

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
22nd Century Technologies Inc.
220 Davidson Avenue, Suite 118, Somerset, NJ 08873

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) initiated a complaint investigation of the 22nd Century Technologies Inc. (TSCTI) establishment located at 220 Davidson Avenue, Suite 118, Somerset, NJ 08873 on July 23, 2020, and found sufficient evidence to support that TSCTI was not in compliance with Executive Order 11246, as amended (E.O. 11246 or the Executive Order) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (VEVRAA) and their respective implementing regulations at 41 C.F.R. §§ -60, -300.

In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and TSCTI enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

II. General Terms and Conditions

1. In exchange for TSCTI's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under E.O. 11246, Section 503, and/or VEVRAA based on the violations described in Part III below. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if TSCTI violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review TSCTI's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. TSCTI will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves TSCTI of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. TSCTI 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, including its attachments, 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 Acting Assistant District Director (Effective Date).
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 TSCTI submits its final progress report required in Section IV, below, unless OFCCP notifies TSCTI in writing before the expiration date that TSCTI 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 TSCTI has met all of its obligations under the Agreement.
10. If TSCTI violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-1.34 and 41 C.F.R. 60-300.63 will govern:
 - i. OFCCP will send TSCTI a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. TSCTI 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 TSCTI is unable to demonstrate that it has not violated the Agreement, or if OFCCP's 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 TSCTI, 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 agreed to in the Agreement.
 - b. TSCTI may be subject to the sanctions set forth in Section 209 of the Executive Order, 41 C.F.R. 60-1.27, or 41 C.F.R. 60-300.66, and/or other appropriate relief for violating this Agreement.
11. TSCTI neither admits nor denies any violation of the Executive Order, Section 503 or VEVRAA, 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, and in the Timeline included as Attachment B, 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:** TSCTI discriminated against its employees by prohibiting employees from discussing or disclosing their compensation. Specifically, version 2.1.1.9-1 of TSCTI’s employee handbook has a Business Ethics and Standards of Conduct which prohibits employees from discussing their salary with coworkers, in violation of 41 C.F.R. § 60-1.4(a)(3).

REMEDY: Within 90 calendar days of the Effective Date of this Agreement, TSCTI will revise the Business Ethics and Standards of Conduct policy to remove the policy prohibiting employees from discussing their salary with coworkers. Within 90 calendar days of the Effective Date of this Agreement, TSCTI will train all of its employees involved in employee compensation decisions and all individuals with supervisory status on TSCTI’s non-discriminatory obligations for individuals who inquire about, discuss, or disclose compensation. Within 90 calendar days of the Effective Date of this Agreement, TSCTI will inform all of its employees in writing of TSCTI’s non-discriminatory obligations for individuals who inquire about, discuss, or disclose their compensation or the compensation of another employee or applicant.

2. **VIOLATION:** TSCTI failed to incorporate the nondiscrimination provisions of 41 C.F.R. § 60-1.4(a)(3) into its employee manuals, in violation of 41 C.F.R. § 60-1.35(c).

REMEDY: Within 90 calendar days of the Effective Date of this Agreement, TSCTI will incorporate the provisions of 41 C.F.R. § 60-1.4(a)(3) into its employee manuals and disseminate the nondiscrimination provision of 41 C.F.R. § 60-1.4(a)(3) through electronic posting or a physical posting in a conspicuous location at its facility.

3. **VIOLATION:** TSCTI failed to post in conspicuous places the notice informing applicants and employees of their EEO rights. Specifically, TSCTI’s Anti-Discrimination and Anti-Harassment policies included in version 2.1.1.9-1 of its employee handbook

failed to include sexual orientation and gender identity as protected bases, in violation of 41 C.F.R. § 60-1.4(a)(1).

REMEDY: Within 90 calendar days of the Effective Date of this Agreement, TSCTI will modify its Anti-Discrimination and Anti-Harassment policies to include sexual orientation and gender identity as protected bases, as required by 41 C.F.R. § 60-1.4(a)(1).

