

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

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File No. 001-14217

ENGlobal Corporation

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction
of incorporation or organization)

88-0322261

(I.R.S Employer
Identification No.)

11740 Katy Fwy – Energy Tower III, 11th floor
Houston, TX

(Address of principal executive offices)

77079

(Zip code)

Registrant's telephone number, including area code: (281) 878-1000

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

Title of each class

Trading Symbol

Name of each exchange on which registered

Common Stock, \$0.001 par value

ENG

NASDAQ

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act: Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Act: Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shortened period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.:

Large accelerated filer

Accelerated filer

Non-accelerated Filer

Smaller reporting company

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. Yes No

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) Yes No

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on June 25, 2022 (the last business day of the registrant's most recently completed second fiscal quarter) was \$27,931,814 (based upon the closing price for shares of common stock as reported by the NASDAQ on June 24, 2022).

The number of shares outstanding of the registrant's \$0.001 par value common stock on March 28, 2023 is as follows: 39,771,617 shares.

Documents incorporated by reference: Responses to Items 10, 11, 12, 13 and 14 of Part III of this Report are incorporated herein by reference to information contained in the Company's definitive proxy statement for its 2023 Annual Meeting of Stockholders or an amendment to this Report to be filed with the Securities and Exchange Commission not later than 120 days after the end of the fiscal year covered by this Report.

ENGLOBAL CORPORATION

2022 ANNUAL REPORT ON FORM 10-K

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PART I

CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this "Report"), including "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as oral statements made by the Company and its officers, directors or employees, contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such forward-looking statements are based on management's beliefs, current expectations, estimates and projections about the industries that the Company and its subsidiaries' serve, the economy and the Company in general. The words "expect," "anticipate," "intend," "plan," "believe," "seek," "estimate" and similar expressions are intended to identify such forward-looking statements; however, this Report also contains other forward-looking statements in addition to historical information. Although we believe that the expectations reflected in the forward-looking statements are reasonable, such forward-looking statements are not guarantees of future performance and are subject to risks, uncertainties and other factors that may cause the actual results, performance or achievements of the Company to differ materially from historical results or from any results expressed or implied by such forward-looking statements. The Company cautions readers that the following important factors and the risks described in Part I, Item 1A. Risk Factors of this Report, among others, could cause the Company's actual results to differ materially from the forward-looking statements contained in this Report: (1) the substantial doubt about our ability to continue as a going concern as of December 31, 2022; (2) our limited borrowing capacity under our credit facility may limit our ability to finance operations or engage in other business activities, which could have a material impact on our financial condition; (3) our ability to realize revenue projected in our backlog and our ability to collect accounts receivable and process accounts payable in a timely manner; (4) our ability to obtain additional financing when needed; (5) the impact of the COVID-19 pandemic and of the actions taken by governmental authorities, individuals and companies in response to the pandemic on our business, financial condition, and results of operations, including on our revenues and profitability; (6) our ability to increase our backlog, revenue and profitability; (7) the effect of economic downturns and the volatility and level of oil and natural gas prices; (8) the uncertainties related to the U.S. Government's budgetary process and their effects on our long-term U.S. Government contracts; (9) our ability to identify, evaluate, and complete any transactions in connection with our review of strategic transactions; (10) the impact of the announcement of our review of strategic transactions on our business, including our financial and operating results, or our employees, suppliers and customers; (11) our ability to accurately estimate the overall risks, revenue or costs on a contract; (12) the risk of providing services in excess of original project scope without having an approved change order; (13) our ability to execute our expansion into the modular solutions market and to execute our updated business growth strategy to position the Company as a leading provider of engineered modular solutions to its customer base; (14) our ability to attract and retain key professional personnel; (15) our debt obligations may limit our financial flexibility; (16) our dependence on one or a few customers; (17) the risks of internal system failures of our information technology systems, whether caused by us, third-party service providers, intruders or hackers, computer viruses, malicious code, cyber-attacks, phishing and other cyber security problems, natural disasters, power shortages or terrorist attacks; (18) the risk of unexpected liability claims or poor safety performance; (19) our ability to realize project awards or contracts on our pending proposals, and the timing, scope and amount of any related awards or contracts; (20) our ability to retain existing customers and attract new customers; (21) our ability to identify, consummate and integrate potential acquisitions; (22) our reliance on third-party subcontractors and equipment manufacturers; (23) our ability to satisfy the continued listing standards of NASDAQ with respect to our common stock or to cure any continued listing standard deficiency with respect thereto; and (24) the effect of changes in laws and regulations, including U.S. tax laws, with which the Company must comply and the associated cost of compliance with such laws and regulations. Actual results and the timing of certain events could differ materially from those projected in or contemplated by the forward-looking statements due to a number of factors detailed from time to time in ENGlobal's filings with the Securities and Exchange Commission. In addition, reference is hereby made to cautionary statements set forth in the Company's other SEC filings.

The Company cautions that the foregoing list of important factors is not exclusive. We are under no duty and have no plans to update any of the forward-looking statements after the date of this Report to conform such statements to actual results.

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ITEM 1. BUSINESS

ENGlobal Corporation (which may be referred to as "ENGlobal," the "Company," "we," "us" or "our"), incorporated in the State of Nevada in June 1994, is a leading provider of innovative, delivered project solutions primarily to the energy industry. We deliver these solutions to our clients by combining our vertically-integrated engineering and professional project execution services with our automation and systems integration expertise and our fabrication and construction capabilities. We believe our vertically-integrated strategy allows us to differentiate our company from most of our competitors as a full-service provider, thereby reducing our clients' dependency on and coordination of multiple vendors and improving control over their project cost and schedules. Our strategy and positioning has also allowed the Company to pursue larger scopes of work centered around many different types of modularized engineered systems. All of the information contained in this Report relates to the annual periods ended December 31, 2022, which contained 53 weeks, and December 25, 2021, which contained 52 weeks.

We derive revenues primarily from three sources: (i) business development efforts, (ii) preferred provider or alliance agreements with strategic end-user clients, original equipment manufacturers, and technology partners, and (iii) referrals from existing customers and industry members. Our business development professionals are focused on specific market segments within the energy industry. The market segments that we are targeting include Renewables, Automation, Oil, Gas, and Petrochemicals, and Government Services. This market focus allows us to develop centers of expertise for each of our targeted markets.

We generally enter into two principal types of contracts with our clients: time-and-material contracts and fixed-price contracts. Our clients typically determine the type of contract to be utilized for a particular engagement, with the specific terms and conditions of a contract being negotiated and typically contained in a multiyear services agreement.

Our business development professionals focus on building long-term relationships with clients in order to provide solutions throughout the life cycle of their projects and facilities. Additionally, we seek to capitalize on cross-selling opportunities between our market segments and many of our projects will contain elements from more than one market segment. Sales leads are often jointly developed and pursued by our business development personnel from multiple markets.

Products and services are also promoted through trade advertising, participation in industry conferences and on-line internet communication via our corporate home page at www.englobal.com. The ENGlobal website illustrates our company's full range of services and capabilities and is updated on a continuous basis. Through the ENGlobal website, we seek to provide visitors and investors with a single point of contact for obtaining information about our company. Information on our website or any other website is not a part of this Report.

Client relationships are nurtured by our geographic advantage of having office locations near our larger customers. By having clients in close proximity, we are able to provide single, dedicated points of contact. Our growth depends in large measure on our ability to attract and retain qualified business development personnel with a respected reputation in the energy industry. Management

believes that in-house marketing allows for more accountability and control, thus increasing profitability. We develop preferred provider and alliance agreements with clients in order to facilitate repeat business. These preferred provider agreements, also known as master services or umbrella agreements (“MSAs”) typically have a duration of three to five years. This allows our clients to release work to us without having to negotiate contract terms for each individual project. With the primary terms of the contract agreed to, add-on projects with these customers are easier to negotiate and can be accepted quickly, without the necessity of a bidding process. Management believes that these agreements can serve to stabilize project-centered operations.

We have identified four strategic markets where we have a long history of delivering project solutions and can provide complete project execution and have focused our business development teams on communicating these offerings to their clients. These four targeted markets include: (i) Renewables, (ii) Automation, (iii) Oil, Gas, and Petrochemicals, and (iv) Government Services.

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Within the Renewables group, our focus is to design and build production facilities for hydrogen and associated products, together with converting existing production facilities to produce products from renewable feedstock sources. These projects often utilize technologies that are more fuel efficient, and therefore reduce the associated carbon footprint of the facility. Our scope of work on these projects will typically include front-end development, engineering, procurement, mechanical fabrication, automation and commissioning services, and may be performed in conjunction with a construction partner.

Our Automation group designs, integrates and commissions modular systems that include electronic distributed control, on-line process analytical data, continuous emission monitoring, and electric power distribution. Often these packaged systems are housed in a fabricated metal enclosure, modular building or freestanding metal rack, which are commonly included in our scope of work. We provide automation engineering, procurement, fabrication, systems integration, programming and on-site commissioning services to our clients for both new and existing facilities.

Our Oil, Gas, and Petrochemical group focuses on providing engineering, procurement, construction, and automation services as well as fabricated products to downstream refineries and petrochemical facilities as well as midstream pipeline, storage and other transportation related companies. These services are often applied to small capital improvement and maintenance projects within refineries and petrochemical facilities. For our transportation clients, we work on facilities that include pumping, compression, gas processing, metering, storage terminals, product loading and blending systems. In addition, this group designs, programs and maintains supervisory control and data acquisition (“SCADA”) systems for our transportation clients. This group also provides engineering, fabrication and automation services to clients who have operations in the U.S. oil and gas exploration and development markets. The operations are usually associated with the completion, purification, storage and transmission of the oil and gas from the well head to the terminal or pipeline destination.

Our Government Services group provides services related to the engineering, design, installation and maintenance of automated fuel handling and tank gauging systems for the U.S. military across the globe.

We have positioned ourselves as a full-service, vertically-integrated supplier in order to better accommodate the requests of our clients and capture opportunities of larger scope. A majority of these opportunities are expected to be in all sectors of the energy industry; however, some may be outside the energy sector. One result of our sales efforts is that our proposal pipeline continues to increase as we are now focused on selling complete packaged solutions as opposed to our past focus of primarily selling consultant man hours. Many of these proposals have very long lead times and have exceeded our expected award timing, which would imply that many of our customers will release awards when they are more confident that commodity prices have stabilized at a sufficient level or foreseeable time period. Backlog represents an estimate of gross revenues of all awarded contracts that have not been completed and will be recognized as revenue over the life of the project. Although backlog reflects business that we consider to be firm, cancellations or scope adjustments may occur. Further, most contracts with clients may be terminated by either party at will, in which case the client would only be obligated to pay us for services provided through the termination date. A significant portion of our revenue is generated through MSAs with our clients. Projects awarded under these MSAs tend to be smaller in nature, but continuously awarded as each one is completed. In these instances, only the current unfinished projects are included in our backlog. Additionally, we have historically performed work under longer term contracts with the U.S. Navy that were generally renewed, released or awarded on an annual basis. Recently, the federal government has begun changing the contracting agency for this work. This has created some delays to the contracting sequence. At December 31, 2022, our backlog was \$20.4 million. Of this amount, \$14.9 million was for our Commercial segment and \$5.5 million was for our Government segment. This compares to a total backlog of \$12.8 million as of December 25, 2021 with \$7.0 million for our Commercial segment and \$5.8 million for our Government segment.

We continue to be mindful of our overhead structure. We have made significant investments in key business development and other essential personnel, product developments and new facilities and equipment, which all have negatively impacted our selling, general and administrative (“SG&A”) expense. While we believe the addition of these key personnel will allow the Company to expand its client base and acquire new projects, we recognize that the level of our SG&A is greater than it could be for a company our size and have started efforts to reduce headcount, reduce office and shop space, and implement other cost saving measures to address our lack of profitability. If anticipated revenue levels are not achieved to support the reduced level of our SG&A, we will continue these efforts to reduce SG&A expense. In addition, during the year ended December 31, 2022 we recorded a \$1.9 million bad debt reserve due to a contract dispute with one of our major customers.

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Our recurring losses, negative cash flows from operating activities, need for additional financing and the uncertainties surrounding our ability to obtain such financing, raise substantial doubt about our ability to continue as a going concern. We have limited cash on hand and will need additional working capital to fund our planned operations. We are subject to significant risks and uncertainties, including failing to secure additional capital to fund our planned operations or failing to profitably operate the business. We intend to raise funds through various potential sources, such as equity or debt financings; however, we can provide no assurance that such financing will be available on acceptable terms, or at all. If adequate financing is not available or we do not achieve profitability and positive cash flows from operating activities, we may be required to significantly curtail or cease our operations, and our business would be jeopardized.

