IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11, Subchapter V
QLESS, INC.,	Case No. 24-11395 (___)
Debtor.[1]	

EMERGENCY MOTION OF THE DEBTOR FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING AND APPROVING DEBTOR TO (A) OBTAIN DEBTOR IN POSSESSION FINANCING ON A JUNIOR SECURED BASIS AND (B) USE CASH COLLATERAL OF PRE-PETITION SECURED LENDER; (II) SCHEDULING A FINAL HEARING; AND (III) GRANTING RELATED RELIEF

The above-captioned debtor and debtor-in-possession (the "**Debtor**") files this *Emergency Motion of the Debtor for Interim and Final DIP Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in Possession Financing on a Junior Secured Basis and (B) Use of Cash Collateral of Pre-Petition Secured Lender; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* (this "**Motion**"). In support of this Motion, the Debtor submits (i) the *Declaration of James Harvey in Support of Chapter 11 Petition and First Day Relief* (the "**First Day Declaration**")[2] and (ii) the *Declaration of Andrew De Camara of Sherwood Partners, Inc. in Support of Emergency Motion of the Debtor For Interim and Final Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in Possession Financing on a Junior Secured Basis and (B) Use Cash Collateral of Pre-Petition Secured Lender; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* (the "**De Camara Declaration**"), filed concurrently herewith and incorporated herein by reference. In further support of this Motion, the Debtor respectfully represents as follows:

[1] The Debtor's principal place of business and service address is 21 Miller Alley, Suite 210, Pasadena CA 91105.
[2] Capitalized terms used but not defined herein shall have the meanings set forth in the First Day Declaration.

I. SUMMARY OF RELIEF REQUESTED

1. The Debtor seeks entry of interim and final orders, substantially in the form of the interim order attached hereto as **Exhibit 1** and a final order to be submitted at a later date (respectively, the "**Interim DIP Order**" and "**Final DIP Order**" and collectively, the "**DIP Orders**"):

(i) authorizing the Debtor to obtain postpetition financing junior to existing secured debt pursuant to the terms of the *Binding Debtor in Possession Credit Facility Term Sheet* (the "**DIP Loan Term Sheet**") between the Debtor, as the borrower, Palisades Growth Capital Fund II, L.P. ("**Palisades**"), as the DIP lenders (the "**DIP Lenders**"),[3] attached to the Interim DIP Order as Exhibit B, and a newly formed entity owned and controlled by the DIP Lenders, as collateral agent for the DIP Lenders (in such capacity, the "**DIP Agent**") consisting of up to $1.0 million in initial borrowings (the "**Initial DIP Borrowing**") under the Interim DIP Order and up to an aggregate new money amount of $3.5 million under the Final DIP Order (subject to approval of a budget by the DIP Lenders as to any amount in excess of $3.0 million) (the "**DIP Facility**"). There is no roll-up of any prepetition debt proposed under the Motion, and the DIP Liens and claims will be junior to the existing secured debt;

(ii) authorizing the Debtor to execute, deliver, and perform under the DIP Loan Term Sheet and any other related documents that may be reasonably necessary, desirable or required to implement the DIP Facility and perform thereunder and/or that may be reasonably requested by the DIP Agent (acting at the direction of the DIP Lenders);

(iii) granting to the DIP Agent, for the benefit of itself and the DIP Lenders, (a) DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, which DIP Liens shall be, subject to the Carve Out (as defined below), the Prepetition Loan Agreement Obligations (as defined below), and the Permitted Liens (as defined below) and (b) DIP Superpriority Claims (as defined below) pursuant to section 364(c)(1) of the Bankruptcy Code, subject and subordinate to the Carve Out and the Adequate Protection Superpriority Claims (as defined below);

(iv) authorizing the Debtor to pay all principal, interest, fees, costs, expenses, and other amounts payable under the DIP Loan Term Sheet as such become due and payable, as provided and in accordance therewith;

[3] The DIP Lenders consist of Palisades and/or one or more of its affiliates who also own or control approximately 35% of the Debtor's shares. Other shareholders of the Debtor also may participate as DIP Lenders.

(v) authorizing the Debtor to use Cash Collateral (as defined below) and the proceeds of the DIP Facility in accordance with the Interim DIP Order, an approved initial budget (subject to permitted variances) attached to the Interim DIP Order as Exhibit A (the "**Initial Budget**"), and the DIP Loan Term Sheet, to pay for working capital needs, and to provide working capital for other general corporate purposes, of the Debtor in the ordinary course of business and for the costs and expenses of administering this Chapter 11 case;

(vi) authorizing the Debtor to perform such other and further acts as may be necessary or desirable in connection with the Interim DIP Order, the DIP Loan Term Sheet, and the transactions contemplated hereby and thereby, subject to the Interim DIP Order;

(vii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Term Sheet and the Interim DIP Order;

(viii) granting adequate protection to the Prepetition Lender (as defined below) as provided in the Interim DIP Order;

(ix) scheduling a final hearing (the "**Final Hearing**") within twenty-eight (28) days after the Petition Date (as defined below) to consider entry of the Final DIP Order that grants all of the relief requested in the Motion on a final basis; and

(x) providing for the immediate effectiveness of the DIP Orders and waiving any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

II. JURISDICTION AND VENUE

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "**Court**") under 28 U.S.C. § 157 pursuant to the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot

enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief requested herein are sections 105, 361, 362, 363, 364, 506(c), 507 and 552 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6004 and 9013 of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**"), and Local Rules 4001-2, 9006-1, and 9013.

III. BACKGROUND

A. General Background

5. On the date hereof (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this Chapter 11 case, and no committees have been appointed or designated.

6. Information regarding the Debtor's business and capital structure and the circumstances leading to this case is set forth in the First Day Declaration, which has been filed with the Court contemporaneously with this Motion and is incorporated here by reference.

B. Prepetition Secured Debt

7. As of the Petition Date, the Debtor was party to that certain Business Loan Agreement dated as of February 21, 2023 (such agreement, as amended and existing immediately prior to the Petition Date, the "**Prepetition Loan Agreement**") with Celtic Bank Corporation (the "**Prepetition Lender**") and all other documents, instruments and agreements executed in

connection with the Prepetition Loan Agreement (such agreements, collectively with the Prepetition Loan Agreement, the "**Prepetition Loan Agreement Documents**").

8. As of the Petition Date, the Debtor under the Prepetition Loan Agreement was indebted to the Prepetition Lender, without defense, counterclaim, recoupment or offset of any kind, in the non-contingent liquidated amount of no less than $6,250,000.00, plus other fees, costs, expenses and other amounts arising in respect of the Prepetition Loan Agreement Documents obligation existing immediately prior to the Petition Date (such obligations, the "**Prepetition Loan Agreement Obligations**").

9. As of the Petition Date, the Prepetition Loan Agreement Obligations were secured by valid, enforceable, properly perfected and unavoidable liens on security interests (the "**Prepetition Liens**") encumbering substantially all assets of the Debtor's existing immediately prior to the commencement of the Debtor's bankruptcy proceeding (the "**Prepetition Collateral**"), which Prepetition Liens are senior, first priority liens and security interests with respect to all Prepetition Collateral.

IV. PROPOSED DIP FACILITY

A. Debtor's Need for Financing

10. As set forth in the First Day Declaration and the De Camara Declaration, the Debtor's operations are not currently profitable. The Debtor has limited liquidity to continue business in the ordinary course and satisfy accruing administrative expenses. The Debtor cannot operate on access to cash collateral alone; it requires debtor-in-possession financing to ensure the administrative solvency of this estate. Such financing is also required to allow the Debtor to continue its ongoing process to confirm a chapter 11 plan that will maximize value for the benefit of all constituents. Absent immediate access to cash collateral and the funding available under the

DIP Facility, the Debtor would be unable to sustain operations, pay its employees or vendors, or achieve a successful restructuring through the chapter 11 process. Accordingly, the Debtor has an urgent and immediate need for entry of the Interim DIP Order as requested herein.

11. Against that backdrop, the Debtor negotiated the DIP Loan Term Sheet with the DIP Lenders, which includes the Debtor's largest shareholders holding approximately 35% of the Debtor's shares. To avoid any appearance of a possible conflict of interest, the Debtor retained an independent director, M. Freddie Reiss, to among other tasks, take the lead in negotiating and directing the Debtor's professionals with respect to the proposed DIP Facility. It is ultimately the parties' intention to convert the DIP Facility into equity in the Debtor under a contemplated chapter 11 plan. Until then, the DIP Lenders have agreed to provide postpetition financing to the Debtor in an amount up to $3.5 million (subject to approval of a budget by the DIP Lenders as to any amount in excess of $3.0 million), which will be junior and subordinate to the Prepetition Loan Agreement Obligations of the Prepetition Lender. No other financing is presently available to the Debtor. As set forth in the De Camara Declaration, the Debtor's representatives contacted three (3) alternative funding sources with an opportunity to provide a debtor-in-possession loan to the Debtor on a junior secured basis. No party expressed any interest in moving forward with such financing.

12. Hence, after good faith and arms' length negotiations, the Debtor and the DIP Lenders ultimately agreed on the terms of the DIP Facility. The parties also agreed on the terms of consensual use of cash collateral and adequate protection to the Prepetition Lender. The Debtor believes that the financing available under DIP Facility, along with consensual access to cash collateral, all in accordance with the projections in the Initial Budget, is adequate and that the funding contemplated thereunder is reasonable and on market terms that will allow the Debtor to

have adequate liquidity to satisfy its accruing administrative expenses during the course of this case based upon estimated DIP funding during that period.

B. Summary of Essential Terms of DIP Facility

13. In accordance with Bankruptcy Rule 4001(b) and Local Rule 4001-2(a)(i)-(iii), below is a summary[4] of the essential terms of the proposed financing and use of cash collateral:

Borrower:	QLess, Inc.
DIP Lenders:	Palisades Growth Capital Fund II, L.P. and/or one or more of its affiliates who also own or control approximately 35% of the Borrower's shares and other shareholders of the Debtor also may participate as DIP Lenders.
DIP Agent:	A newly formed entity owned and controlled by the DIP Lenders. The DIP Agent shall act as collateral agent for the DIP Lenders. The DIP Agent shall take direction provided by the holders of the majority (greater than 50%) of the outstanding principal amount of the DIP Loans.
DIP Facility:	DIP Lenders will make DIP Loans available to Borrower in an aggregate amount up to $3.5 million (subject to approval of a budget by the DIP Lenders as to any amount in excess of $3.0 million).
Availability:	Subject to entry of the Interim DIP Order, up to $1.0 million (the "**Initial DIP Borrowing**") for the purposes set forth below and in accordance with the Budget (as defined below) and Interim DIP Order. Subject to entry of the Final DIP Order, Borrower shall be permitted to borrow up to an additional $2.5 million (subject to approval of the Budget (as defined below) by the DIP Lenders as to any amount in excess of $2.0 million (the "**Subsequent Borrowing**") for the purposes set forth below and in accordance with the Budget and Final DIP Order.

[4] The summary and descriptions of the terms and conditions for the proposed financing and use of cash collateral and the provisions of the proposed Interim DIP Order and the Final DIP Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summaries and descriptions are qualified in their entirety by the proposed Interim DIP Order, the Final DIP Order, and the DIP Loan Term Sheet.