4. **VIOLATION:** TSCTI failed to post in conspicuous places the notice informing applicants and employees of their EEO rights. Specifically, TSCTI's Anti-Discrimination and Anti-Harassment policies included in version 2.1.1.9-1 of its employee handbook failed to include disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran, either individually or collectively referred to as "protected veteran(s)" as a protected basis, in violation of 41 C.F.R. § 60-300.5(a)(9).

REMEDY: Within 90 calendar days of the Effective Date of this Agreement, TSCTI will modify its Anti-Discrimination and Anti-Harassment policies to include disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran, either individually or collectively referred to as "protected veteran(s)" as a protected basis, as required by 41 C.F.R. § 60-300.5(a)(9).

IV. OFCCP Monitoring Period

1. **Recordkeeping.** TSCTI Contractor agrees to retain all records relevant to the violation(s) 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. TSCTI will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**

TSCTI agrees to furnish OFCCP with one report during the Monitoring Period. The report will contain the documentation specified according to the date scheduled:

- a. **Progress Report 1:** The report will be due on May 31, 2021. TSCTI will submit the following:

For Violation 1:

1. A copy of TSCTI's employee manual with the revised Business Ethics and Standards of Conduct policy.
2. Documentation of training for all employees involved in employee compensation decisions and all employees who hold supervisory status on

TSCTI's non-discriminatory obligations for individuals who inquire about, discuss, or disclose compensation. This documentation will include:

- i. Date, time, and place of training;
 - ii. Name and job title of each trainer;
 - iii. A sign-in sheet listing the name and job title of each attendee; and
 - iv. Copies of the training and presentation materials.
3. Documentation of the written notification to employees informing them of TSCTI's non-discrimination obligations for individuals who inquire about, discuss, or disclose compensation and their rights under 41 C.F.R. § 60-1.4(a)(3).

For Violations 2, 3, and 4:

4. A copy of TSCTI revised employee manual(s) incorporating the nondiscrimination provision of 41 C.F.R. § 60-1.4(a)(3), the EEO policies that include all protected bases required under 41 C.F. R. § 60-1.4(a)(1), and the EEO policies that include disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran, either individually or collectively referred to as "protected veteran(s)," as required by 41 C.F. R. § 60-300.5(a)(9).
5. A roster of all employees who were active as of the effective date of the revised employee manual
6. Documentation that all employees received a copy of the revised employee manual. The documentation will include:
 - i. Employee ID or other unique identifier.
 - ii. Date the employee received the revised manual.

TSCTI will submit the report to:

Shanae Moody – Acting Assistant District Director
OFCCP Arlington District Office
2300 Clarendon Boulevard, Suite 1330
Arlington, VA 22201
(b) (6), (b) (7)(C)@dol.gov

TSCTI 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 TSCTI provides in accordance with this Agreement are trade secrets, commercial, and/or financial in nature, and customarily kept private or closely-held, and the TSCTI believes should remain

confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, TSCTI will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will promptly notify TSCTI of the FOIA request and provide TSCTI 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 TSCTI's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify TSCTI in writing within sixty (60) days of the date of the final progress report that TSCTI 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 TSCTI within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines TSCTI has met all of its obligations under the Agreement.

V. SIGNATURES

The person signing this Agreement on behalf of TSCTI personally warrants that he or she is fully authorized to do so, that TSCTI has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on TSCTI.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and 22nd Century Technologies Inc., Somerset, NJ 08873.

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

Satvinder Singh
President and Chief Executive Officer
22nd Century Technologies Inc.
Somerset, NJ 08873

DATE: 01/13/21

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

Shanae Moody
Acting Assistant District Director
Arlington District Office
Mid-Atlantic Region

DATE: 01/19/2021

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

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

Compliance Officer
Arlington District Office
Mid-Atlantic Region

DATE: 01/19/2021