



## **22nd Century Group, Inc. Corporate Governance Guidelines**

The Board of Directors (the "Board") of 22nd Century Group, Inc. (the "Company") has adopted the following Corporate Governance Guidelines (the "Guidelines") to assist the Board in the exercise of its responsibilities, establish a governance framework that complies with applicable laws and regulations, and to serve the interests of the Company and its stockholders. These Guidelines are intended as a component of the Company's flexible governance framework within which the Board, assisted by its Committees, directs the affairs of the Company. These Guidelines should be interpreted in the context of all applicable laws, regulations, and the listing rules (the "Nasdaq Rules") of the Nasdaq Stock Market ("Nasdaq"), as well as the Company's charters, bylaws, and other corporate governance documents and are not intended to establish by their own force any legally binding obligations. The Guidelines are subject to modification from time to time by the Board as the Board may deem appropriate in the best interests of the Company and its stockholders or as required by applicable laws and regulations.

### **1. THE BOARD**

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#### **Size of the Board**

The Company's Bylaws provide that the number of directors will be fixed from time to time by the Board. The Corporate Governance & Nominating Committee (the "Committee") will periodically review the size of the Board, which may vary to permit the Board to function efficiently as a body.

#### **Independence of the Board**

The Board will be comprised of a majority of directors who qualify as independent directors (the "Independent Directors") under the Nasdaq Rules and the rules and regulations of the U.S. Securities and Exchange Commission (the "SEC").

The Committee will review annually the relationships that each director has with the Company (either directly or as a partner, stockholder or officer of an organization that has a relationship with the Company). Following such annual review, only those directors who the Board affirmatively determines have no material relationship with the Company (either directly or as a partner, stockholder or officer of an organization that has a relationship with the Company) will be considered Independent Directors, subject to additional qualifications prescribed under the Nasdaq Rules. The basis for any determination that a relationship is not material will be published in the Company's annual proxy statement or, if the Company does not file an annual proxy statement, in the Company's Annual Report on Form 10-K filed with the SEC.

## **Separate Sessions of Non-Management Directors Other Matters**

Non-management directors are all directors who are not Company officers (as that term is defined in Rule 16a-1(f) under the Securities Exchange Act of 1934, as amended), including such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. The non-management directors will meet in executive session without management directors or management present on a regularly scheduled basis. The name of the Chair of such meetings will be published along with a means for stockholders to communicate with the non-management directors. The non-management directors will review the Company's implementation of and compliance with these Guidelines and consider such matters as they may deem appropriate at such meetings.

In addition, if the non-management directors include directors who are not also Independent Directors, the Independent Directors shall also meet separately at least once per year in executive session.

## **Director Qualification Standards**

The Committee is responsible for reviewing with the Board, on an annual basis, the appropriate characteristics, skills, and experience required for the Board as a whole and its individual members. In evaluating the suitability of individual candidates (both new candidates and current Board members), the Committee, in recommending candidates for election, and the Board, in approving (and, in the case of vacancies, appointing) such candidates, takes into account the factors required by applicable laws, rules, regulations, and the Nasdaq Rules as well as the Committee's charter. Each nominee must also possess fundamental qualities of intelligence, honesty, good judgment, high ethics, and standards of integrity, fairness, and responsibility. The Board evaluates each individual in the context of the Board as a whole, with the objective of assembling a group that can best perpetuate the success of the business and represent stockholder interests through the exercise of sound judgment using its diversity of experience in these various areas. The Company is committed to seeking to attain diversity on the Board and the Board and Committee consider a candidate's race, gender, geography, thought, viewpoints, backgrounds, skills, experience, and expertise when recommending and approving candidates for election. In determining whether to recommend a director for re-election, the Committee also considers the director's past attendance at meetings, as well as participation in and contributions to the activities, of the Board.

## **Selection of New Directors**

Each year, at the annual meeting, the Board will recommend a slate of directors for election by the stockholders. In accordance with the Bylaws of the Company, the Board will also be responsible for filling vacancies or newly created vacancies on the Board that may occur between annual meetings of stockholders. The Committee is responsible for identifying, screening, and recommending candidates to the entire Board for Board membership.