	All orders entered by the Bankruptcy Court in connection with the DIP Facility shall be satisfactory in form and substance to DIP Lenders in their sole but reasonable discretion. The DIP Loan Term Sheet, the DIP Orders, and any documents executed in connection therewith are referenced herein as the "**DIP Facility Documents**".
Term of DIP Facility:	Unless otherwise extended in writing by DIP Lenders in their sole discretion, the period from the date on which the Initial DIP Borrowing Conditions (as described below) shall have been met to the earliest of: (i) September 13, 2024; (ii) the occurrence of an Event of Default (as defined below); (iii) the consummation of a sale of substantially all of the Borrower's assets to any entity other than the DIP Lenders, and (iv) the effective date of a confirmed chapter 11 plan (such date, the "**Maturity Date**"); *provided, however*, that if the Maturity Date is triggered as a result of a sale to a bidder other than DIP Lenders, the DIP Loans shall be repaid in full, in cash at the closing of such sale, which closing shall occur not later than the date referenced in item (i) above.
Use of Proceeds:	Proceeds of the DIP Loans shall be used by Borrower solely to: (i) fund day-to-day working capital needs of Borrower and expenditures during the case, in accordance with the Budget; and (ii) to pay reasonable fees and expenses of restructuring legal and financial advisors or other similar advisors, in each case in accordance with the Budget (collectively, "**Permitted Uses**").
Interest Rates:	The rate of 15% per annum on the outstanding principal amount of the DIP Loans, compounded monthly. Interest shall accrue and be payable on the Maturity Date (whether at stated maturity, by acceleration or otherwise). At all times that an Event of Default exists, the non-default interest rate shall be increased by 2.00% per annum. Default interest shall be payable in cash, upon demand.
Fees:	A commitment fee of 1.50% of the aggregate DIP Facility amount would be fully-earned, due and payable on the Maturity Date.
Credit Bidding	If the Borrower contemplates a sale of substantially all of the Borrower's assets to any entity other than the DIP Lenders, through a restructuring plan or otherwise, then the DIP Lenders shall have the right to credit bid any or all of the obligations owing by Borrower to DIP Lenders under the DIP Facility, including any outstanding accrued interest and fees thereunder. In the event DIP Lenders are not the successful bidders in any sale of the Purchased Assets, the proceeds of any sale of the Purchased Assets to such other successful bidder shall be applied *first* to the repayment in full, in cash of the

	Prepetition Lender, then *second* to the repayment in full, in cash of the DIP Facility at the closing of such transaction.
Optional Prepayments and Commitment Reductions:	No early repayment or prepayment of any obligations permitted under the DIP Facility.
Priority:	Subject to the Carve-Out (as defined below), all obligations of Borrower under the DIP Facility shall be secured by (i) second-priority liens on and security interests in all assets of the Debtor subordinate to the Prepetition Lender and any permitted liens under the loan agreements therewith, (ii) subject to entry of the Final DIP Order, first-priority liens on and security interests in all assets of the Debtor that are not subject to existing liens, including subject to entry of the Final DIP Order, proceeds of avoidance actions, and (iii) superpriority administrative expense claims against Borrower's bankruptcy estate having priority over all administrative expenses of the kind specified in sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, pursuant to the applicable provisions of section 364 of the Bankruptcy Code, provided that such superpriority administrative expense claims shall not be payable from the proceeds of avoidance actions pending entry of the Final DIP Order. Interim DIP Order at ¶6, ¶7.
Conditions Precedent to Effectiveness and Initial DIP Borrowing:	The DIP Facility is subject to certain customary conditions (the "**Initial DIP Borrowing Conditions**") precedent, as set forth below: 1. The filing of the case with the Bankruptcy Court on or before [●], 2024 (such date, the "**Petition Date**"). 2. Receipt and approval by DIP Lenders in their sole but reasonable discretion of the Initial Budget. 3. The filing on the Petition Date of a motion for entry of the Interim DIP Order and Final DIP Order (in two stages) (the "**DIP Motion**"). 4. The satisfaction of all Milestones (as defined below). 5. The entry of the Interim DIP Order by the Bankruptcy Court on or before three (3) business days following the Petition Date, which Interim DIP Order shall be in full force and effect, and shall not have been amended, vacated, reversed, modified, rescinded or subject to a presently effective stay pending appeal.

6. All of the "first day orders" entered around the time of commencement of the case shall be consistent with the DIP Facility and the Interim DIP Order and be reasonably satisfactory in form and substance to DIP Lenders in all respects.

7. Receipt of a borrowing notice from Borrower in form and substance reasonably satisfactory to DIP Lenders.

8. Each of the Borrower's representations and warranties shall be true and correct in all material respects on and as of the date of the borrowing, except to the extent such representations and warranties specifically relate to an earlier date.

9. After giving effect to a request for, and the borrowing of, such DIP Loan, the aggregate amount of all DIP Loans would not exceed the commitment amount under the DIP Facility.

10. No Event of Default and no condition which would constitute an Event of Default with the giving of notice or lapse of time or both shall exist.

Conditions Precedent to Each Subsequent Borrowing: Unless otherwise indicated, the obligation to provide each DIP Loan (including the Initial DIP Borrowing) shall be subject to the satisfaction of certain customary subsequent DIP Borrowing conditions.

Representations and Warranties: The DIP Facility is subject to certain customary representations and warranties by the Debtor.

Budget: A 13-week rolling cash budget as approved by DIP Lenders in its sole but reasonable discretion prior to the entry of the Interim DIP Order (and any subsequent approved budget, the "**Budget**"), shall be attached to the DIP Motion and shall reflect on a line-item basis Borrower's anticipated aggregate cash receipts and aggregate working capital expenses for each week covered by the Budget. The Budget will include items for each of the Permitted Uses. For each rolling three-week period in the Budget, aggregate disbursements, on a cumulative basis, shall not exceed 15% of the aggregate amount of projected disbursements for such three-week period. DIP Lenders may also, in writing, authorize the Debtor to exceed the permitted variances. On each monthly anniversary of the Petition Date (as defined below) (or, if such anniversary is not a business day, then on the next succeeding business day), Borrower shall provide DIP Lenders with an updated Budget, including a detailed report of variances on a line-item basis. Subsequent Budgets shall be subject to prior review and approval by DIP Lenders.

Affirmative Covenants: The DIP Facility is subject to certain customary affirmative covenants by the Debtor.

Negative Covenants: The DIP Facility is subject to certain customary negative covenants by the Debtor.

Event of Default: The DIP Facility is subject to the following events of default (each an "**Event of Default**"), unless waived or modified by DIP Lenders in their sole but reasonable discretion:

1. Borrower's failure to make any payment when due;

2. Borrower's noncompliance with covenants, or breaches of representations and warranties in the DIP Facility Documents;

3. any representation or warranty made by Borrower in the DIP Facility Documents shall prove to have been incorrect in any material respect when made or at any other times specified therein;

4. any other material breach of the DIP Facility Documents;

5. Borrower's failure to satisfy or stay execution of judgments in excess of $250,000;

6. except as otherwise contemplated by the Budget and approved by an order of the Bankruptcy Court, Borrower shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition indebtedness or payables;

7. the existence of certain materially adverse employee benefit or environmental liabilities;

8. material impairment of the rights provided Borrower under the DIP Facility Documents or DIP Orders;

9. dismissal of the case or conversion of the case to a Chapter 7 case or denial of Subchapter V election, or Borrower files or fails to oppose a motion (other than one filed by DIP Lenders) seeking such relief;

10. appointment of a trustee (other than the Subchapter V trustee), responsible officer or examiner with enlarged powers relating to the operation of the business of Borrower;

11. granting of relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed against any assets of Borrower in excess of $250,000;

12. filling of motion seeking entry of an order, or entry of an order, confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization that does not require indefeasible repayment in full in cash of the DIP Facility as of the effective date of the plan and/or that does not otherwise comply with the provisions of the DIP Facility Documents or the DIP Orders;

13. entry of an order staying, reversing, vacating or otherwise modifying, without the prior consent of DIP Lenders, the DIP Facility or the DIP Orders;

14. Borrower's failure to comply with the DIP Orders;

15. a change of control with respect to Borrower shall occur;

16. any material provision of the DIP Facility Documents or the DIP Orders shall cease to be valid and binding on Borrower, or Borrower shall so assert publicly or in any pleading filed in any court;

17. an order is entered determining that (i) any of the Borrower's assets are not property of its bankruptcy estate, (ii) the Borrower's assets are not capable of being sold pursuant to section 1123 of the Bankruptcy Code or otherwise, and/or (iii) the Borrower's assets cannot be sold free and clear of any liens, claims or other encumbrances;

18. payment or granting of adequate protection other than to any DIP Lender or the Prepetition Lender in its capacity as a pre-petition secured lender with respect to any prepetition debt (other than as approved by DIP Lenders and the Bankruptcy Court);

19. entry of an order denying or terminating use of cash collateral by Borrower;

20. cessation of liens or superpriority claims granted with respect to the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein;

21. rejection of any executory contract or unexpired lease identified as material by DIP Lenders without DIP Lender consent;

22. Borrower's failure to comply with any Milestones (as defined below); and

23. Borrower files, or supports any person filing, a motion seeking standing to assert a claim or challenge to DIP Lenders' liens and claims.

24. Termination or reduction of the exclusivity period for Borrower to file a Chapter 11 plan in the case.

Milestones: The DIP Facility and the DIP Orders require Borrower to comply with the following milestones (collectively, the "**Milestones**"), unless waived or modified by DIP Lenders in their sole but reasonable discretion:

1. On or before the date that is three (3) business days after the Petition Date, the Interim DIP Order shall have been entered by the Bankruptcy Court;

2. On or before July 1, 2024, the Subchapter V Plan shall have been filed;

3. On or before the date that is twenty-eight (28) days after the Petition Date, the Final DIP Order shall have been entered by the Bankruptcy Court; and

4. On or before the date that is seventy-five (75) days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order.

Costs and Expenses: Borrower shall pay all reasonable actual, documented out of pocket fees, costs and expenses of DIP Lenders (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) in connection with (i) the negotiation, preparation, execution and entry of the DIP Facility Documents, as applicable, regardless of when incurred, (ii) all litigation, contests, disputes, suits, proceedings or actions (whether instituted by DIP Lenders, Borrower or any other person or entity) in any way relating to the DIP Facility or Borrower's affairs, and (iii) the enforcement of any rights and remedies under the DIP Facility Documents, DIP Orders or applicable law. All such fees, costs and expenses that become due and owing after maturity of the DIP Loans (whether at stated maturity, by acceleration or otherwise) shall be due and payable on demand.

Indemnification: Borrower shall indemnify DIP Lenders and their affiliates, successors and assigns against any liability arising in connection with the transactions contemplated hereby (other than in the case of the gross

	negligence, bad faith or willful misconduct of any indemnified person).
Assignments and Participations:	The DIP Facility Documents shall contain usual and customary assignment provisions subject to Borrower's prior written consent, not to be unreasonably withheld or delayed, except that no such consent shall be required if an Event of Default has occurred and is continuing, or in the case of any such assignment to any affiliate of the DIP Lenders. DIP Lenders shall have free participation rights without the prior written consent of or prior notice to Borrower.
Release:	Upon entry of the Interim DIP Order, as of the Petition Date, Borrower for itself, its affiliates, directors, employees, representatives and assigns, forever and irrevocably discharges and releases the DIP Lenders and each of the DIP Lenders' principals, predecessors, successors, assigns, agents, employees, representatives, attorneys, subsidiaries, affiliates, solely in their capacities as such, from any and all claims, complaints, and lawsuits of any nature whatsoever, known or unknown, suspected or unsuspected, that Borrower (or any of such other persons) has against the DIP Lenders or any of such other persons, in their capacities as such.
Adequate protection to Prepetition Lender:	Subject to the Carve-Out, solely to the extent of and in an amount equal to the aggregate diminution in value (if any) of the interests of the Prepetition Lender in the Prepetition Collateral from and after the Petition Date, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, the Prepetition Lender is hereby granted the following adequate protection: (i) additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens on the DIP Collateral effective as of the Petition Date (together, the "**Adequate Protection Liens**"), senior to the DIP Liens and (ii) superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claims**"), senior to the DIP Superpriority Claims, provided that such Adequate Protection Superpriority Claims shall be subject to the Carve-Out and shall not be payable from the proceeds of avoidance actions pending entry of the final DIP order. In addition, the Prepetition Lender shall be entitled to reimbursement of its actual and necessary professional fees by the Debtor up to $50,000 per month. Any professional fees of the Prepetition Lender (or DIP Agent or DIP Lenders) to be paid by the Debtor shall be subject to at least 10 days' notice and an opportunity to object to the Debtor, the U.S. Trustee, and the subchapter V trustee. Interim DIP Order at ¶8.

Carve-Out / Professional Fees Account:	Each of the DIP Liens, DIP Superpriority Claims, DIP Obligations, Prepetition Liens, Prepetition Loan Agreement Obligations, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall each be subject to and subordinate to payment of the Carve Out. The Carve Out shall have such priority claims and liens over all assets of the Debtor, including the DIP Collateral and Prepetition Collateral. As used here, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (and any monthly, restructuring, or sale fees to the extent earned prior to the date of the Carve Out Trigger Notice (as defined below)) (the "**Allowed Professional Fees**") incurred by (or payable to) persons or firms retained by the Debtor pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the subchapter V trustee at any time before the date of delivery of the Carve Out Trigger Notice by the DIP Agent (at the direction of the DIP Lenders), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Debtor Professionals and the subchapter V trustee in an aggregate amount not to exceed $250,000 incurred on or after the date of delivery of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the DIP Lenders) to the Debtor, its restructuring counsel (Pachulski Stang Ziehl & Jones LLP), the U.S. Trustee, and the subchapter V trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below), stating that the Post-Carve Out Trigger Notice Cap has been invoked. The Debtor shall, on a weekly basis commencing after the first week of the Initial Budget, transfer cash proceeds of the DIP Loan Term Sheet or cash on hand into a segregated account (which may be the trust account of Debtor's counsel), not subject to the control of the DIP Agent, the DIP Lenders, or the Prepetition Lender (the "**Professional Fees Account**") in an amount equal to the amount budgeted for Debtor Professionals for the preceding week in the Initial Budget. Upon the delivery of the Carve Out Trigger Notice, the Debtor shall deposit all available cash on hand into the Professional Fees Account

until such amounts therein equal the Carve Out. The Professional Fees Account, and all funds held therein, shall be held in trust exclusively for the benefit of the Debtor Professionals and the subchapter V trustee, and shall be available only to satisfy obligations benefitting from the Carve Out, and the DIP Agent, the DIP Lenders, and the Prepetition Lender (i) shall not sweep or foreclose on any such available cash of the Debtor until the Professional Fees Account is fully funded, and (ii) shall have a security interest on any residual interest in the Professional Fees Account available following satisfaction in cash of all Carve Out expenses. Interim DIP Order at ¶9.

