

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

2U, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11279 (MEW)

(Jointly Administered)

Related Docket Nos. 14 & 49

**FINAL ORDER (A) PROHIBITING UTILITY COMPANIES FROM
ALTERING, REFUSING, OR DISCONTINUING UTILITY
SERVICES; (B) APPROVING THE DEBTORS' PROPOSED
FORM OF ADEQUATE ASSURANCE OF PAYMENT FOR UTILITY SERVICES;
(C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR
ADDITIONAL ADEQUATE ASSURANCE; AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “*Motion*”)² of the Debtors for an order (this “*Final Order*”)
(a) prohibiting the Debtors’ utility service providers (the “*Utility Companies*”) from altering,
refusing, or discontinuing service to, or discriminating against, the Debtors; (b) approving an
adequate assurance deposit as adequate assurance of postpetition payment to the Utility
Companies; (c) establishing procedures for resolving any subsequent requests by the Utility
Companies for additional adequate assurance of payment; and (d) granting related relief; and this
Court having reviewed the Motion and the First Day Declarations; and this Court having
determined that the relief requested in the Motion is in the best interests of the Debtors, their
estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider
the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: 2U, Inc. (5939); edX LLC (8554); 2U GetSmarter, LLC (9643); 2U Harkins Road LLC (N/A); 2U NYC, LLC (N/A); 2U KEIH Holdco, LLC (3837); CritiqueIt, Inc. (5532); edX Boot Camps LLC (8904); and 2U GetSmarter (US), LLC (9802). The Debtors’ mailing address is 2345 Crystal Drive, Suite 1100, Arlington, Virginia 22202.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated January 31, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held, if necessary, to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declarations and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Except as provided herein, absent further order of this Court, all Utility Companies identified on the attached **Exhibit 1** (as amended from time to time, the “*Utility Services List*”), are prohibited from altering, refusing, or discontinuing services to, or discriminating against, the Debtors solely on the basis of the commencement of these Chapter 11 Cases, a debt owed by the Debtors for Utility Services rendered before the Petition Date, or any perceived inadequacy of the Proposed Adequate Assurance.
4. As adequate assurance of payment to Utility Companies for postpetition Utility Services, the Debtors shall deposit cash in the amount of \$4,216 which is equal to one-half of the Debtors’ approximate monthly payment for all Utility Services based on the Debtors’ average

payments over a twelve (12)-month period (the “*Utility Deposit*”), into a segregated, interest-bearing account (the “*Adequate Assurance Account*”). The Adequate Assurance Account shall be (a) segregated from other funds; (b) be available only for the purposes set forth in this Final Order; and (c) not be subject to any liens or security interests of any lender or any other party other than the Utility Companies.

5. Any Utility Company that is paid in advance for Utility Services shall be deemed to have received adequate assurance of payment satisfactory to such Utility Company as required by section 366 of the Bankruptcy Code.

6. Except as provided herein with respect to Utility Companies’ rights, the Debtors’ creditors shall have no interest in, or lien on, the Utility Deposit or the Adequate Assurance Account.

7. The portion of the Utility Deposit attributable to each Utility Company shall be returned to the Debtors on the earlier of (a) the Debtors’ termination of services from such Utility Company, *provided* that the Debtors obtain the affected Utility Company’s consent to do so or serve upon the affected Utility Company a notice of the Debtors’ intent to reduce the Utility Deposit within fourteen (14) days thereof and receive no response thereto; (b) entry of an order of this Court authorizing the return of such Utility Deposit to the Debtors; or (c) the effective date of a chapter 11 plan in these Chapter 11 Cases (at which time the Utility Deposit shall automatically, without further order of this Court, be returned to the Debtors or the reorganized Debtors, as applicable).

8. The following procedures (the “*Adequate Assurance Procedures*”) to resolve objections to the Debtors’ Proposed Adequate Assurance are approved:

- (a) Any Utility Company dissatisfied with the Proposed Adequate Assurance may make an additional adequate assurance request in writing (each an “*Additional*”

Adequate Assurance Request”), that sets forth (i) the amount and form of additional or alternative assurance of payment requested; (ii) the type of Utility Services provided and the location(s) where such Utility Services are provided; (iii) a summary of any security deposits provided by the Debtors to such Utility Company; (iv) an explanation as to why the Utility Company believes the Proposed Adequate Assurance is insufficient; and (v) an email address to which the Debtors may respond to the Additional Adequate Assurance Request.