## **Selection of Chairman of the Board**

The Board will select the Chairman of the Board in accordance with the Company's Bylaws.

## **Limitations of Other Board Service**

No director may serve on the Board of Directors of more than two other public companies, unless the Board determines that such simultaneous service would not impair the ability of such director to serve on the Board.

In addition, the members of the Audit Committee may not serve on the audit committees of the board of directors of more than two other public companies at the same time as they are serving on the Audit Committee, unless the Board determines that such simultaneous service would not impair the ability of such members to effectively serve on the Audit Committee and such determination is disclosed in the Company's annual proxy statement.

The Board does not believe that its members should be prohibited from serving on boards of other organizations that are not public companies and has not adopted any guidelines limiting such activities. However, the Committee and the Board will take into account the nature of, and time involved in, a director's service on other such boards and/or committees in evaluating the suitability of individual director candidates and current directors and making recommendations to the Company's stockholders. Service on other boards and/or committees should be consistent with the Company's conflict of interest policies set forth below.

## **Changes in Director Employment**

When a director resigns or materially changes their position with their employer or becomes aware of circumstances that may materially adversely reflect upon the director or the Company, the director should notify the Board of such circumstances. The Board, in its discretion, may remove a director if the Board determines that such resignation, change in position or other circumstances would materially impact such director's ability to properly serve the Company.

## **Failure to Receive a Majority Vote; Resignation Policy**

The Board shall only nominate for election or re-election as director candidates who agree to tender, promptly following such person's failure to receive the required vote for election or re-election, an irrevocable offer to resign. The resignation will be effective upon the Board's acceptance of such offer to resign or void upon the Board's rejection of such offer to resign. In addition, the Board shall fill director vacancies only with candidates who agree to tender, promptly following their appointment to the Board, the same form of an offer to resign tendered by other directors in accordance with these guidelines.

If a majority vote of the votes cast is required for election or re-election, and an incumbent director fails to receive the required majority vote, then the Nominating and Corporate Governance Committee shall, considering such factors as it deems relevant, make a

recommendation to the Board as to whether to accept or reject the resignation, or whether other action should be taken. Considering the Nominating and Corporate Governance Committee's recommendation and such other factors as it deems relevant, the Board shall, exercising its business judgment, determine whether to accept or reject the resignation, or whether other action should be taken. An incumbent director who fails to receive a majority of the votes cast in any election of such director that requires a majority vote and who tenders his or her resignation shall remain active and engaged in Board activities and shall have all the authority and responsibilities of a director, while the Nominating and Corporate Governance Committee and the Board decide whether to accept or reject such resignation, or whether other action should be taken. Notwithstanding the foregoing, no director who has offered to resign pursuant to this policy shall participate in the consideration of such resignation offer.

The Company will publicly disclose the Board's decision regarding the course of action that it has determined to take in a press release, in a report filed with or furnished to the SEC or in another manner reasonably expected to make the Board's decision publicly-available within 90 days from the date of the certification of the shareholder vote. In the event the Board elects not to accept an affected director's offer to resign, the Board shall include in its decision the Board's rationale for such decision.

## **Retirement Age**

The Company has no mandatory retirement age for its directors.

## **Director Responsibilities**

The business and affairs of the Company will be managed by or under the direction of the Board, including through one or more of its Committees as set forth in the Bylaws and Committee charters. Each director is expected to spend the time and effort necessary to properly discharge his or her responsibilities. These include:

- (1) overseeing the conduct of the Company's business, to evaluate whether the business is being properly managed;
- (2) reviewing and, where appropriate, approving the Company's major financial objectives, plans, and actions;
- (3) reviewing and, where appropriate, approving major changes in, and determinations of other major issues respecting, the appropriate auditing and accounting principles and practices to be used in the preparation of the Company's financial statements;
- (4) reviewing and, where appropriate, approving major changes in, and determinations under, these Guidelines, the Code of Business Conduct and Ethics, and other Company policies;