Available Information

You can find financial and other information about ENGlobal at our website at www.englobal.com. Copies of our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are provided free of charge through our website and are available as soon as reasonably practicable after filing electronically or otherwise furnishing reports to the Securities and Exchange Commission (the “SEC”). Information relating to corporate governance at ENGlobal, including: (i) our Code of Business Conduct and Ethics for all of our employees, including our Chief Executive Officer and our Chief Financial Officer; (ii) our Code of Ethics for our Chief Executive Officer and our Senior Financial Officers; (iii) information concerning our directors and our Board of Directors Committees, including Committee charters; and (iv) information concerning transactions in ENGlobal securities by directors and executive officers, is available on our website under the Investors link. Information on our website or any other website is not a part of this Report. We will provide any of the foregoing information, for a reasonable fee, upon written request to Investor Relations, ENGlobal Corporation, 11740 Katy Fwy., Energy Tower III, Suite 1100, Houston, Texas 77079.

Reporting Segments

Our Commercial and Government segments are strategic business units that offer different services and products and therefore require different marketing and management strategies. Separate operational leaders are in charge of our engineering offices and our automation offices, including the office that contracts with government agencies. The operating performance of our segments is regularly reviewed with the operational leaders of the two segments, the Executive Chairman (“CEO”), the chief financial officer (“CFO”) and others. This group represents the chief operating decision maker (“CODM”) for ENGlobal.

Our corporate and other expenses that do not individually meet the criteria for segment reporting are reported separately as Corporate expenses.

Products and Services

The Commercial segment provides multi-disciplined engineering services and fabrication relating to the development, management and execution of projects requiring professional engineering and related project management services primarily to the energy industry throughout the United States. The Commercial segment currently operates through ENGlobal’s wholly-owned subsidiary, ENGlobal U.S., Inc. (“ENGlobal U.S.”). ENGlobal’s engineering staff has the capability of developing a project from the initial planning stages through detailed design and construction management. Our services include conceptual studies, project definition, cost estimating, engineering design, environmental compliance, material procurement, project management, construction management and fabrication.

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The Commercial segment derives revenue on contracts from time-and-material fees charged for professional and technical services. Its operating income is derived primarily from services it provides to the oil and gas industry. We also enter into contracts providing for the execution of projects on a fixed-price basis, whereby some, or all, of the project activities related to engineering, material procurement, construction management, automation, integration, and fabrication are performed for a fixed amount.

The Government segment provides services related to the design, integration and implementation of process distributed control and analyzer systems, advanced automated data gathering systems, information technology and the maintenance of these systems primarily to the U.S. Government globally. The Government segment operates through ENGlobal's wholly-owned subsidiary, ENGlobal Government Services, Inc. ("EGS").

EGS primarily provides automated fuel handling systems and maintenance services to branches of the U.S. military and public sector entities. Other clients of this division are government agencies, refineries, petrochemical and process industry customers worldwide. EGS provides electrical and instrument installation, technical services, and ongoing maintenance, calibration and repair services.

Competition

Our Commercial segment competes with a large number of public and private firms of various sizes, ranging from the industry's largest firms, which operate on a worldwide basis to much smaller regional and local firms. Many of our competitors are larger than we are and have significantly greater financial and other resources available to them than we do. However, the largest firms in our industry are sometimes our clients, performing as program managers for very large-scale projects who subcontract a portion of their work to us. We also have many competitors who are smaller than us and who, as a result, may be able to offer services at more competitive prices.

Competition is centered on performance and the ability to provide the engineering, planning and project delivery skills required for completing projects in a timely, cost-efficient manner. The expertise of our management and technical personnel and the timeliness and quality of our support services are key competitive factors.

Our Government segment competes with a large number of public and private firms of various sizes, ranging from the industry's largest firms, which operate on a worldwide basis to much smaller regional and local firms. Many of our competitors are larger than we are and have significantly greater financial and other resources available to them than we do. We also have many competitors who are smaller than us and who, as a result, may be able to offer services at more competitive prices.

Competition is centered on performance and the ability to provide the engineering, assembly and integration required to complete projects in a timely and cost-efficient manner. The technical expertise of our management team and technical personnel and the timeliness and quality of our support services are key competitive factors.

Customers

Our customer base consists primarily of Fortune 500 companies in the energy industry and the U.S. government. While we do not have continuing dependence on any single client or a limited group of clients, one or a few clients may contribute a substantial portion of our revenue in any given year or over a period of several consecutive years due to the longevity of major projects, such as facility upgrades or expansions. ENGlobal may work for many different subsidiaries or divisions of a client. The loss of a single large customer, including all of its subsidiaries or divisions, or the reduction in demand for our services by several customers in the same year could have a material impact on our financial results. We continue to focus substantial attention on improving customer services in order to enhance satisfaction and increase customer retention. Revenue generated through sources such as preferred provider relationships are longer term in nature and are not typically limited to one project.

A significant long-term trend among our clients and their industry counterparts has been outsourcing engineering services. This trend has fostered the development of ongoing, longer-term client arrangements. These arrangements vary in scope, duration and degree of commitment. While there is typically no guarantee that work will result from these agreements, often the arrangements form the basis for a longer-term client relationship. Despite their variety, we believe that these partnering relationships have a stabilizing influence on our revenue.

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Overall, our ten largest customers, who vary from one period to the next, accounted for 66.0% of our total revenues for 2022 and 86.0% of our total revenues for 2021. Most of our projects are specific in nature and we generally have multiple projects with the same clients. If we were to lose one or more of our significant clients and were unable to replace them with other customers or other projects, our business could be materially adversely affected. Our top two clients in 2022 were a contractor completing a renewable diesel facility and the U.S. Government. Even though we frequently receive work from repeat clients, our client list may vary significantly from year to year. Our potential revenue in all segments is dependent on continuing relationships with our customers. For the years ended December 31, 2022 and December 25, 2021, we had approximately 59 and 69 active customers, respectively.

Suppliers

Our ability to provide clients with services and systems in a timely and competitive manner depends on the availability of products and parts from our suppliers at competitive prices and on reasonable terms. Our suppliers are not obligated to have products on hand for timely delivery nor can they guarantee product availability in sufficient quantities to meet our demands. There can be no assurance that we will be able to obtain necessary supplies at prices or on terms we find acceptable. However, in an effort to maximize availability and maintain quality control, we generally procure components from multiple distributors on our clients' behalf and in some cases we can take advantage of national agreements our clients may have entered into.

For example, all of the product components used by our Government segment are assembled using components and materials that are available from numerous domestic manufacturers and suppliers. There are approximately five principal suppliers of distributed control systems, each of which can be replaced by an equally viable competitor, and our clients typically direct the selection of their preferred supplier. Thus, in the vast majority of cases, we anticipate little or no difficulty in obtaining components in sufficient quantities and in a timely manner to support our installation and assembly operations in the Government segment. Units produced through the Government segment are not produced for inventory and component parts; rather, they are typically purchased on an as-needed basis. By being vendor neutral, ENGlobal is able to provide quality technology and platforms for the design of plant systems such as 3D modeling, process simulation and other technical applications.

Despite the foregoing, our Government segment relies on certain suppliers for necessary components and there can be no assurance that these components will continue to be available on acceptable terms. If a vendor does not continue to contract with us, it may be difficult to obtain alternative sources of supply without a material disruption in our ability to provide products and services to our customers. While we do not believe that such a disruption is likely, if it did occur, it could have a material adverse effect on our financial condition and results of operations.

Patents, Trademarks, Licenses

Our success depends in part upon our ability to protect our proprietary technology, which we do primarily through protection of our trade secrets and confidentiality agreements. In addition, the U.S. Patent and Trademark Office issued our "Integrated Rack" patent No. 7,419,061 B1 in 2008, our "Universal Master Control Station System" patent No. 8,601,491 B1 in 2013, our "Modular HVAC System for Providing Positive Pressure to an Interior of a Positive Pressure Facility" patent No. 8,670,870 in 2014, our "Method of Controlling a Plurality of Master Control Stations" patent No. 8,959,447 B1 and our "Client Configuration Tool" patent No. 8,983,636 B1 in 2015.

Our trade names are protected by registration as well as by common law trademark rights. Our trademark for the use of "ENGlobal" ® - "Engineered for Growth" ®, and "viMAC" ® in connection with our products are registered with the U.S. Patent and Trademark Office and we claim common law trademark rights for "ENGlobal" ™ in connection with our services. We also claim common law trademark rights for "Global Thinking...Global Solutions" ™, "CARES - Communicating Appropriate Responses in Emergency Situations" ™, "riFAT" ™, "ACE" ™, and "ENGlobal Power Islands" ™.

There can be no assurance that the protective measures we currently employ will be adequate to prevent the unauthorized use or disclosure of our technology, or the independent, third-party development of the same or similar technology. Although our competitive position to some extent depends on our ability to protect our proprietary and trade secret information, we believe that other factors, such as the technical expertise and knowledge base of our management and technical personnel, as well as the timeliness and quality of the support services we provide, will also help us to maintain our competitive position.

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Environmental, Social and Governance (ESG), Human Capital, and Diversity, Equity and Inclusion (DEI)

Workforce Composition

As of December 31, 2022, we employed approximately 302 individuals on a full-time equivalent basis compared to approximately 198 individuals on a full-time equivalent basis as of December 25, 2021. The 52.5% increase in personnel in 2022 was attributable to the start-up of our field services and construction divisions, and increased staffing levels to address the increase in project volume during the year and the anticipated growth in 2023. We believe that our ability to recruit and retain highly skilled and experienced professional and technical personnel has been and will continue to be critical to our ability to execute our business plan. None of our employees are represented by a labor union or is subject to a collective bargaining agreement. We believe that relations with our employees are good.

Diversity and Inclusion

As a company focused on internal collaboration to achieve common goals and partnerships with a diverse group of stakeholders to optimize value, we believe a diverse workforce is critical to our success. As such, we endeavor to create an environment rich in diversity that welcomes those of all backgrounds, ethnicities, and experiences. We employ people from a diverse number of nationalities and ethnicities. Nearly 49% of our workforce is comprised of racial minority groups; approximately 15% of our workforce is female.

ENGlobal is committed to balance in our hiring practices and workplaces. Our recruiting efforts, development opportunities and retention initiatives include a focus on promoting gender and ethnicity balance in the workplace. As a contractor for various governmental entities we provide certain assurances of our initiatives related to workplace diversity.

We also are dedicated to the development and training of our workforce. Training begins with onboarding with job-specific instruction, integrating safety expectations, corporate ethics and behaviors that focus on workplace inclusion.

Benefits

We provide employees health and welfare benefits standard for the industry and their location of employment. All employees and their families (upon meeting eligibility requirements) are eligible to participate in the Company's health insurance plan as well as the Company's defined contribution (401(k)) plan with a discretionary Company match.

Health and Safety

Safety is one of our core values. We endeavor to make certain our employees have access to preventive policies, procedures, programs, and training as we work toward an accident-free workplace.

Our human capital initiatives are implemented by senior leadership with oversight from our Board of Directors. The Board's Compensation and Nominating and Corporate Governance Committees oversee our human capital-related policies, programs, and initiatives that focus on diversity and benefits including employee safety, health and wellness matters.

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Government Regulations

ENGlobal and certain of its subsidiaries are subject to various foreign, federal, state, and local laws and regulations relating to our business and operations, and various health and safety regulations established by the Occupational Safety and Health Administration (OSHA). We are subject to a variety of state, local and foreign licensing, registration and other regulatory requirements governing the practice of engineering and other professional disciplines. For example, OSHA requires Process Safety Management to prevent the release of hazardous chemicals, the Department of Transportation (DOT) requires that pipeline operators are in full compliance with pipeline safety regulations, and the Environmental and Protection Agency (EPA) provides incentives to reduce chemical emissions. Currently, we are not aware of any situation or condition relating to the regulation of the Company, its subsidiaries, or personnel that we believe is likely to have a material adverse effect on our results of operations or financial condition.

Benefit Plans

ENGlobal sponsors a 401(k) retirement plan for its employees. The Company, at the direction of the Board of Directors, may make discretionary contributions. The Company reinstated the match of employees' deferrals effective May 29, 2022. The Company matches 33% of employee deferrals up to 6% of eligible pre-tax compensation, for a maximum Company matching contribution of 2%.

ITEM 1A. RISK FACTORS

Set forth below and elsewhere in this Report and in other documents that we file with the SEC are risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements contained in this Report. You should be aware that the occurrence of any of the events described in these risk factors and elsewhere in this Report could have a material adverse effect on our business, financial condition and results of operations and that upon the occurrence of any of these events, the trading price of our common stock could decline. These factors, among others, raise substantial doubt about the Company's ability to continue as a going concern within one year after the issuance date of this Report.

