(a), timely receipt of an executed Borrowing Base Certificate and/or Transaction Report, as applicable;

(c) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Borrowing Base Certificate and/or Transaction Report, as applicable, and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(d) in Bank's reasonable discretion, after consultation with Borrower, there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank.

3.3 Covenant to Deliver. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

3.4 Procedures for Borrowing; Advances. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time on the Funding Date of the Advance. Together with any such electronic or facsimile notification, Borrower shall deliver to Bank by electronic mail or facsimile a completed Borrowing Base Certificate or Transaction Report, as applicable, executed by a Responsible Officer or his or her designee. Bank may rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee. Bank shall credit Advances to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from a Responsible Officer or his or her designee.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest (subject to Section 4.4), in the Collateral granted herein (subject only to Permitted Liens that expressly have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are satisfied in full, and at such time, Bank shall, at Borrower's sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to Borrower. In the event (a) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (b) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding letters of credit, Borrower shall provide to Bank cash collateral in an amount equal to 105% (110% for letters of credit denominated in a currency other than Dollars), of the Dollar Equivalent of the face amount of all such letters of credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit. In furtherance of the aforementioned sentence, Bank shall use reasonable commercial efforts to arrive at an acceptable cash collateral amount when requested by Borrower.

4.2 Priority of Security Interest. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens to the extent such security interest can be perfected by the filing of UCC financing statements or by control). If Borrower shall acquire a commercial tort claim which might reasonably be expected to result in awarded damages (less any legal and other expenses incurred or reasonably be expected to be incurred by Borrower) in excess of \$250,000, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder. Such financing statements may indicate the Collateral as "all assets of the Debtor, now existing or hereafter acquired" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

4.4 Foreign Assets. Notwithstanding anything herein to the contrary, there shall be no requirement to perfect or otherwise evidence any liens or security interests in favor of Bank for any assets located in or registered under any jurisdiction other than the United States of America or any state thereof or the District of Columbia.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization; Authorization; Power and Authority. Borrower and each of its Domestic Subsidiaries are each duly existing and in good standing in its jurisdiction of organization and each is qualified and licensed to do business and each is in good standing in any jurisdiction in which the conduct of each of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate" (as amended from time to time, the "**Perfection Certificate**"). Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete as of the date set forth therein (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent not prohibited by this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect and except for filings required in connection with the execution of this Agreement), or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, rights in, or the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Except as permitted under Section 6.8, Borrower has no domestic Deposit Accounts other than the Deposit Accounts with Bank or the Deposit Accounts, if any described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and, to the extent required herein, taken such actions as are necessary to give Bank a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. In the event that Borrower, after the date hereof, intends to store or otherwise deliver any portion of the Collateral in excess of One Million Dollars (\$1,000,000) to a bailee, then Borrower will first receive the written consent of Bank and such bailee must execute and deliver a bailee agreement in form and substance satisfactory to Bank in its reasonable discretion.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To Borrower's knowledge, no claim has been made that any part of the Intellectual Property included in the Collateral violates the rights of any third party except to the extent such claim would not have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Accounts Receivable. For any Eligible Account in any Borrowing Base Certificate, all statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing such Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. If an Event of Default has occurred and is continuing, Bank may, after notice to and consultation with the Borrower, notify any Account Debtor owing Borrower money of Bank's security interest in such funds and verify the amount of such Eligible Account. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Borrowing Base Certificate. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.

5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, One Million Dollars (\$1,000,000).

5.5 Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations for the period covered in such financial statements. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.6 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue its business as currently conducted.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower. Borrower may defer payment of any contested taxes; provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower in excess of Twenty Five Thousand Dollars(\$25,000), including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement (other than projections and forecasts), was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

5.13 Designated Senior Indebtedness. The Loan Documents and all of the Obligations shall be deemed "Designated Senior Indebtedness" or a similar concept thereof for purposes of any Indebtedness of the Borrower.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance. (a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, the noncompliance with which could have a material adverse effect on Borrower's business.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in the Collateral. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank as reasonably requested by the Bank.

6.2 Financial Statements, Reports, Certificates.

(a) Commencing on the date of the Initial Borrowing (except (X) in the case of clause (ii) below, which shall commence on the date of the Initial Eligible Accounts Borrowing; and (Y), in the case of clauses (v), (vi), (vii) and (x) below, which shall commence on the Effective Date), Borrower shall provide Bank with the following:

(i) (A) within thirty (30) days after the end of each month, and (B) upon each request for a Credit Extension, (I) prior to the Accounts Receivable Triggering Event, a Borrowing Base Certificate and (II) on and after the Accounts Receivable Triggering Event, a Transaction Report;

(ii) after the occurrence of the Accounts Receivable Triggering Event (or as Bank may otherwise request from time to time) within thirty (30) days after the end of each month, (A) monthly accounts receivable agings (as applicable), aged by invoice date, (B) monthly accounts payable agings (as applicable), aged by invoice date, and (C) monthly reconciliations of accounts receivable agings (aged by invoice date, as applicable), transaction reports, Deferred Revenue reports (as applicable) and general ledger;

(iii) [Reserved];

(iv) within thirty (30) days after the end of each month, a monthly Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank shall reasonably request;

(v) within five (5) days after filing with the SEC, but in any event within forty-five (45) days after the end of each fiscal quarter (other than the last fiscal quarter of any fiscal year), of Borrower, quarterly unaudited consolidated and consolidating financial statements;

(vi) within five (5) days after filing with the SEC, but in any event, within thirty (30) days after the end of each fiscal year of Borrower, and as materially amended and/or updated, annual operating budgets (including income statements, balance sheets and cash flow statements, by quarter) for the upcoming fiscal year of Borrower, as approved by Borrower's board of directors, together with any related business forecasts used in the preparation of such annual financial projections;

(vii) within five (5) days after filing with the SEC, but in any event within one hundred fifty (150) days following the end of Borrower's fiscal year, annual audited consolidated financial statements certified by, and with an unqualified opinion of, independent certified public accountants acceptable to Bank;

(viii) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(ix) a prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, One Million Dollars (\$1,000,000) or more; and

(x) within twenty (20) days after the end of each month, a Cash Burn Certificate, indicating the Borrower's Cash Burn, together with such supporting ledger reports and schedules as Bank shall require, in its reasonable discretion.

