

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K  
CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 29, 2020

**22nd Century Group, Inc.**  
(Exact Name of Registrant as Specified in Charter)

**Nevada**  
(State or Other Jurisdiction of Incorporation)

**001-36338**  
(Commission File Number)

**98-0468420**  
(I.R.S. Employer  
Identification No.)

**8560 Main Street, Suite 4, Williamsville, New York**  
(Address of Principal Executive Office)

**14221**  
(Zip Code)

Registrant's telephone number, including area code: **(716) 270-1523**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol	Name of each exchange on which registered
Common Stock, \$0.00001 par value	XXII	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). 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 13(a) of the Exchange Act.

**Item 5.02: Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

*Appointment of New CEO and CFO*

On June 3, 2020, 22nd Century Group, Inc. (the “Company”) announced the appointment of James A. Mish as its Chief Executive Officer, effective June 22, 2020, and the appointment of John Franzino as its Chief Financial Officer, effective immediately. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

Mr. Mish, age 56, has served as Chief Executive Officer of Noramco, a global leader in the production of controlled substances for the pharmaceutical industry, from 2016, and Purisys, a synthetic cannabinoid API, ingredients and solutions provider to pharmaceutical and consumer products companies from 2019. Prior to that, he served as President of Ashland Specialty Ingredients - Consumer Specialties, a major division of Ashland Corporation, a premier global specialty materials company serving customers in a wide range of consumer and industrial markets, from 2013 to 2016.

Mr. Franzino, age 63, has been in the position of Vice President of Administration with the Company since April 30, 2020 and previously served as Chief Financial Officer of West Point Association of Graduates from 2017. Additionally, he has extensive strategic financial leadership experience serving as Vice President of Finance and Controller of Bard College from 2012 to 2016 and as Chief Financial Officer of Santa Fe Natural Tobacco Company, a subsidiary of Reynolds American, Inc., from 2001 to 2011. Mr. Franzino is a Certified Public Accountant (CPA) and holds a Master of Business Administration degree from Farleigh Dickinson University and an Advanced Professional Certificate in Finance from New York University.

There are no family relationships between Mr. Mish and Mr. Franzino and any director, executive officer or person nominated or chosen by the Company to become a director or executive officer. Additionally, there have been no transactions involving Mr. Mish or Mr. Franzino that would require disclosure under Item 404(a) of Regulation S-K.

Each of Mr. Mish and Mr. Franzino entered into an employment agreement with the Company for a term of three years.

Pursuant to the employment agreement with James A. Mish, Mr. Mish will earn an initial base salary of \$450,000 and shall be eligible for future cash bonuses and awards of performance units as a percentage of base salary based on the achievement of performance targets to be established by the Company. As a one-time inducement, the Company agreed to an award of 150,000 restricted stock units (“RSUs”), vesting on the one-year anniversary of the date of grant, subject to continued service. Pursuant to the employment agreement with John Franzino, Mr. Franzino will earn an initial base salary \$250,000 and shall be eligible for future cash bonuses and equity awards.

---

If Mr. Mish's employment is terminated by the Company without Cause or by such executive for Good Reason (as such terms are defined in the employment agreement), then he will be entitled to a severance benefit in the form of (i) a continuation of his then-base salary for a period ending on the earlier of 12 months or the remaining term of the employment agreement (plus continuing health care coverage during such period) and (ii) the payment of a pro-rated bonus award. If Mr. Franzino's employment is terminated by the Company without Cause or by such executive for Good Reason (as such terms are defined in the employment agreement), then he will be entitled to a severance benefit in the form of (i) a continuation of his then-base salary for a period of 12 months and (ii) the payment of any earned but unpaid bonus award.

The description of the employment agreements above are qualified by reference to the forms of employment agreements, which are attached hereto as Exhibits 10.1 and 10.2, respectively.

*Resignation of CFO*

On May 29, 2020, Andrea S. Jentsch resigned as the Company's Chief Financial Officer. Mr. Jentsch's resignation is not the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

**Item 9.01(d): Financial Statements and Exhibits.**

[Exhibit 10.1](#) [Employment Agreement between the Company and James Mish](#)  
[Exhibit 10.2](#) [Employment Agreement between the Company and John Franzino](#)  
[Exhibit 99.1](#) [Press Release](#)

---

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**22nd Century Group, Inc.**

Date: June 3, 2020

/s/ Michael J. Zercher  
\_\_\_\_\_  
Michael J. Zercher  
President and Chief Operating Officer

---

22nd CENTURY GROUP, INC.  
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("**Agreement**") is dated as of May 22, 2020, between 22nd CENTURY GROUP, INC., a Nevada corporation ("**Company**") and James A. Mish ("**Executive**").

WHEREAS, the Company desires to engage the Executive as a full-time executive employee to provide services to the Company pursuant to the terms of this Agreement, and the Executive desires to accept such employment.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

1. EFFECTIVE DATE

The Executive's employment with the Company shall commence on June 22, 2020 (the "**Effective Date**").

2. EMPLOYMENT; DUTIES AND TERM

2.1 General. As of the Effective Date, the Company employs the Executive as, and the Executive agrees to serve as, Chief Executive Officer of the Company upon the terms and conditions specified in this Agreement. The Executive shall perform such duties and services for the Company as may be determined from time to time by the Board of Directors of the Company (the "**Board**"), provided that such duties and services shall be consistent in all material respects with the Executive's position Chief Executive Officer of the Company. The Executive agrees to serve the Company faithfully and to the best of his ability under the direction of the Board.

2.2 Exclusive Services. The Executive shall devote his full working time throughout the Employment Term (as defined in Section 2.3) to the performance of services for the Company. During the Employment Term, the Executive will not be employed by any other person or entity, or be self-employed, without the prior approval of the Board. The Executive shall use his best efforts, judgment and energy to improve and advance the business and interests of the Company in a manner consistent with the duties of his position. Upon the Executive's execution of this Agreement and during the Employment Term, the Executive will disclose to the Company any existing or proposed participation or membership in trade or professional associations, and any existing or proposed appointments as a member of the board of directors (or similar governing body) of any for-profit or not-for-profit entity; all such participations, memberships and appointments shall be subject to Board approval.

2.3 Employment Term. The Executive's employment under this Agreement shall commence as of the Effective Date and shall terminate on the earlier of (i) the third anniversary of the Effective Date (the "**Third Anniversary Date**") or (ii) earlier termination of the Executive's employment pursuant to Section 5 of this Agreement. At least 120 days prior to the Third Anniversary Date, the Board will initiate a discussion with the Executive regarding continuation of the Executive's employment after the Third Anniversary Date. If the Executive's employment with the Company continues after the Third Anniversary Date and the Company and the Executive have not agreed in writing to renew this Agreement or entered into a new employment agreement that supersedes this Agreement, the Executive's continuing employment with the Company will be "at will." For the purposes of this Agreement, "**Employment Term**" means the period beginning on the Effective Date and ending on the date that Executive's employment with the Company terminates for any reason.

2.4 Board Service. If requested by the Board, the Executive will, as applicable, accept an appointment to the Board or a nomination to stand for election to the Board. The Executive will not receive or be entitled to any additional compensation for service on the Board.

2.5 Location. Subject to travel as required in the performance of the Executive's duties for the Company, unless otherwise approved by the Board, the Executive will be located at the Company's corporate headquarters in the Buffalo, New York region and the Executive will maintain a residence in the Buffalo, New York region.

### 3. COMPENSATION

3.1 Base Salary. Commencing on the Effective Date, the Executive shall be paid an annual base salary ("**Base Salary**") in the amount of \$450,000.00, payable in accordance with the Company's payroll practices. Subject to the Executive's rights under Section 5.2, Base Salary is subject to increase or decrease, from time to time, in the sole and absolute discretion of the Board.

3.2 Initial RSU Grant. Within 30 days following the Effective Date, the Executive will receive an award of 150,000 restricted stock units ("RSUs") under the Company's 2014 Omnibus Incentive Plan (the "**2014 Plan**"). The RSUs will be subject to vesting requirements described on Exhibit A and all applicable terms of the 2014 Plan.

3.3 Cash Bonus Opportunity. During the Employment Term, the Executive will be eligible to receive an annual cash bonus in an amount not to exceed 150% of Base Salary. The amount of cash bonus awarded to the Executive in any year will be determined by the Board based on annual performance metrics and strategic goals for the Company and annual individual objectives for the Executive. Such metrics, goals and objectives will be determined annually by the Board in consultation with the Executive. Payment of a cash bonus in respect of a Company fiscal year will be made not later than 120 days following the end of the applicable Company fiscal year, provided that, except as otherwise provided in this Agreement, if the Employment Term ends prior to payment, the Executive shall not be entitled to such cash award.

3.4 Performance Unit Awards. During the Employment Term, the Executive will be eligible to receive an annual award of Performance Units (as defined in the 2014 Plan).

The maximum annual Performance Unit award to the Executive will be 250% of Base Salary, and each such award shall be subject to performance, vesting and other requirements specified by, or determined in accordance with, the 2014 Plan.

3.5 Reimbursement of Expenses. The Company shall reimburse the Executive for reasonable travel and other business expenses incurred by him in the fulfillment of his duties hereunder upon presentation by the Executive of an itemized account of such expenditures, in accordance with Company practices and policies.

3.6 Recoupment. The Executive agrees that the compensation provided by the Company under this Agreement or otherwise is subject to recoupment or clawback as required by law (including, for the avoidance of debt required under any policy adopted by the Company as required by applicable law).