- (b) Any such Additional Adequate Assurance Request must be served on: (a) 2U, Inc., 2345 Crystal Drive, Suite 1100, Arlington, Virginia 22202 (Attn: Matthew Norden (mnorden@2u.com) and Lillian Brownstein (lbrownstein@2u.com)); (b) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020 (Attn: George A. Davis (george.davis@lw.com), George Klidonas (george.klidonas@lw.com), Anupama Yerramalli (anu.yerramalli@lw.com), Randall C. Weber-Levine (randall.weber-levine@lw.com) and Scott Yousey (scott.yousey@lw.com)), proposed counsel for the Debtors.
- (c) The Debtors may, in their discretion and without further order of this Court, resolve any Additional Adequate Assurance Request by mutual agreement with the objecting Utility Company, and in connection with such resolution, may provide a Utility Company with alternative assurance of payment in accordance with the Approved Budget, to the extent the Debtors believe such alternative assurance is reasonable in the exercise of their business judgment, including, but not limited to, cash deposits, letters of credit, prepayments, or other forms of security.
- (d) If the Debtors are unable to reach a resolution with an objecting Utility Company regarding an Additional Adequate Assurance Request, the Debtors may request a hearing (a “**Determination Hearing**”) before this Court (which hearing may be the next regularly scheduled omnibus hearing) to determine the adequacy of the Proposed Adequate Assurance; *provided*, that the Debtors, with the consent of such Utility Company, may continue any unresolved Additional Adequate Assurance Request to a hearing date after the Determination Hearing, and *provided, further*, that the any objecting Utility Company will be prohibited from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any unpaid charges for prepetition Utility Services or any perceived inadequacy of the Proposed Adequate Assurance, pending resolution of any Additional Adequate Assurance Request.
- (e) Any Utility Company that does not make an Additional Adequate Assurance Request as described above will be deemed to have received adequate assurance of payment satisfactory to such Utility Company as required by section 366 of the Bankruptcy Code.
- (f) All Utility Companies, including any Additional Utility Companies (subject to service of this Motion and any related orders), will be prohibited from altering,

refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any unpaid charges for prepetition Utility Services or any perceived inadequacy of the Proposed Adequate Assurance, subject to such Utility Company's right to seek modification of the Proposed Adequate Assurance under the Adequate Assurance Procedures, unless otherwise ordered by this Court.

9. If an amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account (a "***Disbursement Request***") by giving written notice to: (a) United States Trustee, U.S. Department of Justice, Office of the U.S. Trustee, 1 Bowling Green, Room 534, New York, NY 10004 (Attn: Rachael E. Siegel (rachael.e.siegel@usdoj.gov), Daniel Rudewicz (daniel.rudewicz@usdoj.gov), and Brian Masumoto (brian.masumoto@usdoj.gov)); (b) 2U, Inc., 2345 Crystal Drive, Suite 1100, Arlington, Virginia 22202 (Attn: Matthew Norden (mnorden@2u.com) and Lillian Brownstein (lbrownstein@2u.com)); and (c) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020 (Attn: George A. Davis (george.davis@lw.com), George Klidonas (george.klidonas@lw.com), Anupama Yerramalli (anu.yerramalli@lw.com), Randall C. Weber-Levine (randall.weber-levine@lw.com) and Scott Yousey (scott.yousey@lw.com)), proposed counsel for the Debtors. A Disbursement Request shall only be honored on the date that is three (3) business days after the date of receipt of the Disbursement Request.

10. The Debtors are authorized to amend the Utility Services List by adding or deleting a Utility Company. When doing so, the Debtors shall file with this Court a notice of such amendment and serve such notice on the affected Utility Company together with a copy of the Motion and this Final Order.

11. The Debtors are authorized to reduce the Utility Deposit, to the extent it includes an amount for a Utility Company that the Debtors subsequently determine, in their sole discretion, should be removed from the Utility Services List, by an amount equal to one-half the Debtors'

approximate monthly payment, based on the Debtors' average payments over a twelve (12) month period, for Utility Services provided by such Utility Company; *provided*, that the Debtors provide such Utility Company with notice and an opportunity to object.

12. This Final Order is binding on all Utility Companies, regardless of when such Utility Companies are added to the Utility Services List, from and after the date on which the applicable Utility Company is served with notice of this Final Order; *provided*, that this Final Order will only be binding on any additional Utility Company once the Proposed Adequate Assurance has been increased for such additional Utility Company. A Utility Company served with notice of this Final Order that was not previously served with notice of the Motion or this Final Order (an "***Additional Utility Company***") shall be permitted to make an Additional Adequate Assurance Request in accordance with the Adequate Assurance Procedures, and any Additional Utility Company that does not so make an Additional Adequate Assurance Request shall be deemed to have received adequate assurance of payment satisfactory to such Additional Utility Company as required by section 366 of the Bankruptcy Code, subject to such Additional Utility Company's right to seek modification of the Proposed Adequate Assurance in accordance with the Adequate Assurance Procedures, unless otherwise ordered by this Court.