RISKS RELATED TO OUR BUSINESS, INDUSTRY AND STRATEGY

Substantial doubt about our ability to continue as a going concern exists. Our audited financial statements for the period ended December 31, 2022 were prepared on the assumption that we would continue as a going concern. Those financial statements and the accompanying opinion of our auditor expressed a substantial doubt about our ability to continue as a going concern. Those audited financial statements did not include any adjustments that might result from the outcome of this uncertainty. Our recurring losses, negative cash flows from operating activities, need for additional financing and the uncertainties surrounding our ability to obtain such financing, raise substantial doubt about our ability to continue as a going concern. We have limited cash on hand and will need additional working capital to fund our planned operations. We are subject to significant risks and uncertainties, including failing to secure additional capital to fund our planned operations or failing to profitably operate the business. We intend to raise funds through various potential sources, such as equity or debt financings; however, we can provide no assurance that such financing will be available on acceptable terms, or at all. If adequate financing is not available or we do not achieve profitability and positive cash flows from operating activities, we may be required to significantly curtail or cease our operations, and our business would be jeopardized.

Our ability to continue as a going concern is also subject to, among other factors, our ability to collect receivables from our clients when due and invoice our customers in a timely manner. If we are not able collect our receivables when due from our clients, our cash flow will be negatively impacted which could lead to us not being able to meet our current obligations.

We do not have material borrowing capacity under our revolving credit facility, which may limit our ability to finance operations or engage in other business activities, which could have a material impact on our financial condition. As of December 31, 2022, the credit limit under the Revolving Credit Facility was \$1.8 million and outstanding borrowings were \$1.7 million. On March 27, 2023, we modified the Revolving Credit Facility which reduced the credit limit to \$0.9 million and outstanding borrowings to \$0.9 million. The limited availability under the Revolving Credit Facility may limit our ability to finance operations or engage in other business activities, which could have a material impact on our financial condition.

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If we are unable to collect our receivables, our results of operations and cash flows could be adversely affected. Our business depends on our ability to successfully obtain payment from our clients of the amounts they owe us for work performed and materials supplied. In the ordinary course of business, we extend unsecured credit to our customers. We may also agree to allow our customers to defer payment on projects until certain milestones have been met or until the projects are substantially completed, and customers typically withhold some portion of amounts due to us as retainage. As of December 31, 2022, we had projects that had \$0.1 million in retainage. We bear the risk that our clients will pay us late or not at all. Though we evaluate and attempt to monitor our clients' financial condition, there is no guarantee that we will accurately assess their creditworthiness. To the extent the credit quality of our clients deteriorates or our clients seek bankruptcy protection, our ability to collect receivables and our results of operations could be adversely affected. Even if our clients are credit-worthy, they may delay payments in an effort to manage their cash flow. Financial difficulties or business failure experienced by one or more of our major customers has had and could, in the future, continue to have a material adverse effect on both our ability to collect receivables and our results of operations.

Our debt obligations may limit our financial flexibility. As of December 31, 2022, we had a total of approximately \$1.7 million in debt outstanding under the Revolving Credit Facility, which matures on May 20, 2023. On March 27, 2023, we modified the Revolving Credit Facility which reduced the credit limit to \$0.9 million and outstanding borrowings to \$0.9 million. We may incur additional debt in order to fund our operational activities. A higher level of indebtedness increases the risk that our financial flexibility may deteriorate. Our ability to meet our debt obligations and service our debt depends on future performance. General economic conditions, commodity prices, and financial, business and other factors may affect our operations and our future performance. Many of these factors are beyond our control and we may not be able to generate sufficient cash flow to pay the debt, and future working capital, borrowings and equity financing may not be available to pay or refinance such debt.

The COVID-19 pandemic has adversely affected and could continue to adversely affect our business, financial condition and results of operations. Our business is dependent upon the willingness and ability of our customers to conduct transactions with us. The COVID-19 pandemic has caused severe disruptions in the worldwide economy, including the global demand for oil and natural gas. The prolonged nature of the COVID-19 pandemic has resulted, and may continue to result, in a significant decrease in business and/or has caused, and may in the future cause, our customers to be unable to meet existing payment or other obligations to us, particularly in the event of a resurgence of COVID-19 in our market areas. The COVID-19 pandemic may also negatively impact the availability of our key personnel necessary to conduct our business as well as the business and operations of third-party service providers who perform critical services for our business. Because the severity, magnitude and duration of the COVID-19 pandemic and its economic consequences are uncertain, rapidly changing and difficult to predict, the impact on our business, financial condition and results of operations remains uncertain and difficult to predict. If COVID-19 resurges or if the response to contain the COVID-19 pandemic is unsuccessful, we could experience a material adverse effect on our business, financial condition, and results of operations.

Our future revenue depends on our ability to consistently bid and win new contracts, provide high-quality, cost-effective services, and to maintain and renew existing contracts. Our failure to effectively obtain future contracts could adversely affect our profitability. Our future revenue and overall results of operations require us to successfully bid on new contracts, provide high-quality, cost-

effective services, and renew existing contracts. Contract proposals and negotiations are complex and frequently involve a lengthy bidding and selection process, which is affected by a number of factors, such as market conditions, financing arrangements and required governmental approvals. For example, a client may require us to provide a bond or letter of credit to protect the client should we fail to perform under the terms of the contract. When negative market conditions arise, or if we fail to secure adequate financial arrangements or required governmental approvals, we may not be able to pursue particular projects, which could adversely affect our profitability. These factors have impacted our operations in the past several years and may continue to do so.

Economic downturns and the volatility and level of oil and natural gas prices could have a negative impact on our businesses. Demand for the services offered by us has been and is expected to continue to be, subject to significant fluctuations due to a variety of factors beyond our control, including demand for engineering services in the petroleum refining, petroleum chemical and pipeline industries and in other industries that we provide services to. During economic downturns in these industries, our customers' need to engage us may decline significantly and projects may be delayed or cancelled. However, these factors can cause our profitability to decline significantly. Our clients' willingness to undertake these activities depends largely on the following factors:

- Prices and expectations about future prices of oil and natural gas;
- Domestic and foreign supply of and demand for oil and natural gas;

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- The cost of exploring for, developing, producing and delivering oil and natural gas;
- Weather conditions, such as hurricanes, which may affect our clients' ability to produce oil and natural gas;
- Available pipeline, storage and other transportation capacity;
- Federal, state and local regulation of oilfield activities;
- Environmental concerns regarding the methods our customers use to produce oil and natural gas;
- The availability of water resources and the cost of disposal and recycling services; and
- Seasonal limitations on access to work locations.

Anticipated future prices for oil and natural gas are a primary factor affecting spending by our clients. Historically, the markets for oil and natural gas have been volatile and lower prices or volatility in prices for oil and natural gas typically decreases spending by our clients, which can cause rapid and material declines in demand for our services and in the prices we are able to charge for our services. Further, a sustained period of lower prices and volatility in prices for oil and natural gas can exacerbate the potential for cancellations and adjustments to our backlog from our clients in the oil and natural gas industry. The February 2022 invasion of Ukraine by Russia is an ongoing conflict. As a result of the invasion, certain events are affecting the global and United States economy, including increased inflation, substantial increases in the prices of oil and natural gas, large Western companies ceasing to do business in Russia and uncertain capital markets with declines in the leading market indexes. The duration of this conflict and its impact on our business are uncertain, but it is likely to continue causing disruption and instability which may lead to additional volatility in prices for oil and natural gas.

We derive a portion of our revenue from U.S. federal, state and local government agencies, and as a result, any disruption in government funding, any change in our ability to comply with various procurement laws and regulations as a U.S. Government contractor, or any exercise by the U.S. Government of certain rights to modify, delay, curtail, renegotiate, or terminate existing contracts for convenience could adversely affect our business. In 2022, we generated approximately 18.6% of our revenue from contracts with U.S. federal, state and local government agencies. A significant amount of this revenue is derived under multi-year contracts, many of which are appropriated on an annual basis. As a result, at the beginning of a project, the related contract may be only partially funded, and additional funding is normally committed only as appropriations are made in each subsequent year. Our backlog includes only the portion of the contract award for which funding has been appropriated. Whether appropriations are made, and the timing of payment of appropriated amounts, may be influenced by numerous factors that could affect our U.S. Government contracting business, including the following:

- The failure of the U.S. Government to complete its budget and appropriations process before its fiscal year-end, which may result in U.S. Government agencies delaying the procurement of services;
- Budget constraints or policy changes resulting in delay or curtailment of expenditures related to the services we provide;
- The timing and amount of tax revenue received by federal, and state and local governments, and the overall level of government expenditures;
- Delays associated with insufficient numbers of government staff to oversee contracts;
- Competing political priorities and changes in the political climate with regard to the funding or operation of the services we provide;
- Unsatisfactory performance on government contracts by us or one of our subcontractors, negative government audits or other events that may impair our relationship with federal, state or local governments;
- A dispute with or improper activity by any of our subcontractors; and
- General economic or political conditions.

In addition, we must comply with and are affected by U.S. federal, state, local, and foreign laws and regulations relating to the formation, administration and performance of government contracts. These laws and regulations affect how we do business with our clients and, in some instances, impose additional costs on our business operations. Although we take precautions to prevent and deter fraud, misconduct, and non-compliance, we face the risk that our employees or outside partners may engage in misconduct, fraud, or other improper activities. U.S. government agencies, such as the Defense Contract Audit Agency ("DCAA"), routinely audit and investigate government contractors and evaluate compliance with applicable laws, regulations, and standards. In addition, during the course of its audits, the DCAA may question our incurred project costs. If the DCAA believes we have accounted for such costs in a manner inconsistent with the requirements of applicable laws, regulations and standards, the DCAA auditor may recommend that such costs be disallowed. Historically, we have not experienced significant disallowed costs as a result of government audits. However, we can provide no assurance that the DCAA or other government audits will not result in material disallowances for incurred costs in the future.

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Also, U.S. Government projects in which we participate as a contractor or subcontractor may extend for several years. Generally, government contracts include the right to modify, delay, curtail, renegotiate, or terminate contracts and subcontracts at the government's convenience any time prior to their completion. Any decision by a U.S. Government client to modify, delay, curtail, renegotiate, or terminate our contracts at their convenience may result in a decline in our profits and revenue.

We are reviewing strategic transactions and there can be no assurance that we will be successful in identifying or completing any strategic alternative, that any such strategic transactions will result in additional value for our shareholders or that the process will not have an adverse impact on our business. Our Board of Directors continues to review strategic transactions. These transactions could include, but are not limited to, strategic acquisitions, mergers, reverse mergers, the issuance or buyback of public shares, or the purchase or sale of specific assets, in addition to other potential actions aimed at increasing shareholder value. There can be no assurance that the review of strategic transactions will result in the identification or consummation of any transaction. Our Board of Directors may also determine that our most effective strategy is to continue to effectuate our current business plan. The process of reviewing strategic transactions may be time consuming and disruptive to our business operations and, if we are unable to effectively manage the process, our business, financial condition and results of operations could be adversely affected. We could incur substantial expenses associated with identifying and evaluating potential strategic transactions. No decision has been made with respect to any transaction and we cannot assure you that we will be able to identify and undertake any transaction that allows our shareholders to realize an increase in the value of their common stock or provide any guidance on the timing of such action, if any.

We also cannot assure you that any potential transaction or other strategic alternative, if identified, evaluated and consummated, will provide greater value to our shareholders than that reflected in the current price of our common stock. Any potential transaction would be dependent upon a number of factors that may be beyond our control, including, but not limited to, market conditions, industry trends, the interest of third parties in our business and the availability of financing to potential buyers on reasonable terms. We do not intend to comment regarding the evaluation of strategic transactions until such time as our Board of Directors has determined the outcome of the process or otherwise has deemed that disclosure is appropriate or required by applicable law. As a consequence, perceived uncertainties related to our future may result in the loss of potential business opportunities and volatility in the market price of our common stock and may make it more difficult for us to attract and retain qualified personnel and business partners.

We may consider growing through acquisitions and may not be successful in doing so or in integrating effectively any business or operations we may acquire. As part of our historic business strategy, we have expanded our business through strategic acquisitions. Appropriate acquisitions could allow us to expand into new geographical locations, offer new services, add complementary businesses to expand our portfolio of services, enhance our capital strength or acquire additional talent. Accordingly, our future performance will be impacted by our ability to identify appropriate businesses to acquire, negotiate favorable terms for such acquisitions and effectively and efficiently integrate such acquisitions into our existing businesses. There is no certainty that we will succeed in completing any future acquisitions or whether we will be able to successfully integrate any acquired businesses or to operate them profitably.

