

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): November 15, 2021

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.)

500 Seneca Street, Suite 507, Buffalo, New York
(Address of Principal Executive Office)

14204
(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))

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.

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

Title of Each Class	Trading Symbol	Name of Exchange on Which Registered
Common Stock, \$0.00001 par value per share	XXII	NASDAQ Capital Market

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

On November 15, 2021, 22nd Century Group, Inc. (the “Company”) appointed Richard Fitzgerald as its Chief Financial Officer, effective immediately. Mr. Fitzgerald succeeds John Franzino, the Company’s previous Chief Financial Officer, who has transitioned to Chief Administrative Officer where he will be responsible for further developing the Company’s business processes and leading the Company’s financial planning and analysis, operational finance, human resources, and information technology functions. A copy of the press release announcing the transition is attached hereto as Exhibit 99.1 and is incorporated by reference herein.

Mr. Fitzgerald, age 58, currently is serving as Chief Financial Officer and Secretary of CleanTech Acquisition Corp. (Nasdaq: CLAQU), a SPAC focused on the CleanTech sector, since February of 2021. Mr. Fitzgerald recently served as Chief Financial Officer at Immunome, Inc. (Nasdaq: IMNM) a novel immunology therapeutics company that completed its IPO and Nasdaq listing in October 2020. Previously, Mr. Fitzgerald served as Chief Financial Officer for both Sesen Bio (Nasdaq: SESN), a late-stage clinical company advancing fusion protein therapies, and PAVmed Inc. (Nasdaq: PAVM), where he successfully completed the company’s IPO and Nasdaq listing. Mr. Fitzgerald has also held senior financial positions at TechPrecision Inc. (OTCBB: TPCS), Nucleonics Inc. (sold to Alnylam Pharmaceuticals Inc. (Nasdaq: ALNY)), and Exelon Corporation (NYSE: EXC). Mr. Fitzgerald received his B.S. in Business Administration and Accounting from Bucknell University. He previously served as Co-Chair of the Biotechnology Innovation Organization’s CFO/Tax Committee, which lobbied for capital markets and tax reforms in support of the life science industry. Mr. Fitzgerald is a member of the American and Pennsylvania Institutes of Public Accounting and a current Board member of the Bucknell University Alumni Association Board of Directors and serves on the Finance Committee of FORCE BLUE TEAM.ORG.

There are no family relationships between Mr. Fitzgerald 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. Fitzgerald that would require disclosure under Item 404(a) of Regulation SK.

Mr. Fitzgerald entered into an employment agreement with the Company for a term of three years. Pursuant to the employment agreement with Richard Fitzgerald, Mr. Fitzgerald will earn an initial base salary of \$325,000 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 up front award of \$75,000. If Mr. Fitzgerald’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 a continuation of his then-base salary for a period of 12 months (plus continuing health care coverage during such period). The description of the employment agreement above is qualified by reference to the form of employment agreement, which is attached hereto as Exhibit 10.1.

Item 9.01(d): Financial Statements and Exhibits.

Exhibit 10.1	Employment Agreement between the Company and Richard Fitzgerald dated November 15, 2021.
Exhibit 99.1	Press Release
Exhibit 104	Cover Page Interactive Data File - The cover page XBRL tags are embedded within the inline XBRL document

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.

/s/ Steven P. Przybyla

Steven P. Przybyla
Vice President, General Counsel and Secretary

Date: November 19, 2021

22nd CENTURY GROUP, INC.
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("**Agreement**") is dated as of November 15, 2021, between 22nd CENTURY GROUP, INC., a Nevada corporation ("**Company**") and Richard Fitzgerald ("**Employee**").

WHEREAS, the Company desires to engage the Employee as a full-time executive employee to provide services to the Company pursuant to the terms of this Agreement, and the Employee 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 Employee's employment with the Company shall commence on November 15, 2021 (the "**Effective Date**").

2. EMPLOYMENT DUTIES AND TERM

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

2.2 Exclusive Services. The Employee 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 Employee will not be employed by any other person or entity, or be self-employed, without the prior approval of the Board. The Employee 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 Employee's execution of this Agreement and during the Employment Term, the Employee 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 approval by the CEO.

