IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
QLESS, INC.,	Chapter 11, Subchapter V
Debtor.	Case No. 24-11395 (BLS)

ORDER CONFIRMING PLAN

QLess, Inc., (the "**Debtor**"):[1]

a. commenced this case on June 19, 2024 (the "**Petition Date**"), by filing a voluntary petition for relief under Subchapter V, Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in this Court;

b. operated its business and managed its property during the Chapter 11 Case as a debtor in possession under Bankruptcy Code § 1182(2);

c. proposed the *Plan,* filed on July 19, 2024 [Doc 70] (the "**Original Plan**"), which was amended by the *Amended Plan*, filed on August 21, 2024 [Doc 122] (the "**Plan**");

d. solicited Ballots on the Original Plan for holders of Claims and Interests in Classes 1, 2, 4, and 5 under the Plan—the Classes entitled to Vote to accept or reject the Plan—and served the Confirmation Hearing Notice on all parties in accordance with Court order, as evidenced by the *Certificate of Service* [Doc. 96] filed on August 7, 2024;

e. filed Exhibit C to the Plan (the Amended and Restated Charter) and Exhibit E to the Plan (the Celtic Bank Agreed Loan Covenant Amendments) on August 17, 2024, and August 23, 2024, respectively;

[1] Capitalized terms used but not defined in this order are defined in the Plan. The rules of interpretation set forth in the Plan apply to this order.

f. filed, on August 23, 2024, *Declaration Of Andres A. Estrada with Respect to the Tabulation of Votes on the Plan Dated July 19, 2024* [Doc. 129] (the "**Ballot Report**"), which details the results of the Plan voting process, and the *Brief in Support of Plan Confirmation* (the "**Confirmation Brief**"), which attached the *Declaration of Andrew De Camara* (the "**De Camara Declaration**").

The Court:

a. set August 21, 2024, as the deadline by which Ballots to accept or reject the Original Plan were due (the "**Voting Deadline**") and the last date on which objections to confirmation of the Plan could be filed (the "**Objection Deadline**");

b. set August 27, 2024 at 2:00 p.m. (Eastern Time), as the date and time for the hearing to consider Confirmation of the Plan (the "**Confirmation Hearing**") and, on that date, continued the Confirmation Hearing to September 13, 2024 at 9:30 a.m. (Eastern Time);

c. conducted the Confirmation Hearing on September 13, 2024, at which: (i) the Court conducted an evidentiary hearing regarding the objection of a group of disputed creditors led by Alex Bäcker (the "**Objectors**") to the Debtor's eligibility for relief under Subchapter V of Chapter 11 ("**Eligibility**"), as expressed in *Objection of Alex Bäcker and Certain Preferred Shareholders to Debtor's Subchapter V Eligibility and Plan* [Doc. 118] and the *Supplemental Memorandum in Support of the Objection of Alex Bäcker and Certain Preferred Shareholders to Debtor's Subchapter V Eligibility and Plan* [Doc. 147] (together, the "**Objection**") filed by the Objectors and to the Debtor's response to the Objection contained in the *Debtor's Supplemental Brief in Support of Eligibility and Plan Confirmation* [Doc. 153] (the "**Eligibility Brief**"); (ii) heard testimony from Mr. De Camara and Mr. M. Freddie Reiss and accepted into evidence several exhibits in support of the Eligibility Brief and the Objection, as well as testimony and other evidentiary support for confirmation of the Plan and the findings of fact set forth below; and (iii) heard argument from counsel for the Debtor, counsel for the Objectors, counsel for Palisades, counsel for the U.S. Trustee, and David Klauder in his capacity as Subchapter V Trustee;

d. reviewed the Plan, the Ballot Report, the Confirmation Brief, the De Camara Declaration, and all filed pleadings, exhibits, and other documents regarding Eligibility and Confirmation;

e. determined that no objections other than the Objection were filed or raised before or at the Confirmation Hearing regarding Eligibility or Confirmation;

f. determined that notice of the Confirmation Hearing and the opportunity for Classes 1, 2, 4, and 5 to Vote on, and any party in interest to object to Confirmation of, the Plan has been adequate and appropriate;

g. determined that the modifications of the Original Plan that resulted in the Plan do not require a re-solicitation of Votes and do not otherwise implicate Bankruptcy Code § 1193(a) and that Votes on the Original Plan constitute Votes on the Plan;

h. taken judicial notice of all pleadings and other documents filed, all orders entered, and all evidence and arguments presented in this case; and

i. determined after due deliberation that just cause exists for the findings of fact and conclusions of law contained, and for the relief granted, in this order.

