November 5, 2014

Ms. Susan Cosper  
Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116


Dear Ms. Cosper:

We appreciate the opportunity to respond to the Financial Accounting Standards Board’s proposed Accounting Standards Update (ASU) regarding the accounting by customers for fees paid in cloud computing arrangements. Groupon, Inc. is an extensive user of Internet-based application software hosted by third parties and we strongly support the FASB’s efforts to improve the accounting for such cloud computing arrangements. However, we believe that the proposed ASU does not result in improvements to financial reporting and perpetuates unnecessary complexity for users of financial statements.

We believe that complexity in financial reporting is reduced by aligning accounting guidance with the economics of the underlying transactions, such that similar arrangements are accounted for in a similar manner. For the reasons described herein, we do not believe that the proposed ASU accomplishes this objective. Additionally, we do not believe that aligning a purchaser’s accounting for goods or services with the provider’s revenue recognition is always the most appropriate strategy for reducing complexity in financial reporting. Rather, we believe that improvements to financial reporting are better attained by identifying the underlying deliverables in an arrangement and then establishing an accounting framework that reflects the nature of those deliverables.

Cloud computing arrangements are generally accounted for in practice today as single-element service transactions (i.e., executory contracts). Under that accounting model, no software-related intangible asset is recognized by purchasers in cloud computing arrangements and none of the subsequent cost is recognized as amortization expense. This differs from the accounting applied by licensees of on-premise software who would typically recognize a software-related intangible asset, provided that recognition of the asset is appropriate under the guidance in ASC 350-40, and classify the subsequent cost as amortization expense. Although EBITDA-based measures constitute non-GAAP information, they are nonetheless widely used by investors for a variety of purposes, including the application of market multiples to assess valuation. Consequently, we believe that accounting guidance resulting in a more consistent presentation of software costs, regardless of whether the purchaser elects to maintain the underlying software on its own servers in an on-premise arrangement or contracts to have it maintained on a third party’s servers in a cloud computing arrangement, would reduce complexity for users of financial statements by increasing comparability between economically similar transactions. This differs from the proposed ASU, which would perpetuate the current inconsistencies in accounting for software costs.

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The Basis for Conclusions to the proposed ASU specifies that if a cloud computing arrangement includes a license to internal-use software, then the software license would be accounted for by the customer in accordance with Subtopic 350-40. It further states that some arrangements may include one or more licenses to software as well as a promise to provide services, in which case the customer should allocate the contract consideration between the license(s) and the service element(s). We agree with both of those conclusions. However, we disagree with the criteria for determining whether a software deliverable is present, which are based on a “physical possession” principle. To the contrary, we believe that a cloud computing arrangement always includes a software deliverable. The right to use software constitutes an intangible asset, not a physical asset. As such, an evaluation based on whether a customer can take physical possession is inherently flawed and inconsistent with the recognition criteria for other intangible assets. For example, ASC 805 does not include a recognition criterion to evaluate whether an acquirer in a business combination can physically possess intangible assets such as customer relationships.

Although the terms of individual cloud computing arrangements vary, in many cases the functionality and utility of a software platform, including the customer’s ability to customize and integrate the software with other components of its overall information technology environment, are substantially the same regardless of whether the software is obtained through an on-premise license or a cloud computing arrangement. Additionally, the customer is typically prohibited from selling or sub-licensing the software to third parties under either type of arrangement. As such, an evaluation of the customer’s ability to control such software would often be substantially identical regardless of who owns the servers on which it resides. The key economic difference between the two types of arrangements is that in an on-premise solution, the customer must purchase or lease its own servers, while in a cloud computing arrangement it contracts with the vendor to host the software. Prior to entering into contracts for cloud computing arrangements, many software vendors actually provide the customer with the option to either license on-premise software or enter into a cloud computing agreement where the software is maintained on the vendor’s servers. We believe that a decision to purchase hosting services by entering into a cloud computing arrangement is an additional deliverable that should be separately accounted for as an executory contract. However, because the customer’s rights to use the underlying software are often the same regardless of whether it enters into an on-premise license agreement or a cloud computing arrangement, we believe that the accounting treatment for the right to use that software should be consistent as well. We also encourage the Board to reach out to investors regarding whether they believe that a potentially significant difference in EBITDA-related measures for the cost of software applications is justified based solely on whether the software is (or can be) maintained on an entity’s own servers or whether it must be hosted by a third party.

If the Board ultimately decides to finalize the proposed ASU in its current form, we believe that additional guidance is necessary to clarify the framework for evaluating whether the customer has the ability to take delivery of the software without incurring significant cost. Specifically, we believe that the final guidance should clarify whether “significant cost” refers solely to incremental amounts payable to the vendor or whether it includes other types of costs as well. For example, if a particular entity has excess server capacity, it may be able to download software without incurring the potentially significant costs of additional servers. However, if the same entity had no excess server capacity such that it would be necessary to purchase or lease additional servers, then it may conclude that it is unable to take delivery of the software without incurring significant cost. Additionally, an entity that operates internationally may incur more incremental costs of taking delivery of software, including server-related costs in multiple jurisdictions, than an entity with domestic operations only. Also, an entity’s conclusion as to whether it can take delivery of software without incurring significant cost could potentially change from period-to-period depending on its facts and circumstances at the balance sheet date and it is unclear whether the evaluation of significant cost is performed only at inception of the arrangement or on an ongoing basis. To improve comparability in financial reporting by minimizing the circumstances in which entities may reach different conclusions as to the presence of a software deliverable in identical contracts depending on their entity-specific facts and circumstances, we recommend that the final ASU clarify that the
significant cost analysis only includes incremental amounts that would be owed to the vendor in the event that the entity elects to take delivery of the software.

Appendix A to this letter provides our responses to the specific questions raised in the Exposure Draft.

If you have any questions about our comments or wish to discuss any of the matters addressed throughout, please contact me at 312-334-1579.

Respectfully submitted,

Brian C. Stevens  
Chief Accounting Officer  
Groupon, Inc.
Appendix A: Responses to the questions set out in the Exposure Drafts

**Question 1:** Should a customer in a cloud computing arrangement evaluate whether the arrangement involves a software license by applying the criteria in paragraphs 350-40-15-4A through 15-4C? If not, what guidance should be applied and why?

No, for the reasons set forth in the body of this letter we do not believe that a customer should evaluate whether the arrangement involves a software deliverable by applying the criteria in paragraphs 350-40-15-4A through 15-4C. We believe that comparability in accounting for software costs would be significantly improved if the Board were to conclude that all cloud computing arrangements contain a software deliverable that should be recognized as an intangible asset.

**Question 2:** Should an entity be permitted to elect prospective or retrospective transition?

Yes, we agree with permitting entities to elect either prospective or retrospective transition.

**Question 3:** Should the amendments in this proposed Update be effective for:

a. Public business entities for annual periods, including interim periods within those annual periods, beginning after December 15, 2015, with early adoption permitted?

b. All other entities for annual periods beginning after December 15, 2015, and interim periods in annual periods beginning after December 15, 2016, with early adoption permitted?

Yes, we agree with proposed transition periods.