

2U, INC.

FORM S-8 (Securities Registration: Employee Benefit Plan)

Filed 12/08/17

Address	7900 HARKINS ROAD LANHAM, MD, 20706
Telephone	(301) 892-4350
CIK	0001459417
Symbol	TWOU
SIC Code	7372 - Services-Prepackaged Software
Industry	IT Services & Consulting
Sector	Technology
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

2U, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of Incorporation or organization)

26-2335939
(I.R.S. Employer Identification No.)

**7900 Harkins Road
Lanham, Maryland 20706**
(Address of principal executive offices) (Zip code)

Amended and Restated 2017 Employee Stock Purchase Plan
(Full title of the plan)

**Christopher J. Paucek
Chief Executive Officer
2U, Inc.
7900 Harkins Road
Lanham, Maryland 20706
(301) 892-4350**

(Name and address of agent for service) (Telephone number, including area code, of agent for service)

Copies to:

**Andrea L. Nicolas
Erica Schohn**
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Telephone: (212) 735-3000
Fax: (917) 777-3000

Matthew Norden
Co-General Counsel, Corporate & Securities
2U, Inc.
7900 Harkins Road
Lanham, Maryland 20706
Telephone: (301) 892-4350
Fax: (202) 478-1660

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	1,000,000 shares	\$ 58.75	\$ 58,750,000	\$ 7,314.38

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “*Securities Act*”), this Registration Statement shall also cover any additional shares of the Registrant’s common stock, par value \$0.001 (the “*Common Stock*”) that become issuable under the Amended and Restated 2017 Employee Stock Purchase Plan (the “*2017 Plan*”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of Common Stock.
 - (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share is estimated to be \$58.75, which is the average of the high and low prices of the Registrant’s Common Stock as reported on the NASDAQ Global Select Market on December 5, 2017.
-
-

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

ITEM 1. PLAN INFORMATION.

Not required to be filed with this Registration Statement.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.

Not required to be filed with this Registration Statement.

PART II

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by 2U, Inc. (the “*Registrant*”) with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2016 filed on February 24, 2017.
- (b) The Registrant’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2017 filed on May 4, 2017.
- (c) The Registrant’s Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2017 filed on August 7, 2017.
- (d) The Registrant’s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2017 filed on November 7, 2017.
- (e) The Registrant’s Current Report(s) filed on Form 8-K filed on May 2, 2017, June 1, 2017, July 3, 2017 (as amended and supplemented by the Form 8-K/A filed on August 7, 2017), September 1, 2017, September 11, 2017 and September 14, 2017.
- (f) The description of the Registrant’s Common Stock which is contained in the Registrant’s Registration Statement on Form 8-A filed on March 25, 2014 (File No. 001-36376) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), including any amendment or report filed for the purpose of updating such description.
- (g) All documents, reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than Current Reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits furnished on such form that relate to such items) on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Registrant is incorporated under the laws of the State of Delaware. Section 102 of the Delaware General Corporation Law, or DGCL, permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the DGCL, the Registrant's amended and restated certificate of incorporation and bylaws provide that: (i) the Registrant is required to indemnify its directors to the fullest extent permitted by the DGCL; (ii) the Registrant may, in its discretion, indemnify its officers, employees and agents as set forth in the DGCL; (iii) the Registrant is required, upon satisfaction of certain conditions, to advance all expenses incurred by its directors in connection with certain legal proceedings; (iv) the rights conferred in the bylaws are not exclusive; and (v) the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents.

The Registrant has entered into agreements with its directors that require the Registrant to indemnify them against expenses, judgments, fines, settlements and other amounts that any such person becomes legally obligated to pay (including with respect to a derivative action) in connection with any proceeding, whether actual or threatened, to which such person may be made a party by reason of the fact that such person is or was a director of the Registrant or any of its affiliates, provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the Registrant's best interests. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. At present, no litigation or proceeding is pending that involves any of the Registrant's directors or officers regarding which indemnification is sought, nor is the Registrant aware of any threatened litigation that may result in claims for indemnification.