(5) reviewing and, where appropriate, approving actions to be undertaken by the Company that would result in a material change in the financial structure or control of the Company, the acquisition or disposition of any businesses or asset(s) material to the Company or the entry of the Company into any major new line of business;

(6) with respect to the Independent Directors, together with the Compensation Committee, regularly evaluating the performance and approving the compensation of the Chief Executive Officer;

(7) with the input of the Chief Executive Officer and the Compensation Committee, regularly evaluating the performance of principal senior executives;

(8) planning for succession with respect to the position of Chief Executive Officer and monitoring management's succession planning for other key executives; and

(9) ensuring that the Company's business is conducted with the highest standards of ethical conduct and in conformity with applicable laws and regulations.

## **Compensation**

The Company's executive officers shall not receive additional compensation for their service as directors. Senior management of the Company will report once a year to the Compensation Committee regarding the status of the Company's non-management director compensation in relation to other U.S. companies of comparable size and the Company's competitors. Such report will include consideration of both direct and indirect forms of compensation to the Company's non-management directors, including any charitable contributions by the Company to organizations in which a non-management director is involved. Following a review of the report, the Compensation Committee will recommend any changes in non-management director compensation to the Chairman of the Board, which changes will be approved or disapproved by the Board after a full discussion. In the event that the Company is required to prepare an Accounting Restatement in accordance with the Compensation Recovery Policy, the Company shall recover reasonably promptly the amount of Erroneously Awarded Compensation.

## **Conflicts of Interest**

Directors are expected to avoid any action, position or interest that conflicts with the interests of the Company or gives the appearance of a conflict. If an actual or potential conflict of interest develops, the director should immediately report the matter to the Chairman of the Board. Any significant conflict must be resolved or, if not resolved, the director shall resign. If a director has a personal interest in a matter before the Board, the director will disclose the interest to the Board, excuse himself or herself from discussion on the matter, and not vote on the matter.

## **Board Orientation and Continuing Education of Board Members**

The Company provides new directors with a director orientation program to familiarize them with, among other things, the Company's business, strategic plans, significant financial, accounting and management issues, compliance programs, conflicts policies, Code of Business Conduct and Ethics, these Guidelines, principal officers, internal auditors, and independent auditors.

The Company will make available to directors continuing education programs, as management or the Board determines desirable.

## **Interaction with Institutional Investors, the Press and Customers**

The Board believes that management speaks for the Company. Each director should refer all inquiries from institutional investors, the press or customers to management. Individual Board members may, from time to time and at the request of management, meet or otherwise communicate with various constituencies that are involved with the Company. If comments from the Board are appropriate, they should, in most circumstances, come from the Chairman of the Board.

## **Board Access to Senior Management**

The Board will have complete access to Company management to ensure directors can ask any questions and receive all information necessary to perform their duties. Directors should exercise judgment to ensure their contact with management does not distract managers from their jobs or disturb the business operations of the Company. Such contact, if in writing, should be copied to the Chief Executive Officer of the Company.

## **Board Access to Independent Advisors**

The Board Committees may hire independent advisors as set forth in their applicable charters. The Board shall have access to such advisors and such other independent advisors that the Company retains or that the Board considers necessary to discharge its responsibilities.

## **Annual Self-Evaluation**

Following the end of each fiscal year, the Committee will oversee an annual assessment by the Board of the Board's performance. The Committee will be responsible for establishing the evaluation criteria and implementing the process for such evaluation, as well as considering other corporate governance principles that may, from time to time, merit consideration by the Board.

The assessment should include a review of any areas in which the Board or management believes the Board can make a better contribution to the governance of the Company, as well as a review of the Committee structure and an assessment of the Board's compliance with the principles set forth in these Guidelines. The purpose of the review will be to improve the performance of the Board as a unit, and not to target the performance of any individual Board member. The Committee will utilize the results of the Board evaluation process in assessing and determining the characteristics and critical skills required of prospective candidates for election to the Board.