For purposes of this Section 6.2(a), reports on Form 10-K, 10-Q and 8-K, financial statements and annual operating budgets timely filed with the Securities and Exchange Commission, for which Borrower provides Bank with a link to Borrower's website at www.delcath.com and/or the SEC's website at www.sec.gov, on a case-by-case basis, shall be sufficient for delivery of such reports.

(b) So long as Borrower is subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, Borrower shall endeavor to provide, within five (5) days after filing, all reports on Form 10-K, 10-Q and 8-K filed with the SEC or a link thereto on Borrower's or another website on the Internet.

(c) Borrower shall provide Bank (i) with prompt written notice of any material adverse change in the composition of the Intellectual Property, (ii) quarterly, written notice of the registration of any Copyright (including any subsequent ownership right of Borrower in or to any Copyright), Patent or Trademark not previously disclosed to Bank, or (iii) with prompt written notice of Borrower's knowledge of an event that materially adversely affects the value of the Intellectual Property, taken as a whole.

6.3 Accounts Receivable.

(a) Schedules and Documents Relating to Accounts. Commencing on the date of the Initial Eligible Accounts Borrowing, Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. Commencing on the date of the Initial Eligible Accounts Borrowing, if reasonably requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, commencing on the date of the Initial Eligible Accounts Borrowing and thereafter, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary endorsements, and copies of all credit memos.

(b) Disputes. Commencing on the date of the Initial Eligible Accounts Borrowing, Borrower shall promptly notify Bank of all material disputes or claims relating to Accounts. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Default or Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Advances will not exceed the Availability Amount.

(c) Collection of Accounts. Borrower shall have the right to collect all Accounts, unless and until a Default or an Event of Default has occurred and is continuing. Sixty (60) days prior to the Initial Eligible Accounts Borrowing, all payments on and proceeds of Accounts of Account Debtors shall be deposited directly by the applicable Account Debtor into a lockbox account, or such other "blocked account" as Bank may specify. Whether or not an Event of Default has occurred and is continuing, Borrower shall immediately deliver all payments on and proceeds of Accounts of Account Debtors to an account maintained with Bank. Such payments and proceeds shall be applied, after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof.

(d) Returns. Commencing on the date of the Initial Eligible Accounts Borrowing, provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower valued, individually or in the aggregate, in excess of One Million Dollars (\$1,000,000), Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any attempted return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall promptly notify Bank of the return of the Inventory.

(e) Verification. Commencing on the date of the Initial Eligible Accounts Borrowing, Bank may, after the occurrence and during the continuance of an Event of Default, after consultation with and notice to the Borrower, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose.

(f) No Liability. Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own bad faith, gross negligence or willful misconduct.

6.4 Remittance of Proceeds. Commencing on the date of the Initial Eligible Accounts Borrowing and thereafter, if any Advances are outstanding, except as otherwise provided in Section 6.3(c), deliver, in kind, all proceeds arising from the disposition of any Collateral (other than dispositions of Inventory in the ordinary course of business) to Bank, in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (1) prior to an Event of Default, against the outstanding principal balance of the Revolving Line (unless Bank waives such application), the order and method of such application to be in the sole discretion of Bank, and (2) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of surplus, worn out or obsolete Equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Five Hundred Thousand Dollars (\$500,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will maintain all proceeds of Collateral in an account maintained with Bank. Nothing in this Section limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.5 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries in excess of Twenty Five Thousand Dollars (\$25,000), except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Access to Collateral; Books and Records. At reasonable times, on three (3) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower's Books. In addition to the Initial Audit, such inspections and audits shall be limited to (i) prior to the Accounts Receivable Triggering Event, one (1) time per calendar year; and (ii) on and after the Accounts Receivable Triggering Event, two (2) times per year. The Initial Audit will be completed within sixty (60) days after the Effective Date, or such later date as Bank shall determine, in its reasonable business judgment. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be \$850 per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies), Borrower shall pay Bank a fee of \$1,000 plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

6.7 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location. All property policies shall have a lender's loss payable endorsement showing Bank as a lender loss payee and waive subrogation against Bank. All liability policies covering Collateral shall show, or have endorsements showing, Bank as an additional insured. All property policies and all liability policies covering Collateral (or their respective endorsements) shall provide that the insurer shall endeavor to give Bank at least twenty (20) days' notice before canceling, amending, or declining to renew its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy covering Collateral shall, at Bank's option, be payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to One Million Dollars (\$1,000,000) with respect to any loss, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

6.8 Operating Accounts.

(a) (i) Maintain substantially all of its and its Domestic Subsidiaries', if any, domestic depository accounts, domestic operating accounts (other than deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees) with Bank, and, (ii) within thirty (30) days after the Effective Date, establish a domestic securities account with Bank's affiliates with all excess funds maintained at or invested through Bank or an affiliate of Bank; provided, that Borrower may maintain (x) its existing accounts at Bank of America or its affiliates (the "**Bank of America Accounts**") to facilitate its treasury operations, in a maximum amount not to exceed (i) from the Effective Date through the date that is 150 days after the Effective Date, Five Million Dollars (\$5,000,000); and (ii) from the date that is 151 days after the Effective Date and thereafter, Two Million Five Hundred Thousand Dollars (\$2,500,000); and (y) its existing Deposit Account at Bank of America or its affiliate which contains cash collateral securing the Existing Bank of America L/C, in a maximum amount not to exceed One Million Dollars (\$1,000,000) (the "**Bank of America Cash Collateral Deposit Account**"). Subject to the next sentence, amounts in excess of the amounts listed in the foregoing clauses (i) and (ii) of clause (x) in each respective period shall be promptly transferred to an account of Borrower maintained at Bank. Notwithstanding the foregoing, up to forty-nine percent (49%) of Borrower's cash and Cash Equivalents located in the United States in excess of Thirty Five Million Dollars (\$35,000,000) may be maintained at or invested through domestic depository accounts, domestic operating accounts and/or domestic securities accounts (collectively, the "**Other Accounts**") at financial institutions located in the United States, other than Bank or an affiliate of Bank.