THE COURT FINDS AND CONCLUDES:[2]

A. Jurisdiction, Venue, and Core Proceeding

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2) in which the Court may enter final orders.

B. Eligibility for Relief

2. The Debtor has proved Eligibility by, among other things, establishing by a preponderance of the evidence that the Debtor's non-insider, non-affiliate, non-contingent, liquidated debts as of the Petition Date did not exceed $7,500,000, the applicable debt limit under

[2] The following findings and conclusions constitute the Court's findings of fact and conclusions of law under Bankruptcy Rules 7052 and 9014.

Bankruptcy Code § 1182(1)(a) as of the Petition Date. Accordingly, the Debtor was on the Petition Date and is today an entity eligible for relief under Subchapter V of Chapter 11 under Bankruptcy Code §§ 101(51D)(A), 109, and 1182(1)(A) as those provisions existed on the Petition Date.

C. Burden of Proof

3. The Debtor has met its burden of proving the applicable requirements for Confirmation under Bankruptcy Code § 1191(b) by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

D. Notice

4. Notice of (a) the Plan, (b) the Confirmation Hearing, (c) the Voting Deadline, and (d) the Objection Deadline was adequate under applicable provisions of the Bankruptcy Code, the Bankruptcy Rule, the Local Rules, and all other applicable law, rules, and orders of this Court. No further notice is required.

E. Voting

5. As described in the Ballot Report, Ballots to Vote to accept or reject the Plan were duly and adequately served on members of Classes 1, 2, 4, and 5. (Class 6 under the Plan is an empty class and is, therefore, disregarded.) The period during which the Debtor solicited acceptances or rejections to the Plan was a reasonable and sufficient period for holders of Claims and Interests in Classes 1, 2, 4, and 5 to make an informed decision to accept or reject the Plan under the circumstances. Solicitation was conducted in good faith and conducted in accordance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

6. Under Bankruptcy Code § 1126(f), the Debtor was not required to solicit votes from holders of Claims in Class 3 because those holders, whose Claims are unimpaired, are deemed to accept the Plan.

7. Classes 1, 2, and 5 have all Voted to accept the Plan. The Debtor stipulated that the Objectors' claims in Class 4, although subject to a pending objection, would be counted for purposes of Voting. Accordingly, Class 4 has Voted to reject the Plan.

F. Compliance with Bankruptcy Code Requirements

8. The Plan satisfies all the applicable requirements for a confirmable Plan set forth in Bankruptcy Code §§ 1122 and 1123(a), insofar as the Plan properly classifies all Claims and Interests, properly specifies which Classes of are impaired and unimpaired, properly sets forth the treatment of each Class, does not discriminate between Claims in the same Class, contains adequate means for implementation, does not issue non-voting equity securities, adequately identifies the Debtor's directors or officers following the Effective Date, adequately identifies the Avoidance Actions, and adequately identifies the Debtor as the Plan's proponent.

9. The Plan satisfies all applicable Bankruptcy Code requirements for Confirmation contained in Bankruptcy Code § 1191(a) (incorporating Bankruptcy Code § 1129(a)(1) – (12) and (d)). Bankruptcy Code § 1129(a)(13) – (16), (b), and (c) do not apply to the Debtor or the Plan. The Debtor has proposed the Plan in good faith and not by any means forbidden by law. The Liquidation Analysis contained in the Plan and the other related evidence supporting Confirmation uses appropriate methodologies and assumptions and establishes that each holder of an Impaired Claim either has accepted the Plan or will receive or retain under the Plan, on account of that Claim, property of a value, as of the Effective Date, that is not less than the amount that holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date. The Plan is feasible in that its confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. There is no evidence that the Plan's principal purpose is to avoid taxes or the application of section 5 of the Securities Act of 1933.

10. Because the Plan provides holders of Allowed General Unsecured Claims in Class 4 with three years of the Debtor's projected disposable income as demonstrated on Exhibit B to the Plan, the Plan satisfies the requirements of Bankruptcy Code § 1191(b).

