UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption In Compliance with D.N.J. LBR 9004-1

Mark C. Errico, Esq.
Squire Patton Boggs (US) LLP
382 Springfield Ave., Suite 300
Summit, NJ 07901
Telephone: (973) 848-5600
Facsimile: (973) 848-5601
Email: mark.errico@squirepb.com

Mark A. Salzberg, Esq. (admitted *pro hac vice*)
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
Telephone: (202) 457-6000
Facsimile: (202) 457-6315
Email: mark.salzberg@squirepb.com

Counsel for Blue Yonder, Inc.

In re:

SAM ASH MUSIC CORPORATION, *et al.*,[1]

Debtor.

Case No. 24-14727 (SLM)

Chapter 11 (Jointly Administered)

Judge Stacey L. Meisel

MOTION TO COMPEL PURCHASER TO
PAY POST-CLOSING DATE CONTRACT EXPENSES

Blue Yonder, Inc. ("**Blue Yonder**"), hereby files this *Motion to Compel Purchaser to Pay Post-Closing Date Contract Expenses* (the "**Motion**") and requests that the Court enter an order compelling the

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). Upon information and belief, the location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

Purchaser (as defined herein) to pay all expenses arising under the Blue Yonder Contract (as defined herein) accruing since the closing date of the Purchaser's acquisition of the Debtors' assets.

In support of this Motion, Blue Yonder relies upon the Certification of Candie Rogers (the "**Rogers Cert.**") dated as of October 25, 2024, which is attached hereto as **Exhibit A** and incorporated herein. Blue Yonder further attached hereto as **Exhibit B** is a proposed order granting this Motion:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue of this case and this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested in this Motion are section 365 of the Bankruptcy Code, Bankruptcy Rules 6006 and 9014 and Local Rule 9013-1.

FACTUAL BACKGROUND

1. Prepetition, Blue Yonder and Debtor Sam Ash Corporation ("**Sam Ash**") were parties to the following agreements:

Name of Contract	**Date**
Sale and License Agreement	3/13/1997
Schedule 1-A: Additional Licensed Software & Maintenance	6/28/2019
Schedule 2-A: Consolidation and Amended Maintenance Schedule	9/21/2019
Schedule 3-A: Additional Licensed Software & Maintenance	10/31/2019
Schedule 4-A: Amended Maintenance Schedule	3/21/2022
Amendment to Master Agreement: Maintenance	12/28/2022

(collectively, the "**Blue Yonder Contract**"). *See* Rogers Cert. ¶3.

2. The Blue Yonder Contract was listed by the Debtors for assumption and assignment, with a cure payment of $9,003.84. *See Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [ECF 152].[2]

3. On June 10, 2024, Blue Yonder filed its *Objection to Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [ECF. 238] (the "**Objection**"), stating that the cure amount under the Blue Yonder Contract was $554,861.74, plus any further amounts that become due and owing up through the date of assumption. Blue Yonder also reserved its right under section 365(b)(3) to object on the grounds of adequate assurance of future performance.

4. On June 28, 2024, the Court entered the *Order (A) Authorizing the Debtors to Enter into an Asset Purchase Agreement, (B) Approving the Asset Purchase Agreement (the "APA"), and (C) Authorizing the Assumption and Assignment of the Assumed Contracts* [ECF 336] (the "**Sale Order**") approving the sale of the Debtors' assets to Organizacion Gonher S.A. De C.V (or one of its designees) (the "**Purchaser**").