(b) Other than with respect to any replacements of the accounts set forth in clauses (x) or (y) of Section 6.8(a), provide Bank five (5) days prior-written notice before establishing any Collateral Account (including, without limitation, the Other Accounts) at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains (including, without limitation, the Other Accounts), Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank; provided, that with respect to Collateral Accounts in existence on the Effective Date, such fully executed Control Agreements will be required to be delivered to Bank prior to the Initial Borrowing, as described in Section 3.2. The provisions of the previous sentence shall not apply to the Bank of America Cash Collateral Deposit Account, deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such or up to five (5) Deposit Accounts with an average daily balance of less than \$250,000.

6.9 Cash Reserve. During a Cash Reserve Period (which may be calculated by Bank at any time), Borrower shall execute all agreements reasonably required by Bank to establish and maintain restricted certificates of deposit at Bank, in an aggregate amount not less than the aggregate amount of all outstanding Obligations of Borrower owed to Bank and Bank's Affiliates (including, without limitation, any Bank Services).

6.10 Protection and Registration of Intellectual Property Rights.

(a) (i) Take commercially reasonable steps to protect, defend and maintain the validity and enforceability of its material U.S. registered or applied for Intellectual Property included in the Collateral; and (ii) except in the Borrower's reasonable business judgment, not allow any U.S. registered or applied for Intellectual Property included in the Collateral material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) If Borrower (i) obtains any U.S. Patent, registered U.S. Trademark, registered U.S. Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any U.S. Patent or the registration of any U.S. Trademark, then Borrower shall provide written notice thereof to Bank as required by Section 6.2(c), and shall promptly after such notification execute such intellectual property security agreements and other documents and take such other actions as Bank shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest (subject to Section 4.4) in favor of Bank in such property (other than Permitted Liens). If Borrower registers any Copyrights or mask works in the United States Copyright Office, Borrower shall, promptly after notification as required by Section 6.2(c), (y) execute an intellectual property security agreement and such other documents and take such other actions as Bank may request in its good faith business judgment to (subject to Section 4.4), perfect and maintain a first priority perfected security interest in favor of Bank (other than Permitted Liens) in such Copyrights or mask works; and (z) record such intellectual property security agreement with the United States Copyright Office with the United States Copyright Office. Borrower shall, promptly after notification as required by Section 6.2(c), provide to Bank copies of all applications that it files in the U.S. Copyright office or the U.S. Patent and Trademark Office for Patents or for the registration of Trademarks, Copyrights or mask works, together with evidence of the recording of the intellectual property security agreement necessary for Bank to perfect and maintain a first priority security interest in such property.

(c) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.11 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, use commercially reasonable efforts to make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's Books, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.12 Creation/Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenant contained in Section 7.3 hereof, in the event Borrower or any Domestic Subsidiary creates or acquires any Domestic Subsidiary, Borrower and such Domestic Subsidiary shall promptly notify Bank of the creation or acquisition of such new Domestic Subsidiary and, at Bank's request, in its sole discretion, take all such action as may be reasonably required by Bank to cause each such Domestic Subsidiary to, in Bank's sole discretion, become a co-Borrower or guarantor under the Loan Documents and grant a continuing pledge and security interest in and to the assets of such Domestic Subsidiary (substantially as described on Exhibit A hereto); and Borrower shall grant and pledge to Bank a perfected security interest (subject to Section 4.4) in the stock, units or other evidence of ownership of each Domestic Subsidiary.

6.13 Further Assurances. Subject to Section 4.4, execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Borrower shall deliver to Bank, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other material filings with any Governmental Authority regarding compliance with or maintenance of material Governmental Approvals or material Requirements of Law that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries, taken as a whole.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Cash, Cash Equivalents and Inventory in the ordinary course of business, in a manner consistent with past practices; (b) of worn out or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments, Permitted Indebtedness and Permitted Distributions; (d) of property in connection with sale-leaseback transactions; (e) of property (other than property pursuant to any other clause of this Section 7.1) to the extent such property is exchanged for credit against, or proceeds are promptly applied to, the purchase price of other property used or useful in the business of Borrower or its Subsidiaries; (f) constituting non-exclusive licenses, sublicenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business, in a manner consistent with past practices, and other non-perpetual licenses that may be exclusive in some respects (but not territorially exclusive for the United States), but that would not result in a legal transfer of Borrower's title in the licensed property; (g) consisting of sales or discounting of delinquent accounts in the ordinary course of business); and (h) of assets (other than Accounts or Inventory (unless such Transfer is in the ordinary course of Borrower's business, in amounts and in a manner consistent with past practices); provided, that the aggregate book value of all such Transfers by Borrower and its Subsidiaries, together, shall not exceed in any fiscal year, \$1,000,000.

7.2 Changes in Business, Management or Business Locations. (a) Engage in or permit any of its Subsidiaries, if any, to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; or (b) liquidate or dissolve; provided that Subsidiaries that are not an obligor under the Loan Documents may liquidate or dissolve so long as it is not reasonably likely to cause a material adverse change to Borrower's business.

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) change its jurisdiction of organization, (2) change its organizational structure or type, (3) change its legal name, or (4) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or, other than in connection with a Permitted Acquisition or a Permitted Investment, acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of the Collateral, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Domestic Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Domestic Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Domestic Subsidiaries' Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock per fiscal year, other than Permitted Distributions; or (b) directly or indirectly make any Investment (including, without limitation, any additional Investment in any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (i) transactions constituting Permitted Investments or Permitted Distributions and (ii) other transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Bank.