#### 4. EMPLOYEE BENEFITS

The Executive shall, during his employment under this Agreement, be included to the extent eligible thereunder in all employee benefit plans, programs or arrangements (including plans, programs or arrangements providing for retirement benefits, disability benefits, health and life insurance, or vacation and paid holidays) which shall from time to time be established by the Company for, or made available to, its senior executives generally. The Executive will be provided not less than four (4) weeks' vacation per calendar year.

#### 5. TERMINATION OF EMPLOYMENT

##### 5.1 Termination Events.

5.1.1. By the Company. The Company may terminate the Executive's employment at any time for Cause (as hereinafter defined), without Cause, or upon the Executive's Disability (as hereinafter defined).

5.1.2. By the Executive. The Executive may terminate his employment at any time for Good Reason (as hereinafter defined) or without Good Reason.

##### 5.2 Termination Without Cause: Resignation for Good Reason

5.2.1 Severance Benefits. If, prior to the Third Anniversary Date, the Executive's employment is terminated by the Company without Cause, or the Executive resigns from his employment for Good Reason:

- (i) The Company shall continue to pay the Executive the Base Salary (at the rate in effect immediately prior to such termination) until the earlier of (a) the Third Anniversary Date, or (b) twelve (12) months following the effective date of termination (such period being referred to hereinafter as the "Severance Period"). The payments shall occur in installments in the same amount in effect immediately prior to such termination and at the same regular payment intervals as the Executive's Base Salary was being paid on the Effective Date and such installments shall be deemed a series of separate payments within the meaning of Treas. Reg. §1.409A-2(b)(2)(iii).

(ii) The Executive timely elects to continue health insurance coverage under the Company's applicable group health insurance plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), then the Company shall directly pay, or reimburse Executive for, the COBRA premium for the Executive and Executive's covered dependents under such plan during the Severance Period, provided that (a) the Executive will be responsible for paying the same portion of the premium that the Company requires to be paid by its management employees under the applicable plan, and (b) the Company's obligation to pay or reimburse the Executive for such premiums will terminate on the date Executive becomes eligible to receive reasonably comparable health insurance coverage from a subsequent employer (and Executive agrees to promptly notify the Company of such eligibility). If the Company determines that it cannot provide the benefit required by this Section 5.2.1(ii) without potentially breaching the Company's applicable group health insurance contract, violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act) or incurring an excise tax, the Company shall in lieu thereof during the Severance Period pay to the Executive a taxable monthly payment in an amount equal to the portion of the COBRA premium otherwise payable or reimbursable by the Company under this Section 5.2.1(ii).

(iii) The Executive will remain eligible to receive an award under the cash bonus program described in Section 3.3 with respect to the fiscal year in which termination occurs. Any such award shall be pro-rated to reflect the period of such fiscal year during which the Executive was employed by the Company.

(iv) The Executive shall have no further right to receive any other compensation or benefits after such termination or resignation of employment except as specifically determined in accordance with the terms of the employee benefit plans or programs of the Company. In the event of the Executive's death during the Severance Period, Base Salary continuation payments under this Section 5.2.1 shall continue to be made during the remainder of the Severance Period to the beneficiary designated in writing for this purpose by the Executive or, if no such beneficiary is specifically designated, to the Executive's estate.

**5.2.2 Termination of Severance Benefit** If, during the Severance Period, the Executive breaches any of his obligations under this Agreement (including, without limitation, the Executive's obligations under Section 6), the Company may, in addition to all other rights and remedies upon written notice to the Executive, terminate the Severance Period and cease to make any further payments or provide any benefits described in Section 5.2.1.

**5.2.3 Release.** The Company's obligation to make the Base Salary and bonus payments and provide health insurance benefits described in Section 5.2.1 shall be subject to the following conditions: (i) within 21 days after the effective date of termination or resignation, the Executive shall have executed and delivered to the Company a Termination Agreement and Release ("**Release**") in the form of **Exhibit B** attached hereto, and (ii) the Release shall not have been revoked by the Executive during the revocation period specified therein. If the Executive fails to deliver a fully executed Release to the Company before expiration of such 21 day period, or such release is revoked as permitted therein, then the Company will have no obligation to make any of the payments or provide any of the benefits specified in Section 5.2.1.

**5.3 Termination for Cause: Resignation Without Good Reason** If, prior to the Third Anniversary Date, the Executive's employment is terminated by the Company for Cause, or the Executive resigns from his employment hereunder other than for Good Reason, the Executive shall be entitled only to payment of his Base Salary as then in effect through and including the date of termination or resignation. The Executive shall have no further right to receive any other compensation or benefits after such termination or resignation of employment, except as determined in accordance with the terms of the employee benefit plans or programs of the Company.

**5.4 Cause.** Termination for "**Cause**" shall mean termination of the Executive's employment by the Company because of:

- (i) any act or omission that constitutes a breach by the Executive of any of his obligations under this Agreement or any written Company policy or procedure and failure to cure such breach after notice of, and a reasonable opportunity to cure, such breach;
- (ii) the continued willful failure or refusal of the Executive to substantially perform the duties reasonably required of him as an employee of the Company;
- (iii) an act of moral turpitude, dishonesty or fraud by, or criminal conviction (excluding non-felony convictions relating solely to vehicle and traffic offenses) of, the Executive which in the sole determination of the Board would render his continued employment by the Company damaging or detrimental to the Company;
- (iv) any material misappropriation of Company property by the Executive; or
- (v) any other willful misconduct by the Executive which is materially injurious to the financial condition or business reputation of, or is otherwise materially injurious to, the Company.

**5.5 Good Reason.** For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of one or more of the following events provided that, the Executive shall give the Company a written notice, within 45 days following the initial occurrence of the event, describing the event that the Executive claims to be Good Reason and stating the Executive's intention to terminate employment unless the Company takes appropriate corrective action:

- (i) a material decrease in the Executive's Base Salary other than a decrease not exceeding 10% which is part of a general decrease in base salary for substantially all of the Company's senior executives;
- (ii) a failure by the Company to pay material compensation due and payable to the Executive in connection with his employment;
- (iii) a material change in the Executive's position or title or the Company's failure to assign to the Executive duties that are generally consistent with the Executive's position and title;
- (iv) a material diminution in benefits provided by the Company to the Executive except for a diminution applicable to substantially all of the Company's senior executives; or
- (v) any change in reporting structure resulting in the Executive not being a direct report to the Board. The Company shall have 30 days from the date of receipt of the written notice from the Executive stating his claim of Good Reason in which to take appropriate corrective action. If the Company does not cure the Good Reason during such period, the Executive's employment will terminate as of the end of such 30-day period.

5.6 **Death or Disability.** In the event of termination of employment by reason of death or Disability, the Executive (or his estate, as applicable) shall be entitled to Base Salary and benefits through the date of termination. Other benefits shall be determined in accordance with the benefit plans maintained by the Company, and the Company shall have no further obligation hereunder. For purposes of this Agreement, "**Disability**" means a physical or mental disability or infirmity of the Executive that, in the sole opinion of the Board, prevents (with or without reasonable accommodation) the normal performance of substantially all his material duties as an employee of the Company, which disability or infirmity shall exist for any continuous period of 90 days.

5.7 **Resignation of Positions.** Upon termination of Executive's employment with the Company for any reason, the Executive agrees to immediately resign from all positions and offices in which he is then serving the Company and its subsidiaries including, but not limited to, if applicable, resignation from the Board.

## 6. CONFIDENTIALITY; NONSOLICITATION AND NONCOMPETITION

6.1 **Confidentiality.** The Executive covenants and agrees with the Company that he will not any time during the Employment Term and thereafter, except in performance of his obligations to the Company hereunder or with the prior written consent of the Company, directly or indirectly, disclose any secret or Confidential Information that he may learn or has learned by reason of his association with the Company. The term "**Confidential Information**" includes information not previously made generally available to the public by the Company, with respect to the Company's products, facilities, applications and methods, trade secrets and other intellectual property, systems, procedures, manuals, confidential reports, product price lists, customer lists, technical information, financial information (including the revenues, costs or profits associated with any of the Company's products), business and strategic plans, prospects or opportunities, but shall exclude any information which the Company intentionally makes generally available to the public other than as a result of disclosure by the Executive in violation of this Section 6.1. The Executive will be released of his obligations under this Section 6.1 to the extent the Executive is required to disclose under any applicable laws, regulations or directives of any government agency, tribunal or authority having jurisdiction in the matter or under subpoena or other process of law provided that the Executive provides the Company with prompt written notice of such requirement. In addition, the Executive will not be in breach of any obligations under Section 6.1, and will not be criminally or civilly liable under any Federal or state trade secret law, for the disclosure of Confidential Information that is made in confidence to a Federal, state or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law involving the Company or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law involving the Company, the Executive may disclose Confidential Information, including trade secrets, to his attorney and use such Confidential Information in the court proceeding if such Confidential Information is filed under seal.