The Registrant maintains a directors' and officers' liability insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses the Registrant for those losses for which it has lawfully indemnified the directors and officers. The policy contains various exclusions.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS

Exhibit Number	Description
3.1(1)	Amended and Restated Certificate of Incorporation, as amended to date and as currently in effect.

3.2(2)	Amended and Restated Bylaws, as currently in effect.
4.1(3)	Specimen stock certificate evidencing shares of Common Stock.
4.2	Amended and Restated 2017 Employee Stock Purchase Plan.
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
23.1	Consent of KPMG LLP, independent registered public accounting firm.
23.2	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page of this Form S-8).

-
- (1) Previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.
- (2) Previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.
- (3) Previously filed as Exhibit 4.2 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-194079), filed with the Commission on March 17, 2014, and incorporated by reference herein.

ITEM 9. UNDERTAKINGS

1. The undersigned registrant hereby undertakes:

- (a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(i) and (a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (b) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
 - (d) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
 - (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
3.1(1)	<u>Amended and Restated Certificate of Incorporation, as amended to date and as currently in effect.</u>
3.2(2)	<u>Amended and Restated Bylaws, as currently in effect.</u>
4.1(3)	<u>Specimen stock certificate evidencing shares of Common Stock.</u>
4.2	<u>Amended and Restated 2017 Employee Stock Purchase Plan.</u>
5.1	<u>Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.</u>
21.1(4)	<u>Subsidiaries of the Registrant.</u>
23.1	<u>Consent of KPMG LLP, independent registered public accounting firm.</u>
23.2	<u>Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on the signature page of this Form S-8).</u>

-
- (1) Previously filed as Exhibit 3.1 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.
 - (2) Previously filed as Exhibit 3.2 to the Registrant's Current Report on Form 8-K (File No. 001-36376), filed with the Commission on April 4, 2014, and incorporated by reference herein.
 - (3) Previously filed as Exhibit 4.2 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (File No. 333-194079), filed with the Commission on March 17, 2014, and incorporated by reference herein.
 - (4) Previously filed as Exhibit 21.1 to the Registrant's Annual Report on Form 10-K (File No. 001-36376), filed with the Commission on February 24, 2017, and incorporated by reference herein.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lanham, State of Maryland, on this 8th day of December, 2017.

2U, INC.

By: /s/ Catherine A. Graham
Catherine A. Graham
Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Christopher J. Paucek, Catherine A. Graham, Todd J. Glassman and Matthew Norden, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Christopher J. Paucek</u> Christopher J. Paucek	Chief Executive Officer and Director (<i>Principal Executive Officer</i>)	December 8, 2017
<u>/s/ Catherine A. Graham</u> Catherine A. Graham	Chief Financial Officer (<i>Principal Financial Officer</i>)	December 8, 2017
<u>/s/ Andrea Papaconstantopoulos</u> Andrea Papaconstantopoulos	Chief Accounting Officer (<i>Principal Accounting Officer</i>)	December 8, 2017
<u>/s/ Paul A. Maeder</u> Paul A. Maeder	Director	December 8, 2017
<u>/s/ Mark J. Chernis</u> Mark J. Chernis	Director	December 8, 2017
<u>/s/ Timothy M. Haley</u> Timothy M. Haley	Director	December 8, 2017
<u>/s/ Sallie L. Krawcheck</u> Sallie L. Krawcheck	Director	December 8, 2017
<u>/s/ John M. Larson</u> John M. Larson	Director	December 8, 2017
<u>/s/ Earl Lewis</u> Earl Lewis	Director	December 8, 2017
<u>/s/ Coretha M. Rushing</u> Coretha M. Rushing	Director	December 8, 2017
<u>/s/ Edward S. Macias</u> Edward S. Macias	Director	December 8, 2017
<u>/s/ Robert M. Stavis</u> Robert M. Stavis	Director	December 8, 2017
<u>/s/ Valerie B. Jarrett</u> Valerie B. Jarrett	Director	December 8, 2017

2U, INC.
AMENDED AND RESTATED
2017 EMPLOYEE STOCK PURCHASE PLAN

Section 1. Purpose of the Plan

The 2U, Inc. Amended and Restated 2017 Employee Stock Purchase Plan is intended to encourage employee participation in the ownership and economic progress of the Company pursuant to a plan that is designed to qualify as an “employee stock purchase plan” within the meaning of Section 423(b) of the Code.