Stipulation / Challenge Rights:

The Debtor proposes to make various stipulations and to grant releases in favor of the Prepetition Lender. Subject to the Challenge Period (as defined herein), the Stipulations, admissions, waivers, and releases in favor of the Prepetition Lender contained in the Interim DIP Order shall be binding upon the Debtor and its estate in all circumstances and for all purposes and the Debtor is deemed as of such date to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The Stipulations, admissions, and waivers contained in the Interim DIP Order shall be binding upon all other parties in interest, including any person acting on behalf of the Debtor's estate, unless and to the extent that a party in interest with proper standing granted by order of the Court, has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules: (i) seeking to avoid, object to, or otherwise challenge the findings or Debtor's Stipulations herein, including regarding, (a) the validity, enforceability, extent, priority, or perfection of the security interests and liens of the Prepetition Lender, (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Loan Agreement Obligations, and (c) asserting or prosecuting any so-called "lender liability" claims, avoidance actions or any other claim, counter claim, cause of action, objection, contest or defense, of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable law or otherwise, against the Prepetition Lender or its representatives (any such claim, a "**Challenge**") setting forth the particular basis for such Challenge; and (ii) in which the Court enters a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed Challenge. A Challenge must be filed on or prior to seventy-five (75) days following entry of the Interim DIP Order (the "**Challenge Period**" and the date of expiration of the Challenge Period, the "**Challenge Period Termination Date**"); *provided, however*, that if a chapter 11 trustee is appointed or the case is converted to a case under chapter 7 prior to the Challenge Period Termination Date, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the Challenge Period Termination Date

or (2) the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of the case to a case under chapter 7, as applicable, to commence a Challenge; *provided, further*, that the timely filing of a motion seeking standing to file a Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such standing motion is resolved or adjudicated by the Court and solely as to the Challenges for which standing is sought (as set forth in such motion). To the extent the Stipulations, admissions, waivers and releases contained in the Interim DIP Order are (x) not subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date or (y) subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date, but such Challenge does not result in a final and nonappealable judgment or order of the Court that is inconsistent with the stipulations, admissions, waivers and releases contained in the Interim DIP Order, then, without further notice, motion, or application to, or order of, or hearing before, the Court and without the need or requirement to file any proof of claim: (a) any and all such Challenges by any party (including any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in this case, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any successor case) shall be deemed to be forever barred; (b) the Prepetition Loan Agreement Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtor's chapter 11 case and any successor case; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens and security interests, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtor's stipulations and admissions contained in the Interim DIP Order as to the priority, extent, and validity as to the Prepetition Lender's claims, liens, and interests contained in the Interim DIP Order shall be of full force and effect and forever binding upon the Debtor, its estate, and all creditors, interest holders, and other parties in interest in this Chapter 11 case and any successor case. Nothing in the Interim DIP Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtor or its estate, including any Challenge. Interim DIP Order at ¶19.

C. Additional Required Disclosures

14. Pursuant to Local Rule 4001-2(a)(i), a debtor in possession seeking authority to use cash collateral or obtain financing must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of certain such provisions. Set forth below are the disclosures required in accordance with Local Rule 4001-2(a)(i)(A)-(X) (most of which are also disclosed in the summary above):

(i) Local Rule 4001-2(a)(i)(A) requires a debtor to disclose the amount of cash collateral the debtor seeks permission to use or the amount of credit the debtor seeks to obtain under the proposed loan agreement, including the committed amount of the proposed loan agreement and the amount of new funding that will actually be available for borrowing by the debtor.

Amount of Cash Collateral to be used is set forth in the Initial Budget. New DIP Loans total up to $3.5 million (subject to approval of a budget by the DIP Lenders as to any amount in excess of $3.0 million). [Initial Budget, Exhibit A to Interim DIP Order]

(ii) Local Rule 4001-2(a)(i)(B) requires the disclosure of pricing and economic terms, including letter of credit fees, commitment fees, and any other fees, provided that when any such terms are sought to be filed under seal, they shall not be disclosed in the Financing Motion itself, but shall be set forth in a separate document filed pursuant to the procedures set forth in Local Rule 9018-1(d), the filing of which shall be disclosed in the Financing Motion.

The economic terms of the DIP Facility and the applicable paragraphs of the proposed Interim DIP Order and/or DIP Credit Agreement, as applicable, are disclosed above. There are no terms sought to be filed under seal. [DIP Loan Term Sheet]

(iii) Local Rule 4001-2(a)(i)(C) requires the disclosure of provisions that specifically limit the Court's power or discretion to enter future orders in the case.

None, except those inconsistent with the DIP Orders.

(iv) Local Rule 4001-2(a)(i)(D) requires disclosure of provisions that provide for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding.

Not applicable.

(v) Local Rule 4001-2(a)(i)(E) requires disclosure of material conditions to closing and borrowing, including budget provisions.

The material conditions to closing and borrowing are summarized above and set forth in detail in the DIP Loan Term Sheet.

(vi) Local Rule 4001-2(a)(i)(F) requires disclosure of any carve-outs from liens or superpriority claims, including the material terms of any professional fee carve-out.

The provisions of the Carve-Out are set forth in the Interim DIP Order. [Interim DIP Order ¶9]

(vii) Local Rule 4001-2(a)(i)(G) requires disclosure of provisions that provide for postpetition liens on unencumbered assets, including the identification of such assets.

The provisions regarding liens on unencumbered assets and the identity of such assets (mainly avoidance proceeds) are set forth in the Interim DIP Order. [Interim DIP Order ¶6]

(viii) Local Rule 4001-2(a)(i)(H) requires disclosure of provisions that establish any sale or plan milestones.

Plan and related milestones are set forth in the DIP Loan Term Sheet.

(ix) Local Rule 4001-2(a)(i)(I) requires disclosure of provisions that provide for a prepayment penalty or other provisions that affect the debtor's right or ability to repay the financing in full during the course of the chapter 11 case.

No early prepayment is permitted under the DIP Loan Term Sheet.

(x) Local Rule 4001-2(a)(i)(J) requires disclosure of provisions, in jointly administered cases, that govern joint liability of the debtors, including any provisions that would cause one jointly administered debtor to become liable for the prepetition debt of another jointly administered debtor for which it was not previously subject to.

Not applicable.

(xi) Local Rule 4001-2(a)(i)(K) requires disclosure of provisions that require the debtor to pay an agent's or lender's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee appointed under section 1102 of the Bankruptcy Code (if formed) or, upon objection by either of the foregoing parties, the Court.

Payment of lender fees is subject to standard notice requirements. [Interim DIP Order ¶8]

(xii) Local Rule 4001-2(a)(i)(L) requires disclosure of provisions that prohibit the use of estate funds to investigate the liens and claims of the prepetition lender.

Not applicable.

(xiii) Local Rule 4001-2(a)(i)(M) requires disclosure of any termination or default provisions concerning the use of cash collateral or the availability of credit.

Default and termination provisions are set forth in the DIP Loan Term Sheet.

(xiv) Local Rule 4001-2(a)(i)(N) requires disclosure of any provisions that grant cross-collateralization protection or elevate prepetition debt to administrative expense (or higher) status or that secure prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law).

Not applicable, aside from adequate protection liens in favor of the Prepetition Lender on DIP Collateral. [Interim DIP Order ¶8]

(xv) Local Rule 4001-2(a)(i)(O) requires disclosure of any provisions that apply the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise have the effect of converting (or "rolling up") prepetition debt to postpetition debt.

Not applicable. There is no roll-up under the DIP Loan Term Sheet.

(xvi) Local Rule 4001-2(a)(i)(P) requires disclosure of any provisions that immediately prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior to the lender's prepetition liens under applicable law, without the consent of the affected secured creditors, and the proposed notice to be provided to such affected secured creditors.

Not applicable. There is no priming under the DIP Loan Term Sheet.

(xvii) Local Rule 4001-2(a)(i)(Q) requires disclosure of any provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest, including, but not limited to, any official committee appointed in these cases, at least seventy-five (75) days from the entry of the initial interim order to investigate such matters or (ii) limit the Court's ability to grant relief in the event of a successful challenge.

The proposed DIP Orders provide that any stipulations by the Debtor relating to the validity and amount of the Prepetition Loan Agreement Obligations and

claims of the Prepetition Lender are subject to challenge by parties in interest during a period of seventy-five (75) days from date of entry of the Interim DIP Order, as disclosed above. [Interim DIP Order ¶19]. No provisions in the proposed DIP Orders limit the ability of the Court to grant relief in the event of a successful challenge.

(xviii) Local Rule 4001-2(a)(i)(R) requires disclosure of any provisions that immediately approve all terms and conditions of the underlying loan agreement (provided that provisions in the order that provide that the debtor is authorized to enter into and be bound by the terms and conditions of such loan agreement do not need to be summarized).

The DIP Loan Term Sheet and the authority of the Debtor to enter into same are approved upon entry of the Interim DIP Order, except as to certain provisions (liens on avoidance proceeds), which are only approved upon entry of the Final DIP Order.

(xix) Local Rule 4001-2(a)(i)(S) requires disclosure of any provisions that modify or terminate the automatic stay or permit the lender to enforce remedies following an event of default that do not require at least five (5) days' written notice to the trustee or debtor in possession, the Office of the United States Trustee and each committee appointed under sections 1102 and 1114 of the Bankruptcy Code (the "Remedies Notice Period"), prior to such modification or termination of the automatic stay or the enforcement of the lender's remedies.

A motion is required before relief from stay is granted to exercise remedies. [Interim DIP Order ¶14]

(xx) Local Rule 4001-2(a)(i)(T) requires disclosure of any provisions that seek to limit what parties in interest (other than the debtor) may raise at any emergency hearing scheduled during the Remedies Notice Period.

Not applicable.

(xxi) Local Rule 4001-2(a)(i)(U) requires disclosure of any provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, and 548 of the Bankruptcy Code or, in each case, the proceeds thereof.

Liens on avoidance proceeds are effective only upon entry of the Final DIP Order. [Interim DIP Order ¶6]

(xxii) Local Rule 4001-2(a)(i)(V) requires disclosure of any provisions that immediately waive the debtor's rights under section 506(c) of the Bankruptcy Code.

Not applicable.

(xxiii) Local Rule 4001-2(a)(i)(W) requires disclosure of any provisions that immediately seek to affect the Court's power to consider the equities of the case doctrine under section 552(b)(1) of the Bankruptcy Code.

Not applicable.

(xxiv) Local Rule 4001-2(a)(i)(X) requires disclosure of any provisions that immediately shield the lender from the equitable doctrine of "marshalling" or any similar doctrine.

Not applicable.

D. Need for Financing and Use of Cash Collateral

15. As addressed earlier, the Debtor has an immediate and critical need to obtain the DIP Facility and to use cash collateral to, among other things: (a) permit the orderly operation of their business; (b) maintain business relationships; (c) make capital expenditures; (d) satisfy other working capital, operational, and general corporate needs; (e) fund costs and expenses related to the Chapter 11 case, and (g) fund the payment of other fees and expenses set forth in the Initial Budget, for the benefit of the Debtor's stakeholders. The ability of the Debtor to maintain business relationships with its vendors, suppliers, and customers requires the availability of working capital from the DIP Facility and access to cash collateral, the absence of which would immediately and irreparably harm the Debtor, its estate, and parties-in-interest. The Debtor does not have sufficient available sources of working capital and financing to operate its business in the ordinary course throughout the case without access to the DIP Facility and authorized use of Cash Collateral. In the absence of the DIP Facility and the use of Cash Collateral, the Debtor's business and estate would suffer immediate and irreparable harm. Access to the DIP Facility will provide the Debtor with sufficient working capital and liquidity to operate during this Chapter 11 case and is vital to the continuation of the Debtor's ongoing chapter 11 plan process. Without access to the DIP Facility and cash collateral, the Debtor would run out of money and its ability to maintain going concern operations and value will be significantly impaired.

16. As set out in the De Camara Declaration, the Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lenders and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor also is unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without granting to the DIP Lenders, the DIP Liens and the DIP Superpriority Claims, in each case subject to the Carve-Out and the prepetition Loan Agreement Obligations to the extent set forth herein, under the terms and conditions set forth in the Interim DIP Order and the DIP Documents.

V. BASIS FOR RELIEF

A. The Debtor Should Be Permitted to Obtain Postpetition Financing Pursuant to Section 364(c) of the Bankruptcy Code.

17. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtor seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(l) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c).