6.2 **Acknowledgment of Company Assets.** The Executive acknowledges that the Company, at the Company's expense, has acquired, created and maintains, and will continue to acquire, create and maintain, significant goodwill with its current and prospective customers, strategic partners, vendors and employees and significant Confidential Information, and that such goodwill and Confidential Information is valuable property of the Company. The Executive further acknowledges that to the extent such goodwill and Confidential Information will be generated through the Executive's efforts, such efforts will be funded by the Company and the Executive will be fairly compensated for such efforts. The Executive acknowledges that all goodwill developed by the Executive relative to the Company's customers, strategic partners, vendors and employees, and all Confidential Information developed by the Executive, shall be the sole and exclusive property of the Company and shall not be personal to the Executive. Accordingly, in order to afford the Company reasonable protection of such goodwill and of the Company's Confidential Information, the Executive agrees as follows:

6.2.1 **No solicitation; Non-Interference.** During the Employment Term and for a period of two years after termination of employment for any reason (such two-year period, the "**Post-Termination Restrictive Covenant Period**"), the Executive shall not, directly or indirectly, as an investor, lender, officer, director, manager, or as an employee, associate, consultant or agent of any individual or entity, or in any other capacity: (i) solicit or endeavor to entice away from the Company any individual who is employed by the Company; (ii) solicit or endeavor to entice away from the Company any entity who is, or was within the then most recent 12-month period, a customer (or reasonably anticipated to become a customer) of the Company; (iii) interfere with the business relationship between the Company and any customer, strategic partner, supplier or vendor of the Company or attempt to persuade or encourage any customer, strategic partner, supplier or vendor of the Company to cease doing business with the Company or to engage in any activity competitive with the Company; or (iv) make or publish any disparaging remarks about the Company, its products, prospects or management.

**6.2.2 Change of Control Activity.** The Executive agrees that during the Post-Termination Restrictive Covenant Period, the Executive shall not, directly or indirectly, or in any individual or representative capacity, engage or otherwise participate in any Change of Control Activity with respect to the Company. “**Change of Control Activity**” means (a) effect, seek, offer or propose (whether publicly or otherwise) to effect, or cause or participate in, or in any way assist any other individual or entity to effect, seek, offer or propose (whether publicly or otherwise) to effect or participate in: (i) any acquisition of any securities (or beneficial ownership thereof) or all or substantially all of the assets of the Company, (ii) any tender or exchange offer, merger or other business combination involving the Company, (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company, or (iv) any “solicitation” of “proxies” (as such terms are used in the proxy rules of the Securities and Exchange Commission) or consents to vote any voting securities of the Company; (b) form, join or in any way participate in a “group” (as defined under the Securities Exchange Act of 1934, as amended) with respect to the securities of the Company; (c) make any public announcement with respect to, or submit an unsolicited proposal for or offer of (with or without condition), any extraordinary transaction involving the Company or its securities or assets; or (d) enter into any discussions or arrangements with any third party with respect to any of the foregoing.

**6.2.3 Non-Competition.** During the Employment Term and during the Post-Termination Restrictive Covenant Period, the Executive shall not, directly or indirectly, as an investor, lender, officer, director, manager, or as an employee, associate, consultant or agent of any individual or entity, or in any other capacity, (other than as an investor owning not more than a 1% interest in a publicly-traded entity), engage in the Restricted Business (as hereinafter defined) anywhere in the world other than on behalf of the Company. The Executive acknowledges and agrees that the Company conducts business throughout the world, that the Company’s legitimate and protectable business interests are throughout the world, and therefore this Section 6.2.3 is intended to prohibit competitive activities by the Executive throughout the world. “**Restricted Business**” means research and product development with respect to, the manufacture, distribution, marketing or sale of, or the licensing of intellectual property related to, tobacco products, hemp products, cannabis products, cannabinoids or other products made from or related to the tobacco plant or the cannabis plant, including but not limited to hemp, hemp/cannabis, industrial hemp, marijuana, marijuana/cannabis, *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*.

**6.3 Exclusive Property.** The Executive confirms that all Confidential Information is and shall remain the exclusive property of the Company. All business records, and documents (whether in paper or electronic media) kept or made by Executive relating to the business of the Company shall be and remain the property of the Company. Upon termination of the Executive’s employment with the Company for any reason, the Executive promptly deliver to the Company all of the following that are in the Executive’s possession or under his control: (i) all computers, telecommunication devices and other tangible property of the Company and its affiliates, and (ii) all documents and other materials, in whatever form, which include Confidential Information or which otherwise relate in whole or in part to the present or prospective business of the Company, including but not limited to, drawings, graphs, charts, specifications, notes, reports, memoranda, and computer disks and tapes, and all copies thereof.

**6.4 Injunctive Relief; Tolling.** Without intending to limit the remedies available to the Company, the Executive acknowledges that a breach of any of the covenants contained in this Section 6 may result in material and irreparable injury to the Company or its affiliates or subsidiaries for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction restraining the Executive from engaging in activities prohibited by this Section 6 or such other relief as may be required specifically to enforce any of the covenants in this Section 6. If for any reason, it is held that the restrictions under this Section 6 are not reasonable or that consideration therefore is inadequate, such restrictions shall be interpreted or modified to include as much of the duration and scope identified in this Section 6 as will render such restrictions valid and enforceable including, if applicable, modifications to the geographic scope of Section 6.2.3. The Post-Termination Restrictive Covenant Period will not include any period during which the Executive is in violation of Sections 6.1, 6.2.1, 6.2.2 or 6.2.3.

**6.5 Communication to Third Parties.** The Executive agrees that the Company shall have the right to communicate the terms of this Section 6 to any third parties, including but not limited to, any prospective employer of the Executive. The Executive waives any right to assert any claim for damages against Company or any officer, employee or agent of Company arising from such disclosure of the terms of this Section 6.

**6.6 Independent Obligations.** The provisions of this Section 6 shall be independent of any other provision of this Agreement. The existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense of the enforcement of this Section 6 by the Company.

**6.7 Non-Exclusivity.** The Company’s rights and the Executive’s obligations set forth in this Section 6 and in Section 7 are in addition to, and not in lieu of, all rights and obligations provided by applicable statutory or common law.

## 7. INVENTIONS

The term “Invention” means any discovery, concept or idea, whether or not patentable or copyrightable, including but not limited to processes, methods, formulae and techniques, as well as improvements thereof or know-how related thereto. The Executive will promptly and fully inform the Company in writing of any Invention which is conceived, made, or reduced to practice by the Executive, either solely or jointly with another or others, during the Employment Term or within 12 months after termination of the Executive’s employment for any reason, setting forth in detail the procedures employed and the results achieved. The Company and/or its nominee or assign will be the sole owner, without payment of royalty or any other compensation to the Executive, of any such Invention which (i) is conceived, made or reduced to practice with the use of Confidential Information or the Company’s equipment, facilities, materials, personnel or other resources, or (ii) at the time it is conceived, made or reduced to practice relates to the Company’s present or prospective business or actual or demonstrably anticipated research or development, or (iii) is the result of any work performed by the Executive for the Company. With respect to each such Invention of which the Company is the owner, the Executive will execute and deliver promptly to the Company (without charge to the Company but at its expense) such written instruments and do such other acts as may be necessary in the opinion of the Company to obtain and maintain United States and/or foreign letters patent or United States and/or foreign copyright registrations and to vest the entire right and title thereto in the Company.

8. CERTAIN PAYMENTS

Notwithstanding anything in this Agreement to the contrary, if any amounts due to the Executive under this Agreement and any other plan or program of the Company constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code")), then the aggregate of the amounts constituting the parachute payment shall be reduced to an amount that will equal three times his "base amount" (as defined in Section 280G(b)(3) of the Code) less \$1.00. The determination to be made with respect to this Section 8 shall be made by an accounting firm jointly selected by the Company and the Executive and paid by the Company, and which may be the Company's independent auditors.

9. MISCELLANEOUS.

9.1 Notices. All notices or communications hereunder shall be in writing, addressed as follows:

To the Company,

22nd Century Group, Inc.  
8560 Main Street  
Suite 4  
Williamsville, New York 14221  
Attention: Chairman of the Board

To the Executive, at such address maintained in the Company's records as the Executive's primary residential address.

All such notices shall be conclusively deemed to be received and shall be effective, (i) if sent by hand delivery, upon receipt, (ii) if sent by nationally recognized overnight carrier, upon receipt; or (iii) if sent by registered or certified mail, on the fifth day after the day on which such notice is mailed.

9.2 Severability. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.3 Assignment. Neither this Agreement nor any rights hereunder shall be assignable or otherwise subject to hypothecation by the Executive.

9.4 Entire Agreement. This Agreement represents the entire agreement of the parties and shall supersede any and all previous contracts, arrangements or understandings between the Company and the Executive relating to the subject matter hereof. This Agreement may be amended at any time by mutual written agreement of the parties hereto.

9.5 Withholding. The payment of any amount pursuant to this Agreement shall be subject to applicable withholding and payroll taxes, and such other deductions as may be required under the applicable law or Company's employee benefits plans, if any.

9.6 Governing Law: Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that state. The Company and the Executive agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Executive's employment with the Company will be brought only to the exclusive jurisdiction of the courts of the State of New York or the federal courts located in the State of New York, in each case located in Buffalo, New York, and each of the Company and the Executive hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Further, the Company and the Executive agree that, after a legal dispute is before a court as specified in this Section 9.6, and during the pendency of such dispute before such court, all actions, suits, or proceedings with respect to such dispute or any other dispute, including without limitation, any counterclaim, cross-claim or interpleader, will be subject to the exclusive jurisdiction of such court.

9.7 Costs of Enforcement. In the event of a dispute or action to enforce the terms of this Employment Agreement, the prevailing party shall be entitled to its costs and expenses incurred in connection therewith, including all attorneys' fees.

9.8 Legal Advice. The Executive hereby represents and warrants to the Company that he has had the opportunity to seek independent legal advice prior to the execution and delivery of this Agreement and that he has availed himself of that opportunity prior to signing this Agreement and that he is signing this Agreement voluntarily without any undue pressure. Executive represents that he: (i) is familiar with the covenants set forth in Section 6 and (ii) is fully aware of his obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of such covenants.