Section 2. Definitions

Unless the context clearly indicates otherwise, the following terms have the meanings set forth below:

(a) “*Board*” shall mean the board of directors of the Company.

(b) “*Code*” shall mean the United States Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations issued thereunder.

(c) “*Committee*” shall mean the Board, or a committee designated by the Board to administer the Plan, which Committee shall administer the Plan as provided in Section 3 hereof.

(d) “*Common Stock*” shall mean the common stock, \$0.001 par value per share, of the Company.

(e) “*Company*” shall mean 2U, Inc. or any successor corporation.

(f) “*Compensation*” shall mean the fixed salary or base hourly wage paid by the Company or a Designated Subsidiary, as applicable, to an Employee as reported by the Company (or by a Designated Subsidiary) to the United States government (or other applicable government) for income tax purposes, including an Employee’s portion of salary deferral contributions pursuant to Section 401(k) of the Code and any amount excludable pursuant to Section 125 of the Code, but excluding items such as commissions, bonuses, fees, overtime pay, severance pay, expenses, stock option or other equity incentive income, or other special emolument or any credit or benefit under any employee plan maintained by the Company.

(g) “*Continuous Status as an Employee*” shall mean the absence of any interruption or termination of service as an Employee. Continuous Status as an Employee shall not be considered interrupted in the case of a leave of absence agreed to in writing by the Company (including, but not limited to, military or sick leave), provided that such leave is for a period of not more than ninety (90) days or reemployment upon the expiration of such leave is guaranteed by contract or statute.

(h) “*Designated Subsidiary*” shall mean any Subsidiary of the Company that is designated by the Committee to participate in the Plan. The Committee may, from time to time,

designate any Subsidiary from among a group consisting of the Company and its related corporations, including corporations having become parents or Subsidiaries of the Company after the adoption and approval of the Plan.

(i) “*Employee*” shall mean any employee of the Company or a Designated Subsidiary whose annual Compensation is less than \$200,000, and whose customary employment is both more than twenty (20) hours per week and more than five (5) months per calendar year.

(j) “*Exchange Act*” shall mean the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

(k) “*Exercise Date*” shall mean the last trading day of each Offering Period, unless otherwise determined by the Committee.

(l) “*Fair Market Value*” shall mean, as of any date, the value of the Common Stock determined as follows:

(1) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock shall be, unless otherwise determined by the Board, the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(2) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(3) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(m) “*Offering Date*” shall mean the first trading day of each Offering Period, unless otherwise determined by the Committee.

(n) “*Offering Period*” or “*Period*” shall mean the Plan Half-Year beginning on an Offering Date and ending on the next succeeding Exercise Date, or such other period as determined by the Committee; provided that the Offering Period may not exceed twenty-seven (27) months from the Offering Date. As used herein, the term “Offering Period” shall refer to all Offering Periods under the Plan as the context requires.

(o) “*Option Price*” shall mean the purchase price of a share of Common Stock as provided in Section 7(a) hereof.

(p) “*Participant*” shall mean any Employee who (i) is eligible to participate in the Plan under Section 6(a) hereof and (ii) elects to participate in the Plan with respect to any Offering Period.

(q) “ *Plan* ” shall mean the 2U, Inc. Amended and Restated 2017 Employee Stock Purchase Plan, as the same may be amended from time to time.

(r) “ *Plan Account* ” or “ *Account* ” shall mean an account established and maintained in the name of each Participant.

(s) “ *Plan Administrator* ” shall mean any Employee or Employees or a third party qualified to act as the Plan Administrator appointed pursuant to Section 3 hereof.

(t) “ *Plan Half-Year* ” shall mean each six (6) month period during the term of the Plan, commencing on January 1, 2018.

(u) “ *Subsidiary* ” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of granting an option, each of the corporations other than the last corporation in the unbroken chain owns shares possessing fifty percent (50%) or more of the total combined voting power of all classes of shares in one of the other corporations in such chain.