7.10 Compliance. Become an "investment company" under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or non-exempt Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, in each individual instance and in the aggregate for all such instances, in excess of One Hundred Thousand Dollars (\$100,000), including, in each case any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (a) or (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation which it is required to perform pursuant to Sections 6.2, 6.4, 6.5, 6.6, 6.8, or 6.9, or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds in excess of One Million Dollars (\$1,000,000) of Borrower or of any entity under the control of Borrower (including a Subsidiary) on deposit or otherwise maintained with Bank or any Bank Affiliate, or (ii) a notice of lien or levy is filed against any of Borrower's assets with a fair market value of One Million Dollars (\$1,000,000) or more, by any government agency, and the same under subclauses (i) and (ii) hereof are not, within fifteen (15) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any fifteen (15) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business; provided, that the Event of Default under this Section 8.4(b) shall be cured or waived for purposes of this Agreement upon Bank receiving written evidence that the same under subclauses (i) and (ii) hereof have, within fifteen (15) days after the occurrence thereof, been discharged or stayed (whether through the posting of a bond or otherwise) and so long as Bank has not declared an Event of Default under any other provision of this Agreement and/or exercised any rights with respect thereto;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default that has not been cured or waived resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of One Million Dollars (\$1,000,000); or (b) any default by Borrower that has not been cured or waived within the applicable cure period, the result of which would reasonably be expected to have a material adverse effect on Borrower's business;

8.7 Judgments. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Million Dollars (\$1,000,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within fifteen (15) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made; or

8.9 Change in Control. A Change in Control occurs.

9 BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. While an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) for any letters of credit, demand that Borrower (i) deposit cash with Bank in an amount equal to 105% (110% for letters of credit denominated in a currency other than Dollars), of the Dollar Equivalent of the aggregate face amount of all letters of credit remaining undrawn plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such letters of credit, as collateral security for the repayment of any future drawings under such letters of credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any letters of credit; provided, however, if an Event of Default described in Section 8.5 occurs, the obligation of Borrower to cash collateralize all letters of credit remaining undrawn shall automatically become effective without any action by Bank;

(d) terminate any foreign exchange forward contracts;

(e) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, notify any Person owing Borrower money of Bank's security interest in such funds, and verify the amount of such account;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Subject to the terms of the applicable lease agreement, Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use (which license shall terminate upon the earlier of any Event of Default being cured or payment in full of all Obligations (other than inchoate indemnity obligations)), without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, subject to Bank's adherence to Borrower's quality control requirements for Trademarks and subject to maintenance of trade secret rights in any trade secrets; Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit during an Event of Default;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, being coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon when due or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document when due, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 **NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, “**Communication**”), other than Advance requests made pursuant to Section 3.4, by any party to this Agreement or any other Loan Document must be in writing and be delivered or sent by facsimile at the addresses or facsimile numbers listed below. Bank or Borrower may change its notice address by giving the other party written notice thereof. Each such Communication shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, registered or certified mail, return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission (with such facsimile promptly confirmed by delivery of a copy by personal delivery or United States mail as otherwise provided in this Section 10); (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated below. Advance requests made pursuant to Section 3.4 must be in writing and may be in the form of electronic mail, delivered to Bank by Borrower at the e-mail address of Bank provided below and shall be deemed to have been validly served, given, or delivered when sent (with such electronic mail promptly confirmed by delivery of a copy by personal delivery or United States mail as otherwise provided in this Section 10). Bank or Borrower may change its address, facsimile number, or electronic mail address by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Delcath Systems, Inc.
810 Seventh Avenue, 35th Floor
New York, New York 10019
Attn: Graham Miao & Peter Graham
Fax: 212-489-2103
Email: gmiao@delcath.com & pgraham@delcath.com

If to Bank: Silicon Valley Bank
275 Grove Street, Suite 2-200
Newton, Massachusetts 02466
Attn: Michael Quinn
Fax: (617) 527-0177
Email: mquinn@svb.com

with a copy to: Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attn: Charles W. Stavros, Esquire
Fax: (617) 880-3456
Email: cstavros@riemerlaw.com

11 **CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

New York law governs the Loan Documents without regard to principles of conflicts of law (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law). Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in New York; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower’s actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREINABOVE, BANK SHALL SPECIFICALLY HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH BANK DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE BANK’S RIGHTS AGAINST BORROWER OR ITS PROPERTY.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

12 GENERAL PROVISIONS

12.1 Termination Prior to Maturity Date. This Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank or if Bank's obligation to fund Credit Extensions terminates pursuant to the terms of Section 2.1.1(b). Notwithstanding any such termination, Bank's lien and security interest in the Collateral shall continue until Borrower fully satisfies its Obligations (other than inchoate indemnity obligations) and terminates all Bank Services or cash collateralizes such Bank Services as described in Section 4.1. Upon payment in full of the Obligations (other than inchoate indemnity obligations) and at such time as (i) all Bank Services are terminated and/or cash collateralized, and (ii) Bank's obligation to make any other Credit Extensions has terminated, Bank shall release its liens and security interests in the Collateral and all rights therein shall revert to Borrower. In furtherance of the aforementioned sentence, Bank shall use reasonable commercial efforts to arrive at an acceptable cash collateral amount when requested by Borrower. Upon any Transfer permitted pursuant to Section 7.1, Bank automatically release its liens and security interests in the Collateral and all rights therein the subject of such transfer.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower contemplated by the Loan Documents (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.5 Correction of Loan Documents. Bank may, in consultation with Borrower, correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.6 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. All amendments and other modifications to this Agreement must be signed by Bank and Borrower. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1 and Section 12.1, the grant of security interest by Borrower in Section 4.1 shall survive until (i) the termination of all Bank Services Agreements or (ii) all Bank Services Agreements are cash collateralized as described in Section 4.1. In furtherance of the aforementioned sentence, Bank shall use reasonable commercial efforts to arrive at an acceptable cash collateral amount when requested by Borrower. The obligation of Borrower in Section 12.3 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.10 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use commercially reasonable efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers reasonably appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) disclosed to Bank by a third party if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use the confidential information for reporting purposes and the development and distribution of databases and market analyses so long as such confidential information is aggregated and anonymized prior to distribution, unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.11 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, Bank shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.12 Right of Set Off. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any part thereof and apply the same to any Obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.13 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.14 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.15 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.16 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.17 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting and the singular includes the plural. As used in this Agreement, the following capitalized terms have the following meanings:

"**Account**" is any "account" as defined in the Code.

"**Account Debtor**" is any "account debtor" as defined in the Code.

"**Accounts Receivable Triggering Event**" is the earliest to occur of (i) the date Borrower projects it will generate accounts receivable of One Million Dollars (\$1,000,000) or more; (ii) the date Borrower actually generates accounts receivable of One Million Dollars (\$1,000,000) or more; or (iii) such date as Bank and Borrower shall mutually agree upon, each in their reasonable business judgment.