9.9 Absence of Conflicting Obligations. The Executive represents and warrants that his execution, and delivery of this Agreement, and his performance of services for the Company as contemplated by this Agreement, do not conflict with or breach any contractual, fiduciary or other legal obligation owed by the Executive to any other individual or entity.

9.10 Counterparts. This Employment Agreement may be executed in multiple counterparts (including by means of electronic signatures, or facsimile or PDF signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed and the Executive has hereunto set his hand, as of the day and year first above written.

22nd CENTURY GROUP, INC.

By \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
James A. Mish

**EXHIBIT A**  
**INITIAL RSU GRANT (150,000 UNITS)**

- All 150,000 RSUs will vest upon satisfaction of all of the following conditions: (i) the Executive has remained continuously employed as the Company's Chief Executive Officer from the Effective Date through the one-year anniversary of the Effective Date, (ii) on the one-year anniversary of the Effective Date no event has occurred that would constitute Cause, and (iii) on the 90th day following the Effective Date (the "**Share Acquisition Deadline**") the Executive is the record and beneficial owner of not less than 100,000 shares of Company common stock purchased by Executive after the Effective Date in open-market transactions in compliance with all applicable securities laws and the Company's Insider Trading Policy; provided, however, that if the Share Acquisition Deadline is a day during which the Executive's ability to purchase Company common stock is prohibited by the Company's Insider Trading Policy or applicable securities laws, then the Share Acquisition Deadline shall be extended to the first day thereafter on which such purchase by the Executive is permitted.

**EXHIBIT B**

**22nd CENTURY GROUP, INC.  
TERMINATION AGREEMENT AND RELEASE**

In consideration of the payments and benefits to be provided to me by 22nd Century Group, Inc. (the "**Company**") pursuant to Section 5.2.1 of the Employment Agreement between the Company and me dated \_\_\_\_\_, 2020 (the "**Employment Agreement**"), I agree as follows:

1. **Termination.** My employment with the Company is terminated effective \_\_\_\_\_ and I will not thereafter apply for employment with the Company.

2. **Release.** On behalf of myself and my heirs, successors, executors, administrators, trustees, legal representatives, agents and assigns, I fully and forever release and discharge the Company, its subsidiaries, divisions and affiliates and its and all of their predecessors, successors, assigns, directors and officers (collectively "**Released Parties**") from any and all claims, demands, suits, causes of action, obligations, promises, damages, fees, covenants, agreements, attorneys' fees, debts, contracts and torts of every kind whatsoever, known or unknown, at law or in equity, foreseen or unforeseen, which against the Released Parties I ever had, now have or which I may have for, upon or by reason of any matter, cause or thing whatsoever relating to or arising from my employment with the Company or the termination thereof, specifically including, but not limited to, all claims under the following: the Civil Rights Acts of 1866, 1871, 1964 and 1991; the Age Discrimination in Employment Act of 1967; the Older Workers' Benefit Protection Act of 1990; the Americans with Disabilities Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Worker Adjustment Retraining Notification Act; the Family and Medical Leave Act; the National Labor Relations Act; the Occupational Safety and Health Act; the New York State Human Rights Law; the New York City Human Rights Law; the New York State Labor Law; §§ 120 and 241 of the New York State Workers' Compensation Law; any contract of employment, express or implied; and any and all other federal, state or local laws, rules or regulations.

I hereby waive the right to receive any personal relief (i.e. monetary or equitable relief) as a result of any lawsuit or other proceeding brought by the EEOC or any other governmental agency, based on or related to any of the matters from which I have released the Released Parties. I also will take all actions necessary, if any, now or in the future, to make this Release effective.

The foregoing release shall not operate to release the Company from its obligations to make payments and provide benefits as provided under Section 5.2.1 of the Employment Agreement.

In connection with the foregoing release (i) I acknowledge that the payments and benefits under Section 5.2.1 of the Employment Agreement are good and sufficient consideration to which I would not otherwise be entitled but for my execution and delivery to the Company of this instrument, (ii) I acknowledge that I have been advised by the Company to consult with an attorney before signing this instrument, (iii) the Company has allowed me at least twenty-one (21) days from the date I first receive this instrument to consider it before being required to sign it and return it to the Company, and (iv) I may revoke this instrument, in its entirety, within seven (7) days after signing it by delivering written notice of such revocation to the Company on or before 5:00 p.m. on the seventh day of such revocation period.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the \_\_\_\_ day of \_\_\_\_\_

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made as of April 8, 2020, between 22nd Century Group, Inc., a Nevada corporation with its office located at 8560 Main Street, Suite 4, Williamsville, New York 14221 (the "Company"), and John Franzino, an individual residing at 82 Roe Ave, Highland Falls, New York 10928 (the "Employee").

**1. EMPLOYMENT DUTIES AND RESPONSIBILITIES**

1.1 Position and Title. The Company hereby agrees to employ the Employee in the position(s) described on Addendum A attached hereto and the Employee hereby accepts such position(s) and agrees to serve the Company, including Company Affiliates (as defined below), in such capacity until this Agreement expires as set forth in Addendum A or this Agreement is earlier terminated by one of the parties in accordance with the terms set forth in Section 4 below.

1.2 Company Policies and Procedures. The Employee agrees to materially abide by all applicable policies and procedures of the Company and its Affiliates (as defined below) for which notice of the policy or procedure has been given in writing by Company and acknowledgement of receipt has been given in writing by Employee, and Employee agrees to perform job duties to the best of his/her ability.

1.3 Attention. During the term of this Agreement, excluding any periods of paid time off to which Employee is entitled, Employee agrees (i) to devote Employee's full time, ability and attention to the business of the Company and its Affiliates (as defined below), during normal working hours, and (ii) not to acquire, hold or retain, whether directly or indirectly, more than a one percent (1%) passive investment interest in any business competing with or similar in nature to the business of the Company or any of its Affiliates. For purposes of this Agreement, "Affiliates" shall mean any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under the common control of, the Company.

**2. TERM OF EMPLOYMENT**

2.1 Effective Date. The Effective Date of this Agreement shall be April 30, 2020.

2.2 Term. The initial term of this Agreement shall be set forth on Addendum A hereto, and the Company agrees to employ the Employee and the Employee hereby agrees to serve the Company until this Agreement is terminated by one of the parties in accordance with the terms set forth in Section 4 below.

**3. COMPENSATION**

3.1 Base Salary. During the Term of this Agreement the Company shall pay to Employee, and Employee shall accept from the Company, a bi-weekly base salary in the amount set forth on Addendum A attached hereto (the "Base Salary"), payable on the Company's standard pay schedule, provided that the Employee has been in active service during the specified pay period. Employee's Base Salary may not be decreased at any time during this Agreement without the express written consent of the Employee. The Base Salary will be increased as set forth in Addendum A hereto, as well as in such other amounts as the Company may determine in its sole discretion from time to time, but nothing herein shall be deemed to require any such increase other than as set forth in Addendum A hereto.

---

3.2 Incentive Compensation/Bonus. Employee will be eligible to receive a bonus of up to 50% of his Base Salary each calendar year based upon satisfactory achievement of personal performance objectives and business performance objectives as may be mutually determined by the Company and the Employee each year, and/or such other incentive compensation arrangements that may be entered into between the Company and the Employee in the future. Any such bonus will be deemed earned as of December 31 each year and paid out no later than April 30 each year, subject to approval by the Company's Board of Directors.

3.3 Stock Options/Restricted Stock Grants. Employee will be eligible for stock options and/or restricted stock as may be awarded by the Company, in its sole discretion, from time to time, subject to the terms of the Company's 2014 Omnibus Incentive Plan or any similar plan or agreement then being offered by the Company during the term of this Agreement.

3.4 Expenses. Employee shall be entitled to reimbursement of business expenses that are incurred in the furtherance of Company business and are consistent with the Company's policies for such expense reimbursement.

3.5 Benefits. Employee shall receive medical, dental, personal disability, retirement, and/or other fringe benefits as are provided to similarly situated executives of the Company from time to time, as well as Employee may participate in the Company's 401(k) retirement plan, all as described in Addendum A hereto. Employee shall receive the relocation benefits described in Addendum A, and Employee shall be eligible for paid time off as described in Addendum A.

3.6 Equipment. Company will provide Employee with use of a computer and use of a Company cellular phone or reimbursement for monthly cellular phone charges (not to exceed \$60.00 per month), in each case at the option of the Company, for Employee to conduct business and/or remain in contact with the office(s) or employees while Employee is away from the office.

#### **4. TERMINATION OF EMPLOYMENT**

Employee's employment with the Company may be terminated, prior to the expiration of any term of this Employment Agreement as set forth on Addendum A hereto, in accordance with any of the following provisions:

4.1 Termination By Employee Without Good Reason. The Employee may terminate employment at any time during the course of this Agreement by giving thirty (30) days' notice in writing to the Chief Executive Officer or President of the Company. During the notice period, Employee must fulfill all Employee's duties and responsibilities set forth above and use Employee's best efforts to train and support Employee's replacement, if any. Failure to comply with this requirement may result in Termination for Cause described below, but otherwise Employee's salary and benefits will remain unchanged during the 30-day notification period. The Company, at its option, may relieve Employee of all Employee's duties and responsibilities at any time during the notice period, but will, in such instance, be required to continue to maintain Employee's pay and benefits through the remainder of the 30-day notice period.

