



# 22nd Century Group, Inc. - Board of Directors

## Audit Committee Committee Charter

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### **1. AUTHORITY AND PURPOSE**

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The Board of Directors (“Board”) of 22nd Century Group, Inc. (“XXII” or the “Company”) has established the Audit Committee (the “Committee”) to assist the Board in fulfilling its oversight and fiduciary responsibilities over (a) the integrity of the financial statements of the Company, (b) the independent auditors’ qualifications and independence, (c) the performance of the Company’s internal audit function and independent auditors and (d) the Company’s compliance with legal and regulatory requirements.

The Committee shall have the authority to fund its activities as it determines prudent.

### **2. COMPOSITION**

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#### **2.1 Chair**

At least on an annual basis, the Board, upon the recommendation of the Governance and Nominating Committee, will appoint a Chair of the Committee. The Board may also appoint a member as Committee Vice Chair to act when the Chair is unavailable. The Chair will preside over and conduct Committee meetings or designate another Committee member to do so in the absence of the Chair and Vice Chair.

#### **2.2 Secretary**

XXII’s Corporate Secretary or its designee will be responsible for recording and drafting meeting minutes for distribution to Committee members for review and approval.

#### **2.3 Members**

The Committee shall be comprised of three or more directors as determined by the Board. Each Committee member must be “independent,” as defined by the NYSE American listing standards, the Securities and Exchange Commission (the “SEC”) and the Public Company Accounting Oversight Board (“PCAOB”), and be free from any relationship that, in the opinion of the Board, would interfere with the exercise of his or her independent judgment as a member of the Committee.

Each Committee member must comply with all financial literacy requirements of the security exchange on which the Company is listed. The Company will provide the opportunity for continuing education paid by the Company which relates to the duties of the Committee. At least one Committee member shall be deemed an “audit committee financial expert” as defined by the SEC, or the Company will provide the applicable disclosure that the Committee does not include such an expert, as required

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by the SEC.

If a Committee member simultaneously serves on the audit committees of more than three public companies, then in each case, the Board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the Committee and disclose such determination in the Company's annual proxy statement.

### **3. OPERATIONS**

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#### **3.1 Committee Meetings**

The Committee will meet at prudent intervals (at least four times per year) in regular session, and each time the Company proposes to issue a press release with its quarterly or annual earnings information. Such earnings release meetings may be combined with any regular quarterly meeting of the Committee or may be conducted separately from the regular quarterly meetings of the Committee. The Committee shall be provided with a copy of the earnings release in advance for its review.

The Committee may convene additional meetings, as circumstances require, at the call of the Chair, or any two other members of the Committee. All Committee members are expected to attend each meeting. The Committee shall invite members of Management, auditors, internal or external legal counsel or others to attend meetings and provide pertinent information, as appropriate. It will hold private meetings with the Independent Auditor and Management and, if requested, with external legal counsel.

Attendance at any Committee meeting may be in-person, telephonic or videoconferencing.

#### **3.2 Committee Decisions**

Committee meetings require a quorum (at least one half of the Members) and decisions will be reached by majority vote of all Members present. Unless Company policies or legal requirements provide otherwise, the Committee may also act without a meeting upon receipt of unanimous written or electronic consent. No Member may act in a manner that affects himself or herself.

Unless otherwise specified by a resolution approving a decision of the Committee, any Member may execute, on behalf of the Committee, all documents that are necessary or desirable to implement Committee decisions.

#### **3.3 Agendas and Meeting Materials and Minutes**

Members may suggest agenda topics to the Chair. The Chair will circulate an Agenda and meeting materials sufficiently in advance of Committee meetings to allow for appropriate preparation and review by Members.

The Chair may call a special Committee meeting with twenty-four (24) hour notice to

Members, or such shorter notice as the Chair deems appropriate in the circumstances.

XXII's Corporate Secretary or its designee will record minutes for all Committee meetings. Minutes will identify all persons in attendance and reflect the disposition of all matters considered or acted upon by the Committee.

Meeting minutes should be prepared within a reasonable time after each meeting. Minutes may be approved through electronic voting. Minutes will be maintained by the Company's corporate secretary.

The Committee may establish such rules as it determines necessary or proper to conduct Committee business which are not contrary to the Company's policies or legal requirements.

### **3.4 Assistance from Management, Third Parties and Subcommittees**

The Committee will have direct access to, and complete and open communication with the Company's management and access to Company records relevant to the Committee's duties.

