

Conciliation Agreement  
Between the  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
And  
22<sup>nd</sup> Century Technologies, Inc.  
220 Davidson Avenue, Suite 118  
Somerset, NJ 08873  
OFCCP Case No. R00302099

**I. Preliminary Statement**

The Office of Federal Contract Compliance Programs (OFCCP) evaluated the 22<sup>nd</sup> Century Technologies, Inc. (22<sup>nd</sup> Century) establishment located at 220 Davidson Avenue, Suite 118, Somerset, NJ (the “Establishment”), beginning on June 4, 2020. OFCCP found that 22<sup>nd</sup> Century failed to comply with Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended and its implementing regulations at 41 C.F.R. Section 60-741.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient consideration described in this document, OFCCP and 22<sup>nd</sup> Century enter into this Conciliation Agreement (“Agreement”) and the parties agree to all the terms therein.

**II. General Terms and Conditions**

1. In exchange for 22<sup>nd</sup> Century’s fulfillment of all obligations in this Agreement, OFCCP agrees not to issue a Notice of Violations in the compliance evaluation of the 220 Davidson Avenue, Suite 118, Somerset, NJ location and agrees not to institute administrative or judicial enforcement proceedings under Section 503, based on the violations described in more detail in Part III below. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if 22<sup>nd</sup> Century violates any provision of this Agreement, as set forth in Paragraph 10, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review 22<sup>nd</sup> Century’s compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the Establishment’s premises, interview witnesses, and examine and copy documents. 22<sup>nd</sup> Century will permit access to its Establishment’s premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents OFCCP requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves 22<sup>nd</sup> Century of its obligation to fully comply with the requirements of E.O. 11246, Section 503, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.

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4. 22<sup>nd</sup> Century agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This Agreement constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
7. This Agreement becomes effective on the day it is signed by the District Director.
8. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
9. This Agreement will expire sixty (60) days after 22<sup>nd</sup> Century submits its final progress report required in Section IV, below, unless OFCCP notifies 22<sup>nd</sup> Century in writing before the expiration date that 22<sup>nd</sup> Century has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that 22<sup>nd</sup> Century has met all of its obligations under the Agreement.
10. If 22<sup>nd</sup> Century violates this Agreement:
  - a. The procedures at 41 C.F.R. 60-741.63 will govern:
    - i. OFCCP will send 22<sup>nd</sup> Century a written notice stating the alleged violations and summarizing any supporting evidence.
    - ii. 22<sup>nd</sup> Century shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - iii. If 22<sup>nd</sup> Century is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
    - iv. In the event of a breach of this Agreement by 22<sup>nd</sup> Century, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms in the Agreement.

- b. 22<sup>nd</sup> Century may be subject to the sanctions set forth in 41 C.F.R. 60-741.66, and other appropriate relief for violating this Agreement.
11. 22<sup>nd</sup> Century does not admit any violation of Section 50, nor has there been an adjudication on the merits regarding any such violation.
12. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
13. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
14. Each party shall bear its own fees and expenses with respect to this matter.
15. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation, or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
16. All references to "days" in this Agreement are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a Federal holiday, that deadline will be extended to the next business day.

### III. Technical Violations and Remedies

1. **VIOLATION:** 22<sup>nd</sup> Century failed to state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to their disability status and will not be discriminated against on the basis of disability, as required by 41 CFR 60-741.5(a)(7).

**REMEDY:** 22<sup>nd</sup> Century will state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to their disability status and will not be discriminated against on the basis of disability. Additionally, 22<sup>nd</sup> Century's tagline should at a minimum state "disability" so that the tagline will be clearly understood by jobseekers.

2. **VIOLATION:** 22<sup>nd</sup> Century failed to maintain medical information collected on separate forms and in separate medical files in violation of 41 CFR 60-741.23(d).

**REMEDY:** 22<sup>nd</sup> Century will maintain any information collected regarding the medical condition or history of any applicant or employee on separate forms and in separate medical files and treated as a confidential record, except that: (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and any necessary accommodations (2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and (3) Government officials engaged in enforcing the laws administered by OFCCP, will be provided relevant information on request.

Additionally, 22<sup>nd</sup> Century must not keep disability self-identification data with the employee's confidential medical file but must store it securely so that confidentiality is maintained, and access to this data must be limited solely to contractor personnel who have a need to know the information for the purpose of complying with OFCCP's regulations.

3. **VIOLATION:** 22<sup>nd</sup> Century failed to have the full affirmative action program available to any employee or applicant for employment upon request. The location and hours during which the program may be obtained was not posted at 22<sup>nd</sup> Century's establishment in violation of 41 CFR 60-741.41.