5. Paragraph 34 of the Sale Order requires the Purchaser to pay on a current basis all post-Closing Date expenses arising under any Designated Contract for which an objection is pending:

> In the event of an objection by the Contract Counterparty to the Cure Costs asserted by Debtors or the Debtors' ability to assume and assign with regard to any Transferred Contract or Designated Contract (such contract, a "Disputed Contract"), the Debtors, with the consent of Purchaser, shall either settle the objection of such party or shall litigate such objection under procedures as the Bankruptcy Court shall approve and proscribe; **provided, that the Purchaser shall pay to the Debtors on a current basis any post-petition administrative expense arising on or after the Closing**

[2] While the Debtors identified the Blue Yonder contract as "AMENDMENT TO MASTER AGREEMENT: MAINTENANCE", all of the contracts are integrated and constitute one agreement. Furthermore, subsequent discussions confirmed that the Debtors were referring to the Blue Yonder Contract as defined above.

> **Date under such Disputed Contract, pending the determination whether such Disputed Contracts will be assumed and assigned or rejected**.

(emphasis added).

6. On July 22, 2024, the Debtors filed the *Notice of Closing of Sale of the Debtors' Assets to Organizacion Gonher S.A. De C.V* [ECF. 387] (the "**Sale Notice**") stating that the sale to the Purchaser closed on July 19, 2024 (the "**Closing Date**"). The Sale Notice also identified the Blue Yonder Contract as one of the "Designated Contracts."

7. The original deadline (the "**Designation Rights Period**") for the Purchaser to determine which executory contracts and unexpired leases it wanted to acquire pursuant to section 365 of the Bankruptcy Code was October 17, 2024. However, by notice filed on October 17, 2024 [ECF 541] (the "**Extension Notice**"), the Liquidating Trustee, with the consent of the Purchaser, extended the Designation Rights Period for a period of thirty (30) days, until November 16, 2024. In the Extension Notice, the Liquidating Trustee expressly reserved the right to further extend the Designation Rights Period.

8. Blue Yonder has been in discussions with the Purchaser since the Closing Date concerning the potential assumption and assignment of the Blue Yonder Contract. Although these discussions continue, there is no certainty that an agreement will be reached. Furthermore, based on the Extension Notice, the Liquidating Trustee may further extend the Designation Rights Period. This means that Blue Yonder, which has been performing under the Blue Yonder Contract throughout this bankruptcy, s*ee* Rogers Cert. ¶4, will be required to continue to provide services to the Purchaser under the Blue Yonder Contract without any assurance of being paid.

9. As of October 31, 2024, the sum of $155.180.66 will have accrued under the Blue Yonder Contract since the Closing Date, which amount is calculated as follows:

Product	**Annual Rate**	**No. of Contract Days**	**Per diem rate**	**Days Post Closing Date**	**Accrued Charges**
MMHF – Batch	$ 640.43	364	$1.76	104	$182.98
Oracle Software	$ 187,736.36	364	$515.76	104	$53,638.96
MMHF	$ 355,730.14	365	$974.60	104	$101,358.72
					$ 155,180.66

See Rogers Cert. ¶6. The Purchaser's obligations under the Blue Yonder Contract continue to accrue at a *per diem* rate of $1,492.12. *See id.* ¶7.

MEMORANDUM OF LAW

10. "It is axiomatic that a court possesses the inherent authority to enforce its own orders." *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 325 (Bankr. D. Del. 1999), *aff'd sub nom. In re Cont'l Airlines*, No. 90-932, 2000 WL 1425751 (D. Del. Sept. 12, 2000), *aff'd sub nom. In re Cont'l Airlines, Inc.*, 279 F.3d 226 (3d Cir. 2002); *In re Congoleum Corp.*, No. 03-51524, 2005 WL 712540, *5 (Bankr. D. N.J. Mar. 24, 2005) (stating that a "bankruptcy court has inherent authority to enforce its own order") (citations omitted). In fact, a court may hold a party in contempt for failure to comply with the court's prior orders. *See In re Kwok*, Case No. 22-50073 (JAM), 2023 WL 11920546, *4 (D. Conn. Mar. 10, 2023) (noting that "[t]his Court has the inherent power to hold parties in contempt of court under 11 U.S.C. § 105(a)" and that contempt may be sought to "coerce the defendant into compliance" with a court order) (citations omitted).