## **2. BOARD MEETINGS**

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### **Frequency of Meetings**

The Board will meet at least once annually. In addition, special meetings may be called from time to time as determined by the needs of the business. It is the responsibility of the directors to attend meetings.

### **Director of Attendance**

A director is expected to spend the time and effort necessary to properly discharge his or her responsibilities. Accordingly, a director is expected to regularly prepare for and attend meetings of the Board and all Committees on which the director sits (including separate meetings of non-management directors and the Independent Directors), with the understanding that, on occasion, a director may be unable to attend a meeting. A director who is unable to attend a meeting is expected to notify the Chairman of the Board or the Chair of the appropriate Committee in advance of such meeting, and, whenever possible, participate in such meeting via teleconference.

Each director must attend at least 75% of the aggregate number of Board and Committee meetings in each fiscal year for which he or she is a member. Absent an excuse that is acceptable to the Board in its discretion, any director failing to attend at least 75% of such meetings will not be nominated for re-election to the Board at the next annual meeting.

### **Attendance of Non-Directors**

The Board encourages the Chairman of the Board or the Chair of any Committee to bring Company management and outside advisors or consultants from time to time into Board and/or Committee meetings to provide insight into items being discussed by the Board which involve the manager, advisor or consultant, and make presentations to the Board on matters which involve the manager, advisor or consultant. Attendance of non-directors at Board meetings is at the discretion of the Board.

### **Agendas**

The Chairman establishes the agenda for each Board meeting with input from management and, as necessary or desired, from the other directors.

### **Advance Receipt of Meeting Materials**

Information regarding the topics to be considered at a meeting is essential to the Board's understanding of the business and the preparation of the directors for a productive meeting. To the extent feasible, the meeting agenda and any written materials relating to each Board meeting will be distributed to the directors sufficiently in advance of each meeting to allow for meaningful review of such agenda and materials by the directors. Directors are expected to have reviewed and be prepared to discuss all materials distributed in advance of any meeting.

### 3. COMMITTEE MATTERS

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#### **Number, Name, Responsibilities, and Independence of Committees**

The Board currently has three standing Committees: (i) an Audit Committee, (ii) a Compensation Committee, and (iii) a Corporate Governance and Nominating Committee. The Audit, Compensation, and Corporate Governance and Nominating Committees shall each be composed entirely of Independent Directors. In addition, our Board of Directors currently maintains a Scientific Advisory Board. From time to time, the Board may form a new Committee or disband a current Committee, depending upon the circumstances. Each Committee will perform its duties as assigned by the Board in compliance with the Company's Bylaws and the Committee's charter. The current standing Committees are:

(1) Audit Committee: The function of the Audit Committee is to help ensure the integrity of the Company's financial statements, the qualifications and independence of the Company's independent auditor, and the performance of the Company's internal audit function and independent auditors. The Audit Committee also selects, assists, and meets with the independent auditor, oversees each annual audit and quarterly review, establishes and maintains the Company's internal audit controls, and prepares the report that federal securities laws require be included in the Company's annual proxy statement.

(2) Compensation Committee: The function of the Compensation Committee is to review and approve the compensation and benefits of the Company's executive officers, evaluate and approve the Company's compensation plans, policies and programs, review and discuss with management the Company's compensation discussion and analysis to be included in the Company's annual proxy statement or Annual Report on Form 10-K filed with the SEC, and produce an annual report on executive compensation for inclusion in the Company's proxy statement or Annual Report on Form 10-K filed with the SEC, in accordance with applicable rules and regulations.

(3) Corporate Governance and Nominating Committee. The function of the Corporate Governance and Nominating Committee is to identify qualified candidates to become Board members; select nominees for election as directors at the next annual meeting of stockholders (or special meeting of stockholders at which directors are to be elected); consider offers from Board members to resign pursuant to the majority voting policy in these Guidelines and make recommendations to the Board regarding such offers; select candidates to fill any vacancies on the Board; develop and recommend to the Board these Guidelines; and oversee the evaluation of the Board and management of the Company.