18. In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

a. unencumbered credit or alternative financing without superpriority status is available to the debtor;

b. the credit transactions are necessary to preserve assets of the estate;

c. the terms of the credit agreement are fair, reasonable, and adequate;

d. the proposed financing agreement was negotiated in good faith and at arm's-length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and its creditors; and

e. the proposed financing agreement adequately protects the DIP Lender.

See, e.g., *In re Aqua Assoc.*, 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)).

19. For the reasons discussed below, the Debtor satisfies the standards required to obtain postpetition financing in the Chapter 11 case on a secured superpriority basis as to the DIP Collateral under sections 364(c)(1), (2), and (d)(1) of the Bankruptcy Code.

B. The Debtor is Unable to Obtain Financing on More Favorable Terms.

20. As discussed above and in the First Day Declaration and the De Camara Declaration, the Debtor carefully considered its financing options. Ultimately, the Debtor determined that the DIP Facility provides the Debtor with the best and only viable postpetition financing option available and should be approved by this Court.

21. The Debtor respectfully submit that its efforts to obtain postpetition financing therefore satisfy the standard required under section 364(c) of the Bankruptcy Code. *See, e.g., In re Sky Valley, Inc.,* 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing").

C. The Proposed Financing is Necessary to Maximize the Value of the Debtor's Estate.

22. The Debtor seeks to use the DIP Facility for general working capital purposes, ordinary business expenses such as payroll, and bankruptcy-related costs and expenses, in accordance with the Initial Budget, to maximize value through a chapter 11 plan process. The DIP Facility represents the best economic alternative for a new debtor-in-possession lending arrangement. As noted above, it is the parties' ultimate intent to equitize the DIP Facility under a confirmed plan.

23. Simply put, without immediate access to the DIP Facility and use of cash collateral, the Debtor cannot continue to operate its business. Failure to access and have use of

the DIP Facility would irreparably damage the Debtor's efforts to effectuate the plan for the benefit of all constituents. Accordingly, the Debtor urges the Court to authorize the DIP Facility on the terms contemplated herein.

D. The Terms of the Proposed Financing are Fair, Reasonable, and Appropriate.

24. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

25. The terms of the DIP Facility were negotiated in good faith and at arm's-length between the Debtor (and specifically, its independent director, Freddie Reiss) and the DIP Lenders, resulting in an agreement that is designed to permit the Debtor to maximize the value of their assets. The Debtor submits that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances. *See, e.g.*, *Bray v. Shenandoah Fed. Sav. and Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364 of the Bankruptcy Code imposes no duty to seek credit from every possible lender); *In re Western Pacific Airlines, Inc.*, 223 B.R. 567 (Bankr. D. Colo. 1997) (authorizing postpetition financing that would preserve the value of the debtor's assets). Further, the Debtor expects to have consent of the Prepetition Lender to approval of the DIP Facility and use of cash collateral on the terms set forth in the proposed DIP Orders.

E. The Carve-Out is Appropriate.

26. The DIP Liens and Adequate Protection Liens are subject and subordinate to the Carve-Out. The Carve-Out contains similar terms to others that this Court has found to be

reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their advisors. Without the Carve-Out, the Debtor's estate may be deprived of possible rights and powers if the services for which professionals may be compensated are restricted. *See In re Ames Dep't Stores, Inc*., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of this case by ensuring that assets remain for the payment of the U.S. Trustee fees, subchapter V trustee fees, and professional fees, notwithstanding the grant of superpriority claims and replacement liens as part of the adequate protection of the Prepetition Lender's interests in the Prepetition Collateral. Accordingly, the Carve-Out is appropriate and should be approved.

F. <u>The DIP Lenders Should Be Deemed Good Faith Lenders.</u>

27. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

28. Here, the Debtor believes the DIP Facility embodies the most favorable terms on which the Debtor could obtain postpetition financing. As described in the First Day Declaration and the De Camara Declaration, negotiations of the terms of the DIP Facility with the

DIP Lender were conducted in good faith and at arms' length, and under the supervision of the Debtor's independent director (Freddie Reiss). The terms and conditions of the DIP Loan Term Sheet are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code, and in accordance with the DIP Orders, including the Initial Budget. Any consideration being provided to any of the DIP Lenders is described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

G. The Proposed Financing Reflects the Debtor's Sound Business Judgment.

29. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g.*, *Trans World Airlines, Inc. v. Travelers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition credit facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 38 (financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

30. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., Group of Inst. Investors v. Chicago, Mil., St. P. & Pac.*, 318 U.S. 523, 550 (1943) (holding that decisions regarding assumption or rejection of leases are left to the business judgment of the debtor); *In re Simasko Prod. Co.,* 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."). Further, one court has noted that "[m]ore exacting scrutiny [of the debtors' business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the

estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.,* 762 F.2d 1303, 1311 (5th Cir. 1985).

31. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *In re Curlew Valley Associates*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also Trans World Airlines, Inc.,* 163 B.R. at 974 (approving interim loan, receivables facility and asset-based facility based upon prudent business judgment of the debtor). Generally courts will not second-guess a debtor in possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *Curlew Valley,* 14 B.R. at 513-14 (footnotes omitted).

32. The Debtor believes that the economics underlying the DIP Facility, including the various fees payable to the DIP Lenders thereunder, are fair and reasonable and consistent with market norms. For these reasons and those set forth above, the Debtor's sound business judgment clearly supports approval of the DIP Facility. Access to the DIP Facility will allow the Debtor to continue to operate, thus maximizing value for all of their constituents.

H. Section 363 of the Bankruptcy Code Authorizes the Debtor's Use of Cash Collateral.

33. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (A) each entity that has an interest in such cash collateral provides consent, or (B) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

34. Here, the Debtor seeks authority to use cash collateral pursuant to the Initial Budget and has sought approval of various forms of adequate protection in favor of the Prepetition Lender including adequate protection liens and superpriority claims on the DIP Collateral to the extent of any diminution and reimbursement of reasonable professional fees incurred by the Prepetition Lender up to $50,000 per month. Importantly, the Debtor expect to have consent of the Prepetition Lender to the use of cash collateral on the terms set forth in the DIP Orders.

35. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a Final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. at 449; *see also In re Ames Dep't Stores Inc.,* 115 B.R. at 38. After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

36. As previously noted, in order to continue operating and satisfy accruing administrative expenses, the Debtor requires access to the DIP Facility and the use of cash collateral. Such use will provide the Debtor with the necessary funds to remain administratively solvent, while the Debtor pursues a plan confirmation process.

37. Absent access to cash collateral, the Debtor would face immediate and irreparable harm. The Debtor would be forced to cease operations and convert this Chapter 11 case to one under chapter 7. Jobs would be lost and substantial value destroyed. Thus, immediate access to cash collateral is essential to the Debtor's ability to maximize value for the benefit of all constituents.

I. Interim DIP Order and Final Hearing

38. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court schedule a Final hearing within approximately twenty-eight (28) calendar days after the Petition Date to consider approval of this Motion on a final basis, as required by the DIP Loan Term Sheet.

39. The urgent need to avoid immediate and irreparable harm to the Debtor's estate make it imperative that the Debtor be authorized to access the DIP Facility and use cash collateral pending the Final Hearing, in order to allow the Debtor to operate and administer this Chapter 11 case on a postpetition basis. Without the ability to make draws under the DIP Facility and use cash collateral, the Debtor would be unable to satisfy accruing postpetition obligations, including payroll, and would not be able to conduct a value-maximizing plan process, thus causing irreparable harm to the Debtor and the value of this estate. Accordingly, the Debtor respectfully requests that, pending the Final Hearing, the Interim DIP Order be approved and that the terms and provisions of the Interim DIP Order be implemented and be deemed binding and that, after the Final Hearing, the Final DIP Order be approved in all respects and the terms and provisions of the Final DIP Order be implemented and be deemed binding.

J. Waiver of Bankruptcy Rule 6004(a) and 6004(h)

40. To implement the foregoing successfully, the Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

VI. NOTICE

41. The Debtor will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) counsel to the DIP Lenders; (d) the United States Attorney's Office for the District of Delaware; (e) any known party that asserts a lien in the Debtor's assets, including the Prepetition Lender; and (f) any party that requests service pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m).

VII. NO PRIOR REQUEST

42. The Debtor has not made any prior request for the relief sought herein to this Court or any other court.

WHEREFORE, the Debtor respectfully requests entry of the Interim DIP Order and, after Final Hearing, the Final DIP Order, granting the relief requested herein and such other relief as is just and proper.

Dated: June 19, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

James E. O'Neill (DE Bar No. 4042)
Jeffrey N. Pomerantz (*pro hac vice* forthcoming)
Jordan A. Kroop (*pro hac vice* forthcoming)
Maxim B. Litvak (*pro hac vice* forthcoming)
Greg V. Demo (*pro hac vice* forthcoming)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, Delaware 19899 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: joneill@pszjlaw.com
jpomerantz@pszjlaw.com
jkroop@pszjlaw.com
mlitvak@pszjlaw.com
gdemo@pszjlaw.com

Proposed Counsel to the Debtor and Debtor in Possession

EXHIBIT 1

Proposed Interim DIP Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: QLESS, INC., Debtor. [1]	Chapter 11, Subchapter V Case No. 24-11395 (___)

INTERIM ORDER (I) AUTHORIZING AND APPROVING DEBTOR TO (A) OBTAIN DEBTOR IN POSSESSION FINANCING ON A JUNIOR SECURED BASIS AND (B) USE CASH COLLATERAL OF PRE-PETITION SECURED LENDER; (II) SCHEDULING A FINAL HEARING; AND (III) GRANTING RELATED RELIEF

On June [●], 2024, the United States Bankruptcy Judge for the District of Delaware (the "**Court**") held an interim hearing (the "**Interim Hearing**") on an emergency basis to consider the *Debtor's Emergency Motion for Interim and Final Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in Possession Financing on a Junior Secured Basis and (B) Use Cash Collateral; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* (the "**Motion**") (ECF [●]) filed by QLess, Inc. (the "**Debtor**"), the debtor and debtor in possession in the above-referenced subchapter V chapter 11 bankruptcy case (the "**Case**"). Appearances were made as set forth on the record of the Court at the Interim Hearing.

The Court, having read and considered the Motion, the *Declaration of James Harvey in Support of Chapter 11 Petition and First Day Relief* (ECF [●]), the *Declaration of Andrew De Camara of Sherwood Partners, Inc. in Support of Emergency Motion of the Debtor For Interim and Final Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in Possession Financing on a Junior Secured Basis and (B) Use Cash Collateral of Pre-Petition Secured Lender; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* (ECF [●]), the initial budget (the "**Initial Budget**") (attached hereto as **Exhibit A**), the *Binding Debtor in Possession Credit*

[1] The Debtor's principal place of business and service address is 21 Miller Alley, Suite 210, Pasadena CA 91105.

Facility Term Sheet (the "**DIP Loan Term Sheet**")[2] between the Debtor, as the borrower, Palisades Growth Capital Fund II, L.P. ("**Palisades**") and other lenders, as the DIP lenders (the "**DIP Lenders**"), attached hereto as **Exhibit B**, and a newly formed entity owned and controlled by the DIP Lenders, as collateral agent for the DIP Lenders (in such capacity, the "**DIP Agent**"), all papers filed in support of the Motion, the record in the Case, the docket in the Case, the evidence presented and arguments of counsel at the Interim Hearing, and for good cause appearing, therefor and,

HEREBY FINDS AS FOLLOWS:

A. On June 19, 2024 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 subchapter 5 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

B. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) and this Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are (i) sections 361, 363(b), (c), and (e), and 364(c), (d), and (e) of the Bankruptcy Code; (ii) Rules 2002(a)(2), 4001(b) and (c), and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"); and (iii) Rules 2002-1(b), 4001-2, 9006-1, and 9013 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**")

[2] Capitalized terms used but not defined herein shall have the meanings set forth in the DIP Loan Term Sheet or the Motion, as applicable.

D. Notice of the Motion and Interim Hearing and the relief sought in the Motion, and the time fixed for filing objections to the Motion was good and proper and adequate under applicable rules and the circumstances of the Case, and no further notice is necessary or appropriate prior to entry of this interim order (this "**Interim Order**") granting the Motion. A reasonable opportunity to object and be heard regarding the relief provided herein has been afforded to all parties-in-interest.

E. Approval of the relief requested in the Motion pursuant to this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending a final hearing (the "**Final Hearing**"), and approval of the relief pursuant to this Interim Order is fair and reasonable and in the best interests of the Debtor, its estate, and all parties-in-interest, and is essential for the continued operation of the Debtor's business and the preservation of the value of the Debtor's assets.

F. Borrowing the Initial DIP Loans (as defined below) pursuant to this Interim Order is a sound and prudent exercise of the Debtor's business judgment.