---

4.2 Termination By The Company Without Cause. The Company may terminate Employee's employment without cause at any time during the term of this Agreement by giving the Employee thirty (30) days' notice of such termination, during which period Employee will continue to receive the compensation and benefits to which Employee would normally be entitled under the terms of this Agreement. During the notice period, Employee must fulfill all of Employee's duties and responsibilities and use Employee's best efforts to train and support Employee's replacement, if any. Notwithstanding the foregoing, the Company, at its option, may instruct Employee during such period not to undertake any active duties on behalf of the Company. In the event the Company terminates this Agreement under this Section 4.2, Employee shall be entitled to the severance benefits described under Section 7, pertaining to Severance Benefits, provided that the Employee elects to comply with the Restrictive Covenants set forth in Section 6. If Employee disavows the Restrictive Covenants and chooses to compete with the Company in violation of the covenants set forth in Section 6, then Employee forfeits all Severance Benefits provided in Section 7.

4.3 Termination By The Company For Cause. The Company may, at any time and without notice (except as required below), terminate the Employee for "cause." Termination by the Company of the Employee for "cause" shall be limited to termination based on any of the following grounds: (a) fraud, misappropriation, embezzlement or material acts of similar dishonesty; (b) conviction of a felony crime; (c) intentional and willful misconduct that subjects the Company to criminal or civil liability; (d) breach of the Employee's duty of loyalty to the Company or diversion or usurpation of corporate opportunities properly belonging to the Company; (e) material breach of this Agreement and/or any other agreement entered into between the Company and the Employee; and/or (f) willful and/or continued failure to satisfactorily perform the duties of Employee's position; provided, however, that Employee shall not be terminated for cause under subsection (e) or (f) above unless the Company first has provided Employee with written notice making specific reference to this Section 4.3 that the Company considers the Employee to be in violation of Employee's obligations under those subsections and Employee fails, within thirty (30) days of such notice, to cure the conduct that has given rise to the notice.

In the event of a termination by the Company for Cause, Employee shall be entitled to receive only that Base Salary earned on or before the Employee's last day of active service and other post-employment benefits required by law or under Company policy. Under this Section 4.3, Employee shall not be entitled to receive any portion of any bonus for the period in which the termination occurs.

4.4 Termination by the Employee For Good Reason.

a. This Agreement may be terminated by the Employee upon notice to the Company of any event constituting "Good Reason" as defined herein.

b. As used herein, the term "Good Reason" means: the failure of the Company to pay Employee's compensation in accordance with this Agreement without the prior written consent of the Employee; a material reduction in the Employee's Base Salary; a material reduction in the Employee's bonus opportunity; a relocation of the Employee's principal place of employment by more than 25 miles; any material breach by the Company of any material provision of this Agreement or any material provision of any other agreement between the Employee and the Company; or a material, adverse change in the Employee's title, authority, duties, or responsibilities (other than temporarily while the Employee is physically or mentally incapacitated or as required by applicable law). Provided, however, that the Employee shall not be deemed to have Good Reason pursuant to this provision unless the Employee gives the Company written notice that the specified conduct or event has occurred and making specific reference to this Section 4.4 and the Company fails to cure such conduct or event within thirty (30) days of receipt of such notice.

---

c. In the event the Employee terminates this Agreement under this Section 4.4, Employee shall be entitled to the severance benefits described under Section 7, pertaining to Severance Benefits, provided that the Employee elects to comply with the Restrictive Covenants set forth in Section 6. If Employee disavows the Restrictive Covenants and chooses to compete with the Company in violation of the covenants set forth in Section 6, then Employee forfeits all Severance Benefits provided in Section 7.

4.5 Termination By Death Or Disability. The Employee's employment and rights to compensation under this Agreement shall terminate if the Employee is unable to perform the duties of Employee's position due to death or disability; and the Employee, or the Employee's heirs, beneficiaries, successors, or assigns, shall be entitled only to receive any compensation fully earned prior to the date of the Employee's last day of active employment prior to such death or incapacitation due to disability and shall not be entitled to any other compensation or benefits, except: (a) to the extent specifically provided in this Agreement; (b) to the extent required by law; or (c) to the extent that such benefit plans or policies under which Employee is covered provide a benefit to the Employee or to the Employee's heirs, beneficiaries, successors, or assigns. As detailed in Addendum A hereto, Employee's unvested Time-Vested Stock Option (if any) will automatically vest in the case of the Employee's termination of employment with the Company by death or disability. For purpose of this agreement, "disability" shall be defined as the Employee's failure, due to a mental or physical condition, to perform the essential functions of Employee's position for more than 180 days in any 360-day period.

4.6 Change In Control and Termination Provisions.

(a) If within a three (3) year period following any Change in Control (as defined below), after the date hereof, there occurs any of the following:

- (i) any termination of the Employee other than as set forth in Section 4.3 (Termination by the Company for Cause) or Section 4.5 (Termination by Death or Disability),
  - (ii) a diminution of the Employee's responsibilities, as compared to the Employee's responsibilities immediately prior to the Change in Control, including a change in duties within the Company,
  - (iii) any reduction in the Base Salary or any other compensation as compared to such Base Salary or any other compensation as of the date immediately prior to the Change in Control,
  - (iv) any failure to provide the Employee with benefits at least as favorable as those enjoyed by similarly-situated senior corporate officers of the Company after the Change in Control or as granted to the Employee by this Agreement,
-

(v) any relocation of the Employee's principal site of employment to a location more than twenty-five (25) miles from the Executive's principal place of employment as of the date immediately prior to the Change in Control, or

(vi) any material breach of this Agreement by the Company;

then, at the option of the Employee, exercisable by the Employee within ninety (90) days after the occurrence of any of the foregoing events, the Employee may resign his/her employment with the Company (or, if involuntarily terminated, give notice of his/her intention to collect benefits under this Agreement) by delivering a notice in writing (the "Notice of Termination") to the Company, and the Employee shall be entitled to receive the severance benefits described under Section 7, pertaining to Severance Benefits, provided that the Employee elects to comply with the Restrictive Covenants set forth in Section 6. If Employee disavows the Restrictive Covenants and chooses to compete with the Company in violation of the covenants set forth in Section 6, then Employee forfeits all Severance Benefits provided in Section 7.

(b) Notwithstanding any provisions now or hereafter existing under the Company's 2014 Omnibus Incentive Plan or any other stock option plan or restricted share plan of the Company or any entity which directly or indirectly controls the Company, in the event of a Change in Control, all options and all restricted shares provided and/or to be provided to the Employee pursuant to this Agreement, the Company's 2014 Omnibus Incentive Plan and/or any other agreement between the Company (or any entity which directly or indirectly controls the Company) and Employee shall be granted and shall immediately fully vest as of the date of such Change in Control with such options and restricted shares being valued at the closing price of the common stock underlying such options and/or restricted stock grants on the day prior to the day of the Change of Control or, in the event such common stock is not then traded and quoted on a securities exchange or automated quotation system, then the value per share of such common stock shall be the higher of either (i) the book value per share of such common stock, (ii) the price per share of such common stock on the effective date hereof, or (iii) the average price per share of such common stock during the six (6) month period immediately preceding the date on which such shares of common stock were no longer traded and/or quoted on a securities exchange or automated quotation system.

(c) For purposes of this Agreement, a "Change in Control" shall be deemed to exist if any of the following occurs after the date hereof:

(i) a person, as defined in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (other than the Employee or a group including the Employee), either (A) acquires thirty percent (30%) or more of the combined voting power of the outstanding securities of the Company or any entity which directly or indirectly controls the Company, which securities have the right to vote in elections of directors of the Company or any entity which directly or indirectly controls the Company, and such acquisition shall not have been approved within sixty (60) days following such acquisition by a majority of the Continuing Directors (as hereinafter defined) then in office, or (B) acquires fifty percent (50%) or more of the combined voting power of the outstanding securities of the Company or any entity which directly or indirectly controls the Company, which securities have the right to vote in elections of directors of the Company or any entity which directly or indirectly controls the Company; or

---

(ii) Continuing Directors shall for any reason cease to constitute a majority of the Board of Directors; or

(iii) the Company or any entity which directly or indirectly controls the Company disposes, by sale of stock, assets or otherwise, of all or substantially all of the business of the Company or the business of any entity which directly or indirectly controls the Company to a party or parties other than a subsidiary or other affiliate of the Company or any entity which directly or indirectly controls the Company pursuant to a partial or complete liquidation of the Company or any entity which directly or indirectly controls the Company; or

(iv) the Board of Directors of the Company or any entity which directly or indirectly controls the Company approves the consolidation or merger of the Company or any entity which directly or indirectly controls the Company with or into any other person or entity (other than a wholly-owned subsidiary of the Company or any other entity which is directly or indirectly controlled by the Company), or any other person's consolidation or merger with or into the Company or any entity which directly or indirectly controls the Company, which results in all or part of the outstanding shares of common stock of the Company or any entity which directly or indirectly controls the Company being changed in any way or converted into or exchanged for stock or other securities or cash or any other property.

For purposes of this Agreement, the term "Continuing Director" shall mean a member of the Board of Directors of the Company or any entity which directly or indirectly controls the Company who either was a member of such Board of Directors on the date hereof or who subsequently became a Director of the Company or any entity which directly or indirectly controls the Company and whose election, or nomination for election, was approved by a vote of at least two-thirds (2/3) of the Continuing Directors then in office.

4.7 Termination of Officer/Director. In the event that Employee separates from employment with the Company regardless of the reason(s), any officer and/or director position held by the Employee shall automatically terminate on the same date as Employee's separation from the Company.

## 5. CONFIDENTIALITY AND NONDISCLOSURE

5.1 Non-Disclosure of Confidential Information. Employee recognizes that Employee's position with Company is one of the highest trust and confidence and that Employee will have access to and contact with the trade secrets and confidential and proprietary business information of Company. Employee agrees that Employee shall not, while employed by Company or thereafter, directly or indirectly, use for Employee's own benefit or for the benefit of another, or disclose to another any trade secret or Confidential Information (as defined below) of the Company, except to the extent that such use or disclosure is required in the discharge of Employee's duties and obligations on behalf of the Company, or to the extent that such use or disclosure is expressly required or permitted by law or mandated by a governmental authority.