**REMEDY:** 22<sup>nd</sup> Century will post the location and hours during which the full affirmative action program, absent the data metrics required by 60-741.44(k) will be available to any employee or applicant for inspection. 22<sup>nd</sup> Century may make the AAP available to employees upon request electronically, so long as requester is able to access the electronic version of the AAP.

4. **VIOLATION:** 22<sup>nd</sup> Century failed to invite applicants to inform them they believe that they are an individual with disability as defined in 60-741.2(g)(1)(i) or (ii) and required by 60-741.42 (a). 22<sup>nd</sup> Century also failed to invite the applicant post-offer at any time before beginning job duties to inform them whether they believe they are an individual with a disability as required by 60 741.42(b). Additionally, 22<sup>nd</sup> Century has never invited each of its employees to voluntarily inform them they believe that they are an individual with a disability.

**REMEDY:** As part of the 22<sup>nd</sup> Century's affirmative action obligation, 22<sup>nd</sup> Century will invite applicants to inform the contractor whether the applicant believes he or she is an individual with a disability as defined in 60-741.2(g)(1)(i) or (ii). This invitation will be provided to each applicant when the applicant applies or is considered for employment. The invitation may be included with the application materials for a position, but must be separate from the application. Additionally, 22<sup>nd</sup> Century will invite the applicant to inform them they believe they are an individual with a disability post-offer, prior to the applicant beginning any job duties. For both the pre-offer and post-offer invitations, 22<sup>nd</sup> Century will use the language and manner prescribed by the Director and published on the OFCCP website. 22<sup>nd</sup> Century will also invite each of its employees to voluntarily identify as an individual with a disability within one year

of the end of its current AAP cycle and at five year intervals, thereafter. At least once during the intervening years between these invitations, 22<sup>nd</sup> Century must remind employee that they must voluntarily update their disability status. 22<sup>nd</sup> Century must keep all information on self-identification confidential, and will maintain it in a data analysis file, as required by 41 CFR 60-741.23(d).

5. **VIOLATION:** During the period October 1, 2018 through March 31, 2020, 22<sup>nd</sup> Century failed to undertake appropriate outreach and positive recruitment activities that were reasonably designed to effectively recruit qualified individuals with disabilities, document these activities, assess their effectiveness, and document its review, in violation of 41 CFR 60-741.44(f). Specifically, 22<sup>nd</sup> Century's Establishment did not enlist the assistance and support of appropriate organizations, which serve qualified individuals with disabilities, in order to fulfill its commitment to provide equal employment opportunity for such individuals.

**REMEDY:** 22<sup>nd</sup> Century will undertake appropriate external outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities, such as those described at 41 CFR 60-741.44(f)(2). Examples of additional types of outreach and positive recruitment activities include, but are not limited to:

- Entering into formal, written relationships with organizations to accomplish specified objectives, such as training, and/or referring job applicants with work experience or job skills that match or are related to existing and anticipated job vacancies;
- Creating internship programs for students with disabilities from local colleges and universities;
- Using the State Vocational Rehabilitation Service Agency (SVRA), State mental health agency, or State developmental disability agency in the area of the contractor's establishment;
- Participating in the Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;
- Using the entitles funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) (see [www.earnworks.com](http://www.earnworks.com));
- Working with the local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;
- Contacting the placement or career offices of educational institutions that specialize in the placement of individuals with disabilities;
- Participating in job fairs targeting qualified individuals with disabilities; and
- Using local disability service organizations or other resources identified by the contractor's existing Employee Resource Group (ERG) on disability to recruit qualified temporary and permanent job candidates.

Additional examples are in the text of the regulations.

22<sup>nd</sup> Century will annually review its outreach and recruitment activities, assess their effectiveness, and document this review, in accordance with 41 CFR 60-741.44(f)(3). 22<sup>nd</sup> Century will document all activities it undertakes to comply with this section, in accordance with 41 CFR 60-741.44(f)(4).

6. **VIOLATION:** 22<sup>nd</sup> Century failed to track the number of applicants who self-identified as individuals with disabilities pursuant to 60-741.42(a), or who are otherwise known to be individuals with disabilities. Therefore, 22<sup>nd</sup> Century failed to document any computations or comparisons pertaining to applicants with disabilities or applicants with disabilities hired in violation of 41 CFR 60-741.44(k).

**REMEDY:** 22<sup>nd</sup> Century will document the following on an annual basis:

- (1) The number of applicants who self-identify as individuals with disabilities pursuant to 60-741.42(a), or who are otherwise known to be individuals with disabilities;
- (2) The total number of job openings and total number of jobs filled;
- (3) The total number of applicants for all jobs;
- (4) The number of applicants with disabilities hired; and
- (5) The total number of applicants hired.

22<sup>nd</sup> Century will document these comparisons on an annual basis and maintain these for a period of three years.

7. **VIOLATION:** 22<sup>nd</sup> Century failed to evaluate its utilization of individuals with disabilities in violation of 41 CFR 60-741.45(3).