G. The DIP Lender and DIP Agent are extending the Initial DIP Loans in good faith and are entitled to the protections of 11 U.S.C. § 364(e).

H. The Debtor agrees, admits, represents and stipulates for itself and its estate, subject to the challenge rights of third parties set forth in paragraph 19 of this Interim Order, the following (collectively, the "**Stipulations**"):

1. As of the Petition Date, the Debtor was party to that certain Business Loan Agreement dated as of February 21, 2023 (such agreement, as amended and existing immediately prior to the Petition Date, the "**Prepetition Loan Agreement**") with Celtic Bank Corporation (the "**Prepetition Lender**") and all other documents, instruments and

agreements executed in connection with the Prepetition Loan Agreement (such agreements, collectively with the Prepetition Loan Agreement, the "**Prepetition Loan Agreement Documents**");

2. As of the Petition Date, the Debtor under the Prepetition Loan Agreement was indebted to the Prepetition Lender, without defense, counterclaim, recoupment or offset of any kind, in the non-contingent liquidated amount of no less than $6,250,000.00, plus other fees, costs, expenses and other amounts arising in respect of the Prepetition Loan Agreement Documents obligation existing immediately prior to the Petition Date (such obligations, the "**Prepetition Loan Agreement Obligations**").

3. As of the Petition Date, the Prepetition Loan Agreement Obligations were secured by valid, enforceable, properly perfected and unavoidable liens on security interests (the "**Prepetition Liens**") encumbering substantially all assets of the Debtor existing immediately prior to the commencement of the Debtor's bankruptcy proceeding (the "**Prepetition Collateral**"), which Prepetition Liens are senior, first priority liens and security interests with respect to all Prepetition Collateral, subject to Permitted Liens (as defined in the Prepetition Loan Agreement Documents);

4. The Prepetition Liens were granted by the Debtor to, or for the benefit of, the Prepetition Lender for fair consideration and reasonably equivalent value;

5. The Debtor possesses no claims, counterclaim, cross-claims, offsets, challenges, objections, defenses, or other rights or cause of action of any kind or nature against the Prepetition Lender, including, without limitation, avoidance, disallowance, disgorgement, impairment, reduction, attachment, recoupment, defense, objection,

recovery, recharacterization or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and

6. The Prepetition Loan Agreement Obligations constitute valid, binding and legal obligations on the Debtor, enforceable in accordance with their terms, and the Debtor under the Prepetition Loan Agreement Documents will not assert any claims or defenses of any kind or nature that in any way would affect the validity and enforceability of any of the Prepetition Loan Agreement Obligations and/or the security interest or liens of the Prepetition Lenders upon the Prepetition Collateral, or which would in any way reduce the obligation of the Debtor to pay in full tall of the Prepetition Loan Agreement Obligations.

I. The Prepetition Loan Agreement remains in full force and effect, pursuant to its terms, subject to the terms hereof governing the DIP Loan Term Sheet. The Debtor and DIP Lenders' request that the Prepetition Lender reduce the minimum cash balance covenant contained in the Financial Covenants and Ratios provision of the Prepetition Loan Agreement from $1.5 million to $500,000. The Prepetition Lender has consented to that request.

J. The Prepetition Lender does not object to the Initial DIP Loans being secured by second-priority liens on and security interests in all assets of the Debtor subordinate to the Prepetition Lender pursuant to the terms of this Interim Order.

There is good cause to grant the Motion as set forth in this Interim Order; and

HEREBY ORDERS AS FOLLOWS:

1. The Motion is granted to the extent set forth in this Interim Order.

2. Any objections, reservations of rights, or other statements with respect to entry of this Interim Order, to the extent not withdrawn or resolved, are overruled on the merits.

3. The Debtor is authorized and empowered to execute and perform under the DIP Loan Term Sheet, which is approved on an interim basis pursuant to this Interim Order. Nothing in this Interim Order shall prejudice the rights of the Debtor to seek approval of the full amount of the DIP loan with whatever revisions the Debtor may propose at the Final Hearing, or the rights of any party-in-interest in this Case to object thereto.

4. The Debtor is hereby authorized to borrow and incur up to **$1,000,000** in post-petition financing from the DIP Lenders in one or more draws (the "**Initial DIP Loans**"). To borrow an Initial DIP Loan, the Debtor must submit a borrowing notice to the DIP Lenders in form and substance reasonably satisfactory to the DIP Lenders, which notice shall include a statement from an authorized representative of the Debtor that the Debtor is in compliance with all of the provisions of this Interim Order, no Events of Default (as defined below) have occurred that are continuing or would result from the requested borrowing, and, after giving effect to the requested borrowing, the outstanding Initial DIP Loans would not exceed **$1,000,000**. The Debtor may not repay or prepay the Initial DIP Loans prior to the Maturity Date (as defined below). The Initial DIP Loans shall bear interest at the rate of 15% per annum, compounded monthly. All interest accruing on the Initial DIP Loans shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day and last days). Interest shall accrue and be payable on the Maturity Date. At all times that an Event of Default (as defined below) exists, the non-default interest rate shall be increased by 2.00% per annum and default interest shall be payable in cash, upon demand.

5. The Debtor shall pay on the Maturity Date all actual, documented out of pocket fees, costs and expenses of the DIP Lenders (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) in connection with (i)

the negotiation, preparation, execution of and entry into the Initial DIP Loan, as applicable, regardless of when incurred, (ii) all litigation, contests, disputes, suits, proceedings or actions (whether instituted by DIP Lenders, Debtor or any other person or entity) in any way relating to the Initial DIP Loan or Debtor's affairs, and (iii) the enforcement of any rights and remedies related to the Initial DIP Loan or applicable law. All such fees, costs and expenses that become due and owing after the Maturity Date shall be due and payable on demand.

6. The Initial DIP Loans plus all accrued interest, as well as any and all fees, costs and expenses of the DIP Agent and/or DIP Lenders incurred in connection with enforcing their rights against the Debtor following an Event of Default or otherwise, if such fees, costs and expenses are subsequently approved by an order of this Court (collectively, the "**DIP Obligations**"), are hereby immediately secured (without the need or requirement of any filings), pursuant to section 364 of the Bankruptcy Code, subject to the Carve-Out (as defined below), by valid, binding, continuing, enforceable, fully-perfected, and unavoidable liens on and security interests granted in favor of the DIP Agent, for itself and the benefit of the DIP Lenders, in all of the assets and property of the Debtor of every kind, nature and description, wherever located and whether now owned or hereafter acquired (collectively, the "**DIP Collateral**"), as follows (collectively, the "**DIP Liens**"): (i) second-priority liens on and security interests in all assets of the Debtor subordinate to the Prepetition Lender's liens and security interests and the Permitted Liens and (ii) first-priority liens on and security interests in all assets of the Debtor that are not subject to existing liens, including subject to entry of a final DIP order, proceeds of avoidance actions claims arising under chapter 5 of the Bankruptcy Code.

7. In addition, the DIP Agent, for itself and the benefit of the DIP Lenders, is hereby granted superpriority administrative expense claims pursuant to section 364(c)(1) of the

Bankruptcy Code (the "**DIP Superpriority Claims**"), provided that such DIP Superpriority Claims shall be subject to the Carve-Out and shall not be payable from the proceeds of avoidance actions pending entry of the final DIP order.

8. Subject to the Carve-Out, solely to the extent of and in an amount equal to the aggregate diminution in value (if any) of the interests of the Prepetition Lender in the Prepetition Collateral from and after the Petition Date, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, the Prepetition Lender is hereby granted the following adequate protection: (i) additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens on the DIP Collateral effective as of the Petition Date (together, the "**Adequate Protection Liens**"), senior to the DIP Liens and (ii) superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code (the "**Adequate Protection Superpriority Claims**"), senior to the DIP Superpriority Claims, provided that such Adequate Protection Superpriority Claims shall be subject to the Carve-Out and shall not be payable from the proceeds of avoidance actions pending entry of the final DIP order. In addition, the Prepetition Lender shall be entitled to reimbursement of its actual and necessary professional fees by the Debtor up to $50,000 per month. Any professional fees of the Prepetition Lender (or DIP Agent or DIP Lenders) to be paid by the Debtor shall be subject to at least 10 days' notice and an opportunity to object to the Debtor, the U.S. Trustee, and the subchapter V trustee.

9. Each of the DIP Liens, DIP Superpriority Claims, DIP Obligations, Prepetition Liens, Prepetition Loan Agreement Obligations, Adequate Protection Liens, and Adequate Protection Superpriority Claims shall each be subject to and subordinate to payment of the Carve Out. The Carve Out shall have such priority claims and liens over all assets of the Debtor,

including the DIP Collateral and Prepetition Collateral. As used here, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (and any monthly, restructuring, or sale fees to the extent earned prior to the date of the Carve Out Trigger Notice (as defined below)) (the "**Allowed Professional Fees**") incurred by (or payable to) persons or firms retained by the Debtor pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") and the subchapter V trustee at any time before the date of delivery of the Carve Out Trigger Notice by the DIP Agent (at the direction of the DIP Lenders), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Debtor Professionals and the subchapter V trustee in an aggregate amount not to exceed $250,000 incurred on or after the date of delivery of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the DIP Lenders) to the Debtor, its restructuring counsel (Pachulski Stang Ziehl & Jones LLP), the U.S. Trustee, and the subchapter V trustee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined below), stating that the Post-Carve Out Trigger Notice Cap has been invoked. The Debtor shall, on a weekly basis commencing after the first week of the Initial

Budget, transfer cash proceeds of the DIP Loan Term Sheet or cash on hand into a segregated account (which may be the trust account of Debtor's counsel), not subject to the control of the DIP Agent, the DIP Lenders, or the Prepetition Lender (the "**Professional Fees Account**") in an amount equal to the amount budgeted for Debtor Professionals for the preceding week in the Initial Budget. Upon the delivery of the Carve Out Trigger Notice, the Debtor shall deposit all available cash on hand into the Professional Fees Account until such amounts therein equal the Carve Out. The Professional Fees Account, and all funds held therein, shall be held in trust exclusively for the benefit of the Debtor Professionals and the subchapter V trustee, and shall be available only to satisfy obligations benefitting from the Carve Out, and the DIP Agent, the DIP Lenders, and the Prepetition Lender (i) shall not sweep or foreclose on any such available cash of the Debtor until the Professional Fees Account is fully funded, and (ii) shall have a security interest on any residual interest in the Professional Fees Account available following satisfaction in cash of all Carve Out expenses.

10. The DIP Agent and DIP Lenders are entitled to the protections under section 364(e) of the Bankruptcy Code.

11. The Debtor shall not amend or revise the Initial Budget without the prior written approval of the DIP Lenders.

12. Subject to the terms and conditions set forth in this Interim Order, the Debtor is authorized to use the Initial DIP Loans solely in accordance with the Initial Budget through the earlier to occur of (a) September 13, 2024, (b) the occurrence of an Event of Default (as defined below), (c) the consummation of a sale of all or substantially all of the assets of the Debtor, and (d) the effective date of a confirmed chapter 11 plan (such date, the "**Maturity Date**"). The DIP Obligations shall not be due and payable prior to the Maturity Date; provided, however, that if the

Maturity Date is triggered as a result of a sale of the Debtor's assets to a bidder other than the DIP Lenders, the Initial DIP Loans shall be repaid in full, in cash at the closing of such sale, which closing shall occur not later than the date referenced in item (a) above.

13. The occurrence of any of the following events shall constitute an "Event of Default" under this Interim Order:

a) the Debtor shall fail to comply with the provisions of this Interim Order; or

b) the Debtor shall have made any representation or warranty in the DIP Financing Term Sheet that proves to have been incorrect in any material respect; or otherwise materially breached the DIP Financing Term Sheet; or

c) the Debtor shall have made any payment of principal or interest or otherwise on account of any prepetition indebtedness or payables, except as otherwise contemplated in the Initial Budget; or

d) there shall exist a material impairment of the rights provided by the Debtor under the DIP Loan Term Sheet or this Interim Order; or

e) (i) the dismissal of the Case, (ii) the conversion of the Case to a chapter 7 case, (iii) the Debtor is denied subchapter V election, or (iv) the Debtor files or fails to oppose a motion (other than one filed by the DIP Lenders) seeking any such relief; or

f) a trustee (other than a subchapter V trustee), responsible officer or examiner with enlarged powers relating to the operation of the Debtor's business is appointed; or

g) the granting of relief from any stay proceeding so as to allow a third party to proceed against any assets of the Debtor in excess of $250,000; or

h) the filing of a motion seeking entry of an order, or entry of an order, confirming a plan of reorganization that does not require indefeasible repayment of the Initial DIP Loans in full in cash as of the effective date; or

i) a change of control with respect to the Debtor shall occur; or

j) any material provision of the DIP Loan Term Sheet or this Interim Order cease to be valid and binding on the Debtor; or

k) an order shall be entered determining that (i) any of the Debtor's material assets are not property of its bankruptcy estate, (ii) the Debtor's assets are not capable of being sold pursuant to section 1112 of the Bankruptcy Code or otherwise and/or (iii) the Debtor's assets cannot be sold free and clear of any liens, claims or other encumbrances; or

l) the Debtor shall make payment to or grant adequate protection other than to the Prepetition Lender in its capacity as a pre-petition secured lender with respect to any prepetition debt (other than as approved by DIP Lenders and the Bankruptcy Court); or

m) the entry of an order denying or terminating use of cash collateral by the Debtor; or

n) the cessation of the DIP Liens and/or DIP Superpriority Claims to be valid, perfected and enforceable in all respects with the priorities set forth in this Interim Order; or

o) the rejection of any executory contract or unexpired lease identified as material by the DIP Lenders without the DIP Lender's consent; or

p) the Debtor shall fail to comply with milestones under the DIP Financing Term Sheet; or

q) the Debtor files, or supports any person filing, a motion seeking standing to assert a claim or challenge the DIP Lenders' liens and claim.