Section 3. Administration of Plan

Subject to oversight by the Board, the Committee shall have the sole authority and complete discretion to administer the Plan and to make and adopt rules and regulations not inconsistent with the provisions of the Plan or the Code. Further, the Committee shall have the sole authority to prescribe, amend and rescind rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws, which rules and regulations may be set forth in an appendix or appendixes to the Plan. Its interpretations and decisions in respect of the Plan shall, subject to the aforesaid, be final and conclusive. The Committee shall have the authority to appoint a Plan Administrator and to delegate to the Plan Administrator such authority with respect to the administration of the Plan as the Committee, in its sole discretion, deems advisable from time to time.

Section 4. Effective Date of the Plan

The Plan originally became effective on June 1, 2017, upon the approval by the Company’s stockholders. The Plan was amended and restated effective November 29, 2017.

Section 5. Term of the Plan

The Plan shall continue in effect until the earlier of (i) the date when no shares of Common Stock are available for issuance under the Plan (at which time the Plan shall be suspended as set forth in Section 8(c)), or (ii) the tenth anniversary of the Effective Date, unless terminated prior thereto by the Committee, which shall have the right to terminate the Plan at any time. Upon any such termination, the balance, if any, in each Participant’s Account shall be refunded to her or him, or otherwise disposed of in accordance with the policies and procedures prescribed by the Committee in cases where such a refund is not possible.

Section 6. Participation

(a) **Eligibility** . Participation in the Plan is limited to Employees who meet the requirements of this Section 6(a). Each Employee may become a Participant by completing the enrollment procedures prescribed by, or on behalf of, the Plan Administrator, as revised from time to time. An Employee may enroll upon the commencement of employment or prior to the Offering Date of the next Plan Half-Year during the term of the Plan. For new Employees, such enrollment shall be effective for the next Offering Period, subject to such administrative rules as the Committee or Plan Administrator may establish. Notwithstanding any provisions of the Plan to the contrary, no Employee shall be granted an option to purchase Common Stock under the Plan if, immediately after the option is granted, such Employee (or any other person whose shares would be attributed to such Employee pursuant to Section 424(d) of the Code) would own shares and/or hold outstanding options to purchase shares possessing five percent (5%) or more of the total combined voting power or value of all classes of shares of the Company or of any Subsidiary or parent of the Company. Any amounts received from an Employee which cannot be used to purchase Common Stock as a result of this limitation will be returned as soon as practicable to the Employee without interest.

(b) **Payroll Deductions** . Payment for shares of Common Stock purchased hereunder shall be made by authorized payroll deductions from each payment of Compensation in accordance with instructions received from a Participant. Such deductions shall be expressed as a whole number percentage which shall be not less than one percent (1%) and not more than fifteen percent (15%) of the Participant's Compensation as in effect at the start of such Offering Period. A Participant may not increase the deduction during an Offering Period. However, a Participant may change the percentage deduction for any subsequent Offering Period by filing notice thereof with the Company prior to the Offering Date on which such Period commences. Employee contributions are accumulated during the Offering Period and used to purchase shares on the Exercise Date. During an Offering Period, a Participant may decrease the percentage deduction in effect for the remainder of such Offering Period (subject to such administrative rules as the Committee or Plan Administrator may establish), withdraw entirely from participation or discontinue payroll deductions but have the payroll deductions previously made during that Offering Period remain in the Participant's Account to purchase Common Stock on the next Exercise Date, provided that she or he is an Employee as of that Exercise Date. Any amount remaining in the Participant's Account after the purchase of Common Stock will be refunded without interest. Any Participant who discontinues payroll deductions during an Offering Period may again become a Participant for a subsequent Offering Period upon completion of the enrollment procedures prescribed by, or on behalf of, the Plan Administrator, as revised from time to time. Amounts deducted from a Participant's Compensation pursuant to this Section 6(b) shall be credited to such Participant's Account.

(c) **Account Statements** . An individual Plan Account will be maintained for each Participant. Account statements will be given to Participants as soon as practicable following each Offering Period, which statements will set forth the amounts of payroll deductions, the per share Option Price, the number of shares of Common Stock purchased, the aggregate number of shares in the Participant's Account following the purchase and the remaining cash balance, if any.