"**Acquisition**" is (a) the purchase or other acquisition by Borrower or any of its Subsidiaries of all or substantially all of the assets of any other Person, or (b) the purchase or other acquisition (whether by means of merger, consolidation, or otherwise) by Borrower or any of its Subsidiaries of all or substantially all of the stock or other equity interest of any other Person.

"**Adjusted Quick Ratio**" is, with respect to Borrower, as of any date of determination the ratio of (a) the sum of (i) unrestricted cash at Bank (which shall not be less than Twenty Million Dollars (\$20,000,000) at any time) plus (ii) net billed accounts receivable divided by (b) the result of (i) Current Liabilities minus (ii) Deferred Revenue minus (iii) without duplication, warrant liability.

"**Advance**" or "**Advances**" means an advance (or advances) under the Revolving Line.

"**Affiliate**" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Availability Amount**" is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base, minus (b) the outstanding principal balance of any Advances; provided, that during a Cash Reserve Period, no additional Advances shall be available hereunder.

"**Bank**" is defined in the preamble hereof.

"**Bank Expenses**" are all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“**Bank of America Accounts**” is defined in Section 6.8(a).

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrowing Base**” is (a) the lesser of (x) one hundred percent (100%) of Borrower’s unrestricted cash at Bank or (y) Twenty Million Dollars (\$20,000,000) plus (b) eighty percent (80%) of Eligible Accounts, in each case as determined by Bank from Borrower’s most recent Borrowing Base Certificate; provided, however, that Bank may, after consultation with and notice to Borrower, decrease the foregoing amount and/or percentages in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect the Collateral.

“**Borrowing Base Certificate**” is that certain Borrowing Base certificate, a form of which will be provided by Bank to Borrower.

“**Borrowing Resolutions**” are, with respect to any Person, those resolutions adopted by such Person’s board of directors or other appropriate body and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“**Capital Expenditures**” means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, plus (b) to the extent not covered by clause (a), the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or capitalized assets or the capital stock of any other Person.

“**Cash Burn**” is, with respect to Borrower, as of any date of determination, measured on a trailing three month basis, the result of (X) Borrower’s Net Cash Balance as of the last day of the three-month period ended immediately prior to the three-month period ending as of the date of measurement minus (Y) Borrower’s Net Cash Balance as of the last day of the three-month period ending as of the date of measurement.

“**Cash Burn Certificate**” is that certain certificate for reporting Borrower’s Cash Burn, a form of which is provided by Bank to Borrower, together with such supporting ledger reports and schedules as Bank shall require, in its reasonable discretion.

“**Cash Equivalents**” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (c) certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

“Cash Reserve Period” is, as of any date of measurement, the period during which any Advances are outstanding and (X) commencing on the date in which Borrower’s (a) (i) unrestricted cash at Bank plus (ii) Borrower’s unrestricted Cash Equivalents at Bank is less than (b) the greater of (i) Fifteen Million Dollars (\$15,000,000) plus all outstanding Obligations of Borrower owed to Bank or (ii) trailing three (3) months Cash Burn plus all outstanding Obligations of Borrower owed to Bank (such amount being the **“Cash Reserve Balance”**), in each case as determined by Bank, in its reasonable discretion; and (Y) terminating on the date Bank determines, in its reasonable discretion, that Borrower’s (a) (i) unrestricted cash at Bank plus (ii) Borrower’s unrestricted Cash Equivalents at Bank is greater than the Cash Reserve Balance. Borrower is subject at all times to Bank’s determination as to whether a Cash Reserve Period is in effect.

“Change in Control” is a transaction in which any **“person”** or **“group”** (within the meaning of Section 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended) becomes the **“beneficial owner”** (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of greater than 35% of the shares of all classes of stock then outstanding of Borrower ordinarily entitled to vote in the election of directors.

“Chattel Paper” is “Chattel Paper” as defined in the Code.

“Code” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term **“Code”** shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“Collateral” is any and all properties, rights and assets of Borrower described on Exhibit A.

“Collateral Account” is any Deposit Account, Securities Account, or Commodity Account of the Borrower located in the United States.

“Commodity Account” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“Communication” is defined in Section 10.

“Compliance Certificate” is that certain certificate in the form attached hereto as Exhibit B.

“Contingent Obligation” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, letter of credit or other obligations for borrowed money of another such as an obligation, in each case directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“Control Agreement” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Advance, letter of credit, foreign exchange forward contract, amount utilized for cash management services, or any other similar extension of credit by Bank for Borrower’s benefit under this Agreement.

“**Current Liabilities**” are all Obligations of Borrower owed to Bank, plus, without duplication, the aggregate amount of Borrower’s Total Liabilities that mature within one (1) year.

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

“**Default Rate**” is defined in Section 2.3(b).

“**Deferred Revenue**” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“**Deposit Account**” is any “deposit account” as defined in the Code.

“**Designated Deposit Account**” is Borrower’s deposit account, account number 3300878343, maintained with Bank.

“**Document**” is any “document” as defined in the Code.

“**Dollars,**” “**dollars**” or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

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

“**EBITDA**” shall mean (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense.

“**Effective Date**” is defined in the preamble hereof.

“**Eligible Accounts**” means Accounts which arise in the ordinary course of Borrower’s business that meet all Borrower’s representations and warranties in Section 5.3. Bank reserves the right at any time and from time to time after the Effective Date upon notice to Borrower, to adjust any of the criteria set forth below and to establish new criteria in its good faith and in the exercise of reasonable business judgment. Without limiting the fact that the determination of which Accounts are eligible for borrowing is a matter of Bank’s good faith judgment, the following (“**Minimum Eligibility Requirements**”) are the minimum requirements for an Account to be an Eligible Account. Unless Bank agrees otherwise in writing, Eligible Accounts shall not include:

- (a) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent;
- (b) Accounts that the Account Debtor has not paid within one hundred twenty (120) days of invoice date regardless of invoice payment period terms;

- (c) Accounts with credit balances over one hundred twenty (120) days from invoice date;
- (d) Accounts owing from an Account Debtor, in which fifty percent (50%) or more of the Accounts have not been paid within one hundred twenty (120) days of invoice date;
- (e) Accounts owing from an Account Debtor which does not have its principal place of business in the United States;
- (f) Accounts billed and/or payable outside of the United States (sometimes called foreign invoiced accounts);
- (g) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts);
- (h) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
- (i) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;
- (j) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- (k) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);
- (l) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
- (m) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
- (n) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank in its sole discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called “bill and hold” accounts);
- (o) Accounts for which the Account Debtor has not been invoiced;
- (p) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;
- (q) Accounts for which Borrower has permitted Account Debtor’s payment to extend beyond one hundred twenty (120) days;
- (r) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;
- (s) Accounts arising from product returns and/or exchanges (sometimes called “warranty” or “RMA” accounts);

(t) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(u) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(v) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed twenty-five percent (25%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing;

(w) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by “refreshed” or “recycled” invoices; and

(x) other Accounts Bank deems ineligible in the exercise of its good faith and in the exercise of reasonable business judgment.

