Tel: 312-856-9100
Fax: 312-856-1379
www.bdo.com

330 North Wabash, Suite 3200
Chicago, IL 60611

June 30, 2015

Via email to director@fasb.org

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

Re: Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing (File Reference No. 2015-250) ("the ED")

Dear Ms. Cosper:

We are pleased to provide comments on the Board's proposed clarifications to the new revenue standard regarding the identification of performance obligations and licenses of intellectual property. Overall, we support the proposed changes and believe they will promote more consistent outcomes when the new revenue standard is adopted. In particular, we believe the distinction between "functional" and "symbolic" forms of intellectual property represents an appropriate and practical split along an admittedly wide spectrum of transactions.

We have several suggestions for clarifying the final amendments, which are included in our responses to the Board's specific questions in the appendix to this letter.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Adam Brown at (214) 665-0673 or Ken Gee at (415) 490-3230.

Very truly yours,

BDO USA, LLP

BDO USA, LLP

Appendix

Question 1: Paragraphs 606-10-25-14(b) through 25-15 include guidance on accounting for a series of distinct goods or services as a single performance obligation. Should the Board change this requirement to an optional practical expedient? What would be the potential consequences of the series guidance being optional?

We have no strong feelings about changing the series requirement to an optional practical expedient. While we would not object to it, we are not aware of widespread requests for this change.

If the Board provides such an option, we recommend the final amendments clarify whether the expedient should be applied as an accounting policy election, and if so, the appropriate level at which it would apply. For example, would it be an entity-wide election? If not, would it be made for certain customer classes or types of transactions, or perhaps at the individual contract level?

We also recommend providing more clarity as to the Board's intent for providing the option, which is not otherwise apparent in the proposal. That is, are materially different outcomes envisioned for entities making the election compared to those that do not? The Board could clarify its intent either in the basis for conclusions or by including examples to demonstrate application of the expedient.

Question 2: Paragraph 606-10-25-16A specifies that an entity is not required to identify goods or services promised to a customer that are immaterial in the context of the contract. Would the proposed amendment reduce the cost and complexity of applying Topic 606? If not, please explain why.

We agree that the proposed amendment regarding immaterial promises would be an improvement. We also recommend additional changes to the basis for conclusions on this point. As the Board is aware, many stakeholders found the language in paragraph BC90 of ASU 2014-09 problematic, perhaps requiring the identification of an unreasonably large number of performance obligations. We believe the language in the basis for conclusions to this ED more clearly conveys the Board's intentions, particularly with the statement that the number of performance obligations identified under the new revenue standard should not be significantly more than under existing revenue guidance in most cases. As such, we believe the basis for conclusions in the final amendments should clearly state it "clarifies and supersedes" paragraph BC90 in ASU 2014-09, perhaps as an element of the discussion in BC7 through BC17.

We note an affirmative statement to that effect would be similar to the approach used for the revisions to the license guidance in this ED. That is, paragraphs BC53-BC54 of the ED explicitly supersede BC407 of ASU 2014-09 in the context of determining the nature of an entity's promise to grant a license. Without similar closure for the identification of performance obligations, practitioners may be confused by the apparent inconsistency in the way these two topics are discussed in the basis for conclusions of the final amendments.

Question 3: Paragraph 606-10-25-18A permits an election to account for shipping and handling as an activity to fulfill a promise to transfer a good if the shipping and handling activities are performed after a customer has obtained control of the good. Would the proposed amendment reduce the cost and complexity of applying Topic 606? If not, please explain why.

We support providing the election to account for shipping and handling in this manner.

Question 4: Would the revisions to paragraph 606-10-25-21 and the related examples improve the operability of Topic 606 by better articulating the separately identifiable principle and better linking the factors to that principle? If not, what alternatives do you suggest and why?

We agree that the proposed revisions to paragraph 606-10-25-21 and the related examples improve the operability of Topic 606. In light of that goal, we offer the following suggestions.

First, we recommend elevating the following concept from the implementation guidance to paragraph 606-10-25-21 to clarify that in all contracts, no single factor individually determines an entity's conclusion about whether promises to transfer goods or services to the customer are separately identifiable: "Each of the factors in paragraph 606-10-25-21 contributes to, but is not individually determinative of, the conclusion that the equipment and the installation services are not inputs to a combined item in this contract." Otherwise, it is unclear why the Board would stress that no factor is determinative in the context of a single example.

Second, we question how the following statement in paragraph 606-10-55-140A[2] impacts the identification of performance obligations: "The initial design of the devices is specific to the customer and was completed before the entity and the customer entered into the contract, and it is not part of the current negotiated exchange." Perhaps clarifying the nature of the device or explaining why the design phase was excluded from this project would improve its understandability.

Question 5: Would the revisions to paragraphs 606-10-55-54 through 55-64, as well as the revisions and additions to the related examples, improve the operability of the implementation guidance about determining the nature of an entity's promise in granting a license? That is, would the revisions clarify when the nature of an entity's promise is to provide a right to access the entity's intellectual property or to provide a right to use the entity's intellectual property as it exists at the point in time the license is granted? If not, what alternatives do you suggest and why?

