

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

In re:

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

Debtors.¹

Chapter 11

No. 24-11279 (MEW)

(Jointly Administered)

Related Docket No. 72

**ORDER AUTHORIZING THE EMPLOYMENT
AND RETENTION OF KPMG LLP TO PROVIDE
AUDIT SERVICES TO THE DEBTORS EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “*Application*”)² of the Debtors for an order (this “*Order*”), authorizing the Debtors to employ and retain KPMG LLP (“*KPMG*”) to provide audit services to the Debtors, effective as of the Petition Date; and this Court having reviewed the Application, the First Day Declarations, and the Mohler Declaration; and this Court having determined that the relief requested in the Application 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 Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *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 Application 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

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 them in the Application.

venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Application 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 Application; and this Court being satisfied, based on the representations made in the Application and the Mohler Declaration that KPMG is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code, and that KPMG does not hold or represent an interest adverse to the Debtors’ estates; and upon the First Day Declarations and the Mohler Declaration; and upon the record herein and upon all of the proceedings had 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 Application is GRANTED as set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014, the Debtors are authorized to retain and employ KPMG, effective as of the Petition Date, on the terms set forth in the Application and the Engagement Letter, as modified by this Order, to provide the following services as further detailed in the Engagement Letter:

- (a) Integrated Audit Services³
 - (i) KPMG will perform audit of consolidated balance sheets of the Debtors as of December 31, 2024 and 2023, the related consolidated statements of operations and comprehensive loss, changes in stockholders’ equity, and

³ Pursuant to an agreement with the Debtors, as set forth in the August 1, 2024 e-mail referenced above, certain services to be provided by KPMG to the Debtors may be modified in the future but such modifications will not be known until after the effective date of the Debtors’ chapter 11 plan.

cash flows for each of the years in the three-year period ended December 31, 2024 and the related notes to the financial statements and audit of internal control over financial reporting as of December 31, 2024.

- (ii) KPMG will perform the group audit procedures over the Executive Education component in support of the Integrated Audit and the stand-alone statutory audits of the following entities: (1) Get Educated Proprietary Limited; (2) Get Educated International Proprietary Limited; and (3) K2017143886 (South Africa) Proprietary Limited (known as '2U SA Purchaser').
- (b) SEC Filings
 - (i) KPMG will assist with the SEC filings, including registration statements and exempt offerings, and provide services related to material M&A transactions.
- (c) Quarterly Review Services
 - (i) KPMG will perform quarterly review procedures for the fiscal quarters ended March 31, 2024, June 30, 2024, and September 30, 2024.
- (d) Non-Audit Services
 - (i) KPMG will provide a subscription to KPMG's Accounting Research Online, an online library of accounting, auditing and financial reporting literature and related guidance and the automated Accounting Disclosure Checklist, which is a filterable, web-based tool to identify required financial statement disclosures.

4. Except for the Fixed Fee services, KPMG shall be compensated in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order, and any other applicable orders of this Court.

5. Notwithstanding anything herein to the contrary, the Fixed Fees are approved as reasonable and shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except that, notwithstanding anything to the contrary in this Order or the Application, the U.S. Trustee shall retain the right and be entitled to object to all of KPMG's fees and expenses based on the reasonableness standard provided for in section 330 of the Bankruptcy Code.

6. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, or any guidelines regarding submission and approval of fee applications, in light of the services to be provided by KPMG and the structure of KPMG's compensation pursuant to the Engagement Letters, KPMG and its professionals shall be excused from filing time records in accordance with Bankruptcy Rule 2016(a), the Fee Guidelines, and any otherwise applicable orders or procedures of this Court with respect to the Fixed Fee services only, and shall instead be required to keep reasonably detailed time records in half-hour increments and will submit, with any fee application, together with the time records, a narrative summary, by project category, of services rendered and will identify each professional rendering services, the category of services rendered and the amount of compensation requested.

7. The terms and conditions of the Engagement Letter, as modified by this Order, are approved.

8. KPMG will file all fee applications for allowance of its compensation and expenses in accordance with the procedures set forth in section 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Amended Order Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated December 21, 2010, the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York, dated January 29, 2013 (General Order M-447), and the United States Trustee Fee Guidelines (collectively, the "Fee Guidelines"), and any other applicable procedures and orders of this Court and consistent with the proposed compensation set forth in the Engagement Letter, as modified by this Order.