11. Blue Yonder respectfully submits that this Court should enter an order compelling the Purchaser to comply with the terms of the Sale Order and to pay the Liquidating Trustee[3] all amounts due under the Blue Yonder Contract for the period following the Closing Date up through

[3] Blue Yonder would prefer the expenses be paid directly to Blue Yonder without first being paid to the Liquidating Trustee as there appears to be no reason to delay payment any further, especially given Blue Yonder's continuing and uninterrupted post-Closing Date contractual performance.

the earlier of (a) the end of the Designation Rights Period, or (b) the date the Blue Yonder Contract is assumed or rejected.[4]

12. Furthermore, because of the Purchaser's continuing delay in complying with Paragraph 34 of the Sale Order, Blue Yonder requests a waiver of the stay imposed by Bankruptcy Rules 6004(h) and/or 6006(d).

WHEREFORE, for the foregoing reasons, Blue Yonder respectfully requests that the Court enter an order directing the Purchaser to pay to the Liquidating Trustee, for the benefit of Blue Yonder, all expenses arising under the Blue Yonder Contract since the Closing Date.

Date: October 25, 2024

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Mark C. Errico
Mark C. Errico, Esq.
382 Springfield Ave., Suite 300
Summit, NJ 07901
Telephone: (973) 848-5600
Facsimile: (973) 848-5601
Email: mark.errico@squirepb.com

Mark A. Salzberg, Esq. (admitted *pro hac vice*)
2550 M Street, N.W.
Washington, DC 20037
Telephone: (202) 457-6000
Facsimile: (202) 457-6315
Email: mark.salzberg@squirepb.com

Counsel to Blue Yonder, Inc.

[4] If the Blue Yonder Contract is assumed and assigned, these post-Closing Date amounts would be payable as a cure pursuant to section 365(b) of the Bankruptcy Code.

EXHIBIT A

Certification of Candie Rogers

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption In Compliance with D.N.J. LBR 9004-1

Mark C. Errico, Esq.
Squire Patton Boggs (US) LLP
382 Springfield Ave., Suite 300
Summit, NJ 07901
Telephone: (973) 848-5600
Facsimile: (973) 848-5601
Email: mark.errico@squirepb.com

Mark A. Salzberg, Esq. (*pro hac vice* pending)
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
Telephone: (202) 457-6000
Facsimile: (202) 457-6315
Email: mark.salzberg@squirepb.com

Counsel for Blue Yonder, Inc.

In re:

SAM ASH MUSIC CORPORATION, *et al.*,[1]

Debtor.

Case No. 24-14727 (SLM)

Chapter 11 (Jointly Administered)

Judge Stacey L. Meisel

CERTIFICATION OF CANDIE ROGERS

I, Candie Rogers, hereby certify as follows:

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). Upon information and belief, the location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

1. I am Global Leader of Customer Retention for Blue Yonder, Inc. ("**Blue Yonder**"). I have personal, first-hand knowledge of the following facts and information and I am competent to testify as to same.

2. I submit this Certification in support of Blue Yonder's *Motion to Compel Purchaser to Pay Post-Closing Date Contract Expenses* (the "**Motion**"). All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

3. Prior to the Debtors filing bankruptcy on May 8, 2024 (the "**Petition Date**"), Blue Yonder and the Debtor Sam Ash Corporation ("**Sam Ash**") were parties to the following agreements:

Name of Contract	**Date**
Sale and License Agreement	3/13/1997
Schedule 1-A: Additional Licensed Software & Maintenance	6/28/2019
Schedule 2-A: Consolidation and Amended Maintenance Schedule	9/21/2019
Schedule 3-A: Additional Licensed Software & Maintenance	10/31/2019
Schedule 4-A: Amended Maintenance Schedule	3/21/2022
Amendment to Master Agreement: Maintenance	12/28/2022

(collectively, the "**Blue Yonder Contract**").