14. Upon the occurrence of an Event of Default, the DIP Agent, acting at the direction of the DIP Lenders may, by written notice to the Debtor, declare all DIP Obligations to be due and payable. Following or in conjunction with the DIP Agent giving notice of an Event of Default to the Debtor, the DIP Agent and the DIP Lenders shall have the right to file a motion seeking relief, from the automatic stay to exercise any or all remedies available hereunder and/or available to a secured creditor under applicable law, subject to full funding of the Carve-Out.

15. No claim or lien having a priority senior to or pari passu with those granted by this Interim Order to the DIP Agent and DIP Lenders other than with respect to the Prepetition Lender shall be granted or allowed while any portion of the DIP Obligations remain outstanding, and the DIP Liens shall not be (a) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or (b) subordinated to or made pari passu with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

16. If an order dismissing the Case is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code), to the fullest extent permitted by law, that (a) the DIP Liens and DIP Superpriority Claims shall continue in full force and effect and shall maintain their relative priorities as provided in this Interim Order until all DIP Obligations shall have been paid and satisfied in full and that such DIP Liens and DIP Superpriority Claims shall, notwithstanding such dismissal, remain binding on all parties in interest and (b) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to and provided for in this Interim Order.

17. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect the validity or

enforceability of the DIP Liens, or their priority authorized pursuant to this Interim Order. Notwithstanding any such reversal, stay, modification or vacation, any DIP Obligations incurred by the Debtor prior to the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent and DIP Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code and this Interim Order.

18. The DIP Liens and DIP Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order shall survive, and shall not be modified, impaired or discharged by (a) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code, or (b) the entry of an order confirming a plan of reorganization or liquidation in the Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor waives any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order shall continue in this Case or in any superseding chapter 11 case or chapter 7 case under the Bankruptcy Code, and the DIP Liens and DIP Superpriority Claims and all other rights and remedies of the DIP Agent and DIP Lenders granted pursuant to this Interim Order shall continue in full force and effect.

19. Subject to the Challenge Period (as defined herein), the Stipulations, admissions, waivers, and releases in favor of the Prepetition Lender contained in this Interim DIP Order shall be binding upon the Debtor and its estate in all circumstances and for all purposes and the Debtor is deemed as of such date to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The Stipulations, admissions, and waivers contained in this Interim Order shall be binding upon all other parties in interest, including any person acting on behalf of the Debtor's estate, unless and to the extent that a party in interest with proper standing granted by

order of the Court, has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules: (i) seeking to avoid, object to, or otherwise challenge the findings or Debtor's Stipulations herein, including regarding, (a) the validity, enforceability, extent, priority, or perfection of the security interests and liens of the Prepetition Lender, (b) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Loan Agreement Obligations, and (c) asserting or prosecuting any so-called "lender liability" claims, avoidance actions or any other claim, counter claim, cause of action, objection, contest or defense, of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable law or otherwise, against the Prepetition Lender or its representatives (any such claim, a "**Challenge**") setting forth the particular basis for such Challenge; and (ii) in which the Court enters a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed Challenge. A Challenge must be filed on or prior to seventy-five (75) days following entry of this Interim Order (the "**Challenge Period**" and the date of expiration of the Challenge Period, the "**Challenge Period Termination Date**"); *provided, however*, that if a chapter 11 trustee is appointed or the Case is converted to a case under chapter 7 prior to the Challenge Period Termination Date, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the Challenge Period Termination Date or (2) the tenth (10th) day after the appointment of the chapter 11 trustee or the conversion of the Case to a case under chapter 7, as applicable, to commence a Challenge; *provided, further*, that the timely filing of a motion seeking standing to file a Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such standing motion is resolved or adjudicated by the Court and solely as to the Challenges for which standing is sought (as set

forth in such motion). To the extent the Stipulations, admissions, waivers and releases contained in this Interim Order are (x) not subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date or (y) subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date, but such Challenge does not result in a final and nonappealable judgment or order of the Court that is inconsistent with the stipulations, admissions, waivers and releases contained in this Interim Order, then, without further notice, motion, or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (a) any and all such Challenges by any party (including any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in this case, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any successor case) shall be deemed to be forever barred; (b) the Prepetition Loan Agreement Obligations shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtor's chapter 11 case and any successor case; (c) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens and security interests, not subject to recharacterization, subordination, or avoidance; and (d) all of the Debtor's stipulations and admissions contained in this Interim Order as to the priority, extent, and validity as to the Prepetition Lender's claims, liens, and interests contained in this Interim Order shall be of full force and effect and forever binding upon the Debtor, its estate, and all creditors, interest holders, and other parties in interest in this Chapter 11 case and any successor case. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtor or its estate, including any Challenge.

20. Notwithstanding anything in this Interim Order or in any other order by this Court to the contrary, no portion of cash, if any, of the Initial DIP Loan or the DIP Collateral may be used: (a) for any purpose that is prohibited under the Bankruptcy Code; (b) to finance any action which with the giving of notice or passing of time would result in an Event of Default under the this Interim Order; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the DIP Lenders and the approval of this Court; and/or (d) for any purpose or in any manner not approved in the Initial Budget.

21. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, this Interim Order shall be immediately effective and enforceable upon its entity and there shall be no stay of execution or effectiveness of this Interim Order.

22. The DIP Lenders shall have no obligation to extend any DIP loans or other financing, as the case may be, to any trustee or similar responsible person appointed for the estate of the Debtor or after the Maturity Date (subject only to paragraph 11 of this Interim Order).

23. Nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or DIP Lenders any liability for any claims arising from the pre-petition or post-petition activities of the Debtor in the operation of its business, or in connection with its Case.

24. The Court shall retain jurisdiction to interpret and enforce the provisions of the DIP Loan Term Sheet and this Interim Order and the rights of the parties set forth therein and herein.

25. The Final Hearing on the Motion shall be held on July [●] 2024, at [●].

26. The deadline to file a written objection to the relief requested by the Debtor to be entered by this Court in the final order shall be no later than 14 days prior to the Final Hearing, in accordance with the Local Bankruptcy Rules.

27. The deadline for the Debtor and any other party-in-interest to file a written reply to any objections shall be no later than 7 days prior to the Final Hearing, in accordance with the Local Bankruptcy Rules.

28. Nothing in this Interim Order shall in any way be construed or interpreted to constitute the Court's approval of any chapter 11 plan terms or provisions.

####

EXHIBIT A

Initial Budget

QLESS, INC.

EXHIBIT A: INITIAL BUDGET

$000s	INTERIM PERIOD													From
	Petition Date = 6/19/2024													
Week	1	2	3	4	5	6	7	8	9	10	11	12	13	Petition Date
Week ending	21-Jun	28-Jun	5-Jul	12-Jul	19-Jul	26-Jul	2-Aug	9-Aug	16-Aug	23-Aug	30-Aug	6-Sep	13-Sep	Total
Cash Receipts														
Customer	$150	$150	$151	$151	$151	$151	$154	$154	$154	$154	$154	$228	$228	$2,127
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	$0
DIP Loan Financing	-	1,000	-	-	-	2,000	-	-	-	-	-	-	-	3,000
Total Cash Receipts	**$150**	**$1,150**	**$151**	**$151**	**$151**	**$2,151**	**$154**	**$154**	**$154**	**$154**	**$154**	**$228**	**$228**	**$5,127**
Cash Disbursements														
Operating Expenses														
Cost of Revenue	-	(25)	(122)	(2)	(31)	(16)	(163)	(3)	(32)	(3)	(50)	(133)	(34)	(614)
Sales & Marketing	-	(59)	(99)	(3)	(66)	(49)	(163)	(3)	(65)	(3)	(103)	(75)	(64)	(752)
Research & Development	-	(23)	(10)	(216)	(14)	(41)	(37)	(1)	(137)	(1)	(43)	(10)	(126)	(659)
General & Administrative	-	(30)	(143)	(13)	(39)	(22)	(133)	(1)	(28)	(1)	(33)	(112)	(46)	(601)
Contingency	-	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(120)
Other Non-Operating Expenses														
Director Fees	-	-	(40)	-	-	-	(40)	-	-	-	-	(40)	-	(120)
Non-Bankruptcy Professionals	-	-	-	-	-	-	(150)	-	-	-	-	(150)	-	(300)
Secured Interest (Adequate Protection)	-	-	(77)	-	-	-	(77)	-	-	-	-	(76)	-	(230)
Secured Lender Expense Reimbursement	-	-	(50)	-	-	-	(50)	-	-	-	-	(50)	-	(150)
Ch 11 Expenses														
DIP Commitment Fee	-	-	-	-	-	-	-	-	-	-	-	-	(45)	(45)
DIP Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	(77)	(77)
DIP Lender Fees	-	-	-	-	-	-	-	-	-	-	-	-	(200)	(200)
Debtor's Bankruptcy Counsel (Pachulski)	-	(150)	(75)	(75)	(30)	(30)	(30)	(30)	(30)	(75)	(75)	(75)	(75)	(750)
Debtor's CRO/Financial Advisor (Sherwood)	-	(50)	(44)	(19)	(10)	(10)	(35)	(10)	(10)	(10)	(10)	(35)	(10)	(253)
Sub Ch V Trustee		(35)	-	-	-	-	-	-	-	-	-	-	-	(35)
Claims/Noticing Agent (KCC)		(23)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(150)
Other Bankruptcy Expenses		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(24)
Total Cash Disbursements	**$0**	**($407)**	**($683)**	**($352)**	**($214)**	**($191)**	**($902)**	**($70)**	**($326)**	**($115)**	**($337)**	**($780)**	**($701)**	**($5,079)**
Beginning Cash Balance	**$115**	**$265**	**$1,008**	**$476**	**$274**	**$211**	**$2,170**	**$1,422**	**$1,505**	**$1,333**	**$1,372**	**$1,189**	**$636**	**$115**
Net Cash Flow	$150	$743	($533)	($201)	($63)	$1,959	($748)	$83	($172)	$38	($183)	($553)	($473)	$48
Ending Cash Balance	**$265**	**$1,008**	**$476**	**$274**	**$211**	**$2,170**	**$1,422**	**$1,505**	**$1,333**	**$1,372**	**$1,189**	**$636**	**$163**	**$163**

EXHIBIT B

DIP Loan Term Sheet

Execution Version

BINDING DEBTOR IN POSSESSION CREDIT FACILITY TERM SHEET

EFFECTIVE AS OF JUNE 19, 2024

Borrower:	QLess, Inc. ("**Borrower**").
Case:	The bankruptcy case (the "**Bankruptcy Case**") of Borrower to be filed under Subchapter V of chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").
DIP Lenders:	Palisades Growth Capital II, L.P., and/or one or more of its affiliates who also own or control approximately 35% of the Borrower's shares and other shareholders of the Debtor also may participate as DIP Lenders (collectively, the "**DIP Lenders**").
DIP Agent:	A newly formed entity owned and controlled by the DIP Lenders (the "**DIP Agent**"). The DIP Agent shall act as collateral agent for the DIP Lenders. The DIP Agent shall take direction provided by the holders of the majority (greater than 50%) of the outstanding principal amount of the DIP Loans.
DIP Loan:	DIP Lenders will make loans (the "**DIP Loans**") available to Borrower in an aggregate amount up to $3,500,000 (the "**DIP Facility**").
Availability:	Subject to entry by the Bankruptcy Court of an interim order satisfactory in form and substance to DIP Lenders in their sole but reasonable discretion approving the DIP Facility on an interim basis (the "**Interim DIP Order**"), up to $1,000,000 (the "**Initial DIP Borrowing**") for the purposes set forth below and in accordance with the Budget (as defined below) and Interim DIP Order. Subject to entry of a final order satisfactory in form and substance to DIP Lenders in their sole but reasonable discretion approving the DIP Facility on a final basis (the "**Final DIP Order**," and together with the Interim DIP Order, the "**DIP Orders**"), Borrower shall be permitted to borrow up to an additional $2,500,000 (subject to approval of the Budget (as defined below) by the DIP Lenders as to any amount in excess of $2,000,000, the "**Subsequent Borrowing**") for the purposes set forth below and in accordance with the Budget (as defined below) and Final DIP Order. All orders entered by the Bankruptcy Court in connection with the DIP Facility shall be satisfactory in form and substance to DIP Lenders in their sole but reasonable discretion. This term sheet, the

DIP Orders, and any documents executed in connection therewith are referenced herein as the "**DIP Facility Documents**".