2.3 Employment Term. The Employee's employment under this Agreement shall commence as of the Effective Date and shall continue until the earlier of (1) the 3-year anniversary of the Effective Date or (2) termination pursuant to Section 5 of this Agreement. For the purposes of this Agreement, "**Employment Term**" means the period beginning on the Effective Date and ending on the date that Employee's employment with the Company terminates for any reason.

3. COMPENSATION

3.1 Base Salary. During the Employment Term, the Employee shall be paid an annual base salary ("**Base Salary**") in the amount of \$325,000.00, payable in accordance with the Company's payroll practices. Base Salary is subject to increase or decrease, from time to time, in the sole and absolute discretion of the Board.

3.2 Signing Bonus. Within fifteen (15) days of the execution of this Agreement, Company shall pay to Employee a one-time cash payment of \$75,000.00 ("**Signing Bonus**"). The Signing Bonus shall be subject to full repayment by Employee for a period of sixty (60) days from November 15, 2021 ("**Clawback Period**"), should Employee (i) resign from his employment with the Company during the Clawback Period or (ii) be terminated for Cause, as defined in Section 5.4 herein during the Clawback Period. For the avoidance of doubt, the Employee shall not be subject to any repayment obligations for the Signing Bonus after the expiration of the Clawback Period.

3.3 Cash Bonus Opportunity. During the Employment Term, the Employee will be eligible to earn an annual cash bonus targeted at 75% of Base Salary. The amount of cash bonus awarded to the Employee in any year will be determined by the Board, in consultation with the CEO, based on annual performance metrics and strategic goals for the Company and annual individual objectives for the Employee. 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, if the Employment Term ends prior to payment, the Employee shall not be entitled to such cash award.

3.4 Performance Unit Awards. During the Employment Term, the Employee will be eligible to receive an annual award of Performance Units (as defined in the 2021 Plan). The target annual Performance Unit award to the Employee will be 100% of Base Salary, and each such award shall be subject to performance, vesting and other requirements specified by, or determined in accordance with, the 2021 Plan.

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

4. EMPLOYEE BENEFITS

The Employee shall, during the Employment Term, 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 management employees generally.

5. TERMINATION OF EMPLOYMENT

5.1 Termination Events

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

5.2 Termination Without Cause.

5.2.1 Severance Benefits. If the Employee's employment is terminated by the Company without Cause:

(i) The Company shall continue to pay the Employee the Base Salary (at the rate in effect immediately prior to such termination) for a period of 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 Employee'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) If the Employee 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 Employee for, the COBRA premium for the Employee and Employee's covered dependents under such plan during the Severance Period, provided that (a) the Employee 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 Employee for such premiums will terminate on the date Employee becomes eligible to receive reasonably comparable health insurance coverage from a subsequent employer (and Employee 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 Employee 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(i).

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(iii) The Employee shall have no further right to receive any other compensation or benefits after such termination 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 Employee'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 Employee or, if no such beneficiary is specifically designated, to the Employee's estate.

5.2.2 Termination of Severance Benefit. If, during the Severance Period, the Employee breaches any of his obligations under this Agreement (including, without limitation, the Employee's obligations under Section 6), the Company may, in addition to all other rights and remedies upon written notice to the Employee, 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 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 Employee shall have executed and delivered to the Company a Termination Agreement and Release ("**Release**") in the form of Exhibit A attached hereto, and (ii) the Release shall not have been revoked by the Employee during the revocation period specified therein. If the Employee 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. If the Employee's employment is terminated by the Company for Cause, or the Employee resigns from his employment hereunder for any reason, the Employee shall be entitled only to payment of his Base Salary as then in effect through and including the date of termination or resignation. The Employee 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 Employee's employment by the Company because of:

(i) any act or omission that constitutes a breach by the Employee 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;

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(ii) the continued willful failure or refusal of the Employee 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 Employee 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 Employee; or

(v) any other willful misconduct by the Employee which is materially injurious to the financial condition or business reputation of, or is otherwise materially injurious to, the Company.