5.2 Definition of "Confidential Information." For purposes of this Agreement, "Confidential Information" shall include proprietary or sensitive information, materials, knowledge, data or other information of the Company not generally known or available to the public relating to (a) the services, products, Biological Materials (as hereinafter defined), customer lists, business plans, marketing plans, pricing strategies, or similar confidential information of the Company, including but not limited to the Company's trade secrets, patents, intellectual property, systems, procedures, manuals, cost and pricing information, solicitations, proposals, bids, contracts, confidential reports and work product prepared in connection with projects and contracts, supporting information for any of the above items, contractors and contacts, and subcontractors and contacts with whom the Company has done business or is seeking to do business, the identities and records of vendors and suppliers of personnel, material and/or raw materials, all accounting and financial information, business plans and budgets, and all other information pertaining to the business activities and affairs of the Company of every nature and type; (b) the business of any Company customer, including without limitation, knowledge of the customer's current business or staffing needs; and (c) the identities and records of current or former employees of the Company or potential hires and their compensation arrangements with the Company.

---

5.3 Return of Materials, Equipment and Biological Materials Employee further agrees that all memoranda, notes, computer files, records, drawings, reports or other documents, in any format, made or compiled by Employee or made available to Employee while employed by Company concerning any Company activity shall be the property of Company and, if still in the possession and/or control of Employee, shall be delivered to Company upon termination of Employee's employment or at any other time upon request. Employee also agrees to return to the Company and not retain any and all equipment, including laptop computers, and Biological Materials belonging to the Company on or before Employee's last day of employment with Company.

5.4 No Prior Restrictions. The Employee hereby represents and warrants to the Company that the execution, delivery, and performance of this Agreement does not violate any provision of any agreement or restrictive covenant which the Employee has with any former employer which is not a Company Affiliate (a "Former Employer"). The Employee further acknowledges that to the extent the Employee has an obligation to the Former Employer not to disclose certain confidential information, Employee intends to honor such obligation and the Company hereby agrees not to knowingly request the Employee to disclose such confidential information.

## 6. RESTRICTIVE COVENANTS

Employee acknowledges that Employee's services to be rendered hereunder are of a special and unusual character, which have a unique value to the Company and that the Company will be investing time, effort, and expense in Employee. In view of the unique value to the Company of the services of the Employee for which the Company has contracted hereunder, the investments by the Company in the Employee, and as a material inducement for the Company to enter into this Agreement and to pay to the Employee the compensation provided hereunder, Employee covenants and agrees as follows:

6.1. Definitions. The following definitions shall be applicable to each of the covenants set forth in this Section.

a. *Definition of "Same or Substantially Similar Services."* As used herein, "Same or Substantially Similar Services" means services, including without limitation the provision of goods and/or services that are identical or substantially similar, in whole or in part, to goods and/or services (i) which were provided by Employee while Employee was employed with the Company; (ii) which were provided by employees, contractors or third-parties whom Employee was directly or indirectly managing or with whom Employee interacted on behalf of the Company at any time during Employee's employment with Company; or (iii) which were the subject of proposals, contracts or negotiations with which Employee was involved while employed with the Company.

---

b. *Definition of "Customer."* As used herein, "Customer" is defined as any person or entity, including without limitation a Government Agency, to whom Employee, directly or indirectly (e.g., the end user of the services if the Company is a subcontractor), provided services while employed with the Company or with whom Employee interacted on behalf of the Company at any time during Employee's employment with Company.

c. *Definition of "Prospective Customer."* As used herein, "Prospective Customer" shall mean any person or entity, including without limitation a Government Agency, whom the Employee, at any time during the twelve (12) month period preceding the termination of Employee's employment, was involved in working on a proposal for, soliciting or making a proposal to, on behalf of the Company, for the provision of services.

d. *Definition of "Government Agency."* As used herein, "Government Agency" shall be limited to the division, department, operating unit, group, or other appropriate sub-entity of an agency to which the Employee provided services while employed with the Company or with whom Employee interacted on behalf of the Company at any time during Employee's employment with Company.

e. *Definition of "Biological Materials."* As used herein, "Biological Materials" shall mean any plant, seed, propagule, embryo, leaf, root and/or other plant part or tissue, and/or gene construct or fragment thereof, belonging to or produced for the Company and/or its Affiliates, including any of the foregoing produced by Employee or produced by others during Employee's employment with the Company.

f. *Definition of "Intellectual Property"* As used herein, "Intellectual Property" shall mean any and all inventions, developments, formulas, discoveries, concepts, trademarks, improvements, designs, innovations, data, processes, software, works of authorship, know-how, plants, plant varieties (whether registered for plant variety protection or not), tobacco products, smoking cessation aids, cannabis products, cannabinoids, cannabinoid products, drugs and ideas (whether patentable or not) directly or indirectly related to the Company and/or its Affiliates (i) conceived or made by Employee, either alone or with others, while employed by the Company or its Affiliates, and/or (ii) conceived or made by Employee, either alone or with others, with the use of Confidential Information.

## 6.2 Covenants.

a. *Non-Competition with Customers, Prospective Customers and Industry:* During Employee's employment by the Company and for a period of twelve (12) months after Employee ceases to be employed by the Company for any reason, then Employee will not (except on behalf of the Company), directly or indirectly, as either an employee, contractor, or consultant, whether personally or through another entity, provide or offer to provide any goods or Same or Substantially Similar Services to any person or entity planning to engage in or engaged in developing, growing, making, offering, marketing, distributing and/or selling of smoking cessation products, tobacco products, cannabis products, cannabinoids or other similar products made from or related to the tobacco (*Nicotiana*) plant or the cannabis plant ((e.g., *Cannabis indica*, *Cannabis sativa*, etc.) and/or providing or offering to provide the Same or Substantially Similar Services to any Customer or Prospective Customer. Employee specifically recognizes and agrees that the restrictions set forth in this subsection are reasonable. The Company acknowledges and agrees that serving as a Board member of a public or private company is not prohibited by this Section 6.2., however such Board membership shall be subject to approval by the Company in its sole discretion.

---

b. *Non-Interference With Customers or Prospective Customers.* Employee further agrees that, for the term of Employee's employment and for a period of twelve (12) months after Employee ceases to be employed by the Company, the Employee shall not undertake to interfere with the Company's relationship with any Customer, Prospective Customer, researcher, supplier, distributor, farmer and/or manufacturer. This means that Employee shall refrain: (i) from making disparaging comments about the Company or its board, management or employees to any Customer or Prospective Customer; (ii) from attempting to persuade any Customer, Prospective Customer, researcher, supplier, distributor, farmer and/or manufacturer to cease or reduce doing business with the Company; (iii) from soliciting any Customer (excluding suppliers and distributors), Prospective Customer (excluding suppliers and distributors), researcher, farmer and/or manufacturer for the purpose of providing services competitive with the Company Business; or (iv) from assisting any person or entity in doing any of the foregoing.

c. *Non-Solicitation and Non-Hiring of Employees.* Employee agrees that, for the term of Employee's employment and for a period of one (1) year after Employee ceases to be employed by the Company, the Employee shall not, directly or indirectly, as an employee, consultant, contractor, principal, agent, or owner, on Employee's own behalf or the behalf of another person or entity: (i) induce or attempt to induce any person employed or otherwise retained by the Company to leave their employment or retention with the Company; (ii) hire or employ, or attempt to hire or employ, any person employed or otherwise retained by the Company; or (iii) assist or facilitate in any way any other person or entity in the hiring or other retention of any person employed or otherwise retained by the Company. The foregoing restriction also shall apply with respect to any person who was an employee, consultant, subcontractor or other retained position with the Company at the time of, or at any time during the six (6) months preceding, the Employee's termination from the Company. This provision shall not limit the scope or the enforceability of the confidentiality restriction prohibiting the use or disclosure of any information pertaining to current or former employees of the Company or potential hires that was obtained in any manner during the period of Employee's employment with the Company.

d. *Further Covenants.* Employee further agrees, for the term of Employee's employment with the Company or any of its affiliates and for a period of one (1) year after Employee ceases to be employed by the Company or any of its affiliates, as follows:

(i) To disclose promptly in writing to the Company (but to no others), in such manner as the Company may from time to time prescribe, all Intellectual Property, whether patentable or not. All such Intellectual Property shall be the sole and exclusive property of the Company;

(ii) To assign and convey to the Company, upon request, the complete worldwide right, title and interest in and to all Intellectual Property conceived or made by Employee. Upon the request of the Company, Employee shall execute such further assignments and other instruments as may be necessary or desirable to fully and completely assign all such Intellectual Property to the Company and to assist the Company in applying for, obtaining and enforcing patents or copyrights or other rights in the United States and in any other jurisdiction with respect to any such Intellectual Property;

---

(iii) To promptly deliver to the Company any and all written records (in the form of notes, sketches, drawings and any other form as may be specified by the Company) documenting the concepts and/or actual reduction to practice of any such Intellectual Property. Such written records shall at all times be and remain the sole property of the Company;

(iv) Employee shall not be entitled to any payments or awards by reason of any patent application made by the Company or the granting of any patent thereon and, in the event the Company is required by its contracts with its customers, including the United States Government, to transfer rights to certain Intellectual Property to said customers, Employee also shall not be entitled to any payments or awards by reason of any patent application made by any of said customers, or the granting of any patent thereon;