Acquisitions involve numerous risks, any of which could harm our business, including:

- Difficulties in integrating the operations, technologies, products, existing contracts, accounting and personnel of the target company and realizing the anticipated synergies of the combined businesses;
- Difficulties in supporting and transitioning customers, if any, of the target company;
- Diversion of our financial and management resources from existing operations;
- The price we pay or other resources that we devote may exceed the value we realize, or the value we could have realized if we had allocated the purchase price or other resources to another opportunity;

- Risks of entering new markets in which we have limited or no experience;
- Potential loss of key employees, customers and strategic alliances from either our current business or the target company's business;
- Assumption of unanticipated problems or latent liabilities, such as problems with the quality of the target company's services;
- Risks associated with possible violations of the Foreign Corrupt Practices Act and other anti-corruption laws as a result of any acquisition or otherwise applicable to our business; and
- Inability to generate sufficient net income to justify the acquisition costs.

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Acquisitions also frequently result in the recording of goodwill and other intangible assets which are subject to potential impairment in the future that could harm our financial results. In addition, if we finance acquisitions by issuing convertible debt or equity securities, our existing stockholders may be diluted, which could lower the market price of our common stock. As a result, if we fail to properly evaluate acquisitions or investments, we may not achieve the anticipated benefits of any such acquisitions, and we may incur costs in excess of amounts that we anticipate.

Our business and operating results could be adversely affected by our inability to accurately estimate the overall risks, revenue or costs on a contract. Revenue recognition for a contract requires judgment relative to assessing the contracts estimated risks, revenue and costs and technical issues. Due to the size, complexity and nature of many of our contracts, the estimation of overall risk, revenue and cost at completion is complicated and subject to many variables. Changes in underlying assumptions, circumstances or estimates have in the past and may continue to adversely affect future period financial performance.

We may incur significant costs in providing services in excess of original project scope without having an approved change order. After commencement of a contract, we may perform, without the benefit of an approved change order from the customer, additional services requested by the customer that were not contemplated in our contract price due to customer changes or to incomplete or inaccurate engineering, project specifications, and other similar information provided to us by the customer. Our construction contracts generally require the customer to compensate us for additional work or expenses incurred under these circumstances as long as we obtain prior written approval. A failure to obtain adequate written approvals prior to performing the work could require us to record an adjustment to revenue and profit recognized in prior periods under the percentage-of-completion accounting method. Any such adjustments, if substantial, could have a material adverse effect on our results of operations and financial condition, particularly for the period in which such adjustments are made. There can be no assurance that we will be successful in obtaining, through negotiation, arbitration, litigation or otherwise, approved change orders in an amount sufficient to compensate us for our additional, unapproved work or expenses.

Our focus on four strategic market initiatives could subject us to increased costs and related risks and may not achieve the intended results. Focusing our business activities on four strategic market initiatives could subject us to increased costs and related risks and we may not achieve the intended results. These initiatives may require additional investments by the Company and additional attention from management, and if not successful, we may not realize the return on our investments as anticipated or our operating results could be adversely affected by slower than expected sales growth or additional costs.

The failure to attract and retain key professional personnel could materially adversely affect our business. Our success depends on attracting and retaining qualified personnel even in an environment where the contracting process is more difficult. We are dependent upon our ability to attract and retain highly qualified managerial, technical and business development personnel. In particular, competition for key management personnel continues to be intense. We cannot be certain that we will retain our key managerial, technical, and business development personnel or be able to attract or assimilate key personnel in the future. Failure to attract and retain such personnel would materially adversely affect our businesses, financial position, results of operations and cash flows.

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Our dependence on one or a few customers could adversely affect us. One or a few clients have in the past and may in the future contribute a significant portion of our consolidated revenue in any one year or over a period of several consecutive years. In 2022, our top three clients accounted for 17.3%, 12.8% and 7.9% of our revenue, respectively, and our ten largest customers accounted for 66.0% of our revenue. As our backlog frequently reflects multiple projects for individual clients, one major customer may comprise a significant percentage of our backlog at any point in time. Because these significant customers generally contract with us for specific projects, we may lose them in other years as their projects with us are completed. If we do not continually replace them with other customers or other projects, our business could be materially adversely affected. Also, the majority of our contracts can be terminated at will. Although we have long-standing relationships with many of our significant customers, our contracts with these customers are on a project-by-project basis and the customers may unilaterally reduce or discontinue their purchases at any time. In addition, dissatisfaction with the results of a single project could have a much more widespread impact on our ability to get additional projects from a single major client. The loss of business from any one of such customers could have a material adverse effect on our business or results of operations.

Internal system or service failures could disrupt our business and impair our ability to effectively provide our services and products to our clients, which could damage our reputation and adversely affect our revenue, profitability and operating results. Our information technology systems are subject to systems failures, including network, software or hardware failures, whether caused by us, third-party service providers, intruders or hackers, computer viruses, malicious code, cyber-attacks, phishing and other cyber security problems, natural disasters, power shortages or terrorist attacks. Any such failures could cause loss of data and interruptions or delays in our business, cause us to incur remediation costs, subject us to claims and damage our reputation. Failure or disruption of our communications or utilities could cause us to interrupt or suspend our operations or otherwise adversely affect our business. Any system or service disruptions if not anticipated and appropriately mitigated could have a material adverse effect on our business including, among other things, an adverse effect on our ability to bill our clients for work performed on our contracts, collect the amounts that have been billed and produce accurate financial statements in a timely manner. Our property and business interruption insurance may be inadequate to compensate us for all losses that may occur as a result of any system or operational failure or disruption and, as a result, our results of operations could be materially and adversely affected. We have invested and will continue to pursue further investments in systems that will allow us to achieve and remain in compliance with the regulations governing our business; however, there can be no assurance that such systems will be effective at achieving and maintaining compliance or that we will not incur additional costs in order to make such systems effective.

Our backlog is subject to unexpected adjustments and cancellations and is, therefore, an uncertain indicator of our future revenue or earnings. As of December 31, 2022, our backlog was \$20.4 million. We expect a majority of this backlog to be completed in 2023. We cannot assure investors that the revenue projected in our backlog will be realized or, if realized, will result in profits. Projects currently in our backlog may be canceled or may remain in our backlog for an extended period of time prior to project execution and, once project execution begins, it may occur unevenly over the current and multiple future periods. In addition, project terminations, suspensions or reductions in scope occur from time to time with respect to contracts reflected in our backlog, reducing the revenue and profit we actually receive from contracts reflected in our backlog. Future project cancellations and scope adjustments could further reduce the dollar amount of our backlog in addition to the revenue and profits that we actually earn. The potential for cancellations and adjustments to our backlog are exacerbated by economic conditions, particularly in our chosen area of concentration, the energy industry. The markets for oil and natural gas have been volatile which can exacerbate the potential for cancellations and adjustments to our backlog from our clients in the oil and natural gas industry.

Liability claims could result in losses. Providing engineering and design services involves the risk of contract, professional errors and omissions and other liability claims, as well as adverse publicity. Further, many of our contracts require us to indemnify our clients not only for our negligence, if any, but also for the concurrent negligence of our clients. We currently maintain liability insurance coverage, including coverage for professional errors and omissions. However, claims outside of or exceeding our insurance coverage may be made. A significant claim could result in unexpected liabilities, take management time away from operations, and have a material adverse impact on our cash flow.

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Unsatisfactory safety performance can affect customer relationships, result in higher operating costs and result in high employee turnover. Our workers are subject to the normal hazards associated with providing services on construction sites and industrial facilities. Even with proper safety precautions, these hazards can lead to personal injury, loss of life, damage to, or destruction of property, plant and equipment, and environmental damages. We are intensely focused on maintaining a safe environment and reducing the risk of accidents across all of our job sites. However, poor safety performance may limit or eliminate potential revenue streams from many of our largest customers and may materially increase our future insurance and other operating costs. In hiring new employees, we normally target experienced personnel; however, we also hire inexperienced employees. Even with thorough safety training, inexperienced employees have a higher likelihood of injury which could lead to higher operating costs and insurance rates.

Our dependence on third-party subcontractors and equipment manufacturers could adversely affect us. We rely on third-party subcontractors as well as third-party suppliers and manufacturers to complete our projects. To the extent that we cannot engage subcontractors or acquire supplies or materials, our ability to complete a project in a timely fashion may be impaired. If the amount we are required to pay for these goods and services exceeds the amount we have estimated in bidding for fixed-price or time-and-material contracts, we could experience losses on these contracts. In addition, if a subcontractor or supplier is unable to deliver its services or materials according to the negotiated contract terms for any reason, including the deterioration of its financial condition or over-commitment of its resources, we may be required to purchase the services or materials from another source at a higher price. This may reduce the profit to be realized or result in a loss on a project for which the services or materials were needed.

Force majeure events such as natural disasters or global or national health epidemics or concerns, such as the recent COVID-19 coronavirus outbreak, could negatively impact the economy and the industries we service, which may negatively affect our financial condition, results of operations and cash flows. Force majeure events, such as hurricanes or global or national health epidemics or concerns, such as the recent COVID-19 coronavirus outbreak, could negatively impact the economies of the areas in which we operate. For example, in 2017 Hurricane Harvey caused considerable damage along the Gulf Coast not only to the refining and petrochemical industry, but also the commercial segment which competes for labor, materials and equipment resources needed throughout the entire United States. In some cases, we remain obligated to perform our services after a natural disaster even though our contracts may contain force majeure clauses. In those cases, if we are not able to

react quickly and/or negotiate contractual relief on favorable terms to us, our operations may be significantly and adversely affected, which would have a negative impact on our financial condition, results of operations and cash flows.

RISKS RELATED TO OUR COMMON STOCK OUTSTANDING

The trading price of our stock may continue to be volatile, which could cause you to lose part or all of your investment. The stock market in general has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. In particular, the trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. During the past twelve months, the sales price of our stock ranged from a low of \$0.47 per share in March 2023 to a high of \$2.24 per share in August 2022. As a result of this volatility, our stock could experience rapid and substantial decreases in price, and you may be able to sell our stock only at a substantial loss to the price at which you purchased our stock.

Some, but not all, of the factors that may cause the market price of our common stock to fluctuate include:

- fluctuations in our quarterly or annual financial results or the quarterly or annual financial results of companies perceived to be similar to us or relevant for our business;
- changes in estimates of our financial results or recommendations by securities analysts;
- failure of our services or products to achieve or maintain market acceptance;
- changes in market valuations of similar or relevant companies;
- success of competitive service offerings or technologies;
- changes in our capital structure, such as the issuance of securities or the incurrence of debt;
- announcements by us or by our competitors of significant services, contracts, acquisitions or strategic alliances;
- regulatory developments in the United States, foreign countries, or both;
- litigation;
- additions or departures of key personnel;
- investors' general perceptions; and
- changes in general economic, industry or market conditions.

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In addition, if the market for energy related stocks, or the stock market in general, experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition, or results of operations. Further, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. If any of the foregoing occurs, it could cause our stock price to fall and may expose us to lawsuits that, even if unsuccessful, could be costly to defend and a distraction to management.

We are not currently in compliance with Nasdaq's continued listing requirements. If we are unable to comply with Nasdaq's continued listing requirements, our common stock could be delisted, which could affect the price of our common stock and liquidity and reduce our ability to raise capital. Our common stock is currently listed on Nasdaq. Nasdaq has established certain quantitative criteria and qualitative standards that companies must meet to remain listed for trading on this market. On December 21, 2022, we received written notice from Nasdaq indicating that we are not in compliance with the \$1.00 minimum bid price requirement for continued listing on Nasdaq, as set forth in Listing Rule 5550(a)(2).

The notice has no immediate effect on the listing of our common stock, and our common stock will continue to trade on Nasdaq under the symbol "ENG" at this time. We may regain compliance with the minimum bid price requirement in accordance with Listing Rule 5810(c)(3)(A) during the 180 calendar day period from December 21, 2022 to June 19, 2023. To regain compliance, the closing bid price of our common stock must meet or exceed \$1.00 per share for at least ten consecutive business days before June 19, 2023.

If we are not in compliance by June 19, 2023, we may be afforded a second 180 calendar day period to regain compliance. To qualify, we would be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for Nasdaq, except for the minimum bid price requirement. In addition, we would be required to notify Nasdaq of our intent to cure the minimum bid price deficiency, which may include implementing a reverse stock split.

If we do not regain compliance within the allotted compliance period(s), including any extensions that may be granted by Nasdaq, Nasdaq will provide notice that our common stock will be subject to delisting. We would then be entitled to appeal the Nasdaq Staff's determination to a Nasdaq Listing Qualifications Panel and request a hearing.

We intend to monitor the closing bid price of our common stock and consider our available options to resolve the noncompliance with the minimum bid price requirement. No determination regarding our response has been made at this time. There can be no assurance that we will be able to regain compliance with the minimum bid price requirement or will otherwise be in compliance with other Nasdaq listing criteria.