(4) Scientific Advisory Board: The function of the Scientific Advisory Board is to provide advice and recommendations to the Board regarding Company scientific research, technology and innovation strategies, and opportunities including potential partnerships and M&A, as well as to provide strategic advice to the Board regarding emerging science and technology issues and trends.



## **Assignment and Rotation of Committee Members**

The Board appoints, on the recommendation of the Committee, Committee members and Committee chairs according to criteria set forth in the applicable Committee charter and such other criteria that the Board determines to be appropriate in light of the responsibilities of each Committee. Committee membership and the position of Committee Chair will not be rotated on a mandatory basis unless the Board determines that rotation is in the best interest of the Company. The Committee has adopted a guideline to consider rotating Committee members every five years and Committee Chairs every three years.

Each member of the Audit Committee must satisfy the independence requirements of the Nasdaq Rules and Rule 10A-3 under the Securities Exchange Act of 1934, as amended, and must be financially literate, as determined by the Board in its business judgment, or must become financially literate within a reasonable period after his or her appointment. At least one member of the Audit Committee must have accounting or related financial management expertise as determined by the Board in its business judgment. In addition, at least one member of the Audit Committee must meet the definition of "audit committee financial expert" as determined by the Board in its business judgment in accordance with Item 407(d) of Regulation S-K, or the Company shall disclose in its applicable filings pursuant to the Securities Exchange Act of 1934, as amended, the reasons why at least one member of the Audit Committee is not an "audit committee financial expert."

## **Frequency of Committee Meetings**

The minimum number of times each Committee must meet annually is specified in such Committee's charter. In addition, special meetings may be called by the Chair of the Committee, a majority of Committee members or the Chairman of the Board from time to time as determined by the needs of the business. It is the responsibility of the directors to attend the meetings of the Committees on which they serve.

## **Committee Agendas**

The chair of each Committee, in consultation with the appropriate members of the Committee, will develop their Committee's agenda.

## **Committee Self-Evaluations**

Following the end of each fiscal year, each Committee will review its performance and charter and recommend to the Board any changes it deems necessary.

## **4. LEADERSHIP DEVELOPMENT**

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### **Annual Review of Chief Executive Officer**

The Board, with input from the Compensation Committee and the Chief Executive Officer, shall annually establish the performance criteria (including both long-term and short-term goals) to be considered in connection with the Chief Executive Officer's next annual performance evaluation.

At the end of each year, the Chief Executive Officer shall make a presentation or furnish a written report to the Compensation Committee indicating his or her progress against such established performance criteria. Thereafter, with the Chief Executive Officer absent, the Compensation Committee shall meet to review the Chief Executive Officer's performance. The results of the review and evaluation shall be communicated to the Board and the Chief Executive Officer by the chair of the Compensation Committee.

### **Succession Planning**

The Committee meets at least annually with the Chief Executive Officer to review, maintain, and revise, if necessary, the Company's succession plan upon the Chief Executive Officer's retirement and in the event of an unexpected occurrence. The Chief Executive Officer shall report annually to the Board on succession planning for the Chief Executive Officer and senior management positions, including a discussion of assessments, leadership development plans, and other relevant factors.

### **Management Development**

The Board will ensure that a satisfactory system is in effect for the education, development, and orderly succession of senior and mid-level managers throughout the Company.

## **5. OVERSIGHT OF RISK MANAGEMENT**

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The Board and the Board Committees shall have an active role in overseeing management of the Company's risks. The Board shall regularly review information regarding the Company's credit, liquidity, and operations, as well as the risks associated with each. The Company's Compensation Committee shall be responsible for overseeing the management of risks relating to the Company's executive compensation plans and arrangements. The Company's Audit Committee shall oversee management of financial risks. The Company's Corporate Governance and Nominating Committee shall manage risks associated with the independence of the Board, adherence to corporate governance standards, and management development and leadership succession policies and programs. While each Committee shall be responsible for evaluating certain risks and overseeing the management of such risks, the entire Board shall be regularly informed through Committee reports about such risks.

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