(v) During the Employee's employment with the Company and thereafter, Employee shall do all lawful acts, including the execution of papers and giving of testimony that may be necessary or helpful, in obtaining, sustaining, reissuing and renewing United States patents and foreign jurisdiction patents on all such Intellectual Property and/or for perfecting and maintaining the title of the Company thereto; and to otherwise cooperate with the Company in any controversy or legal proceedings relating to such Intellectual Property or to patent applications or patents based thereon;

(vi) Insofar as reports, papers and technical information created by Employee and/or the Company contain unique, proprietary, non-public, and/or copyrightable material, the Employee agrees that the Company shall have the sole and exclusive right to disclose, publish, reproduce, distribute and circulate said material, without cost or liability; and Employee hereby grants all rights of Employee therein to the Company and Employee further releases the Company, its affiliates and its customers from any and all liability for disclosing, publishing, reproducing, distributing and/or circulating any such materials; and

(vii) All information and/or materials related to the Company and/or its business as created, in whole or in part, by the Employee during the course of Employee's employment with the Company shall be solely owned by the Company as "Works Made for Hire", as defined by the United States Copyright Act. To the extent any such works are not, by operation of law, "works made for hire", then Employee hereby assigns to the Company the sole and exclusive ownership of any and all rights of copyright in such works, including, without limitation, all Intellectual Property, and the Company shall have the sole right to obtain and hold in its own name all copyrights, copyright registrations and similar protections that may be available in such materials, works and Intellectual Property.

### 6.3 Enforcement and Remedies.

a. *Reasonableness of Restrictions.* Employee has carefully read and considered the provisions of this Section 6 and, having done so, agrees that the restrictions set forth in such provisions (including, but not limited to, the time period of the restrictions) are fair and reasonable and are reasonably required for the protection of the interests of the Company, its shareholders, directors, officers, and employees.

---

b. *Severability and Reformation.* In the event that, notwithstanding the foregoing, any portions of this Section 6 hereof shall be held to be invalid or unenforceable, the remaining portions thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable portions had not been included therein. In the event that any provision of this Section 6 shall be declared by a court of competent jurisdiction to be invalid due to overly broad, the parties do hereby authorize the court to reform the offending provision so as to make it enforceable.

c. *Successors.* Employee specifically acknowledges and agrees that these covenants contained in this Section 6 shall be enforceable by any successor to the Company.

d. *Extension of Term of Covenant In Event of Breach.* In the event Employee breaches any of the restrictions set forth in Section 6.2, then, in addition to any other remedies to which the Company may be entitled, the duration of the restrictions shall be extended automatically to 1 year from the latest date on which Employee shall have ceased to violate the covenants.

e. *Additional Remedies.* In the event that Employee breaches any of the covenants contained herein, the Company shall be entitled to its remedies at law and in equity, including but not limited to compensatory and punitive damages, and payment by Employee of the reasonable attorneys' fees, court costs, and other expenses incurred by the Company in enforcing the terms of this Agreement. The parties also recognize that any breach of the covenants contained herein may result in irreparable damage and injury to Company which will not be adequately compensable in monetary damages, and that in addition to any remedy that Company may have at law, the Company may obtain such preliminary or permanent injunction or decree as may be necessary to protect Company against, or on account of, any breach of the provisions contained herein. In addition, Employee covenants and agrees that, if Employee violates any of the covenants under Section 6.2 above, the Company shall be entitled to an accounting and repayment of all profits, compensation, commission, remuneration or benefits which Employee, directly or indirectly, has realized and/or may realize from the transactions that give rise to such violation(s).

## **7. SEVERANCE BENEFITS.**

If termination occurs under Section 4.2, Section 4.4 or Section 4.6, and provided that Employee elects to comply with the Restrictive Covenants in Section 6, then within thirty (30) days following the conclusion of the notice period, the Company shall provide a severance benefit to Employee as follows: Employee will continue to receive Employee's Base Salary then in effect, paid in accordance with standard payroll practices for the period of twelve (12) months following termination. Under this Section, Employee shall also be paid for any bonus earned through the date of termination or that would have been earned by Employee during the severance period. As described in Section 4.6(b) and Addendum A hereto, Employee's unvested RSUs will automatically vest on the date that Employee is terminated under Section 4.2, Section 4.4 or Section 4.6.

---

Notwithstanding anything to the contrary, in exchange for the Severance Benefits and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Employee, and on behalf of each of Employee's representatives, agents, estate, heirs, successors and assigns, hereby acknowledge full and complete satisfaction of and absolutely and unconditionally hereby release, remise, discharge, and hold harmless the "Company Releasees" (defined to include the Company and/or any of its parents, subsidiaries, divisions or affiliates, predecessors, successors or assigns, and its and their respective current and/or former partners, directors, shareholders/stockholders, officers, employees, attorneys and/or agents, all both individually and in their official capacities), from any and all actions or causes of action, suits, claims, complaints, contracts, liabilities, agreements, promises, contracts, torts, debts, damages, controversies, judgments, rights and demands of every kind and nature, whether existing or contingent, known or unknown, suspected or unsuspected, through and including the execution and delivery by Employee of a General Release (collectively, "Claims"), including without limitation those arising out of Employee's employment with, change in employment status with, and/or separation of employment from, the Company. This release is intended by the Employee and the Company to be all encompassing and to act as a full and total release of any Claims, whether specifically enumerated herein or not, that Employee may have or have had against the Company Releasees arising from conduct occurring up to and through the date of the General Release, including, but not limited to, any Claims arising from any federal, state or local law, regulation or constitution dealing with either employment, employment benefits or employment discrimination such as those laws or regulations concerning discrimination on the basis of race, color, creed, religion, age, sex, sex harassment, sexual orientation, national origin, ancestry, genetic carrier status, handicap or disability, veteran status, any military service or application for military service, or any other category protected under federal or state law; any contract, whether oral or written, express or implied; any tort; any Claim for equity or other benefits; or any other statutory and/or common law Claim.

In the event that Employee elects to compete with the Company in violation of the covenants set forth in Section 6, then Employee forfeits all Severance Benefits hereunder.

## **8. GENERAL PROVISIONS**

8.1 Notices. All notices and other communications required or permitted by this Agreement to be delivered by the Company or Employee to the other party shall be delivered in writing, either personally, by a national overnight delivery service (such as FedEx or UPS) or by certified or express mail, return receipt requested, postage prepaid, respectively, in each case being to the attention of the Chief Executive Officer or President at the headquarters of the Company, or to the address of record of the Employee on file at the Company. If notice is sent by overnight delivery service, it shall be deemed given and effective on the next business day after it was deposited with a national overnight delivery service. If notice is sent by certified mail, it shall be deemed given and effective on the third day after it was deposited in the mail.

8.2 Amendments. This Agreement may not be amended or modified except by a writing executed by all of the parties hereto.

8.3 Successors and Assigns. This Agreement is personal to Employee and shall not be assignable by Employee. The Company will assign its rights hereunder to (a) any corporation resulting from any merger, consolidation or other reorganization to which the Company is a party or (b) any corporation, partnership, association or other person to which the Company may transfer all or substantially all of the assets and business of the Company existing at such time. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

---

8.4 Severability: Provisions Subject to Applicable Law. All provisions of this Agreement shall be applicable only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal or unenforceable under any applicable law. If any provision of this Agreement or any application thereof shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of other provisions of this Agreement or of any other application of such provision shall in no way be affected thereby.

8.5 Waiver of Rights. No waiver by the Company or Employee of a right or remedy hereunder shall be deemed to be a waiver of any other right or remedy or of any subsequent right or remedy of the same kind.

8.6 Definitions, Headings, and Number. A term defined in any part of this Agreement shall have the defined meaning wherever such term is used herein. The headings contained in this Agreement are for reference purposes only and shall not affect in any manner the meaning or interpretation of this Employment Agreement. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form, and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place where the context so requires.

8.7 Governing Law. This Agreement and the parties' performance hereunder shall be governed by and interpreted under the laws of the State of New York. Employee agrees to submit to the jurisdiction of the courts of the State of New York, County of Erie, and that venue for any action arising out of this Agreement or the parties' performance hereunder shall be in a court of competent jurisdiction located in and serving the State of New York, County of Erie.

8.8 Attorneys' Fees. In the event of a dispute arising out of the interpretation or enforcement of this Agreement, the substantially prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

8.9 Construction and Interpretation. This Agreement has been discussed and negotiated by, all parties hereto and their counsel and shall be given a fair and reasonable interpretation in accordance with the terms hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

---

IN WITNESS WHEREOF, the Company and the Employee have executed and delivered this Agreement as of the date first written above.



EMPLOYEE:

John Franzino

22nd Century Group, Inc.

/s/ Michael J. Zercher

President & Chief Operating Officer

---

**ADDENDUM A TO  
EMPLOYMENT AGREEMENT OF JOHN FRANZINO**

This Addendum A is dated as of April 8, 2020 (the "Addendum"), to the Employment Agreement between 22nd Century Group, Inc., ("Company") and John Franzino ("Employee"), dated as of April 8, 2020 (the "Agreement"). This Addendum shall be effective on April 30, 2020.