SEC regulations limit the amount of funds we may raise during any 12-month period pursuant to our shelf registration statement on Form S-3. Our registration statement on Form S-3 (File No. 333-252572), including the accompanying base prospectus and related prospectus supplements, is subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve calendar-month period unless our public float is at least \$75 million. As of January 31, 2023, our public float (i.e., the aggregate market value of our outstanding equity securities held by non-affiliates) was approximately \$26.1 million, based on the closing price per share of our Common Stock as reported on Nasdaq on January 31, 2023, as calculated in accordance with General Instruction I.B.6 of Form S-3. In addition, during the 12 calendar month period that ends on the date of this filing of this Report, we had offered and sold approximately \$3.4 million of our common stock pursuant to the registration statement. If our public float meets or exceeds \$75 million at any time, we will no longer be subject to the restrictions set forth in General Instruction I.B.6 of Form S-3, at least until the filing of our next Section 10(a)(3) update as required under the Securities Act.

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A possible "short squeeze" due to a sudden increase in demand of our common stock that largely exceeds supply may lead to additional price volatility. Historically there has not been a large short position in our common stock. However, in the future investors may purchase shares of our common stock to hedge existing exposure or to speculate on the price of our common stock. Speculation on the price of our common stock may involve long and short exposures. To the extent an aggregate short exposure in our common stock becomes significant, investors with short exposure may have to pay a premium to purchase shares for delivery to share lenders at times if and when the price of our common stock increases significantly, particularly over a short period of time. Those purchases may in turn, dramatically increase the price of our common stock. This is often referred to as a "short squeeze." A short squeeze could lead to volatile price movements in our common stock that are not directly correlated to our business prospects, financial performance or other traditional measures of value for the Company or our common stock.

A small number of stockholders own a significant portion of our outstanding common stock, thus limiting the extent to which other stockholders can effect decisions subject to stockholder vote. Directors, executive officers and principal stockholders of ENGlobal and their affiliates, beneficially own approximately 31% of our outstanding common stock on a fully diluted basis as of the date of this Report. Accordingly, these stockholders, as a group, are able to affect the outcome of stockholder votes, including votes concerning the adoption or amendment of provisions in our Articles of Incorporation or bylaws and the approval of mergers and other significant corporate transactions.

The existence of these levels of ownership concentrated in a few persons makes it unlikely that any other holder of common stock will be able to affect the management or direction of the Company. These factors may also have the effect of delaying or preventing a change in management or voting control of the Company.

Our Board of Directors may authorize future sales of ENGlobal common stock, which could result in a decrease in the market value to existing stockholders of the shares they hold. Our Articles of Incorporation authorize our Board of Directors to issue up to an additional 39,199,383 shares of common stock and an additional 2,000,000 shares of undesignated preferred stock as of December 31, 2022. Subject to the terms of our Articles of Incorporation, these shares may be issued without stockholder approval unless the issuance is 20% or more of our outstanding common stock, in which case the NASDAQ requires stockholder approval. We may issue shares of stock in the future in connection with acquisitions or financings. In addition, we may issue restricted stock or options under our 2021 Long Term Incentive Plan. Future issuances of substantial amounts of common stock, or the perception that these sales could occur, may affect the market price of our common stock. In addition, the ability of the Board of Directors to issue additional stock may discourage transactions involving actual or potential changes of control of the Company, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of our common stock.

Future issuances of our securities in connection with financing transactions or under equity incentive plans could dilute current stockholders' ownership. We may decide to raise additional funds to fund our operations through the issuance of public or private debt or equity securities. We cannot predict the effect, if any, that future issuances of debt, our common stock, other equity securities or securities convertible into or exchangeable for our common stock or other equity securities or the availability of any of the foregoing for future sale, will have on the market price of our common stock. The issuance of substantial amounts of our common stock or securities convertible into or exchangeable for our common stock (including shares issued upon the exercise of stock options or the conversion or exchange of any convertible or exchangeable securities outstanding now or in the future), or the perception that such issuances could occur, may adversely affect prevailing market prices for our common stock. In addition, further dilution to our existing stockholders will result, and new investors could have rights superior to existing stockholders.

[Table of Contents](#)**ITEM 2. PROPERTIES**

We lease space in five locations in the U.S. totaling approximately 191,127 square feet. The leases have remaining terms ranging from eight months to one hundred sixteen months and are on terms that we consider commercially reasonable. We have no major encumbrances related to these properties.

Our principal office is located in Houston, Texas. We have other offices located in Tulsa, Oklahoma, Brookshire, Texas, and Monahans, Texas. Approximately 61,438 square feet of our total office space is designated for our professional, technical and administrative personnel. We believe that our office and other facilities are well maintained and adequate for existing and planned operations at each operating location. Our Commercial segment performs assembly services in its Houston, Texas integration facility with approximately 81,089 square feet of space and performs fabrication services in its Brookshire, Texas facility with approximately 45,000 square feet of shop space. The previous fabrication facility located in Henderson, TX was moved to the Brookshire, TX location.

Location	Square Feet
Brookshire, TX	45,000
Houston, TX	26,006
Houston, TX (Portwall)	81,089
Tulsa, OK	35,432
Monahans, TX	3,600
	<u>191,127</u>

ITEM 3. LEGAL PROCEEDINGS

From time to time, ENGlobal or one or more of its subsidiaries may be involved in various legal proceedings or may be subject to claims that arise in the ordinary course of business alleging, among other things, claims of breach of contract or negligence in connection with the performance or delivery of goods and/or services. The outcome of any such claims or proceedings cannot be predicted with certainty. As of the date of this filing, management is not aware of any such claims against the Company or any subsidiary business entity.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

[Table of Contents](#)**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information and Holders**

Our common stock has been quoted on the NASDAQ Capital Market (NASDAQ - CM) under the symbol "ENG" since April 16, 2013 and the NASDAQ Global Market prior to that date. Newspaper and on-line stock listings identify us as "ENGlobal."

As of December 31, 2022, approximately 87 stockholders of record held our common stock. We do not have information regarding the number of holders of beneficial interests in our common stock.

Issuer Purchases of Equity Securities

The following table sets forth certain information with respect to repurchases of our common stock for the fourth quarter of 2022:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Maximum Number (or Approximate Dollar Value) of Shares That May Yet be Purchased Under Plans or Programs (1)
September 25, 2022 to October 29, 2022	—	—	—	\$ —
October 30, 2022 to November 26, 2022	—	—	—	\$ —
November 27, 2022 to December 31, 2022	—	—	—	\$ —
Total	—	—	1,290,460	\$ 425,589

- (1) On April 21, 2015, the Company announced that its Board of Directors had authorized the repurchase of up to \$2.0 million of the Company's common stock from time to time through open market or privately negotiated transactions, based on prevailing market conditions. The Company is not obligated to repurchase any dollar amount or specific number of shares of common stock under the repurchase program, which may be suspended, discontinued or reinstated at any time. The stock repurchase program was suspended on May 16, 2017 and was reinstated on December 19, 2018. As of December 31, 2022, the Company had purchased and retired 1,290,460 shares at an aggregate cost of \$1.6 million under this repurchase program. Management does not intend to repurchase any shares in the near future.

[Table of Contents](#)**Dividend Policy**

We have never declared or paid a cash dividend on our common stock. We intend to retain any future earnings for reinvestment in our business and we do not intend to pay cash dividends in the foreseeable future. The payment of dividends in the future, if any, will depend on numerous factors, including our earnings, capital requirements and operating and financial position as well as general business conditions.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion is qualified in its entirety by, and should be read in conjunction with, our Consolidated Financial Statements and Notes thereto, included elsewhere in this Report.

Overview

ENGlobal Corporation is a leading provider of innovative, delivered project solutions primarily to the energy industry. We deliver these solutions to our clients by combining our vertically-integrated engineering and professional project execution services with our automation and systems integration expertise and fabrication capabilities. We believe our vertically-integrated strategy allows us to differentiate our company from most of our competitors as a full service provider, thereby reducing our clients' dependency on and coordination of multiple vendors and improving control over their project cost and schedules. Our strategy and positioning has also allowed the Company to pursue larger scopes of work centered around many different types of modularized engineered systems.

We focus on four strategic markets where we have a long history of delivering project solutions and can provide complete project execution and have focused our business development teams on communicating these offerings to their clients. These four targeted markets include: (i) Renewables, (ii) Automation, (iii) Oil, Gas, and Petrochemicals, and (iv) Government Services.

We continue to be mindful of our overhead structure. We have made significant investments in key business development and other essential personnel, product developments and new facilities and equipment, which have all negatively impacted our selling, general and administrative (“SG&A”) expense. While believe these investments will allow the Company to expand its client base and acquire new projects, we recognize that the level of our SG&A is greater than it could be for a company our size and have started efforts to reduce headcount, reduce office and shop space, and implement other cost saving measures to address our lack of profitability. If anticipated revenue levels are not achieved to support the reduced level of our SG&A, we will continue these efforts to reduce SG&A expense. In addition, during the year ended December 31, 2022, we recorded a \$1.9 million bad debt reserve due to a contract dispute with one of our major customers.

Our recurring losses, negative cash flows from operating activities, need for additional financing and the uncertainties surrounding our ability to obtain such financing, raise substantial doubt about our ability to continue as a going concern. We have limited cash on hand and will need additional working capital to fund our planned operations. We are subject to significant risks and uncertainties, including failing to secure additional capital to fund our planned operations or failing to profitably operate the business. We intend to raise funds through various potential sources, such as equity or debt financings; however, we can provide no assurance that such financing will be available on acceptable terms, or at all. If adequate financing is not available or we do not achieve profitability and positive cash flows from operating activities, we may be required to significantly curtail or cease our operations, and our business would be jeopardized.

Results of Operations

Our revenue is comprised of services revenue and the sale of engineered modular solutions. We generally recognize service revenue as soon as the services are performed. During 2022, we worked on 242 projects ranging in size from \$1 thousand to \$28.7 million. The average size of the projects during 2022 was \$677 thousand and we recorded an average revenue of \$168 thousand per project.

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In the course of providing our services, we routinely provide materials and equipment and may provide construction management or construction services. Generally, these materials, equipment and subcontractor costs are passed through to our clients and reimbursed, along with handling fees, which in total are at margins much lower than those of our services business. In accordance with industry practice and generally accepted accounting principles, all such costs and fees are included in revenue. The use of subcontractor services can change significantly from project to project; therefore, changes in revenue and gross profit, SG&A expense and operating income as a percent of revenue may not be indicative of our core business trends.

Segment operating SG&A expense includes management and staff compensation, office costs such as rents and utilities, depreciation, amortization, travel, bad debt and other expenses generally unrelated to specific client contracts, but directly related to the support of a segment’s operations. Corporate SG&A expenses includes investor relations, governance, finance, accounting, health, safety, environmental, human resources, legal and information technology which are unrelated to specific projects but which are incurred to support corporate activities.

Reporting Segments

Our segments are strategic business units that offer different services and products and therefore require different marketing and management strategies. Separate operational leaders are in charge of our engineering offices and our automation offices, including the office that contracts with government agencies. The operating performance of our segments is regularly reviewed with the operational leaders of the two segments, the CEO, CFO and others. This group represents the CODM for ENGlobal.

Our corporate and other expenses that do not individually meet the criteria for segment reporting are reported separately as Corporate expenses.

Comparison of the years ended December 31, 2022 and December 25, 2021

The following table set forth below, for the years ended December 31, 2022 and December 25, 2021, provides financial data that is derived from our consolidated statements of operations (amounts in thousands, except per share data).