**REMEDY:** 22<sup>nd</sup> Century will annually evaluate the representation of individuals with disabilities in each job group, or in its entire workforce if 22<sup>nd</sup> Century's workforce falls to fewer than 100 employees as outlined in 41 CFR 60-741.45(d)(2)(i).

8. **VIOLATION:** 22<sup>nd</sup> Century failed to preserve personnel and employment records, in violation of 41 CFR 60-741.80(b). Specifically, 22<sup>nd</sup> Century failed to preserve records of requests and pertinent documentation for reasonable accommodations, as required by 41 CFR 60-741.80(a).

**REMEDY:** 22<sup>nd</sup> Century will keep and preserve complete and accurate personnel and employment records, in accordance with 41 CFR 60-741.80(b) for a period of three years from the date of the making of the record.

#### IV. OFCCP Monitoring Period

1. **Recordkeeping.** 22<sup>nd</sup> Century agrees to retain all records relevant to the violations cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. 22<sup>nd</sup> Century will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.

2. **Contractor Reports.**

**Schedule and Instructions.** 22<sup>nd</sup> Century agrees to furnish OFCCP with the following reports during the Monitoring Period according to the following schedule:

The first report shall be due November 1, 2021 and will cover the period beginning October 1, 2020 through September 30, 2021. The second and final report shall be due October 31, 2022 and will cover the period beginning October 1, 2021 through September 30, 2022.

22<sup>nd</sup> Century will submit reports to:

U.S. Department of Labor

Office of Federal Contract Compliance Programs

Diamond Head Building

200 Sheffield Street, Suite 102

Mountainside, NJ 07092

ATTN: Compliance Officer (b) (6), (b) (7)(E)

Both reports will contain the following:

- a) Copies of solicitations and/or advertisements that reference the provisions of the equal opportunity clause in the manner prescribed by 41 CFR 60-741.5(a)(7), pursuant to Remedy 1.
- b) A narrative discussion of the implementation of how 22<sup>nd</sup> Century conducted or plans to maintain and collect medical information of each person with a disability pursuant to Remedy 2.
- c) A copy of posting that includes the hours during which its Section 503 AAP can be obtained pursuant to Remedy 3;
- d) Copies of the OMB approved self-identification forms issued to incumbent employees, pursuant to Remedy 4;

- e) Documentation of 22<sup>nd</sup> Century's outreach and positive recruitment activities taken on behalf of qualified individuals with disabilities, including evidence of job vacancy announcements sent to, and communications with, at least two organizations described under Remedy 5;
- f) The number of applicants who self-identified as individuals with disabilities, or who are otherwise known to the individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired, pursuant to Remedy 6.
- g) Results of 22<sup>nd</sup> Century's annual evaluation of the representation of individuals with disabilities in each job group, pursuant to Remedy 7.
- h) Documentation showing that 22<sup>nd</sup> Century kept and preserved all personnel and employment records specific to Section 503, pursuant to Remedy 8.

22<sup>nd</sup> Century and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports 22<sup>nd</sup> Century provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and 22<sup>nd</sup> Century believes should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, 22<sup>nd</sup> Century will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify 22<sup>nd</sup> Century of the FOIA request and provide 22<sup>nd</sup> Century an opportunity to object to disclosure. OFCCP will withhold disclosure of such reports to the maximum extent allowable by law.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts 22<sup>nd</sup> Century's final progress report as set forth in Section II, Paragraph 9 above. If OFCCP fails to notify 22<sup>nd</sup> Century in writing within sixty (60) days of the date of the final progress report that 22<sup>nd</sup> Century has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies 22<sup>nd</sup> Century within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines 22<sup>nd</sup> Century has met all of its obligations under the Agreement.

**V. SIGNATURES**

The person signing this Agreement on behalf of 22<sup>nd</sup> Century personally warrants that he is fully authorized to do so, that 22<sup>nd</sup> Century has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on 22<sup>nd</sup> Century.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and 22<sup>nd</sup> Century Technologies Inc., 220 Davidson Avenue, Suite 118, Somerset, New Jersey

**(b) (6), (b) (7)(C)**

President  
22<sup>nd</sup> Century Technologies Inc.  
Somerset, NJ 08873

DATE: 12/20/20

**(b) (6), (b) (7)(C)**

Joanne Karayiannidis  
District Director  
OFCCP – New Jersey District Office

DATE: 01/05/2021

**(b) (6), (b) (7)(C)**

Cyara Phillips  
Assistant District Director  
OFCCP – New Jersey District Office

DATE: 01/05/2021

**(b) (6), (b) (7)(C)**

**(b) (6), (b) (7)(E)**

OFCCP – New Jersey District Office

DATE: 01/05/2021