Term of DIP Facility: Unless otherwise extended in writing by DIP Lenders in their sole discretion, the period from the date on which the Initial DIP Borrowing Conditions (as described below) shall have been met to the earliest of: (i) September 13, 2024; (ii) the occurrence of an Event of Default (as defined below); (iii) the consummation of a sale of substantially all of the Borrower's assets to any entity other than the DIP Lenders, and (iv) the effective date of a confirmed chapter 11 plan (such date, the "**Maturity Date**"); *provided, however*, that if the Maturity Date is triggered as a result of a sale to a bidder other than DIP Lenders, the DIP Loans shall be repaid in full, in cash at the closing of such sale, which closing shall occur not later than the date referenced in item (i) above.

Use of Proceeds: Proceeds of the DIP Loans shall be used by Borrower solely to: (i) fund day-to-day working capital needs of Borrower and expenditures during the Bankruptcy Case, in accordance with the Budget; and (ii) to pay reasonable fees and expenses of restructuring legal and financial advisors or other similar advisors, in each case in accordance with the Budget (collectively, "**Permitted Uses**").

Interest Rates: The rate of 15% per annum on the outstanding principal amount of the DIP Loans, compounded monthly. Interest shall accrue and be payable on the Maturity Date (whether at stated maturity, by acceleration or otherwise). At all times that an Event of Default exists, the non-default interest rate shall be increased by 2.00% per annum. Default interest shall be payable in cash, upon demand.

Fees: A commitment fee of 1.50% of the aggregate DIP Facility amount would be fully-earned, due and payable on the Maturity Date.

Credit Bidding If the Borrower contemplates a sale of substantially all of the Borrower's assets to any entity other than the DIP Lenders, through a restructuring plan or otherwise, then the DIP Lenders shall have the right to credit bid any or all of the obligations owing by Borrower to DIP Lenders under the DIP Facility, including any outstanding accrued interest and fees thereunder. In the event DIP Lenders are not the successful bidders in any sale of the Purchased Assets, the proceeds of any sale of the Purchased Assets to such other successful bidder shall be applied *first* to the repayment in full, in cash of the loan from Celtic, then *second* to the repayment in full, in cash of the DIP Facility at the closing of such transaction.

Optional Prepayments and Commitment Reductions:	No early repayment or prepayment of any obligations permitted under the DIP Facility.
Priority:	Subject to the Carve-Out (as defined in the DIP Orders), all obligations of Borrower under the DIP Facility shall be secured by (i) second-priority liens on and security interests in all assets of the Debtor subordinate to Celtic Bank Corporation ("**Celtic**") and any permitted liens under the loan agreements therewith, (ii) first-priority liens on and security interests in all assets of the Debtor that are not subject to existing liens, including subject to entry of the Final DIP Order, proceeds of avoidance actions, and (iii) superpriority administrative expense claims against Borrower's bankruptcy estate having priority over all administrative expenses of the kind specified in sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, pursuant to the applicable provisions of section 364 of the Bankruptcy Code, provided that such superpriority administrative expense claims shall not be payable from the proceeds of avoidance actions pending entry of the Final DIP Order.
Conditions Precedent to Effectiveness and Initial DIP Borrowing:	The DIP Facility is subject to the following conditions (the "**Initial DIP Borrowing Conditions**") precedent, which must be satisfied by Borrower or waived or modified by DIP Lenders in their sole but reasonable discretion: 1. The filing of the Bankruptcy Case with the Bankruptcy Court on or before June 19, 2024 (such date, the "**Petition Date**"). 2. Receipt and approval by DIP Lenders in their sole but reasonable discretion of the initial Budget. 3. The filing on the Petition Date of a motion for entry of the Interim DIP Order and Final DIP Order (in two stages) (the "**DIP Motion**"). 4. The satisfaction of all Milestones (as defined below). 5. The entry of the Interim DIP Order by the Bankruptcy Court on or before three (3) business days following the Petition Date, which Interim DIP Order shall be in full force and effect, and shall not have been amended, vacated, reversed, modified, rescinded or subject to a presently effective stay pending appeal. 6. All of the "first day orders" entered around the time of commencement of the Bankruptcy Case shall be consistent with

the DIP Facility and the Interim DIP Order and be reasonably satisfactory in form and substance to DIP Lenders in all respects.

7. Receipt of a borrowing notice from Borrower in form and substance reasonably satisfactory to DIP Lenders.

8. Each of the Borrower's representations and warranties shall be true and correct in all material respects on and as of the date of the borrowing, except to the extent such representations and warranties specifically relate to an earlier date.

9. After giving effect to a request for, and the borrowing of, such DIP Loan, the aggregate amount of all DIP Loans would not exceed the commitment amount under the DIP Facility.

10. No Event of Default and no condition which would constitute an Event of Default with the giving of notice or lapse of time or both shall exist.

Conditions Precedent to Each Subsequent Borrowing:

Unless otherwise indicated, the obligation to provide each DIP Loan (including the Initial DIP Borrowing) shall be subject to the satisfaction of the Initial DIP Borrowing Conditions and each of the following, which must be satisfied by Borrower or waived or modified by DIP Lenders in their sole but reasonable discretion:

1. If after giving effect to a request for, and the borrowing of, such DIP Loan, the maximum DIP Lenders' commitment under the DIP Facility would not be exceeded, and the DIP Lenders have approved any increase in the Budget, if any, from the initial Budget

2. For any Subsequent Borrowing, the Final DIP Order shall have been entered, shall be in full force and effect, and shall not have been amended, vacated, reversed, modified or rescinded or subject to a presently effective stay pending appeal.

3. No Event of Default and no condition which would constitute an Event of Default with the giving of notice or lapse of time or both shall exist.

4. Representations and warranties shall be true and correct in all material respects on and as of the date of each DIP Loan, except to the extent such representations and warranties specifically relate to an earlier date.

5. Receipt of a borrowing notice from Borrower in form and substance reasonably satisfactory to DIP Lenders.

6. All orders entered by the Bankruptcy Court in connection with the DIP Loans shall be satisfactory in form and substance to the DIP Lenders in their sole but reasonable discretion.

Representations and Warranties:

The DIP Facility is subject to the following representations and warranties by Borrower (in each case subject to customary materiality, knowledge and other qualifiers), unless waived or modified by DIP Lenders in their sole discretion:

1. The Borrower is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to (x) own its properties and to carry on its business in the state of its incorporation and in each other jurisdiction where it transacts business, (y) to enter into this term sheet and the transactions contemplated hereby, and (z) to carry out the provisions and conditions of this term sheet.
2. Subject to entry of the DIP Orders, the Borrower has the corporate power and authority, and the legal right and authority, to make, deliver and perform this term sheet and each of the other DIP Facility Documents, to borrow and grant the DIP Liens hereunder and to consummate all of the other transactions contemplated hereby and thereby.
3. Subject to entry of the DIP Orders, the execution, delivery and performance of this term sheet are not, and the execution, delivery and performance of each of the other DIP Facility Documents when signed by a duly authorized signatory of the Borrower shall not be, in conflict with nor constitute a breach of any provision contained in the Borrower's organizational documents, nor will it constitute an event of default under any material agreement or instrument to which the Borrower is a party or by which the Borrower is bound or violate any requirement of law.
4. Subject to entry of the DIP Orders, no consent or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other person is required in connection with the execution, delivery, performance, validity or enforceability of this term sheet or the other DIP Facility Documents, the borrowing of the DIP Loans hereunder, the granting of security hereunder or the consummation of any of the other transactions contemplated hereby or thereby.
5. Subject to entry of the DIP Orders, this term sheet has been duly executed and delivered on behalf of the Borrower and constitutes, and each other DIP Facility Document, when signed by a duly authorized signatory of the Borrower, shall

constitute, the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms.

6. Absent relief from stay in the Bankruptcy Case, there are no unstayed actions or proceedings pending by or against the Borrower before any court or administrative agency in which an adverse decision could reasonably be expected to result in damages or costs to the Borrower of greater than $250,000.
7. Subject to entry of the DIP Orders, the security interest granted pursuant to this term sheet creates a valid, enforceable, continuing, fully perfected security interest in favor of the DIP Agent, for the benefit of itself and the DIP Lenders, in all of the collateral in the priorities set forth herein. In addition, subject to entry of the DIP Orders, the DIP Agent and DIP Lenders shall be granted Superpriority Claims pursuant to section 364(c)(1) of the Bankruptcy Code.
8. No tax lien has been filed against assets of the Borrower, and no written claim is being asserted, with respect to any such tax, fee or other charge, which could reasonably be expected to result in damages or costs to the Borrower of greater than $250,000. The Borrower is not overdue in the filing of any tax returns or in the payment of any material amount in respect of taxes.
9. The Borrower has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good and marketable title to (in the case of all other personal property, including, but not limited to, intellectual property) all of its properties and assets.
10. The Borrower is in compliance with the requirements of all applicable laws, except for such laws the noncompliance with which could not reasonably be expected to result in damages or costs to the Borrower of greater than $250,000 in the aggregate. Without limiting the generality of the foregoing, the Borrower has met the minimum funding requirements of the United States Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") with respect to any employee benefit plans subject to ERISA, and no event has occurred resulting from the Borrower's failure to comply with ERISA that could result in the Borrower incurring any material liability. The Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. The Borrower is not engaged principally, or as one of the important activities, in the business of extending

credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). The Borrower has complied with all the provisions of the Federal Fair Labor Standards Act.

11. The Borrower owns or possesses, or could obtain ownership or possession of, on terms not materially adverse to it, all intellectual property necessary for the present conduct of its business, without any known conflict with the rights of others, and free from any burdensome restrictions, except where such conflicts and restrictions could not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

Budget: A 13-week rolling cash budget as approved by DIP Lenders in its sole but reasonable discretion prior to the entry of the Interim DIP Order (and any subsequent approved budget, the "**Budget**"), shall be attached to the DIP Motion and shall reflect on a line-item basis Borrower's anticipated aggregate cash receipts and aggregate working capital expenses for each week covered by the Budget. The Budget will include items for each of the Permitted Uses. For each rolling three-week period in the Budget, aggregate disbursements, on a cumulative basis, shall not exceed 15% of the aggregate amount of projected disbursements for such three-week period. DIP Lenders may also, in writing, authorize the Debtor to exceed the permitted variances. On each monthly anniversary of the Petition Date (as defined below) (or, if such anniversary is not a business day, then on the next succeeding business day), Borrower shall provide DIP Lenders with an updated Budget, including a detailed report of variances on a line-item basis. Subsequent Budgets shall be subject to prior review and approval by DIP Lenders.

Affirmative Covenants: The DIP Facility is subject to the following affirmative covenants (including exceptions) by Borrower, unless waived by DIP Lenders in their sole but reasonable discretion:

1. The Borrower shall: (i) maintain its existence (and will not materially change the nature of its business, dispose of all or a substantial portion of its assets or merge or consolidate with another party), (ii) comply with all applicable requirements of law, including all applicable environmental laws and all anti-corruption, anti-bribery, anti-money laundering and anti-terrorism laws, except for such laws the noncompliance with which could not reasonably be expected to result in damages or costs to the Borrower of greater than $250,000; and (iii) remain qualified to do business in all applicable jurisdictions.

2. Proceeds of the DIP Loans shall be used by Borrower solely: (i) to fund day-to-day working capital needs of the Borrower and expenditures during the Bankruptcy Case in accordance with the Budget; (ii) to pay reasonable fees and expenses of restructuring legal and financial advisors or other similar advisors, in each case in accordance with the Budget; and (iii) provide required funding to the Subchapter V Trustee. No portion of the proceeds of the DIP Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying margin stock or for any other purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System, including Regulation T, U, or X of the Federal Reserve Board.
3. The Borrower agrees that (i) its obligations hereunder shall not be discharged by the entry of an order confirming a Chapter 11 plan (and the Borrower, pursuant to section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge), dismissing the Bankruptcy Case or converting the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, and (ii) the Superpriority Claims and the DIP Liens granted to the DIP Agent and DIP Lenders hereunder and pursuant to the DIP Orders shall not be affected in any manner by the entry of an order confirming a Chapter 11 plan dismissing the Bankruptcy Case or converting the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code.
4. Promptly upon, and in any event within three (3) business days of, becoming aware of the occurrence of any event which constitutes a default or Event of Default, the Borrower shall deliver written notice thereof to the DIP Agent together with a detailed statement by a responsible officer of the Borrower outlining the steps being taken to cure such default or Event of Default.
5. The Borrower shall pay and discharge all post-petition taxes, assessments and governmental charges or levies imposed upon it, or upon its income and profits, prior to the date on which penalties might attach thereto and all lawful claims which, if unpaid, might become a lien upon the assets of the Borrower; provided, however, that the Borrower shall not be required to pay and discharge any such tax, assessment, charge, levy or claim so long as the legality thereof shall be contested in good faith and by appropriate proceedings and for which adequate provision in accordance with GAAP has been made, except that the Borrower shall pay or cause to be paid all such taxes, assessments and governmental charges forthwith upon the commencement of proceedings to sell,

seize or collect any assets attached as security therefor, unless such sale, seizure or collection is stayed by the filing of an appropriate bond.