	<u>Commercial</u>	<u>Government Services</u>	<u>Corporate</u>	<u>Consolidated</u>	
For the year ended December 31, 2022:					
Revenue	\$ 32,096	\$ 8,093	\$ —	\$ 40,189	100.0%
Gross profit (loss)	(5,887)	1,675	—	(4,212)	(10.5)%
SG&A	8,608	740	4,767	14,115	35.1%
Operating income (loss)	(14,495)	935	(4,767)	(18,327)	(45.6)%
Other income, net				75	
Interest expense, net				(223)	
Tax expense				(39)	
Net loss				(18,514)	(46.1)%
Basic and diluted loss per share				\$ (0.52)	

	<u>Commercial</u>	<u>Government Services</u>	<u>Corporate</u>	<u>Consolidated</u>	
For the year ended December 25, 2021:					
Revenue	27,986	8,424	—	36,410	100.0%
Gross profit (loss)	(1,567)	924	—	(643)	(1.8)%
SG&A	7,032	892	4,909	12,833	35.2%
Operating income (loss)	(8,599)	32	(4,909)	(13,476)	(37.0)%
Other income, net				8,063	
Interest expense, net				(212)	
Tax expense				(60)	
Net loss				(5,685)	(15.6)%
Basic and diluted loss per share				(0.18)	

	<u>Commercial</u>	<u>Government Services</u>	<u>Corporate</u>	<u>Consolidated</u>	
Year Over Year Increase (Decrease) in Operating Results:					
Revenue	\$ 4,110	\$ (331)	\$ —	\$ 3,779	10.4%
Gross profit (loss)	(4,320)	751	—	(3,569)	
SG&A	1,576	(152)	(142)	1,282	10.0%
Operating income (loss)	(5,896)	903	142	(4,851)	36.0%
Other income, net				(7,988)	
Interest expense, net				(11)	
Tax expense				21	
Net loss				(12,829)	225.7%
Basic and diluted loss per share				\$ (0.34)	

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Revenue – Overall, our revenue for the year ended December 31, 2022, as compared to the year ended December 25, 2021, increased \$3.8 million, or 10.4%, to \$40.2 million from \$36.4 million. Revenue from the Commercial segment increased \$4.1 million, or 14.6%, to \$32.1 million for the year ended December 31, 2022, as compared to \$28.0 million for the comparable period in 2021. Revenue from the Government Services segment decreased \$0.3 million, or 3.9%, to \$8.1 million for the year ended December 31, 2022 as compared to \$8.4 million for the comparable period in 2021. Our 2022 revenue for the Commercial segment increased primarily due to project awards with new customers as we continue our business development efforts to increase our backlog, partially offset by the completion of one large project and projects that ended without subsequent renewals. Our 2022 revenue for the Government Services segment decreased primarily due the ending of a contract and transition to new projects awarded in 2022.

Gross Profit (Loss) – Gross loss for the year ended December 31, 2022 was \$4.2 million, an increase of \$3.6 million, or 555.1%, from a gross loss of \$0.6 million for the comparable period in 2021. Gross loss margin was 10.5% for the year ended December 31, 2022, an increase from the 1.8% gross loss margin for the year ended December 25, 2021.

Gross loss in our Commercial segment increased \$4.3 million, or 275.7%, to a gross loss of \$5.9 million for a gross loss margin of 18.3% for the year ended December 31, 2022 as compared to a gross loss of \$1.6 million and gross loss margin of 5.6% for the year ended December 25, 2021. The increase in gross loss margin is primarily attributable to the inefficient use of personnel to complete projects in addition to the impairment of the license agreement acquired during 2022.

Gross profit in the Government Services segment increased \$0.8 million, or 81.3%, to \$1.7 million for a gross profit margin of 20.7% for the year ended December 31, 2022 as compared to gross profit of \$0.9 million with a gross profit margin of 11.0% for the year ended December 25, 2021. The increase in gross profit is due to an efficient transition out of one of our Government Services contracts.

Selling, General and Administrative – Overall, our SG&A expenses increased by \$1.3 million for the year ended December 31, 2022 as compared to the year ended December 25, 2021. This increase in SG&A was driven by increases in rent expense of \$0.5 million, computer software expense of \$0.5 million, bad debt expense of \$0.5 million, and travel expense of \$0.1 million, partially offset by decreases in legal expense of \$0.2 million, and recruiting expense of \$0.1 million. We continue to focus on reducing expenses to keep our costs in line with our revenue levels. These cost reduction measures include reducing headcount and reducing office and shop space.

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Other income, net – Other income, net of expense, decreased \$8.0 million for the year ended December 31, 2022 as compared to the year ended December 25, 2021 primarily due to a \$1.7 million employee retention credit recorded in the first quarter of 2021, \$5.0 million of PPP loan forgiveness recorded in the third quarter of 2021, and a \$1.4 million employee retention credit recorded in the third quarter of 2021, with no comparable occurrences in 2022.

Tax expense – Tax expense was \$0.1 million for the year ended December 31, 2022 and December 25, 2021.

Net Income (Loss) – Net loss for the year ended December 31, 2022 was \$18.5 million compared to a net loss of \$5.7 million for the year ended December 25, 2021, primarily as a result of the increase in gross loss in 2022, in addition to the employee retention credit in the first and third quarters of 2021 and the PPP Loan forgiveness in the third quarter of 2021, with no comparable occurrences in 2022.

Liquidity and Capital Resources

Overview

We define liquidity as our ability to pay liabilities as they become due, fund business operations and meet monetary contractual obligations. Our primary sources of liquidity are cash on hand, internally generated funds, sales of common stock pursuant to the ATM Agreement (defined below), and borrowings under the Revolving Credit Facility. Our cash decreased to \$3.5 million at December 31, 2022 from \$19.2 million at December 25, 2021, as our operating activities used approximately \$14.5 million in net cash during the year ended December 31, 2022 primarily due to cash used to fund our operating loss. Our working capital as of December 31, 2022 was \$7.1 million as compared to \$26.2 million as of December 25, 2021.

On May 21, 2020, we entered into the Revolving Credit Facility (the “Revolving Credit Facility”) pursuant to which the Lender agreed to extend credit of up to \$6.0 million, subject to a credit limit. As of December 31, 2022, the credit limit under the Revolving Credit Facility was \$1.8 million and outstanding borrowings were \$1.7 million, which yields enough interest to cover our minimum monthly interest charge. On March 27, 2023, we modified the Revolving Credit Facility which reduced the credit limit to \$0.9 million and outstanding borrowings to \$0.9 million. As of December 31, 2022, we were in compliance with all of the covenants under the Revolving Credit Facility. Our Revolving Credit Facility matures on May 20, 2023.

In addition, on January 29, 2021, we filed a shelf registration statement on Form S-3 (File No. 333-252572) (the “Registration Statement”) with the SEC, pursuant to which we may offer and sell, at our option, securities having an aggregate offering price of up to \$100 million, subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve-month period unless our public float is at least \$75 million, as described further below. On January 29, 2021, we entered into an at market issuance sales agreement with B. Riley Securities, Inc., which was subsequently terminated pursuant to its terms on January 7, 2022.

On June 1, 2021, we entered into a securities purchase agreement (the “Purchase Agreement”) pursuant to which we sold and issued an aggregate of 7,142,859 shares of the Company’s common stock to certain institutional investors at an offering price of \$2.80 per share in a registered direct offering priced at-the-market under NASDAQ rules for net proceeds of approximately \$18.7 million after deducting the fees of A.G.P./Alliance Global Partners, the placement agent, and related offering expenses.

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On January 11, 2022, we entered into a sales agreement (the “ATM Agreement”) with Lake Street Capital Markets, LLC (“Lake Street”) pursuant to which we may offer and sell shares of the Company’s common stock having an aggregate offering price of up to \$30 million to or through Lake Street, as sales agent, from time to time, in an “at the market offering”. The Company is not obligated to make any sales under the agreement and any determination by the Company to do so will be dependent, among other things, on market conditions and the Company’s capital raising needs. The Registration Statement, including the accompanying prospectus and related prospectus supplements related to the “at the market offering”, is subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve-month period unless our public float is at least \$75 million. As of January 31, 2023, the Company’s public float (i.e., the aggregate market value of its outstanding equity securities held by non-affiliates) was approximately \$26.1 million, based on the closing price per share of the Company’s common stock as reported on the Nasdaq Capital Market on January 31, 2023, as calculated in accordance with General Instruction I.B.6 of Form S-3. In addition, during the 12 calendar month period that ends on the date of this filing of this Report, we had offered and sold approximately \$3.4 million of our common stock pursuant to the Registration Statement. If our public float meets or exceeds \$75 million at any time, we will no longer be subject to the restrictions set forth in General Instruction I.B.6 of Form S-3, at least until the filing of our next Section 10(a) (3) update as required under the Securities Act.

On February 1, 2023, we entered into a securities purchase agreement (the “RDO Purchase Agreement”) providing for the sale and issuance by the Company to a single institutional investor of 3,971,000 shares (the “Shares”) of the Company’s common stock, at an offering price of \$0.85 per Share in a registered direct offering pursuant to the Registration Statement. Concurrently with the sale of the Shares and pursuant to the RDO Purchase Agreement, the Company also sold and issued in a private placement, for no additional consideration to the investor, warrants to purchase up to 3,971,000 shares of the Company’s common stock (the “Warrants”). The gross proceeds to the Company from the offerings were approximately \$3.4 million before deducting the placement agent’s fees and related offering expenses, and excluding the proceeds, if any, from the exercise of the Warrants. The Company intends to use the net proceeds of the offering for working capital and general corporate purposes. The sale of the Shares pursuant to the RDO Purchase Agreement has reduced the amount of securities that we may sell in a primary offering pursuant to the Registration Statement, including pursuant to the ATM Agreement.

Our recurring losses, negative cash flows from operating activities, need for additional financing and the uncertainties surrounding our ability to obtain such financing, raise substantial doubt about our ability to continue as a going concern, as discussed in Part II, Item 8, Note 1. We have limited cash on hand and will need additional working capital to fund our planned operations. We are subject to significant risks and uncertainties, including failing to secure additional capital to fund our planned operations or failing to profitably operate the business. We intend to raise funds through various potential sources, such as equity or debt financings; however, we can provide no assurance that such financing will be available on acceptable terms, or at all. If adequate financing is not available or we do not achieve profitability and positive cash flows from operating activities, we may be required to significantly curtail or cease our operations, and our business would be jeopardized.

Cash and the availability of cash could be materially restricted if (1) outstanding invoices billed are not collected or are not collected in a timely manner, (2) circumstances prevent the timely internal processing of invoices, (3) we lose one or more of our major customers or our major customers significantly reduce the amount of work requested from us, (4) we are unable to win new projects that we can perform on a profitable basis or (5) we are unable to reverse our use of cash to fund losses.

Our Board of Directors continues to review strategic transactions, which could include strategic acquisitions, mergers, reverse mergers, the issuance or buyback of public shares, or the purchase or sale of specific assets, in addition to other potential actions aimed at increasing shareholder value. The Company does not intend to disclose or comment on developments related to its review unless and until the Board has approved a specific transaction or otherwise determined that further disclosure is appropriate. There can be no assurance that the Board’s strategic review will result in any transaction, or any assurance as to its outcome or timing.

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Cash Flows from Operating Activities

Operating activities used approximately \$14.5 million in net cash during the year ended December 31, 2022 primarily due to cash used to fund our operating loss of \$18.5 million, a \$1.9 million increase in contract assets net of contract liabilities, a \$1.4 million decrease in contingent consideration, and a \$0.2 million decrease in accrued compensations and benefits, partially offset by a \$2.5 million

increase in trade payables, a \$2.5 million impairment of intangible assets, a \$0.9 million decrease in other receivables due to a partial refund of the employee retention credit, \$0.2 million of share-based compensation, a \$0.4 million increase in other current liabilities, \$0.9 million of depreciation and amortization, and \$0.1 million from other components of working capital. Operating activities used approximately \$13.7 million in net cash during the year ended December 25, 2021 primarily due to cash used to fund our operating loss of \$5.7 million, \$4.9 million of PPP Loan forgiveness, a \$3.1 million increase in other current assets, a \$0.1 million decrease in trade payables, a \$1.4 million decrease in accrued compensations and benefits, and a \$0.1 million decrease in other current liabilities and other components of working capital, partially offset by a \$0.7 million decrease in contract assets net of contract liabilities, \$0.8 million of share-based compensation and depreciation, and a \$0.1 million decrease in trade receivables.

Cash Flows from Investing Activities

Investing activities used cash of \$1.5 million during the year ended December 31, 2022 primarily related to the Calvert acquisition as discussed in Part II, Item 8, Note 18, and the purchase of computer hardware and software, and machinery and equipment to outfit our fabrication and field services businesses. Investing activities used cash of \$0.2 million during the year ended December 25, 2021 primarily related to the purchase of computer hardware and machinery and equipment.

Cash Flows from Financing Activities

Financing activities provided cash of \$0.3 million during the year ended December 31, 2022 due to proceeds from borrowings on the Revolving Credit Facility partially offset by payments on finance leases. Financing activities provided cash of \$19.4 million during the year ended December 25, 2021 primarily due to net proceeds from sales of common stock under the ATM Agreement and Purchase Agreement, partially offset by payments on the Revolving Credit Facility and finance leases.

Contractual Obligations

The Company is obligated to make future cash payments under the Revolving Credit Facility, operating leases, finance leases, and other liabilities. Amounts below are undiscounted and may differ from balances reflected on the financial statements. The table below sets forth certain information about our contractual obligations as of December 31, 2022 (in thousands):

	Payment Due by Fiscal Period				
	2023	2024	2025	2026	2027 and thereafter
Operating and finance leases	\$ 2,076	\$ 1,546	\$ 1,328	\$ 1,077	\$ 4,128
Revolving Credit Facility	1,661	—	—	—	—
Other liabilities ⁽¹⁾	509	—	—	—	—
Total	\$ 4,246	\$ 1,546	\$ 1,328	\$ 1,077	\$ 4,128

(1) Other liabilities includes short-term notes payable.