“**Equipment**” is any “equipment” as defined in the Code.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, and its regulations.

“**Event of Default**” is defined in Section 8.

“**Excluded Property**” is (a) any Foreign Subsidiary, (b) any lease, license, contract, or agreement (or any of its rights or interests thereunder) if and to the extent that the grant of the security interest shall, after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) or any other applicable law, constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of Borrower therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease license, contract, property rights or agreement; (c) any lease, license, contract, or agreement (or any of its rights or interests thereunder) if and to the extent that any applicable law or regulation prohibits the creation of a security interest thereon (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity); (d) any Deposit Accounts specifically and exclusively used for (i) payroll, payroll taxes, and other employee wage and benefit payments to or for the benefit of Borrower’s employees and accrued and unpaid employee compensation (including salaries, wages, benefits and expense reimbursements) and (ii) all taxes required to be collected or withheld (including, without limitation, federal and state withholding taxes (including the employer’s share thereof), taxes owing to any governmental unit thereof, sales, use and excise taxes, customs duties, import duties and independent customs brokers’ charges), other taxes for which the Borrower may become liable; (e) the Bank of America Cash Collateral Account and (f) any “intent-to-use” applications for U.S. Trademarks or service marks filed in the United States Patent and Trademark Office (the “**PTO**”) pursuant to 15 U.S.C. §1051 Section (b)(1) unless and until evidence of use of the mark in interstate commerce is submitted to the PTO pursuant to 15 U.S.C. §1051 Section (c) or Section (d).

“**Existing Bank of America L/C**” means that certain letter of credit number S202877, dated as of February 02, 2010, issued by Bank of America, N.A. on behalf of Borrower for the benefit of SLG 810 Seventh Lessee LLC and any replacements or extensions thereof.

“**Financial Assets**” means “financial assets” as defined in the Code.

“**Fixtures**” means all “fixtures” as defined in the Code.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” means any Subsidiary which is not a Domestic Subsidiary.

“**Funding Date**” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” is all “general intangibles” as defined in the Code, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Goods**” means all “goods” as defined in the Code.

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Indebtedness**” is, without duplication, (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations (other than operating leases that are treated as capital leases under GAAP), and (d) Contingent Obligations.

“**Indemnified Person**” is defined in Section 12.3.

“**Initial Audit**” is Bank’s inspection of Borrower’s Accounts, the Collateral, and Borrower’s Books, with results satisfactory to Bank in its sole and absolute discretion.

“**Initial Borrowing**” is the first Advance or borrowing by the Borrower.

“**Initial Eligible Accounts Borrowing**” is the first Advance, in which Eligible Accounts are included in the Borrowing Base.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Instrument**” is any “instrument” as defined in the Code.

“**Intellectual Property**” means all of Borrower’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to a Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“**Interest Expense**” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower and its Subsidiaries, if any, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“**Inventory**” is all “inventory” as defined in the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“**Investment Property**” is all “investment property” as defined in the Code.

“**IP Agreement**” is that certain Intellectual Property Security Agreement executed and delivered by Borrower to Bank dated as of the Effective Date.

“**Letter of Credit Rights**” is any “letter-of-credit right” as defined in the Code.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, the Perfection Certificate, the IP Agreement, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement between Borrower and/or for the benefit of Bank, all as amended, restated, or otherwise modified.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Minimum Eligibility Requirements**” is defined in the defined term “Eligible Accounts”.

“**Net Cash Balance**” means, as of any date of measurement, the result of (i) Borrower’s cash on hand minus (ii) net cash proceeds from the issuance of equity of the Borrower; minus (iii) net cash proceeds from the issuance of Subordinated Debt; minus (iv) net cash proceeds from the sale of Collateral outside the ordinary course of business (excluding cash proceed from Transfers permitted pursuant to Section 7.1); minus (v) insurance proceeds received in cash; minus (vi) without duplication, all other cash held by Borrower derived from sources other than from the sale of goods and/or services in the ordinary course of Borrower’s business.

“**Obligations**” are Borrower’s obligation to pay when due any debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified with the Secretary of State of such Person’s state of formation on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment**” means all checks, wire transfers and other items of payment received by Bank (including proceeds of Accounts and payment of all the Obligations in full) for credit to Borrower’s outstanding Credit Extensions or, if the balance of the Credit Extensions has been reduced to zero, for credit to its Deposit Accounts.

“**Perfection Certificate**” is defined in Section 5.1.

“**Performance Pricing Period**” is the period commencing on the first day of the month following the month in which Borrower’s Adjusted Quick Ratio, measured on a trailing three-month basis, is greater than 1.50:1.00, and terminating on the first day in which Borrower reports, or Bank otherwise determines, in its reasonable discretion, that Borrower’s Adjusted Quick Ratio, measured on a trailing three-month basis, is equal to or less than 1.50:1.00. All reports of Adjusted Quick Ratio made by Borrower to Bank shall be in form and substance acceptable to Bank, in its sole discretion. Borrower shall provide Bank written notice of its intent to enter into a Performance Pricing Period.