5.5 Termination by the Employee For Good Reason.

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

(ii) 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; 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 5.5 and the Company fails to cure such conduct or event within thirty (30) days of receipt of such notice.

(iii) In the event the Employee terminates this Agreement under this Section 5.5, Employee shall be entitled to the severance benefits described under

Section 5.2, 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 5.2.

5.6 **Death or Disability.** In the event of termination of employment by reason of death or Disability, the Employee (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 Employee 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.

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5.7 **Resignation of Positions.** Upon termination of Employee’s employment with the Company for any reason, the Employee agrees to immediately resign from all positions and offices in which he is then serving the Company and its subsidiaries.

6. **CONFIDENTIALITY; NONSOLICITATION AND NONCOMPETITION**

6.1 **Confidentiality.** The Employee 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 Employee in violation of this Section 6.1. The Employee will be released of his obligations under this Section 6.1 to the extent the Employee 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 Employee provides the Company with prompt written notice of such requirement. In addition, the Employee 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 Employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law involving the Company, the Employee 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 Employee 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 Employee further acknowledges that to the extent such goodwill and Confidential Information will be generated through the Employee’s efforts, such efforts will be funded by the Company and the Employee will be fairly compensated for such efforts. The Employee acknowledges that all goodwill developed by the Employee relative to the Company’s customers, strategic partners, vendors and employees, and all Confidential Information developed by the Employee, shall be the sole and exclusive property of the Company and shall not be personal to the Employee. Accordingly, in order to afford the Company reasonable protection of such goodwill and of the Company’s Confidential Information, the Employee agrees as follows:

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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 Employee 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 Employee agrees that during the Post-Termination Restrictive Covenant Period, the Employee 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 Employee 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 Employee 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 Employee 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*.

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6.3 Exclusive Property. The Employee 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 Employee relating to the business of the Company shall be and remain the property of the Company. Upon termination of the Employee's employment with the Company for any reason, the Employee promptly deliver to the Company all of the following that are in the Employee'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 Employee 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 Employee 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 Employee is in violation of Sections 6.1, 6.2.1, 6.2.2 or 6.2.3.

6.5 Communication to Third Parties. The Employee 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 Employee. The Employee 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 Employee 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.

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6.7 Non-Exclusivity. The Company's rights and the Employee'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 Employee will promptly and fully inform the Company in writing of any Invention which is conceived, made, or reduced to practice by the Employee, either solely or jointly with another or others, during the Employment Term or within 12 months after termination of the Employee'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 Employee, 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 Employee for the Company. With respect to each such Invention of which the Company is the owner, the Employee 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 Employee 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 Employee and paid by the Company, and which may be the Company's independent auditors.

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9. MISCELLANEOUS.

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

To the Company,

22nd Century Group, Inc.
500 Seneca Street, Suite 507
Buffalo, New York 14204
Attention: General Counsel

To the Employee, at such address maintained in the Company's records as the Employee'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 Employee.

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 Employee 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 Employee 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 Employee'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 Employee 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 Employee 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.

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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 Employee 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. Employee 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 Employee 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 Employee 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]

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

22nd CENTURY GROUP, INC.

By: /s/ James A. Mish
Name: James A. Mish
Title: Chief Executive Officer

/s/ Richard Fitzgerald
Richard Fitzgerald

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EXHIBIT A

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 November 15, 2021 (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 _____.

22nd Century Group Announces CFO Transition

Richard Fitzgerald Joins as Chief Financial Officer

John Franzino Transitions to Chief Administrative Officer

BUFFALO, N.Y., November 19, 2021 (GLOBE NEWSWIRE) – 22nd Century Group, Inc. (Nasdaq: **XXII**), a leading agricultural biotechnology company focused on tobacco harm reduction, reduced nicotine tobacco, and improving health and wellness through modern plant science, announced today that Richard Fitzgerald has joined the Company as its Chief Financial Officer, effective November 15, 2021. John Franzino, the Company’s previous Chief Financial Officer, has transitioned to Chief Administrative Officer, where he will be responsible for further developing the company’s business processes and leading the Company’s financial planning and analysis, operational finance, human resources, and information technology functions.