Section 7. Purchase of Shares

(a) **Option Price** . Unless otherwise determined by the Committee or Plan Administrator prior to the commencement of an Offering Period, the Option Price per share of the Common Stock sold to Participants hereunder shall be the lesser of ninety percent (90%) of the Fair Market Value of such share on (i) the Exercise Date of the applicable Offering Period or (ii) the Offering Date for such Offering Period, but in no event shall the Option Price per share be less than the par value of the Common Stock.

(b) **Purchase of Shares** . On each Exercise Date, the amount in a Participant's Account shall be charged with the aggregate Option Price of the largest number of shares of Common Stock which can be purchased with such amount, including fractional shares, if so authorized by the Committee, and such shares will be purchased by the Participant hereunder. The balance, if any, in such Account following the purchase shall be carried forward to the next succeeding Offering Period.

(c) **Maximum Number of Shares Per Offering Period** . In no event shall any Participant purchase more than 10,000 shares of Common Stock during an Offering Period (subject to adjustment in accordance with Section 8 of the Plan). Any amounts received from a Participant which cannot be used to purchase shares of Common Stock as a result of this limitation will be returned as soon as possible to the Participant without interest.

(d) **\$25,000 Limitation on Purchase** . Notwithstanding any provisions of the Plan to the contrary, no Participant shall be granted an option under the Plan which permits such Participant's right to purchase shares of Common Stock under all employee stock purchase plans (as described in Section 423 of the Code) of the Company and any Subsidiary to accrue at a rate which exceeds twenty-five thousand dollars (\$25,000) of the Fair Market Value of such shares of Common Stock (determined as of the Offering Date) for any calendar year in which such option would be outstanding at any time. Any amounts received from a Participant which cannot be used to purchase shares of Common Stock as a result of this limitation will be returned as soon as possible to the Participant without interest.

To the extent necessary to comply with Section 423(b)(8) of the Code and the limitations on purchase in this Section 7(d), a Participant's payroll deductions may be decreased to 0% during any Offering Period which is scheduled to end during any calendar year, such that the aggregate of all payroll deductions accumulated with respect to such Offering Period and any other Offering Period ending within the same calendar year does not exceed the twenty-five thousand dollar (\$25,000) limit described above. Payroll deductions shall re-commence at the rate provided for by the Participant's prior election at the beginning of the first Offering Period which is scheduled to end in the following calendar year, unless suspended by the Participant pursuant to Section 6(b) of the Plan.

(e) **Transferability of Rights** . Neither payroll deductions credited to a Participant's Account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be

without effect, except that the Company may treat such act as an election to withdraw funds in accordance with Section 9(a).

Section 8. Shares Reserved for Issuance Under the Plan

(a) **Shares Reserved; Delivery of Stock** . Subject to Section 8(b), a maximum number of shares of Common Stock equal to 1,000,000 shares of Common Stock may be purchased by Participants under the Plan, which shares of Common Stock shall be treasury shares, shares purchased in the open market, or newly authorized shares, as determined by the Committee.

(b) **Equitable Adjustments** . In the event that adjustments are made in the number of outstanding shares of Common Stock or such shares are exchanged for a different class of stock of the Company or for shares of stock of any other corporation by reason of stock dividend, stock split or similar transaction, the Committee may make appropriate adjustments in (i) the number and class of shares or other securities that may be reserved for purchase, or purchased, hereunder, and (ii) the Option Price, provided that in no event shall the Option Price be reduced to an amount that is lower than the par value of a share. All such adjustments shall be made in the sole discretion of the Committee, and its decision shall be binding and conclusive.

(c) **Insufficient Shares** . If the aggregate funds available for the purchase of Common Stock on any Exercise Date would cause an issuance of shares in excess of the number provided for in Section 8(a) hereof, (i) the Committee shall proportionately reduce the number of shares which would otherwise be purchased by each Participant in order to eliminate such excess and (ii) the Plan shall automatically be suspended immediately after such Exercise Date until such time when additional shares of Common Stock may be added to the Plan.