“**Permitted Acquisition**” is any Acquisition by the Borrower, disclosed to Bank, provided that each of the following shall be applicable to any such Acquisition:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition;

(b) the entity or assets acquired in such Acquisition are in the same or similar line of business as Borrower is in as of the date hereof or reasonably related thereto;

(c) the target of such Acquisition, if such acquisition is a stock acquisition, shall be an entity organized under the laws of any State in the United States and shall have a principal place in the United States or, if otherwise, either (i) the target shall be organized under the laws of and have a principal place of business in any jurisdiction in which Bank determines, in its reasonable judgment, that Bank can obtain a first-priority perfected security interest over the assets and/or stock of such target in such jurisdiction, or (ii) the amount of consideration payable in connection with such Acquisition shall not exceed the amount of Investments permitted in connection with clause (c) of the definition of “Permitted Investments”;

(d) If the Acquisition includes a merger of Borrower, Borrower shall remain a surviving entity after giving effect to such Acquisition; if, as a result of such Acquisition, a new Domestic Subsidiary of Borrower is formed or acquired, Borrower shall cause such Domestic to comply with Section 6.12, as required by Bank;

(e) Borrower shall provide Bank with written notice of the proposed Acquisition at least ten (10) Business Days prior to the anticipated closing date of the proposed Acquisition; and not less than five (5) Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and all other material documents relative to the proposed Acquisition (or if such acquisition agreement and other material documents are not in final form, drafts of such acquisition agreement and other material documents; provided that Borrower shall deliver final forms of such acquisition agreement and other material documents promptly upon completion);

(f) the total cash and non-cash consideration payable (including, without limitation, any earn-out payment obligations) plus the total Indebtedness assumed for all such Acquisitions may not exceed Five Million Dollars (\$5,000,000);

(g) the resulting transaction is accretive to Borrower's EBITDA on a *pro forma* basis both historically and prospectively as of twelve (12) months after the date of such Acquisition; and

(h) the entity or assets acquired in such Acquisition shall not be subject to any Lien other than (x) the first-priority Liens granted in favor of Bank and (y) Permitted Liens.

"Permitted Distributions" means:

(a) purchases of capital stock from current and former employees, consultants and directors pursuant to repurchase agreements or other similar agreements in an aggregate amount not to exceed One Million Dollars (\$1,000,000) in any fiscal year; provided that at the time of such purchase no Default or Event of Default has occurred and is continuing;

(b) distributions or dividends consisting solely of Borrower's capital stock;

(c) purchases for value of any rights distributed in connection with any stockholder rights plan;

(d) purchases of capital stock or options to acquire such capital stock with the proceeds received from a substantially concurrent issuance of capital stock or convertible securities;

(e) purchases of capital stock pledged as collateral for loans to employees;

(f) purchases of capital stock in connection with the exercise of stock options or stock appreciation rights by way of cashless exercise or in connection with the satisfaction of withholding tax obligations;

(g) distributions or dividends by any of Borrower's Subsidiaries to its parent or to the Borrower;

(h) purchases of fractional shares of capital stock arising out of stock dividends, splits or combinations or business combinations;

(i) the settlement or performance of such Person's obligations under any equity derivative transaction, option contract or similar transaction or combination of transactions.

"Permitted Indebtedness" is:

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) obligations of Borrower in connection with the Existing Bank of America L/C;

(e) Indebtedness among Borrower and any co-borrower or secured guarantor that becomes a party to one or more of the Loan Documents;

(f) Indebtedness incurred in connection with any Permitted Acquisition, in an aggregate outstanding amount not to exceed One Million Dollars (\$1,000,000) for all such Permitted Acquisitions;

(g) unsecured Indebtedness to trade creditors and with respect to surety bonds and similar obligations incurred in the ordinary course of business;

(h) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;

(i) Indebtedness owed by Subsidiaries to Borrower or another Subsidiary in connection with current operating expenses incurred in the ordinary course of the businesses currently engaged in by Borrower or its Subsidiaries or reasonably related thereto and not for extraordinary items or speculative purposes (other than research and development costs and expenses and Permitted Investments), in an amount not to exceed, together with amounts permitted pursuant to clause (e) of the definition of "Permitted Investments", Ten Million Dollars (\$10,000,000) in the aggregate for the period commencing on the Effective Date through and including December 31, 2012; thereafter, no later than thirty (30) days after the end of each fiscal year, based on information provided by Borrower to Bank, Bank shall, in consultation with Borrower, reasonably determine the Indebtedness permitted pursuant to this clause (i) for the then-current fiscal year, which amount shall in no event be less than, together with amounts permitted pursuant to clause (e) of the definition of "Permitted Investments", Ten Million Dollars (\$10,000,000) in the aggregate; all proceeds of Permitted Indebtedness permitted under this clause (i) shall be used to promptly pay such current operating expenses of such Subsidiaries;

(j) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(k) Indebtedness (i) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (ii) arising under or in connection with cash management services or reasonable and customary overdraft protection in the ordinary course of business;

(l) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;

(m) other unsecured Indebtedness, in an aggregate outstanding amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time;

(n) obligations under any foreign currency swap agreement designed to protect Borrower or any Subsidiary against fluctuations in currency exchange rates and not for speculative purposes;

(o) Indebtedness constituting Contingent Obligations of any of the foregoing; and

(p) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (m) above; provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"Permitted Investments" are:

(a) Investments shown on the Perfection Certificate and existing on the Effective Date and Investments consisting of equity interests in any Subsidiary of Borrower otherwise permitted herein;

(b) Cash Equivalents;

(c) Investments by Borrower in Permitted Acquisitions;

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

(e) Investments by Borrower or any of its Subsidiaries in Subsidiaries for current operating expenses incurred in the ordinary course of the businesses currently engaged in by Borrower or any of its Subsidiaries or reasonably related thereto and not for extraordinary items or speculative purposes (other than research and development costs and expenses and Permitted Investments), in an aggregate amount not to exceed, together with amounts permitted pursuant to clause (i) of the definition of "Permitted Indebtedness", Ten Million Dollars (\$10,000,000) in the aggregate for the period commencing on the Effective Date through and including December 31, 2012; thereafter, no later than thirty (30) days after the end of each fiscal year, based on information provided by Borrower to Bank, Bank shall, in consultation with Borrower, reasonably determine the Investments permitted pursuant to this clause (e) for the then-current fiscal year, which amount shall in no event be less than, together with amounts permitted pursuant to clause (i) of the definition of "Permitted Indebtedness", Ten Million Dollars (\$10,000,000) in the aggregate; all proceeds of Permitted Investments permitted under this clause (e) shall be used to promptly pay such current operating expenses of such Subsidiaries;

(f) Investments consisting of the Bank of America Accounts;

(g) Investments accepted in connection with Transfers permitted by Section 7.1;

(h) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors;

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

(j) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (j) shall not apply to Investments of Borrower in any Subsidiary; and

(k) other Investments not otherwise permitted by Section 7.7 in an aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time.