Stock Repurchase Program

On April 21, 2015, the Company announced that our Board of Directors had authorized the repurchase of up to \$2.0 million of our common stock from time to time through open market or privately negotiated transactions, based on prevailing market conditions. We were not obligated to repurchase any dollar amount or specific number of shares of common stock under the repurchase program, which may be suspended, discontinued or reinstated at any time. From April 2015 through December 2017, the Company purchased and retired 1,191,050 shares at a cost of \$1.5 million. The stock repurchase program was suspended on May 16, 2017 and was reinstated on December 19, 2018. During the years ended December 31, 2022 and December 25, 2021, no shares were repurchased. Management does not intend to repurchase any shares in the near future.

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Accounts Receivable

We typically sell our products and services on short-term credit and seek to minimize our credit risk by performing credit checks and conducting our own collection efforts. Our trade accounts receivable decreased \$0.1 million, or 1.3%, to \$7.6 million as of December 31, 2022 compared to \$7.7 million as of December 25, 2021. We had bad debt expense of \$1.9 million for the year ended December 31, 2022 primarily due to a contract dispute with a major customer during the fourth quarter of the year and \$1.4 of bad debt expense for the year ended December 25, 2021. Our allowance for uncollectible accounts was \$2.1 million as of December 31, 2022 and \$1.7 million as of December 25, 2021 and increased as a percentage of trade accounts receivable to 23.5% for 2022 from 22.1% for 2021. We continue to manage this portion of our business very carefully.

Risk Management

In performing services for our clients, we could potentially face liability for breach of contract, personal injury, property damage or negligence, including professional errors and omissions. We often agree to indemnify our clients for losses and expenses incurred as a result of our negligence and, in certain cases, the sole or concurrent negligence of our clients. Our quality control and assurance program includes a control function to establish standards and procedures for performance and for documentation of project tasks, and an assurance function to audit and to monitor compliance with procedures and quality standards. We maintain liability insurance for bodily injury and third-party property damage, professional errors and omissions, and workers' compensation coverage, which we consider sufficient to insure against these risks, subject to self-insured amounts.

Seasonality

Our revenues are generated by services, and therefore holidays and employee vacations during our fourth quarter negatively impact revenues for that quarter, which is only partially offset by the year-end efforts on the part of many clients to spend any remaining funds budgeted for services and capital expenditures during the year. Our clients' annual budget process is normally completed in the first quarter, which can slow the award of new work at the beginning of the year. Principally due to these factors, our first and fourth quarters are typically less robust than our second and third quarters.

Critical Accounting Policies

Please see Part II, Item 8, Note 2 – *Accounting Policies and New Accounting Pronouncements* for additional information regarding our critical accounting policies.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The audited financial information below is attached hereto and made part hereof:

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To the Shareholders and the Board of Directors of
ENGlobal Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of ENGlobal Corporation (the "Company") as of December 31, 2022 and December 25, 2021, the related consolidated statements of operations, stockholders' equity and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2022 and December 25, 2021, and the consolidated results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and has utilized significant cash in operations that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

[Table of Contents](#)**Revenue Recognition – Estimates of Costs to Complete**

As described in Note 2, the Company recognizes revenue on fixed-price contracts over time when there is a continuous transfer of control to the customer over the duration of the contract as the services are rendered. The accounting conclusions for contracts involve significant judgment, particularly as it relates to determining the amount, timing and presentation of revenue that will be recognized for each performance obligation within the contract, and the distinct number of performance obligations represented by the contract.

We identified management's estimate of costs to complete on contracts where revenue is recognized over time as a critical audit matter. On certain contracts, revenue is recognized over time using a cost-based input method that measures the extent of progress towards completion of a performance obligation. The majority of contract costs are labor costs, but costs also include material and allocable indirect expenses. Generally, revenue is recognized proportionally as labor costs are incurred. Management must make assumptions and estimates regarding labor productivity and availability, the complexity of the work to be performed, the availability of materials, the length of time to complete the performance obligation, execution by subcontractors, the availability and timing of funding, and overhead cost rates, among other variables. A significant change in one or more of these estimates could affect the profitability of the Company's contracts. Given the significant judgments necessary to determine the amount, timing and presentation of revenue and to estimate total costs for the performance obligations that recognize revenue using a cost-based input method, auditing such estimates required extensive audit effort due to the complexity of these fixed-price contracts and a high degree of auditor judgment when performing audit procedures and evaluating the results of those procedures.

The primary procedures we performed to address this critical audit matter included:

- Obtained an understanding and evaluated the design of internal controls over the contract management cycle, including those related to the accumulation of the estimated costs to complete a contract and the estimation of variable consideration.
- Performing journal entry testing procedures to address the presumed fraud risk over revenue.
- For a selection of uncompleted contracts projected to be an overall loss, inquiring of project managers and management to ensure that all losses have been accrued.
- For a selection of contracts, performing elements of the following for each contract:
 - o Confirming relevant contract terms including contract price and related change orders, revenue earned to date, retainage, balance currently due, and estimated completion date.
 - o Reviewing the terms and conditions of each contract and any related modifications to evaluate the appropriateness of the accounting treatment in accordance with generally accepted accounting principles.
 - o Testing the accuracy and completeness of the costs incurred to date for the performance obligation.
 - o Evaluating the estimates of total cost and fees for the performance obligation by:
 - Comparing costs incurred to date to the costs management estimated to be incurred by that date.
 - Evaluating management's ability to achieve the estimates of total cost by performing corroborating inquiries with the Company's project managers, and comparing the estimates to management's work plans.
 - o Testing the mathematical accuracy of management's calculation of revenue for the performance obligation.
 - o Performed a gross margin fade analysis subsequent to year-end and a look-back analysis on completed contracts during the year for selected projects to assess variances between ultimate realization on projects versus estimated profitability in order to evaluate accuracy of the estimation process.

/s/ Moss Adams LLP

Houston, Texas
March 31, 2023

We have served as the Company's auditor since 2017.

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(amounts in thousands, except share amounts)

	December 31, 2022	December 25, 2021
ASSETS		
Current Assets:		
Cash	\$ 3,464	\$ 19,202
Trade receivables, net of allowances of \$2,129 and \$1,673	7,644	7,692
Prepaid expenses and other current assets	1,580	958
Payroll taxes receivable	1,547	3,065
Contract assets	4,934	4,177
Total Current Assets	19,169	35,094
Property and equipment, net	1,757	1,698
Goodwill	720	720
Other assets		
Right of use asset	8,072	4,251
Deposits and other assets	305	306
Total Other Assets	8,377	4,557
Total Assets	\$ 30,023	\$ 42,069

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities:		
Accounts payable	\$ 4,454	\$ 2,001
Accrued compensation and benefits	2,002	2,183
Current portion of leases	1,849	1,389
Contract liabilities	956	2,054
Current portion of deferred payroll tax	-	537
Other current liabilities	1,134	667
Short-term debt	1,661	-
Total Current Liabilities	12,056	8,831
Long-term unearned revenue	425	-
Long-term debt	-	1,035
Long-term leases	7,217	4,012
Total Liabilities	19,698	13,878
Commitments and Contingencies (Note 16)		
Stockholders' Equity:		
Common stock - \$0.001 par value; 75,000,000 shares authorized; 35,800,617 shares issued and outstanding at December 31, 2022 and 35,230,675 shares issued and outstanding at December 25, 2021	36	35
Additional paid-in capital	58,050	57,403
Accumulated deficit	(47,761)	(29,247)
Total Stockholders' Equity	10,325	28,191
Total Liabilities and Stockholders' Equity	\$ 30,023	\$ 42,069

See accompanying notes to consolidated financial statements.

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**ENGLOBAL CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(amounts in thousands, except per share amounts)**

	Year Ended December 31, 2022	Year Ended December 25, 2021
Operating revenues	\$ 40,189	\$ 36,410
Operating costs	44,401	37,053
Gross loss	(4,212)	(643)
Operating costs and expenses:		
Selling, general, and administrative expenses	14,115	12,833
Operating loss	(18,327)	(13,476)
Other income (expense)		
Interest expense, net	(223)	(212)
Other income, net	75	8,063
Loss before income taxes	(18,475)	(5,625)
Provision for federal and state income taxes	(39)	(60)
Net loss	\$ (18,514)	\$ (5,685)
Basic and diluted loss per common share	\$ (0.52)	\$ (0.18)
Basic and diluted weighted average shares used in computing loss per share:	35,574	31,888

See accompanying notes to consolidated financial statements.

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**ENGLOBAL CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(amounts in thousands)**

	Year Ended December 31, 2022	Year Ended December 25, 2021
Common Stock		
Balance at beginning of year	\$ 35	\$ 27
Common stock issued	1	8
Balance at end of year	36	35

Additional Paid-in Capital		
Balance at beginning of year	57,403	37,157
Common stock issued	525	19,976
At-the-market offering costs	(97)	-
Share-based compensation – employees	219	270
Balance at end of year	<u>58,050</u>	<u>57,403</u>
Accumulated Deficit		
Balance at beginning of year	(29,247)	(23,562)
Net loss	(18,514)	(5,685)
Balance at end of year	<u>(47,761)</u>	<u>(29,247)</u>
Total Stockholders' Equity	\$ 10,325	\$ 28,191

See accompanying notes to consolidated financial statements.

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ENGLOBAL CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(amounts in thousands)

	Year Ended December 31, 2022	Year Ended December 25, 2021
Cash Flows from Operating Activities:		
Net loss	\$ (18,514)	\$ (5,685)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	933	561
Share-based compensation expense	219	270
Loss on disposal of fixed assets	13	—
Contingent consideration revaluation	(1,409)	—
Impairment of intangible asset	2,503	—
Forgiveness of PPP Loan	—	(4,949)
Changes in current assets and liabilities:		
Trade accounts receivable	48	97
Contract assets	(757)	(87)
Other current assets	898	(3,087)
Accounts payable	2,453	(137)
Accrued compensation and benefits	(181)	(1,365)
Contract liabilities	(1,098)	796
Income taxes payable	(38)	(38)
Other current liabilities, net	394	(40)
Net cash used in operating activities	<u>\$ (14,536)</u>	<u>\$ (13,664)</u>
Cash Flows from Investing Activities:		
Property and equipment acquired	(602)	(240)
Asset acquisition, net of cash acquired	(904)	—
Net cash used in investing activities	<u>\$ (1,506)</u>	<u>\$ (240)</u>
Cash Flows from Financing Activities:		
Issuance of common stock, net	—	19,984
Payments on finance leases	(224)	(129)
At-the-market offering costs	(97)	—
Proceeds (payments) from revolving credit facility	625	(455)
Net cash provided by financing activities	<u>\$ 304</u>	<u>\$ 19,400</u>
Net change in cash	(15,738)	5,496
Cash at beginning of year	19,202	13,706
Cash at end of year	<u>\$ 3,464</u>	<u>\$ 19,202</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	\$ 223	\$ 212
Right of use assets obtained in exchange for new operating lease liability	\$ 4,864	\$ 4,014
Leased assets obtained in exchange for new finance lease liabilities	\$ 67	\$ 665
Asset acquisition, common stock issued	\$ 525	\$ —
Cash paid during the year for income taxes (net of refunds)	\$ 52	\$ 151
Non-cash transaction: PPP loan forgiveness	\$ —	\$ 4,974

See accompanying notes to consolidated financial statements.

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ENGLOBAL CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – ORGANIZATION AND BASIS OF PRESENTATION

Organization and Operations – ENGlobal Corporation is a Nevada corporation formed in 1994. Unless the context requires otherwise, references to “we”, “us”, “our”, “the Company” or “ENGlobal” are intended to mean the consolidated business and operations of ENGlobal Corporation. Our business operations consist of providing innovative, delivered project solutions to our clients by combining our vertically-integrated engineering and professional project execution services with our automation and systems integration expertise and our fabrication and construction capabilities primarily to the energy industry. Please see “Note 14 – Segment Information” for a description of our segments and segment operations.

Basis of Presentation – The accompanying consolidated financial statements and related notes present our consolidated financial position as of December 31, 2022 and December 25, 2021, and the results of our operations, cash flows and changes in stockholders’ equity for the 53 week period ended December 31, 2022 and for the 52 week period ended December 25, 2021. They are prepared in accordance with accounting principles generally accepted in the United States of America. In preparing financial statements, management makes informed judgments and estimates that affect the reported amounts of assets and liabilities as of the date of the financial statements and affect the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, management reviews its estimates, including those related to percentage-of-completion contracts in progress, litigation, income taxes, impairment of long-lived assets and fair values. Changes in facts and circumstances or discovery of new information may result in revised estimates. Actual results could differ from these estimates.