9. To the extent the Debtors and KPMG enter into any additional engagement letter(s), the Debtors will file such engagement letter(s) with this Court and serve such engagement letter(s)

upon the United States Trustee, counsel to the agents for the Debtors' post-petition secured lenders, and counsel to of any committee in these Chapter 11 Cases. To the extent any of such parties object, within 10 days of such new engagement letter(s) being filed and served, to the additional services to be provided by KPMG, the Debtors will promptly schedule a hearing before this Court. All additional services will be subject to the provisions of this Order.

10. Notwithstanding anything to the contrary in the Application or Engagement Letter ("***Engagement Terms***"), during the pendency of these Chapter 11 Cases, the Engagement Terms are modified as follows:

- (a) Any limitation of liability pursuant to the terms and conditions set forth in the Engagement Terms, or otherwise, are hereby eliminated;
- (b) All requests for payment of indemnity, contribution or reimbursement pursuant to the Engagement Terms shall be made by means of an application (interim or final as the case may be) and shall be subject to review by this Court to ensure that payment of such indemnity, contribution or reimbursement conforms to the terms of the Engagement Terms (as modified by this Order) and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity, contribution or reimbursement is sought; *provided, however*, in no event shall KPMG be indemnified to the extent this Court determines by final, non-appealable order that any claim or expense has resulted from the bad-faith, self-dealing, breach of fiduciary duty, gross negligence or willful misconduct on the part of KPMG;
- (c) In the event that KPMG seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request for payment of indemnity, contribution or reimbursement pursuant to the Engagement Terms (as modified by this Order), the invoices and supporting time records from such attorneys shall be included in KPMG's application (interim or final as the case may be), and such invoices and time records shall be subject to the approval of this Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code;
- (d) KPMG shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of KPMG's counsel other than those incurred in connection with one or more payment requests for (i) indemnity, contribution or reimbursement under the applicable Engagement Terms (as modified by this Order); (ii) retention matters; and (iii) fee applications (other than defense thereof);

- (e) In no event shall KPMG be entitled to indemnification, contribution, exoneration, reimbursement of attorneys' fees or expenses, limitation on liability or allocation or apportionment of damages, indemnified or exonerated if the Debtors or representatives of the estates assert a claim, to the extent this Court determines by final, non-appealable order that such claim for indemnity arose out of KPMG's own bad-faith, self-dealing, breach of fiduciary duty, gross negligence, or willful misconduct; and
- (f) This Court shall have exclusive jurisdiction over any and all issues or disputes relating to the services provided by KPMB during the course of this case and as to the fees and expense reimbursements payable to KPMG for work done during the course of this case, and such issues and disputes shall not be subject to arbitration.

11. Prior to any increases in KPMG's rates for any individual retained by KPMG and providing services in these cases, KPMG shall file a supplemental declaration with this Court and provide 10 business days' notice to the applicable notice parties. The supplemental declaration shall explain the basis for the requested rate increases in accordance with section 330(a)(3)(F) of the Bankruptcy Code and state whether the Debtors have consented to the rate increase. The United States Trustee retains all rights to object to any rate increase on all grounds including the reasonableness standard provided for in section 330 of the Bankruptcy Code and all rates and rate increases are subject to review by this Court.

12. KPMG shall use its reasonable efforts to avoid any duplication of services provided by any of the Debtors' other Chapter 11 Professionals in these Chapter 11 Cases.

13. Notwithstanding anything in the Application or the Engagement Letter to the contrary, KPMG shall (i) to the extent that KPMG uses the services of independent contractors, subcontractors, or employees of foreign or domestic affiliates or subsidiaries (collectively, the "**Contractors**") in these cases, KPMG shall pass-through the cost of such Contractors to the Debtors at the same rate that KPMG pays the Contractors, (ii) seek reimbursement for actual costs only, (iii) ensure that the Contractors are subject to the same conflict checks as required for KPMG, and (iv) file with this Court such disclosures required by Bankruptcy Rule 2014.

14. In the event of any inconsistency between the terms of the Application, the Mohler Declaration, and this Order, the terms of this Order shall govern.

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

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

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

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

Dated: New York, New York
September 5, 2024

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