The Committee may form and delegate to one or more subcommittees all or any portion of the Committee's authority, duties, and responsibilities.

The Committee shall obtain, to the extent it deems necessary or appropriate, advice and assistance from outside legal, accounting or other advisors. The Committee shall have the authority, to the extent it deems necessary or appropriate, to retain and compensate such independent legal, accounting or other advisors without seeking approval of the Board. The Company shall provide for appropriate funding, as determined by the Committee, for payment of compensation to the independent auditors for the purpose of rendering or issuing an audit report and to any such advisors employed by the Committee and for administrative expenses of the Committee that are necessary or appropriate in carrying out its duties.

## **4. DUTIES AND RESPONSIBILITIES**

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The Committee shall be directly responsible for the appointment, retention, compensation, evaluation and termination of the Company's independent auditors. The Committee shall have the sole authority to approve all audit and permitted non-audit engagement fees and terms. The Committee shall be directly responsible for oversight of the work of the independent auditors (including resolution of disagreements between management and the independent auditors) for the purpose of preparing or issuing an audit report or related work. The independent auditors shall report directly to the Committee.

The Committee shall preapprove (which preapproval may be pursuant to preapproval policies and procedures established by the Committee provided such policies and procedures are

detailed as to the particular service and such policies and procedures do not include delegation of the Committee's responsibilities to management) all auditing services and permitted non-audit services (including the fees and terms thereof) to be performed for the Company by its independent auditors, subject to the de minimus exceptions for non-audit services described in applicable SEC rules which are approved by the Committee prior to the completion of the audit. The Committee may delegate authority to grant preapprovals of audit and permitted non-audit services to one or more of its members, provided that decisions of such member or members to grant preapprovals shall be presented to the full Committee at its next scheduled meeting. Except as specified in the preceding sentence, the Committee shall have no authority to delegate its responsibilities and duties to a subcommittee of its members.

The Committee shall oversee the reliability of financial reporting, the effectiveness of internal control over financial reporting and controls and the independence of the internal and external auditors and audit functions. While the Committee has the responsibilities and functions set forth in this Charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Company's financial statements are complete and accurate and are in accordance with generally accepted accounting principles and applicable laws and regulations. This is the responsibility of Management and the Independent Auditors.

In furtherance of its purpose, the Committee's principal accounting and financial reporting oversight responsibilities and functions shall be to:

#### **Financial Statement and Disclosure Matters**

- Review and discuss with management and the independent auditor the annual audited financial statements, including disclosures made in management's discussion and analysis, consider whether they are consistent with the information known to Committee members, and recommend to the Board whether the audited financial statements should be included in the Company's Form 10-K.
- Review and discuss with management and the independent auditor the Company's quarterly financial statements prior to the filing of its Form 10-Q, including disclosures made in management's discussion and analysis and the results of the independent auditor's reviews of quarterly financial statements.
- Discuss with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements, including any significant changes in the Company's selection or application of accounting principles.
- In consultation with management, the independent auditors and the internal auditors, the Committee shall review and consider the adequacy and the integrity of the Company's financial reporting processes and internal control over financial reporting.

- Review and discuss quarterly reports from the independent auditors on:
  - All critical accounting policies and practices used;
  - All alternative treatments of financial information within U.S. generally accepted accounting principles (GAAP) that have been discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditor; and
  - Other material written communications between the independent auditor and management, such as any management letter or schedule of unadjusted differences.
- Discuss with management the Company’s earnings press releases, including the use of “*pro forma*” or “adjusted” non-GAAP information, as well as financial information and earnings guidance provided to analysts and rating agencies. Such discussion may be done generally (consisting of discussing the types of information to be disclosed and the types of presentations to be made), and each earnings release or each instance in which the Company provides earnings guidance need not be discussed in advance. The Committee shall be provided with an advance copy of the earnings release for its review.
- Discuss with management the Company’s major financial risk exposures and the steps management has taken to monitor and control such exposures, including the Company’s risk assessment and risk management policies.
- Discuss with the independent auditor the matters required to be discussed relating to the conduct of the audit, including any difficulties encountered in the course of the audit work; any restrictions on the scope of activities or access to requested information; and any significant disagreements with management.
- Review disclosures made to the Committee by the Company’s CEO and CFO during their certification process for the Form 10-K and Form 10-Q about any significant deficiencies in the design or operation of internal controls or material weaknesses therein and any fraud involving management or other employees who have a significant role in the Company’s internal controls.
- As and when required by SEC regulations, the Committee shall obtain, on a quarterly basis, reports from the Company’s management regarding its evaluation of the Company’s disclosure controls and procedures and internal control over financial reporting.
- As and when required by SEC regulations, the Committee shall obtain, on an annual basis, the independent auditors’ attestation report on management’s assessment of the Company’s internal control over financial reporting.
- The Committee shall discuss with the Company’s management information systems ~~and cybersecurity risks and the steps management has taken to identify, monitor and~~

control such risks.