11. The exculpation provision at Section 10.2 of the Plan is permissible under the Bankruptcy Code. The Exculpated Parties have acted in "good faith" within the meaning of Bankruptcy Code § 1125(e) in connection with this case, the pursuit of Confirmation, and the

property to be distributed under the Plan such that the Exculpated Parties have no liability to any holder of a Claim for any act or omission arising on or after the Petition Date through the Effective Date in connection with, related to, or arising out of, this case, the Plan, the pursuit of Confirmation, the consummation of the Plan, or the administration of the Plan or the property distributed or otherwise dealt with under the Plan except for any act or omission found by a Final Order to constitute a crime, actual fraud, willful misconduct, or gross negligence.

12. The injunction provision at Section 10.1 of the Plan, as amended below, is permissible and enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

G. Implementation

13. Each of the conditions precedent to the Effective Date contained in the Plan has been or is reasonably likely to be satisfied or waived.

14. All documents necessary to implement the Plan have been negotiated in good faith and at arm's length and are, on completion of documentation and execution, valid, binding, and enforceable and not in conflict with any applicable law, rule, or regulation.

H. Executory Contracts and Unexpired Leases

15. The Debtor has demonstrated that it is in the Estate's best interest to assume the executory contracts and unexpired leases set forth on Exhibit D-1 to the Plan (as amended below). All non-Debtor parties to each of those executory contracts and unexpired leases have received or will receive under the Plan adequate cure of any monetary defaults and have been adequately assured of future performance.

16. The Debtor has demonstrated that it has exercised sound business judgment in rejecting the executory contracts and unexpired leases either set forth on Exhibit D-2 to the Plan or not included on either Exhibit D1 or D-2 to the Plan, each of which represents a burden to the estate that outweighs any benefit to the estate.

I. Waiver of Bankruptcy Rule 3020(e)

17. Based on the circumstances and exigencies in the case and with respect to the Debtor's business, cause exists and it is appropriate for the 14-day stay imposed by Bankruptcy Rule 3020(e) to be waived.

In consideration of the foregoing findings of fact and conclusions of law,

THE COURT ORDERS:

1. **Confirmation of the Plan**. The Plan is CONFIRMED under Bankruptcy Code § 1191(b). All the Plan's terms, unless amended in this order, are incorporated into and are an integral part of this order irrespective of whether they are repeated in this order. The projected disposable income portrayed in Exhibit B to the Plan is approved as reasonable and accurate. The Amended and Restated Charter set forth in Exhibit C to the Plan is approved. The Celtic Bank Loan Covenant Amendments set forth in Exhibit E to the Plan are approved, with the clarification than nothing in Exhibit E to the Plan or this order affects the term or maturity of the Celtic Bank Loan or any other matter not explicitly addressed in Exhibit E to the Plan.

2. **Objections**. The Objection and any other objections, responses to, statements, comments, and reservations of rights in opposition to Eligibility or Confirmation are OVERRULED for the reasons stated on the record at the hearing held on September 16, 2024.

3. **Clarifying Amendments.**

a. Section 2.55 of the Plan is deleted and replaced with the following:

> **2.55 New Preferred Shares.** Shares of senior preferred capital stock in the Debtor issued to the DIP Lender under the Plan as of the Effective Date, subject to the exemptions contained in Bankruptcy Code § 1145 and governed by the Amended and Restated Charter. The New Preferred Shares are *pari passu* with the existing senior preferred shares issued by the Debtor before the Petition Date.

b. Section 10.1.2 of the Plan is deleted and replaced with the following:

> **10.1.2 Limited Scope.** Nothing in this Plan: (i) extinguishes, prohibits, or otherwise limits the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution

> and treatment of that Claim under the Plan; (ii) enjoins or otherwise precludes any party-in-interest with adequate standing from enforcing the Plan or the Confirmation Order; or (iii) affects in any way the prosecution of the Shareholder Litigation against any defendant other than the Debtor, including, for the avoidance of doubt, any claims asserted in the Shareholder Litigation against the non-Debtor defendants and any right to collect from applicable insurance policies, which are fully preserved and unaffected by this Plan.

c. Exhibit D-1 of the Plan is amended to include the following two executory contracts as Assumed Contracts:

QLess Armenia IT Services Agreement — Cure = $0.00

QLess Armenia Call Option Agreement — Cure = $0.00

4. **Sources of Cash for Plan Distributions**. All Cash necessary for distributions on account of Allowed Claims under the Plan is available from the Debtor's existing Cash balance.

5. **Governmental Approvals Not Required**. This order constitutes any approvals and consents required by the laws, rules, or regulations of any state or other governmental authority with respect to the implementation and consummation of the Plan and any documents, instruments, or agreements related to the Plan without further action by the Debtor.