(d) **Confirmation** . Confirmation of each purchase of Common Stock hereunder shall be made available to the Participant in either written or electronic format as provided by Section 6(c). A record of purchases shall be maintained by appropriate entries on the books of the Company or Plan Administrator.

(e) **Rights as Stockholders** . The shares of Common Stock purchased by a Participant on an Exercise Date shall, for all purposes, be deemed to have been issued and sold as of the close of business on such Exercise Date. Prior to that time, none of the rights or privileges of a stockholder of the Company shall exist with respect to such shares.

Section 9. Termination of Participation

(a) **Voluntary Withdrawal** . A Participant may withdraw from the Plan at any time by filing a notice of withdrawal prior to the close of business on the business day immediately prior to an Exercise Date. Upon withdrawal, the entire amount, if any, in a Participant's Account shall be refunded to her or him without interest. Any Participant who withdraws from the Plan may again become a Participant in accordance with Section 6(a).

(b) **Termination of Eligibility** . If a Participant ceases to be eligible under Section 6(a) hereof for any reason, the dollar amount in such Participant's Account will be refunded or distributed to the Participant. Upon termination of a Participant's Continuous Status

as an Employee during the Offering Period for any reason, including involuntary or voluntary termination, retirement or death, the payroll deductions credited to such Participant's account (that have not been used to purchase shares of Common Stock) will be returned to such Participant or, in the case of such Participant's death, the Participant's designated beneficiary on file or estate, or otherwise disposed of in accordance with policies and procedures prescribed by the Committee in cases where such a refund or distribution may not be possible.

Section 10. General Provisions

(a) **Notices** . Any notice which a Participant files pursuant to the Plan shall be made on forms prescribed by the Committee and shall be effective only when received by the Company.

(b) **No Right to Employment** . Neither the creation of the Plan nor participation therein shall be deemed to create any right to employment or continued employment for any period or terms of employment, or interpreted in any way to prevent or restrict the Company or a Designated Subsidiary from modifying or terminating any the employment or terms of employment of any Employee.

(c) **Tax Matters; Interpretation** . If a Participant makes a disposition, within the meaning of Section 424(c) of the Code and regulations promulgated thereunder, of any share of Common Stock issued to such Participant hereunder, and such disposition occurs within the two-year period commencing on the day of the Offering Date or within the one-year period commencing on the day of the Exercise Date, such Participant shall, within ten (10) days of such disposition, notify the Company thereof and, thereafter, immediately deliver to the Company any amount of federal, state or local income taxes and other amounts which the Company informs the Participant the Company is required to withhold.

The Plan is intended to comply with Section 423 of the Code and Rule 16b-3 under the Exchange Act, and the Committee shall interpret and administer the provisions of the Plan in a manner consistent therewith. Any provisions inconsistent with such Rule shall be inoperative and shall not affect the validity of the Plan.

It is the responsibility of each Participant to obtain his or her own tax advice in respect of the Plan and to fulfill his or her ongoing tax obligations in respect of the Plan.

(d) **Amendment of the Plan** . The Committee may at any time, or from time to time, amend the Plan in any respect, except that, without approval of the stockholders within twelve (12) months before or after the date on which such amendment is made, no amendment may (i) increase the aggregate number of shares of Common Stock reserved under the Plan other than to reflect a change in the number of outstanding shares due to a stock dividend or stock split or (ii) change the granting corporation from one other than the Company or the Common Stock available for purchase under the Plan. Any amendment of the Plan must be made in accordance with applicable provisions of the Code and/or any regulations issued thereunder, any other applicable law or regulations and the requirements of the principal exchange upon which the Common Stock is listed. Without limiting the foregoing, the Committee may, at any time,

terminate the Plan and refund (without interest) amounts in Participants' Accounts or shorten any ongoing or future Offering Period.

(e) **Application of Funds** . All funds received by the Company by reason of purchases of Common Stock hereunder may be used for any corporate purpose.