"Permitted Liens" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Two Million Dollars (\$2,000,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of lessors, carriers, warehousemen, mechanics, materialmen, suppliers, bailees or other Persons that are possessory in nature arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

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

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property (and any easements and rights-of-way on any such real property) granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the ordinary course of Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest;

(h) non-exclusive license of Intellectual Property granted to third parties in the ordinary course of business;

(i) Liens on cash collateral accounts securing the Existing Bank of America L/C;

(j) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7; and

(k) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions; provided that Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prime Rate" means the rate of interest published in the "Money Rates" section of The Wall Street Journal, Eastern Edition as the "United States Prime Rate." In the event that The Wall Street Journal, Eastern Edition is not published or such rate does not appear in The Wall Street Journal, Eastern Edition, the Prime Rate shall be determined by Bank in accordance with past practices until such time as the Prime Rate becomes available.

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"Requirement of Law" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserves" means, as of any date of determination, such amounts as Bank may from time to time establish and revise in good faith and in the exercise of reasonable business judgment, reducing the amount of Advances, letters of credit and other financial accommodations which would otherwise be available to Borrower under the lending formulas: (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in good faith, do or may affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets or business of Borrower or any guarantor, or (iii) the security interests and other rights of Bank in the Collateral included in the Borrowing Base (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

"Responsible Officer" is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

"Restricted License" is any material license with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or any other property.

“Revolving Line” is an Advance or Advances in an amount not to exceed Twenty Million Dollars (\$20,000,000) outstanding at any time.

“Revolving Line Maturity Date” is April 20, 2016.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code.

“Security” is any “security” as defined in the Code.

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“Supporting Obligation” is any “supporting obligation” as defined in the Code.

“Total Liabilities” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transaction Report” is the Bank’s standard reporting package provided by Bank to Borrower.

“Transfer” is defined in Section 7.1.

“Unused Revolving Line Facility Fee” is defined in Section 2.4(b).

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

DELCATH SYSTEMS, INC.

By /s/ Graham Miao

Name: Graham Miao

Title: EVP, Chief Financial Officer

BANK:

SILICON VALLEY BANK

By /s/ Ryan Ravenscroft

Name: Ryan Ravenscroft

Title: VP

[Signature page to Loan and Security Agreement]

EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, Documents, Instruments (including any promissory notes), Chattel Paper (whether tangible or electronic), cash, Deposit Accounts, Fixtures, Letters of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities, and all other Investment Property, Supporting Obligations, and Financial Assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding any of the other provisions set forth in herein, this Agreement shall not constitute a grant of a security interest in in any Excluded Property; provided, that, notwithstanding the foregoing, a security interest shall be granted in, and shall attach to (x) any property immediately upon such property ceasing to be Excluded Property and (y) any and all proceeds, products, substitutions and replacements of Excluded Property to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Property.

EXHIBIT B
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
FROM: DELCATH SYSTEMS, INC.

Date: _____

The undersigned authorized officer of Delcath Systems, Inc. ("**Borrower**") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "**Agreement**"), (1) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>
Monthly Financial Reports [Reserved]		Yes No
Compliance Certificate	Commencing on the date of the Initial Borrowing, monthly within 30 days	Yes No
Borrowing Base Certificate	Commencing on the date of the Initial Borrowing and prior to the Accounts Receivable Triggering Event, monthly within 30 days and upon each request for a Credit Extension	Yes No
Quarterly financial statements	Commencing on the date of the Initial Borrowing, quarterly within 45 days	Yes No
Annual financial statement (CPA Audited) + CC	FYE within 150 days	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
A/R & A/P Agings and Deferred Revenue reports (as necessary)	Monthly within 15 days	Yes No
Transaction Reports	Commencing on the date of the Initial Eligible Accounts Borrowing and after the Accounts Receivable Triggering Event, monthly within 30 days and upon each request for a Credit Extension	Yes No
Projections	FYE within 30 days, and as amended and/or updated	Yes No
Cash Burn Certificate and supporting ledger reports	Monthly within 20 days	Yes No

The following Intellectual Property was registered after the Effective Date (if no registrations, state "**None**")

Performance Pricing		Applies
AQR > 1.50:100	Prime + 1.00%	Yes No
AQR < 1.50:100	Prime + 2.00%	Yes No

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

Delcath Systems, Inc.

BANK USE ONLY

Received by: _____
AUTHORIZED SINGER

Date: _____

Verified: _____
AUTHORIZED SINGER

Date: _____

Compliance Status: Yes No

By: _____
Name: _____
Title: _____

CERTIFICATION
OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO RULE 13a-14(a) and 15d-14(a) OF THE EXCHANGE ACT

I, Eamonn P. Hobbs, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Delcath Systems, Inc;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 8, 2012

/s/Eamonn P. Hobbs

Eamonn P. Hobbs
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION
OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO RULE 13a-14(a) and 15d-14(a) OF THE EXCHANGE ACT

I, Graham G. Miao, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Delcath Systems, Inc;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

August 8, 2012

/s/Graham G. Miao

Graham G. Miao
Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES – OXLEY ACT OF 2002

In connection with the Quarterly Report of DELCATH SYSTEMS, INC. (the “Company”) on Form 10-Q for the fiscal quarter ended June 30, 2012, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Eamonn P. Hobbs, the President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 8, 2012

/s/Eamonn P. Hobbs

Eamonn P. Hobbs
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES – OXLEY ACT OF 2002

In connection with the Quarterly Report of DELCATH SYSTEMS, INC. (the “Company”) on Form 10-Q for the fiscal quarter ended June 30, 2012, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Graham G. Miao, the Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The report fully complies with the requirements of section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 8, 2012

/s/Graham G. Miao

Graham G. Miao
Chief Financial Officer
(Principal Financial Officer)