4. Blue Yonder has continued to perform under the Blue Yonder Contract since the Petition Date, including, but not limited to, providing maintenance service and support for the software provided to Sam Ash and the Purchaser.

5. Neither Sam Ash nor the Purchaser has paid any amounts accruing under the Blue Yonder Contract since the Petition Date.

6. As of October 31, 2024, the sum of **$155,180.66** will have accrued under the Blue Yonder Contract since the Closing Date, which amount is calculated as follows:

Product	**Annual Rate**	**No. of Contract Days**	**Per diem rate**	**Days Post Closing Date**	**Accrued Charges**
MMHF – Batch	$ 640.43	364	$1.76	104	$182.98
Oracle Software	$ 187,736.36	364	$515.76	104	$53,638.96
MMHF	$ 355,730.14	365	$974.60	104	$101,358.72
					$ 155,180.66

7. The Purchaser's obligations under the Blue Yonder Contract continue to accrue at a *per diem* rate of **$1,492.12**.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 25, 2024.

Candie Rogers

EXHIBIT B

Proposed Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

Mark C. Errico, Esq.
Squire Patton Boggs (US) LLP
382 Springfield Ave., Suite 300
Summit, NJ 07901
Telephone: (973) 848-5600
Facsimile: (973) 848-5601
Email: mark.errico@squirepb.com

Mark A. Salzberg, Esq. (*pro hac vice* pending)
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
Telephone: (202) 457-6000
Facsimile: (202) 457-6315
Email: mark.salzberg@squirepb.com

Counsel for Blue Yonder, Inc.

In Re: SAM ASH MUSIC CORPORATION, *et al.*,[1]	Case No 24-14727 (SLM) Chapter: 11 (Jointly Administered) Hearing Date: November 26, 2024 at 10:00 a.m. Judge: Stacey L. Meisel

ORDER GRANTING MOTION TO COMPEL PURCHASER TO
<u>PAY POST-CLOSING DATE CONTRACT EXPENSES</u>

The relief set forth on the following pages, numbered two (2) through three (3) is **ORDERED**.

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). Upon information and belief, the location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

This case came before the Court upon the *Motion to Compel Purchaser to Pay Post-Closing Date Contract Expenses* (the "**Motion**") filed by Blue Yonder, Inc. ("**Blue Yonder**"), and the Court having jurisdiction to enter this Order and the relief requested therein in accordance with 28 U.S.C. §§ 157(a), (b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b), and this Court may enter a final order consistent with Article III of the United States Constitution; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been adequate and appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion, it is hereby ORDERED THAT:

1. The Motion is hereby GRANTED.

2. The Purchaser[2] shall pay to the Liquidating Trustee the sum of $155,180.66 representing all expenses accruing under the Blue Yonder Contract since the Closing Date through October 31, 2024.

3. Beginning on December 1, 2024, and continuing on the first day of each month thereafter until the earlier of (a) the end of the Designation Rights Period, or (b) the date the Blue Yonder Contract is assumed or rejected, the Purchaser shall pay to the Liquidating Trustee all expenses accruing under the Blue Yonder Contract for the prior month using a per diem accrual rate of $1,492.12.

---

[2] All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Debtors: SAM ASH MUSIC CORPORATION, *et al.*,[1]
Case No: 24-14727 (SLM)
Caption of Order: ORDER GRANTING MOTION TO COMPEL PURCHASER TO PAY POST-CLOSING DATE CONTRACT EXPENSES

---

4. This Order is without prejudice to the rights of Blue Yonder to seek payment from the Liquidating Trustee of all sums paid by the Purchaser to the Liquidating Trustee in accordance with this Order.

5. The Court shall retain jurisdiction to hear and determine all matters arising from and related to the implementation, interpretation and/or enforcement of this Order.

****

Attorney Mark A. Salzberg is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and to file a proof of service within three days of entry of this order.