We generally support the proposed revisions to paragraphs 606-10-55-54 through 55-64, as well as the revisions and additions to the related examples. However, please refer to our response to Question 7.

Question 6: The revisions to paragraph 606-10-55-57 that state an entity should consider the nature of its promise in granting a license of intellectual property when accounting for a single performance obligation. Does this revision clarify the scope and applicability of the licensing implementation guidance? If not, why?

We recommend the Board further clarify in the final amendments *how* this analysis should be performed.

First, we note the proposed revision of paragraph 55-57 does not contemplate whether the license in a combined performance obligation is predominant, or not. Consequently, it appears any combined performance obligation—regardless of the relative significance of the license component—would require this evaluation. We suspect that the relative weighting of the license

[2] Example 10, Case B - Significant Integration Service (Multiple Items)

in the analysis would reflect its significance to the combined performance obligation. In other words, a combined performance obligation that includes a relatively insignificant license would be analyzed without significant regard for the license component. If our understanding is not accurate, then we believe further clarification is necessary.

Second, we suggest the Board illustrate its intended analysis in the context of the customized software example in paragraphs 606-10-55-146 through 55-150. In Cases B – D, the software license i) is not distinct, but ii) is a clearly significant element in the arrangement. Despite the requirement in paragraph 55-57 to consider the nature of a promise in granting a license in a combined performance obligation, the implementation guidance does not illustrate how this requirement impacts the rest of the rest of the revenue recognition analysis.

Question 7: Would the revisions to paragraph 606-10-55-64 adequately communicate the Board's intent (a) that restrictions of time, geographical region, or use in a license of intellectual property are attributes of the license (and, therefore, do not affect the nature of an entity's promise in granting a license or its assessment of the goods or services promised in a contract with a customer) and (b) about determining when a contractual provision is a restriction of the customer's right to use or right to access the entity's intellectual property? If not, what alternatives do you suggest and why?

We believe the first part of the revisions to paragraph 55-64 are appropriate and understandable, i.e., that restrictions are generally an attribute of the license that do not affect the nature of an entity's promise.

We find the second part of the revisions unclear and seemingly inconsistent with the first part. The last sentence added to paragraph 55-64(a) states that "an entity assesses whether a contractual provision defines the scope of the customer's right to use or right to access the intellectual property to determine whether that provision is a restriction." This statement is unclear because it does not indicate what the alternative is when a contractual provision does not represent a restriction. The related implementation guidance in Example 61A, Case B and Example 61B—which both address certain types of contractual restrictions—appears inconsistent with the notion that restrictions are generally an attribute of the license.

Example 61A, Case B concludes that the fifth season of a television series is distinct from the first four seasons. While we appreciate the analysis explaining that conclusion, we do not find it persuasive. That is, the same factors indicating Season 5 is distinct also suggest that Seasons 1-4 are distinct from each other. We find it a more natural extension of the "restrictions" guidance to conclude a contractual provision to deliver Season 5 when and if it is available is a characteristic of a single, combined license to deliver a television series.

Example 61B indicates a movie that can be shown in one week per year for three years is a single license, rather than three distinct licenses. We agree with this analysis. However, the same contract imposes a restriction under which the movie cannot be broadcast in years four through seven, only to be broadcast again in years eight through 10. The ED indicates that the restriction in years four through seven is a "substantive period of time" that results in treating years eight through 10 as a distinct license. During the restriction period, the original customer is deemed to have "effectively revoked" its rights. Again, we do not find this analysis persuasive. We note the customer understood the nature of the restriction in years four through seven at the inception of the license. Therefore, we do not agree the customer can effectively revoke a right it never had. We believe that restriction is more naturally viewed as a characteristic of a single 10-year license.

If the Board adopts these examples as proposed, we believe it will be difficult for practitioners who are not movie production companies to determine when their license agreements would meet these conditions. The underlying concepts appear to incorporate notions of exclusivity, a concept the Board has previously considered and rejected during its deliberations of license transactions. These two examples would also appear to have the unintended effect of creating industry-specific guidance, which the Board generally sought to avoid in BC38 of the ED.

Question 8: Would paragraphs 606-10-55-65 through 55-65B and the related example clarify the scope and applicability of the guidance on sales-based and usage-based royalties promised in exchange for a license of intellectual property? If not, what alternatives do you suggest and why?

We support the proposed amendments to paragraphs 606-10-55-65 through 55-65B. We recommend the Board further clarify within paragraph BC60 of the final amendments that a license of intellectual property can only be "predominant" when the customer would ascribe significantly more value to the license than to the other goods or services to which the royalty relates, consistent with paragraph 606-10-55-65A. Otherwise, it is unclear whether that notion is limited to the example in paragraph 55-65A.