### **Oversight of the Company's Relationship with the Independent Auditor**

- The Committee shall approve all audit engagement fees and terms and other non diminimus compensation to be paid to the independent auditors.
- Before the engagement of an independent auditor and at least annually thereafter, review and discuss with the independent auditor the independent auditor's written communications to the Audit Committee regarding the relationships between the auditor and the Company that, in the auditor's professional judgment, may reasonably be thought to bear on its independence and affirm in writing to the Audit Committee that the auditor is independent.
- Review and evaluate the lead partner of the independent auditor team.
- Obtain and review a report from the independent auditor at least annually regarding: (a) the independent auditor's internal quality-control procedures; (b) any material issues raised by the most recent internal quality-control review, or peer review, of the independent auditor, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the independent auditor; (c) any steps taken to deal with any such issues; and (d) all relationships between the independent auditor and the Company. The Committee shall evaluate the qualifications, performance and independence of the independent auditors, including considering whether the auditors' quality controls are adequate and the provision of permitted non-audit services is compatible with maintaining the auditors' independence, and taking into account the opinions of management and the internal auditors. The Committee shall present its conclusions with respect to the independent auditors to the Board.
- Evaluate the qualifications, performance and independence of the independent auditor, including considering whether the independent auditor's quality controls are adequate and the provision of permitted non-audit services is compatible with maintaining the auditor's independence, taking into account the opinions of management and internal auditors. The Audit Committee shall present its conclusions with respect to the independent auditor to the Board.
- Ensure the rotation of the audit partners as required by law. Consider whether, in order to ensure continuing auditor independence, it is appropriate to adopt a policy of rotating the independent auditing firm on a regular basis.
- Meet with the independent auditor prior to the audit to discuss the planning and staffing of the audit.

### **Oversight of the Company's Internal Audit Function**

- The Committee shall review and approve the internal audit function of the Company, including independence and the proposed audit plans for the coming year.

- Review the significant reports to management prepared by the internal auditing department and management's responses.
- Discuss with the Company's internal audit lead, the independent auditor and management the internal audit department's responsibilities, budget and staffing, and any recommended changes in the planned scope of the internal audit.

### **Compliance Oversight Responsibilities**

- Obtain from the independent auditor assurance, that if it detects or becomes aware of any illegal act, that the Audit Committee will be adequately informed and provided with a report, as required under Section 10A(b) of the Exchange Act.
- Obtain reports from management, the Company's internal audit lead and the independent auditor that the Company is in conformity with applicable legal requirements. Review reports and disclosures of insider and affiliated party transactions. Advise the Board with respect to the Company's policies and procedures regarding compliance with applicable laws and regulations.
- Establish procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.
- Discuss with management and the independent auditor any correspondence with regulators or governmental agencies and any published reports that raise material issues regarding the Company's financial statements or accounting policies.
- Review and approve or ratify all related-party transactions in accordance with the Company's Policies and Procedures with respect to Related Person Transactions.

### **Other Matters**

- Review with the Company's counsel legal matters that could have a material impact on the Company's financial statements, and discuss the Company's process for identifying and managing significant business and financial risk exposures and steps taken by management to control or mitigate those exposures.
- The Committee shall create and approve an agenda for the ensuing year.
- Preparing the audit committee report required by the rules of the SEC to be included in the Company's proxy statement for its annual meeting of stockholders.
- Review the adequacy of the Company's Director's and Officer's Insurance.
- Perform any other activities consistent with this charter, XXII's Bylaws and governing

law, as the Committee or the Board of Directors deems necessary or appropriate.

## 5. CHARTER

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### 5.1 Review

The Committee shall perform a review and evaluation, at least annually, of its performance, including by reviewing the compliance of the Committee with this Charter. At least annually, the Committee shall review and assess the adequacy of this Charter and recommend changes to the Board for approval.

Revision Date	Comments
11/27/2020	Implementation of New Committee Charter Format, updates to conform with new Finance Committee Charter.