- A. Employee's title for purposes of the Agreement shall be Vice President, Administration. Employee shall commence his/her employment in this position on April 30, 2020.
  - B. Employee will relocate his household to the Buffalo, New York area no later than the later of: (a) six months from the date Employee commences employment or (b) six months from the date that any applicable state or local non-essential business closure orders in New York, Erie County and Orange County are lifted. Company will reimburse Employee for reasonable travel expenses between the Company's offices in Williamsville, New York and the Employee's residence in Highland Falls, New York during this transition period to enable the Employee to work in the Company's offices for several days each week. After the Employee has physically relocated his household to the Buffalo, New York area, the Company will reimburse Employee up to \$7,500 for actual household moving expenses.
  - C. Unless earlier terminated as provided in the Agreement, the Term of the Agreement is for an initial period of three (3) years, and thereafter the Agreement shall renew on an annual basis unless earlier terminated by the Company or the Employee as provided in the Agreement.
  - D. Effective as of the date of this Addendum, Employee's Base Salary for purposes of the Agreement shall be equivalent to \$250,000.00 per year (paid bi-weekly at a gross rate of \$9,615.39 per pay period prior to required deductions and withholdings) for the period immediately following the effective date of this Addendum. Thereafter, the Base Salary of Employee may be increased, from time to time, in an amount as determined by the Company.
  - E. Pursuant to the Agreement, Employee shall be eligible for additional compensation and benefits as follows: (i) cash bonuses, from time to time, in an amount as determined by the Company, and (ii) participation in the Company's 2014 Omnibus Incentive Plan and/or any similar stock equity plan that the Company may establish after the date hereof.
  - F. As a one-time inducement to accept the offer of employment from the Company, and upon the Employee commencing full-time employment with the Company on the effective date of this Agreement and Addendum A, the Company agrees to grant at that time One Hundred Thousand (100,000) Restricted Stock Units ("RSUs") of the Company's common stock ("Shares"), which RSU's shall vest as follows: Fifty Thousand (50,000) RSUs vesting in twelve (12) months from the date of grant and Fifty Thousand (50,000) RSUs vesting in twenty-four (24) months from the date of grant.
  - G. As of the date of this Addendum, the Company pays 100% of Employee's premiums for *BlueCross BlueShield Gold POS 7100EX Health Insurance* (employee and dependent coverage) and 100% of Employee's premiums for *MetLife Preferred Dentist Program Plus Insurance* (employee and dependent coverage). Health insurance plans and the Company's policy regarding payments of premiums are subject to change by the Company.
-

- H. As of the date of this Addendum, the Company will offer Employee to be covered by Group Term Life and AD&D insurance equal to one times (1x) Employee's base salary and Long-Term Disability Insurance equal to 60% of Employee's monthly base salary. The Company will pay the premiums for such insurance, subject to change by the Company.
- I. Upon eligibility and enrollment, Employee may defer a percentage (up to the maximum permitted by law) of Employee's pre-tax salary to the Company's 401(k) plan. As of the date of this Addendum and subject to change by the Company, the Company makes per pay period Safe Harbor non-elective contributions to each participant's individual account in an amount equal to 3% of the participant's gross pay for the period, regardless of whether or not the Employee made elective deferrals to the plan. Employee must designate how she would like his/her 401(k) account invested.
- J. In addition to the Company's ten paid national holidays, Employee will be entitled to an annual grant of five weeks (25 business days) paid time off Employee shall be permitted to carry over a maximum of eight (8) weeks of unused leave. Such unused leave shall be paid out at termination of employment.

EMPLOYEE:

22nd Century Group, Inc.

/s/ John Franzino

By: Michael J. Zercher  
Michael J. Zercher  
President & Chief Operating Officer

---

**22nd Century Group Appoints James A. Mish as Chief Executive Officer and John Franzino as Chief Financial Officer**

*Mish brings extensive global executive leadership experience in the development, manufacturing and commercialization of active pharmaceutical ingredients, including cannabinoids, and related consumer products*

*Franzino brings extensive strategic financial leadership experience in tobacco and alcoholic beverage industries*

WILLIAMSVILLE, N.Y. — June 3, 2020 – 22nd Century Group, Inc. (NYSE American: XXII) (“22nd Century” or “the Company”), a leading plant biotechnology company primarily focused on reduced nicotine tobacco and also hemp/cannabis plant genetics research and development, announced today that James A. Mish has been appointed Chief Executive Officer, effective June 22, 2020. The Company also announced that John Franzino has been appointed Chief Financial Officer, effective immediately.

Mish brings extensive global executive leadership experience in science-driven organizations with a recent focus on the development, manufacturing and commercialization of active pharmaceutical ingredients (“API”), including cannabinoids, and related consumer products. He has an outstanding track record of delivering profitable growth at both privately held and publicly traded companies. Prior to joining 22nd Century, Mish served as Chief Executive Officer of Noramco, a global leader in the production of controlled substances for the pharmaceutical industry, and Purisys, a synthetic cannabinoid API, ingredients and solutions provider to pharmaceutical and consumer products companies. Mish led the creation and spinoff of Purisys from Noramco during his tenure.

“We are very pleased to welcome Jim as our new Chief Executive Officer at this critical juncture in our Company’s history,” said Nora B. Sullivan, Chairperson of the Board of Directors of 22nd Century. “Jim’s extensive and proven executive leadership capabilities, substantial science-based industry background and deep experience with pharmaceutical and consumer products make him an outstanding candidate to successfully execute on the Company’s initiatives and strategic plan going forward. We are confident that under Jim’s demonstrated leadership capabilities, 22nd Century will continue to build its portfolio of assets and create value for the benefit of our shareholders. We expect that with Jim’s direction and guidance, 22nd Century will achieve meaningful growth as the Company looks towards the anticipated authorization of our MRTTP application for our proprietary, reduced nicotine cigarettes, and as we work to develop new hemp/cannabis intellectual property and proprietary plants with valuable cannabinoid profiles.”

“I am delighted to join 22nd Century Group at this pivotal time in the Company’s growth as it looks to deliver on its primary mission to reduce smoking-related harm and also bring new and valuable hemp-derived cannabinoid products to market,” said Mish. “22nd Century is an innovative, plant-based biotech company with an extensive and growing intellectual property portfolio that is poised to disrupt both the tobacco and hemp/cannabis industries. I look forward to partnering with 22nd Century’s Board and management team to drive the business forward to deliver value to our customers and shareholders.”

Sullivan continued, “We are also pleased to welcome John Franzino into the role of Chief Financial Officer. John is an accomplished strategic financial executive with a track record of successful leadership in high-growth, highly regulated, consumer-facing industries including tobacco and alcoholic beverages. We are excited to have a CFO of his caliber on the executive management team to help lead the Company through the next chapter of its growth.”

---

Prior to joining 22nd Century Group, Franzino served as Chief Financial Officer of the West Point Association of Graduates. Additionally, he has extensive strategic financial leadership experience serving as Vice President of Finance and Controller at Bard College; as Chief Financial Officer of Santa Fe Natural Tobacco Company, a subsidiary of Reynolds American, Inc.; and as Chief Financial Officer of Labatt USA. Franzino is a Certified Public Accountant (CPA) and holds a Master of Business Administration degree from Farleigh Dickinson University.

“Also, on behalf of the Company’s Board of Directors, I would like to thank Andrea Jentsch, who has resigned as Chief Financial Officer due to personal reasons, for her service and significant contributions to the Company. Despite the challenges presented by COVID-19, Andrea has built a very strong team critical to advancing the Company’s accounting, finance, information technology and human resources activities, and she has made a number of significant improvements to the Company’s processes, internal reporting and IT resources that will be important enablers for the commercialization of the Company’s proprietary plants and products. We wish Andrea the best in her future endeavors,” Sullivan added.

**About 22nd Century Group, Inc.**

22nd Century Group, Inc. (NYSE American: XXII) is a leading plant biotechnology company focused on technologies that alter the level of nicotine in tobacco plants and the level of cannabinoids in hemp/cannabis plants through genetic engineering, gene-editing and modern plant breeding. The Company’s primary mission in tobacco is to reduce the harm caused by smoking by bringing its proprietary reduced nicotine content tobacco cigarettes – containing 95% less nicotine than conventional cigarettes – to adult smokers in the U.S. and international markets. The Company’s primary mission in hemp/cannabis is to develop proprietary hemp/cannabis plants with valuable cannabinoid profiles and agronomic traits and to commercialize those plants through a synergistic portfolio of strategic partnerships in the hemp/cannabis industry.

Learn more at [xxiicentury.com](http://xxiicentury.com), on Twitter [@xxiicentury](https://twitter.com/xxiicentury) and on [LinkedIn](https://www.linkedin.com/company/xxiicentury).

**Cautionary Note Regarding Forward Looking Statements**

This press release contains forward-looking statements concerning our business, operations and financial performance and condition as well as our plans, objectives and expectations for our business operations and financial performance and condition that are subject to risks and uncertainties. All statements other than statements of historical fact included in this press release are forward-looking statements. You can identify these statements by words such as “aim,” “anticipate,” “assume,” “believe,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “potential,” “positioned,” “predict,” “should,” “target,” “will,” “would” and other similar expressions that are predictions of or indicate future events and future trends. These forward-looking statements are based on current expectations, estimates, forecasts and projections about our business and the industry in which we operate and our management’s beliefs and assumptions. These statements are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. All forward-looking statements are subject to risks and uncertainties and others that could cause actual results to differ materially from those contained in our forward-looking statements. Please refer to the “Risk Factors” in our Annual Report on Form 10-K filed on March 11, 2020 and in our subsequently filed Quarterly Report on Form 10-Q. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

###

---

Contacts:

Mei Kuo  
22nd Century Group, Inc.  
(716) 300-1221  
[mkuo@xxiicentury.com](mailto:mkuo@xxiicentury.com)

Cory Ziskind  
ICR  
(646) 277-1232  
[cory.ziskind@icrinc.com](mailto:cory.ziskind@icrinc.com)

---