6. The Borrower shall promptly pay and discharge all post-petition (i) trade accounts payable in accordance with usual and customary business practices, and (ii) claims for work, labor or materials which if unpaid might become a lien upon any of its assets; provided, however, that the Borrower shall not be required to pay any such account payable or claim the payment of which is being contested in good faith and, if necessary, by appropriate proceedings and for which adequate provision as determined in accordance with GAAP has been made, except that the Borrower shall pay or cause to be paid all such accounts payable and claims forthwith upon the commencement of proceedings to foreclose any lien which is attached as security therefor, unless such foreclosure is stayed by the filing of an appropriate bond.
7. The Borrower shall maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity and indemnity for extra expense, (ii) general and professional liability insurance, and (iii) such other insurance coverage in each case against loss or damage of the kinds customarily insured against by persons engaged in the same or similar business of such types and in such amounts as are customarily carried under similar circumstances by such other persons. The Borrower shall deliver to the DIP Agent and DIP Lenders (i) upon the request of the DIP Agent or any DIP Lender from time to time, full information as to the insurance carried, (ii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date hereof, (iii) forthwith, notice of any cancellation or nonrenewal of coverage by the Borrower, and (iv) at least sixty (60) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.
8. The Borrower shall at any time upon the reasonable request of the DIP Agent, at the sole expense of the Borrower, execute or deliver to the DIP Agent any and all financing statements, security agreements, pledges, collateral assignments, amendments to this term sheet or any other DIP Facility Document and all other documents that the DIP Agent may reasonably request in form and substance reasonably

satisfactory to the DIP Agent, to create, perfect, and continue perfected or to better perfect the DIP Liens on the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect the DIP Liens in the Collateral in favor of the DIP Agent and DIP Lenders and in order to fully consummate all of the transactions contemplated under this term sheet. In furtherance and not in limitation of the foregoing, the Borrower shall take such actions as the DIP Agent may reasonably request from time to time to ensure that the DIP Obligations are secured by the collateral.

9. Without limiting Borrower's other obligations under this term sheet and each other DIP Facility Document, all Bankruptcy Court orders, and all other orders entered by the Bankruptcy Court in the Bankruptcy Case, pleadings, motions, applications, judicial information, financial information and other documents to be filed with the Bankruptcy Court that affect or could reasonably be expected to affect the DIP Agent, the DIP Lenders, the DIP Loan facility, the Collateral, the DIP Liens, the Superpriority Claims, Celtic or the Borrower's loan obligations thereto, shall be in form and substance acceptable to the DIP Agent in its reasonable sole discretion.

Negative Covenants: The DIP Facility is subject to the following negative covenants (including exceptions) by Borrower, unless waived by DIP Lenders in their sole but reasonable discretion:

1. Limitations on Indebtedness. The Borrower shall not incur or be obligated on any indebtedness other than: (i) the DIP Obligations; (ii) [reserved]; (iii) current liabilities of the Borrower incurred in the ordinary course of the Borrower's business (including credit card charges or reimbursements for budgeted business expenses incurred postpetition in the ordinary course) or in connection with the Borrower's prosecution of the Bankruptcy Case and not incurred through (A) the borrowing of money, or (B) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services; (iv) endorsements for collection, deposits or negotiation and warranties of products or services, in each case incurred in the ordinary course of business; (v) indebtedness in respect of performance, surety or appeal bonds obtained in the ordinary course of the Borrower's business; and (vi) indebtedness existing as of the Petition Date, including the loan from Celtic.

2. Consolidation, Merger, Sale of Assets, Dissolution, etc. The Borrower shall not (i) directly or indirectly merge into or with or consolidate with any other person or permit any other person to merge into or with or consolidate with it or (ii) sell, assign, lease, transfer, abandon or otherwise dispose of any of its assets, except as otherwise permitted under this term sheet.
3. Changes in Nature of Business. The Borrower shall not engage in any business if, as a result, the general nature of the business which would then be engaged in by the Borrower, considered as a whole, would be substantially changed from the Borrower's business.
4. Organizational Changes. The Borrower shall not, directly or indirectly, amend or otherwise modify any of its organizational documents in a manner materially adverse to the DIP Lenders without the prior written consent of the DIP Lenders, or allow any change in control to occur.
5. Subsidiaries. The Borrower will not acquire or cause to be formed any subsidiaries without the prior written consent of the DIP Lenders.
6. Liens. Except with respect to the DIP Liens, the liens of Celtic and any permitted liens thereunder, Borrower will not mortgage or encumber any of its assets or suffer any liens to exist on any of its assets without the prior written consent of the DIP Lenders.
7. No Contest. The Borrower will not contest the validity, legality, binding effect or priority of the DIP Liens, the DIP Loans, the DIP Facility Documents or the Superpriority Claims.
8. Restricted Investments. Borrower will not, directly or indirectly, make any investments in any person without the prior written consent of the DIP Lenders.
9. Critical Vendors. The Borrower shall not pay any critical vendors for pre-petition claims without (i) the prior written consent of the DIP Lenders, (ii) inclusion of such payments in the Budget, and (iii) an appropriate order from the Bankruptcy Court.
10. Change in Senior Management. Without the prior written consent of the DIP Lenders, the Borrower shall not terminate or make any substantial change in the management duties or discretionary authority of any senior executives of the Borrower.
11. Executive Compensation. The Borrower shall not increase the gross compensation or benefits paid to, for or on behalf of any executive officer or senior management employee of the Borrower without the prior written consent of the DIP Lenders.

12. State of Organization; Location of Chief Executive Office. The Borrower shall not change its state of organization, principal place of business or chief executive office, unless the Borrower has obtained the DIP Agent's prior written consent and has taken such action as is necessary to cause the DIP Liens in the collateral to continue to be a first or second priority, as applicable, fully perfected security interest subject only to Celtic's liens and any permitted liens thereunder.

Event of Default: The DIP Facility is subject to the following events of default (each an "**Event of Default**"), unless waived or modified by DIP Lenders in their sole but reasonable discretion:

1. Borrower's failure to make any payment when due;

2. Borrower's noncompliance with covenants, or breaches of representations and warranties in the DIP Facility Documents;

3. any representation or warranty made by Borrower in the DIP Facility Documents shall prove to have been incorrect in any material respect when made or at any other times specified therein;

4. any other material breach of the DIP Facility Documents;

5. Borrower's failure to satisfy or stay execution of judgments in excess of $250,000;

6. except as otherwise contemplated by the Budget and approved by an order of the Bankruptcy Court, Borrower shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any prepetition indebtedness or payables;

7. the existence of certain materially adverse employee benefit or environmental liabilities;

8. material impairment of the rights provided Borrower under the DIP Facility Documents or DIP Orders;

9. dismissal of the Bankruptcy Case or conversion of the Bankruptcy Case to a Chapter 7 case or denial of Subchapter V election, or Borrower files or fails to oppose a motion (other than one filed by DIP Lenders) seeking such relief;

10. appointment of a trustee (other than the Subchapter V trustee), responsible officer or examiner with enlarged powers relating to the operation of the business of Borrower;

11. granting of relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed against any assets of Borrower in excess of $250,000;

12. filling of motion seeking entry of an order, or entry of an order, confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization that does not require indefeasible repayment in full in cash of the DIP Facility as of the effective date of the plan and/or that does not otherwise comply with the provisions of the DIP Facility Documents or the DIP Orders;

13. entry of an order staying, reversing, vacating or otherwise modifying, without the prior consent of DIP Lenders, the DIP Facility or the DIP Orders;

14. Borrower's failure to comply with the DIP Orders;

15. a change of control with respect to Borrower shall occur;

16. any material provision of the DIP Facility Documents or the DIP Orders shall cease to be valid and binding on Borrower, or Borrower shall so assert publicly or in any pleading filed in any court;

17. an order is entered determining that (i) any of the Borrower's assets are not property of its bankruptcy estate, (ii) the Borrower's assets are not capable of being sold pursuant to section 1123 of the Bankruptcy Code or otherwise, and/or (iii) the Borrower's assets cannot be sold free and clear of any liens, claims or other encumbrances;

18. payment or granting of adequate protection other than to any DIP Lender or Celtic in its capacity as a pre-petition secured lender with respect to any prepetition debt (other than as approved by DIP Lenders and the Bankruptcy Court);

19. entry of an order denying or terminating use of cash collateral by Borrower;

20. cessation of liens or superpriority claims granted with respect to the DIP Facility to be valid, perfected and enforceable in all respects with the priority described herein;

21. rejection of any executory contract or unexpired lease identified as material by DIP Lenders without DIP Lender consent;

22. Borrower's failure to comply with any Milestones (as defined below); and

23. Borrower files, or supports any person filing, a motion seeking standing to assert a claim or challenge to DIP Lenders' liens and claims.

24. Termination or reduction of the exclusivity period for Borrower to file a Chapter 11 plan in the Bankruptcy Case;

Milestones: The DIP Facility and the DIP Orders require Borrower to comply with the following milestones (collectively, the "Milestones"), unless waived or modified by DIP Lenders in their sole but reasonable discretion:

1. On or before the date that is three (3) business days after the Petition Date, the Interim DIP Order shall have been entered by the Bankruptcy Court;

2. On or before July 1, 2024, the Subchapter V Plan shall have been filed;

3. On or before the date that is twenty-eight (28) days after the Petition Date, the Final DIP Order shall have been entered by the Bankruptcy Court; and

4. On or before the date that is seventy-five (75) days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order.

Costs and Expenses: Borrower shall pay all reasonable actual, documented out of pocket fees, costs and expenses of DIP Lenders (including, without limitation, fees and disbursements of counsel, including local counsel, and financial and accounting advisors) in connection with (i) the negotiation, preparation, execution and entry of the DIP Facility Documents, as applicable, regardless of when incurred, (ii) all litigation, contests, disputes, suits, proceedings or actions (whether instituted by DIP Lenders, Borrower or any other person or entity) in any way relating to the DIP Facility or Borrower's affairs, and (iii) the enforcement of any rights and remedies under the DIP Facility Documents, DIP Orders or applicable law. All such fees, costs and expenses that become due and owing after maturity of the DIP Loans

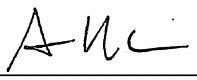
	(whether at stated maturity, by acceleration or otherwise) shall be due and payable on demand.
Indemnification:	Borrower shall indemnify DIP Lenders and their affiliates, successors and assigns against any liability arising in connection with the transactions contemplated hereby (other than in the case of the gross negligence, bad faith or willful misconduct of any indemnified person).
Assignments and Participations:	The DIP Facility Documents shall contain usual and customary assignment provisions subject to Borrower's prior written consent, not to be unreasonably withheld or delayed, except that no such consent shall be required if an Event of Default has occurred and is continuing, or in the case of any such assignment to any affiliate of the DIP Lenders. DIP Lenders shall have free participation rights without the prior written consent of or prior notice to Borrower.
Release:	Upon entry of the Interim DIP Order, as of the Petition Date, Borrower for itself, its affiliates, directors, employees, representatives and assigns, forever and irrevocably discharges and releases the DIP Lenders and each of the DIP Lenders' principals, predecessors, successors, assigns, agents, employees, representatives, attorneys, subsidiaries, affiliates, solely in their capacities as such, from any and all claims, complaints, and lawsuits of any nature whatsoever, known or unknown, suspected or unsuspected, that Borrower (or any of such other persons) has against the DIP Lenders or any of such other persons, in their capacities as such.
Governing Law and Submission to Jurisdiction:	New York except as governed by the Bankruptcy Code.

[signature page follows]

Execution Version

AGREED:

QLESS, INC.



Name: Andrew De Camara
Title: Chief Restructuring Officer

PALISADES GROWTH CAPITAL II, L.P.

Name:
Title:

AGREED:

PALISADES GROWTH CAPITAL II, L.P.
By: Palisades Growth Capital, LLC, its general partner

DocuSigned by:
Anders Richardson
4A568538C57A4E3...

Name: Anders Richardson
Title: Authorized Signatory