(f) **Conditions on Issuance** . The Company shall not be obligated to sell shares of Common Stock hereunder if the Company determines that such sale would violate any applicable law or regulation. Furthermore, the Company shall not be obliged to issue or deliver any shares until all legal and regulatory requirements associated with such issue or delivery have been complied with to the satisfaction of the Committee. In addition, notwithstanding any provision of the Plan to the contrary, the Committee may establish such special rules as the Committee determines are necessary to comply with the laws of a foreign jurisdiction with respect to citizens or residents of such foreign jurisdiction, provided that any such special rules shall comply with the requirements of Section 423 of the Code and the regulations and guidance promulgated thereunder.

(g) **Governing Law** . The Plan and all rights and obligations thereunder shall be constructed and enforced in accordance with the laws of the State of Delaware and any applicable provisions of the Code and the related regulations.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
FOUR TIMES SQUARE
NEW YORK 10036-6522

TEL: (212) 735-3000
FAX: (212) 735-2000
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
PALO ALTO
WASHINGTON, D.C.
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

DIRECT DIAL
(212) 735-3416
DIRECT FAX
(917) 777-3416
EMAIL ADDRESS
ANDREA.NICOLAS@SKADDEN.COM

December 8, 2017

2U, Inc.
7900 Harkins Road
Lanham, Maryland 20706

Re: 2U, Inc.
Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to 2U, Inc., a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), on the date hereof, relating to the registration of up to 1,000,000 shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), issuable pursuant to the Company’s Amended and Restated 2017 Employee Stock Purchase Plan (the “Plan”).

This opinion is being furnished at the request of the Company in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In rendering the opinion stated herein, we have examined and relied upon the following:

- (a) the Registration Statement in the form to be filed with the Commission on the date hereof;



(b) the Plan;

(c) an executed copy of a certificate of Matthew J. Norden, Co-General Counsel, Corporate and Securities, of the Company, dated the date hereof (the “Secretary’s Certificate”);

(d) a copy of the Company’s Amended and Restated Certificate of Incorporation, certified by the Secretary of State of the State of Delaware as of December 7, 2017 and certified pursuant to the Secretary’s Certificate;

(e) a copy of the Company’s Amended and Restated By-Laws, as amended and in effect as of the date hereof and certified pursuant to the Secretary’s Certificate; and

(f) a copy of certain resolutions of the Compensation Committee of the Board of Directors of the Company adopted on November 29, 2017, and the approval of the stockholders of the Company adopted on June 5, 2017 at the annual meeting of the Company, each certified pursuant to the Secretary’s Certificate.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinion stated below including the facts and conclusions set forth in the Secretary’s Certificate.

In our examination, we have assumed the genuineness of all signatures, including endorsements, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making our examination of executed documents, we have assumed that the parties thereto, other than the Company, had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts relevant to the opinion stated herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

In rendering the opinion stated herein, we have also assumed that (i) an appropriate account statement evidencing Shares credited to a recipient's account maintained with the Company's transfer agent has been or will be issued by the Company's transfer agent, (ii) the issuance of Shares will be properly recorded in the books and records of the Company and (iii) each award agreement under which options, restricted stock, restricted stock units or other awards are granted pursuant to the Plan will be consistent with the Plan and will be duly authorized, executed and delivered by the parties thereto.

We do not express any opinion with respect to the laws of any jurisdiction other than the General Corporation Law of the State of Delaware (the "DGCL").

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that the Shares have been duly authorized by all requisite corporate action on the part of the Company under the DGCL and when the Shares are issued to the participants in accordance with the terms and conditions of the Plan and the applicable award agreement for consideration in an amount at least equal to the par value of such Shares, the Shares will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the General Rules and Regulations under the Securities Act.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

ALN

Consent of Independent Registered Public Accounting Firm

The Board of Directors
2U, Inc.

We consent to the use of our reports dated February 24, 2017, incorporated herein by reference, with respect to the consolidated balance sheets of 2U, Inc. as of December 31, 2016 and 2015, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2016, and the effectiveness of internal controls over financial reporting as of December 31, 2016, which reports appear in the December 31, 2016 annual report on Form 10-K of 2U, Inc.

/s/ KPMG LLP

McLean, VA
December 8, 2017