“This is a pivotal time for 22nd Century as we build out our leadership team, particularly with the pending MRTP authorization and international launch of our VLN[®] product,” said James A. Mish, chief executive officer at 22nd Century Group. “We are excited to welcome Rich to the team, expanding our financial and strategic capabilities as we work to rapidly scale the business across all three of our plant franchises. Rich brings a diverse background, including extensive experience in IP and technology licensing in the life science industry, which we believe is timely as we execute on our key launch programs in tobacco, hemp/cannabis and hops.”

“John has been an important part of 22nd Century’s transformation since joining the Company. He has helped the Company advance our primary mission in tobacco harm reduction and to take leadership positions in two new plant franchises, enabling us to expand our revenue base, diversify into international markets, and build our balance sheet to its strongest level in Company history. In his role as Chief Administrative Officer, John will focus on further developing our corporate and operational capabilities to support our growth as we bring VLN[®] to market, begin to monetize our hemp/cannabis portfolio and expand our global operations across all three franchises,” said Mish.

“I am excited to join 22nd Century as the Company readies for a significant change in its revenue model through the launch of its disruptive VLN[®] product and monetization of its highly differentiated hemp/cannabis portfolio through both IP and plant line revenues,” said Fitzgerald. “22nd Century has positioned itself as a critical industry partner across all three of its franchises, and I look forward to building on this foundation as we continue to scale the company.”

Fitzgerald’s other roles include serving as Chief Financial Officer and Secretary of CleanTech Acquisition Corp, (Nasdaq: CLAQU), a SPAC focused on the CleanTech sector. Previously, he was a consulting CFO for Atrin Pharmaceuticals, a novel DNA Damage Repair focused oncology platform, Co-Founder and CFO of SIRPant Immunotherapeutics and CFO of Immunome (Nasdaq: IMNM), where he helped lead the company’s initial public offering onto the Nasdaq. Additionally, Fitzgerald has held financial executive roles at Sesen Bio (Nasdaq: SESN), Annovis Bio (NYSE: ANVS), and Pavmed (Nasdaq: PAVM), among others. He began his career as a Senior Manager in audit and transactions services at Coopers & Lybrand LLP, now PricewaterhouseCoopers. He holds a B.S., Business Administration, Accounting from Bucknell University.

About 22nd Century Group, Inc.

22nd Century Group, Inc. (Nasdaq: **XXII**) is a leading agricultural biotechnology company focused on tobacco harm reduction, reduced nicotine tobacco and improving health and wellness through plant science. With dozens of patents allowing it to control nicotine biosynthesis in the tobacco plant, the Company has developed proprietary reduced nicotine content (RNC) tobacco plants and cigarettes, which have become the cornerstone of the **FDA’s Comprehensive Plan** to address the widespread death and disease caused by smoking. In tobacco, hemp/cannabis, and hop plants, 22nd Century uses modern plant breeding technologies, including genetic engineering, gene-editing, and molecular breeding to deliver solutions for the life science and consumer products industries by creating new, proprietary plants with optimized alkaloid and flavonoid profiles as well as improved yields and valuable agronomic traits.

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

Cautionary Note Regarding Forward-Looking Statements

Except for historical information, all of the statements, expectations, and assumptions contained in this press release are forward-looking statements. Forward-looking statements typically contain terms such as “anticipate,” “believe,” “consider,” “continue,” “could,” “estimate,” “expect,” “explore,” “foresee,” “goal,” “guidance,” “intend,” “likely,” “may,” “plan,” “potential,” “predict,” “preliminary,” “probable,” “project,” “promising,” “seek,” “should,” “will,” “would,” and similar expressions. Actual results might differ materially from those explicit or implicit in forward-looking statements. Important factors that could cause actual results to differ materially are set forth in “Risk Factors” in the Company’s Annual Report on Form 10-K filed on March 11, 2021. All information provided in this release is as of the date hereof, and the Company assumes no obligation to and does not intend to update these forward-looking statements, except as required by law.

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