13. Upon the addition of an Additional Utility Company to the Utility Services List, the Debtors shall increase the amount of the Utility Deposit by an amount equal to one-half of the Debtors' approximate monthly payment for Utility Services provided by such Additional Utility Company, based on the Debtors' average payments over a twelve (12) month period.

14. Should any Additional Utility Company make an Additional Adequate Assurance Request, such Additional Utility Company is prohibited from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of any unpaid charges for

prepetition Utility Services or any perceived inadequacy of the Proposed Adequate Assurance, pending resolution of such Additional Adequate Assurance Request.

15. The Debtors' service of the Motion, this Final Order, or notice of an amendment to the Utility Services List on the Utility Companies does not constitute an admission or concession that any such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

16. Consistent with the Adequate Assurance Procedures, the Debtors are authorized to, in their discretion and without further order of this Court or filing in these cases, resolve any Additional Adequate Assurance Request by an Additional Utility Company by mutual agreement, and in connection with such resolution, may provide an Additional Utility Company with alternative assurance of payment, to the extent the Debtors determine such alternative assurance is reasonable in the exercise of their business judgment, including, but not limited to, cash deposits, letters of credit, prepayments, or other forms of security.

17. If the Debtors are not able to reach a resolution with an objecting Additional Utility Company, the Debtors shall promptly request a hearing before this Court to determine the adequacy of assurance of payment with respect to such Additional Utility Company.

18. Notwithstanding the relief granted in this Final Order, any payment made or to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the DIP Order³ and the DIP Credit Documents (as defined in the DIP Order) and any orders governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating to the foregoing). Nothing herein is intended to modify, alter, or waive, in any way, any

³ **"DIP Order"** refers to that interim or final order, as applicable, approving the *Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to (I) Obtain Junior Lien Postpetition Financing and (II) Use Cash Collateral; (B) Granting Liens and Superpriority Claims; (C) Granting Adequate Protection to Certain Parties; and (D) Granting Related Relief* (as may be amended, restated, or otherwise modified from time to time).

terms, provisions, requirements, or restrictions of the DIP Order or the DIP Credit Documents. To the extent there is any inconsistency between the terms of the DIP Order, the DIP Credit Documents, or any orders approving the Debtors' use of cash collateral, and the terms of this Final Order, the terms of the DIP Order, the DIP Credit Documents, and such order approving the use of cash collateral, as applicable, shall control.

19. Nothing in the Motion, this Final Order, or the relief granted herein (including any actions taken or payments made by the Debtors), is to be construed as (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion; (e) a concession by the Debtors that any lien (contractual, common, statutory or otherwise) is valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved); (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

20. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

21. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

22. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Final Order.

23. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: New York, New York
September 5, 2024

/s/ Michael E. Wiles
THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Utility Services List

Utility Company	Address	Account Number¹	Service Type	Average Monthly Spend	One-Half Monthly Spend	Existing Deposit	Proposed Utility Deposit
AT&T Mobility	P.O. Box 6463 Carol Stream, IL 60197-6463	287285084550	Telecommunications	\$2,684	\$1,342	\$0	\$1,342
Comcast	P.O. Box 37601 Philadelphia, PA 19101-0601	708772856	Telecommunications	\$1,527	\$764	\$0	\$764
Granite Telecommunications LLC	P.O. Box 983119 Client Id #311 Boston, MA 02298-3119	04233469	Telecommunications	\$3,345	\$1,673	\$0	\$1,673
Washington Gas	P.O. Box 37747 Philadelphia, PA 19101-5047	210000304183	Natural Gas	\$875	\$438	\$0	\$438

¹ Although the Debtors have undertaken thorough and good-faith efforts to identify and verify all account numbers for all of their Utility Companies, due to the voluminous number of accounts, there is a possibility that some account numbers may have changed or may be otherwise unintentionally inaccurate. To the extent that the Debtors become aware of any inaccuracies, the Debtors will promptly contact the applicable Utility Company to update the account number and confirm that any applicable adequate assurance deposit applies to the updated accurate account number with respect to the applicable Utility Company. The Debtors further encourage any Utility Company to promptly bring to the Debtors' attention any inaccuracies they independently identify.