6. **Executory Contracts and Unexpired Leases**. All Assumed Contracts on Exhibit D-1 to the Plan (as amended by this order) are assumed as of the Effective Date under Bankruptcy Code § 365. All Rejected Contracts on Exhibit D-2 to the Plan and all other executory contracts and unexpired leases to which the Debtor is a party not listed on either Exhibit D-1 or D-2 to the Plan are rejected as of the Effective Date under Bankruptcy Code § 365. All Rejection Claims must be filed by the Rejection Claims Bar Date. Any Rejection Claim not filed by the Rejection Claims Bar Date is forever barred. All Rejection Claims are General Unsecured Claims under the Plan. All Warrants constitute executory contracts and are rejected as of the date of this order. All Rejection Damages Claims arising from the rejection of Warrants are subordinated beneath the level of all Claims under the Plan in accordance with Bankruptcy Code § 510(b).

7. **Administrative Claims Bar Date**. All requests for payment of an Administrative Claim (other than a Fee Claim but including any 502(b)(9) Claim) must be Filed no later than the Administrative Claims Bar Date. Any holder of an Administrative Claim (other than a Fee Claim) that fails to file and serve its request by the Administrative Claims Bar Date is forever barred from asserting its Administrative Claim against the Debtor or the Estate.

8. **Pre-Effective Date Injunctions or Stays**. All injunctions or stays, whether by operation of law or by order of the Bankruptcy Court, provided for under Bankruptcy Code § 362, or otherwise in effect on the Confirmation Date remain in full force until the Effective Date.

9. **Injunction and Exculpation Provisions**. The injunction and exculpation provisions set forth in Sections 10.1 (as amended in this order) and 10.2 of the Plan, respectively, are approved and authorized in their entirety and bind all persons and entities to the extent provided in the Plan.

10. **Distributions.** Section 7.5 of the Plan, which provides that the Reorganized Debtor and not the Subchapter V Trustee will make all Distributions under the Plan, is approved. The Subchapter V Trustee is excused from any obligations to make any Distributions or other payments under the Plan in accordance with Bankruptcy Code § 1194(b).

11. **Waiver of Stay**. For good cause shown, the stay of this order imposed by Bankruptcy Rule 3020(e) is waived such that this order is effective and enforceable immediately on its entry.

12. **Authorization to Consummate**. The Debtor may consummate the Plan at any time after the Court enters this order, subject only to satisfaction or waiver of the conditions to effectiveness set forth in Section 9.2 of the Plan.

13. **Failure of Consummation**. If the Effective Date does not occur, then nothing contained in the Plan: (a) waives or releases any Claims against the Debtor; (b) prejudices the rights of the holder of any Claim against the Debtor; (c) prejudices any right, remedy or Claim of the Debtor; (d) constitutes an admission against interest by the Debtor; or (e) constitutes a settlement of any kind.

14. **Notice of Effective Date**. The Debtor must file with the Court a notice of the occurrence of the Effective Date within three business days after the conditions in Section 9.2 of the Plan have been satisfied or waived and the Effective Date has occurred (the "**Effective Date Notice**"). Once the Effective Date Notice is filed with the Court, the Debtor need only serve the Effective Date Notice in accordance with Local Rule 3022-1.

15. **Binding Effect**. On the Effective Date, the Plan and all its provisions as well as this order bind and inure to the benefit of the Debtor, the holders of all Claims and Interests and their respective successors and assignees, and all parties-in-interest.

16. **Severability**. If any appellate court finds any provision of the Plan to be invalid, illegal, or unenforceable, the Court, at the Debtor's request, may alter and interpret the Plan or any such provision to make it valid or enforceable to the maximum extent feasible, consistent with the original purpose of the provision held to be invalid or unenforceable, with such provision then applying as altered or interpreted.

17. **References to and Omissions of Plan Provisions**. The failure to specifically include or to refer to any provision of the Plan in this order does not diminish or impair the effectiveness of any such provision. The Court intends and orders that the Plan be confirmed in its entirety.

18. **Headings**. Headings used in this order are for convenient reference only and do not constitute a part of the Plan or this order for any other purpose.

19. **Retention of Jurisdiction**. The Court retains jurisdiction over all matters arising out of, and related to, this case including the matters set forth in Section 10.4 of the Plan.

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Dated: September 17th, 2024
Wilmington, Delaware