Going Concern – The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. As shown in the accompanying financial statements, the Company has suffered recurring losses, used significant cash in support of its operating activities, has limited cash on hand, and will need additional working capital to fund our planned operations.

We define liquidity as our ability to pay liabilities as they become due, fund business operations and meet monetary contractual obligations. Our primary sources of liquidity are cash on hand, internally generated funds, sales of common stock pursuant to the ATM Agreement, and borrowings under the Revolving Credit Facility.

On May 21, 2020, we entered into the Revolving Credit Facility pursuant to which the Lender agreed to extend credit of up to \$6.0 million, subject to a credit limit. As of December 31, 2022, the credit limit under the Revolving Credit Facility was \$1.8 million and outstanding borrowings were \$1.7 million, which yields enough interest to cover our minimum monthly interest charge. On March 27, 2023, we modified the Revolving Credit Facility which reduced the credit limit to \$0.9 million and outstanding borrowings to \$0.9 million. As of December 31, 2022, we were in compliance with all of the covenants under the Revolving Credit Facility. Our Revolving Credit Facility matures on May 20, 2023.

In addition, on January 29, 2021, we filed a shelf registration statement on Form S-3 (File No. 333-252572) (the "Registration Statement") with the SEC, pursuant to which we may offer and sell, at our option, securities having an aggregate offering price of up to \$100 million, subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve-month period unless our public float is at least \$75 million, as described further below. On January 29, 2021, we entered into an at market issuance sales agreement with B. Riley Securities, Inc., which was subsequently terminated pursuant to its terms on January 7, 2022.

On June 1, 2021, sales and issuance of shares of the Company's common stock pursuant to Purchase Agreement provided net proceeds of approximately \$18.7 million after deducting the fees of A.G.P./Alliance Global Partners, the placement agent, and related offering expenses.

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On January 11, 2022, the Company entered into a sales agreement (the "ATM Agreement") with Lake Street Capital Markets, LLC ("Lake Street") pursuant to which the Company may offer and sell shares of the Company's common stock having an aggregate offering price of up to \$30 million to or through Lake Street, as sales agent, from time to time, in an "at the market offering". The Company is not obligated to make any sales under the agreement and any determination by the Company to do so will be dependent, among other things, on market conditions and the Company's capital raising needs. The Registration Statement, including the accompanying prospectus and related prospectus supplements related to the "at the market offering," is subject to the provisions of General Instruction I.B.6 of Form S-3, which provides that we may not sell securities in a public primary offering with a value exceeding one-third of our public float in any twelve-month period unless our public float is at least \$75 million. As of January 31, 2023, the Company's public float (i.e., the aggregate market value of its outstanding equity securities held by non-affiliates) was approximately \$26.1 million, based on the closing price per share of the Company's common stock as reported on the Nasdaq Capital Market January 31, 2023, as calculated in accordance with General Instruction I.B.6 of Form S-3. In addition, during the 12 calendar month period that ends on the date of this filing of this Report, we had offered and sold approximately \$3.4 million of our common stock pursuant to the Registration Statement. If our public float meets or exceeds \$75 million at any time, we will no longer be subject to the restrictions set forth in General Instruction I.B.6 of Form S-3, at least until the filing of our next Section 10(a)(3) update as required under the Securities Act.

On February 1, 2023, we entered into a securities purchase agreement (the "RDO Purchase Agreement") providing for the sale and issuance by the Company to a single institutional investor of 3,971,000 shares (the "Shares") of the Company's common stock, at an offering price of \$0.85 per Share in a registered direct offering pursuant to the Registration Statement. Concurrently with the sale of the Shares and pursuant to the RDO Purchase Agreement, the Company also sold and issued in a private placement, for no additional consideration to the investor, warrants to purchase up to 3,971,000 shares of the Company's common stock (the "Warrants"). The gross proceeds to the Company from the offerings were approximately \$3.4 million before deducting the placement agent's fees and related offering expenses, and excluding the proceeds, if any, from the exercise of the Warrants. The Company intends to use the net proceeds of the offering for working capital and general corporate purposes. The sale of the Shares pursuant to the RDO Purchase Agreement has reduced the amount of securities that we may sell in a primary offering pursuant to the Registration Statement, including pursuant to the ATM Agreement.

Our recurring losses, negative cash flows from operating activities, need for additional financing and the uncertainties surrounding our ability to obtain such financing, raise substantial doubt about our ability to continue as a going concern. We have limited cash on hand and will need additional working capital to fund our planned operations. We are subject to significant risks and uncertainties, including failing to secure additional capital to fund our planned operations or failing to profitably operate the business. We intend to raise funds through various potential sources, such as equity or debt financings; however, we can provide no assurance that such financing will be available on acceptable terms, or at all. If adequate financing is not available or we do not achieve profitability and positive cash flows from operating activities, we may be required to significantly curtail or cease our operations, and our business would be jeopardized.

NOTE 2 – ACCOUNTING POLICIES AND NEW ACCOUNTING PRONOUNCEMENTS

Consolidation Policy – Our consolidated financial statements include our accounts and those of our wholly-owned subsidiaries.

Fair Value Measurements – Fair value is defined as the amount that would be received for the sale of an asset or paid for the transfer of a liability in an orderly transaction between unrelated third-party market participants at the measurement date. In determination of fair value measurements for assets and liabilities we consider the principal, or most advantageous market, and assumptions that market participants would use when pricing the asset or liability.

Cash and cash equivalents – Cash and cash equivalents include all cash on hand, demand deposits and investments with original maturities of three months or less. We consider cash equivalents to include short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. Our cash balance at financial institutions may exceed Federal Deposit Insurance Corporation ("FDIC") insured amounts from time to time.

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Receivables – Our components of trade receivables include amounts billed, amounts unbilled, retainage and allowance for uncollectible accounts. Subject to our allowance for uncollectible accounts, all amounts are believed to be collectible within a year. There are no amounts unbilled representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization. In estimating the allowance for uncollectible accounts, we consider the length of time receivable balances have been outstanding, historical collection experience, current economic conditions and customer specific information. When we ultimately conclude that a receivable is uncollectible, the balance is charged against the allowance for uncollectible accounts.

Concentration of Credit Risk – Financial instruments which potentially subject ENGlobeal to concentrations of credit risk consist primarily of trade accounts and notes receivable. Although our services are provided largely to the energy sector, management believes the risk due to this concentration is limited because a significant portion of our services are provided under contracts with major integrated oil and gas companies and other industry leaders. When we enter into contracts with smaller customers, we may incur an increased credit risk.

Our businesses or product lines are largely dependent on a few relatively large customers. Although we believe we have an extensive customer base, the loss of one of these large customers or if such customers were to incur a prolonged period of decline in business, our financial condition and results of operations could be adversely affected. Two customers provided more than 10% each of our consolidated operating revenues for the year ended December 31, 2022 (17.3% and 12.8%). For the year ended December 25, 2021, two customers provided more than 10% each of our consolidated operating revenues (30.5% and 22.6%). Amounts included in trade receivables related to these customers totaled \$0.2 million and \$3.7 million, respectively, at December 31, 2022 and \$0.1 million and \$1.2 million, respectively, at December 25, 2021. One customer not within the top 10% percent of revenue had an outstanding accounts receivable balance of \$1.6 million as of December 31, 2022.

We extend credit to customers in the normal course of business. We have established various procedures to manage our credit exposure, including initial credit approvals, credit limits and terms, letters of credit, and occasionally through rights of offset. We also use prepayments and guarantees to limit credit risk to ensure that our established credit criteria are met. Our most significant exposure to credit risks relates to situations under which we provide services early in the life of a project that is dependent on financing. Risks increase in times of general economic downturns and under conditions that threaten project feasibility.

Property and Equipment – Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. The estimated service lives of our asset groups are as follows:

Asset Group	Years
Shop equipment	5 – 10
Furniture and fixtures	5 – 7
Computer equipment; Autos and trucks	3 – 5
Software	3 – 5

Leasehold improvements are amortized over the remaining term of the related lease. See Note 4 for details related to property and equipment and related depreciation. Expenditures for maintenance and repairs are expensed as incurred. Upon disposition or retirement of property and equipment, any gain or loss is charged to operations.

Goodwill – Goodwill represents the excess of the purchase price of acquisitions over the fair value of the net assets acquired and liabilities assumed. Goodwill is not amortized but rather is tested and assessed for impairment annually, or more frequently if certain events or changes in circumstance indicate the carrying amount may exceed fair value. The annual test for goodwill impairment is performed in the fourth quarter of each year.

The Company compares its fair value of a reporting unit and the carrying value of the reporting unit to measure goodwill impairment. Fair value was determined by applying undiscounted cash flows of the operating unit after allocation of certain corporate overhead. Estimating the cash flow of the operating unit requires the use of significant estimates and assumptions, including revenue growth rates, operating margins, discount rates and future market conditions, among others. It is possible that changes in market conditions, economy, facts, circumstances, judgments and assumptions used in estimating the fair value could change, resulting in possible impairment of goodwill in the future.

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We performed a qualitative assessment of goodwill, which relates to Government Services, for each of the years ended December 31, 2022 and December 25, 2021. This assessment indicated that there was no impairment of goodwill for the years ended December 31, 2022 and December 25, 2021.

Impairment of Long-Lived Assets – We review our intangible license and property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. The recoverability of long-lived assets is measured by comparison the future undiscounted cash flows expected to result from the use and eventual disposition of the asset to the carrying value of the asset. Estimates of expected future cash flows represent management's best estimate based on reasonable and supportable assumptions. If the carrying amount is not recoverable, an impairment loss is measured as the excess of the asset's carrying value over its fair value. We assess the fair value of long-lived assets using commonly accepted techniques, and may use more than one method, including, but not limited to, recent third-party comparable sales, internally developed discounted cash flow analysis and analysis from outside advisors. During the fourth quarter of 2022, we determined the carrying amount of the license agreement acquired was no longer recoverable and wrote the balance down to its estimated fair value. Fair value was based on expected future cash flows using Level 3 inputs. The resulting impairment of \$2.5 million was recorded within Operating Costs on the Consolidated Statement of Operations. The impairment is attributable to our Commercial segment. During 2021 there were no events or changes in circumstances that indicated that the carrying amount of our assets may not be recoverable.

Revenue Recognition – Our revenue is comprised of engineering, procurement and construction management services and sales of fabricated systems and integrated control systems that we design and assemble. The majority of our services are provided under time-and-material contracts. Some time-and-material contracts may have limits not to exceed. Revenue is not recognized over these limits until authorization by the client has been received.

A majority of sales of fabrication and assembled systems are under fixed-price contracts. We account for a contract when it has approval and commitment from both parties, the rights of the parties are identified, payment terms are identified, the contract has commercial substance and collectability of consideration is probable.

We generally recognize revenue over time as we perform because of continuous transfer of control to the customer. Our customer typically controls the work in process as evidenced either by contractual termination clauses or by our rights to payment for work performed to date plus a reasonable profit to deliver products or services that do not have an alternative use to the Company. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the products or service to be provided, which measures the ratio of costs incurred to date to the total estimated costs at completion of the performance obligation. We generally use the cost-to-cost method on the labor portion of a project for revenue recognition to measure progress of our contracts because it best depicts the transfer of control to the customer which occurs as we consume the materials on the contracts. Therefore, revenues and estimated profits are recorded proportionally as labor costs are incurred.

Under the typical payment terms of our fixed-price contracts, the customer pays us progress payments. These progress payments are based on quantifiable measures of performance or on the achievement of specified events or milestones. The customer may retain a small portion of the contract price until completion of the contract. Revenue recognized in excess of billings is recorded as a contract asset on the balance sheet. Amounts billed and due from our customers are classified as receivables on the balance sheet. The portion of the payments retained by the customer until final contract settlement is not considered a significant financing component because the intent is to protect the customer should we fail to adequately complete some or all of our obligations under the contract. For some contracts we may receive advance payments from the customer. We record a liability for these advance payments in contract liabilities on the balance sheet. The advance payment typically is not considered a significant financing component because it is used to meet working capital demand that can be higher in the early stages of a contract and to protect us from the other party failing to adequately complete some or all of its obligations under the contract.

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To determine proper revenue recognition for contracts, we evaluate whether two or more contracts should be combined and accounted for as one single performance obligation or whether a single contract should be accounted for as more than one performance obligation. This evaluation requires significant judgment and the decision to combine a group of contracts or separate a single contract into multiple performance obligations could change the amount of revenue and profit recorded in a given period. For most of our contracts, we provide a significant service of integrating a complex set of tasks and components into a single project. Hence, the entire contract is accounted for as one performance obligation. Less commonly, we may provide distinct goods or services within a contract in which case we separate the contract into more than one performance obligation. If a contract is separated into more than one performance obligation, we allocate the total transaction price to each performance obligation in an amount based on the estimated relative standalone selling price of the promised goods or services underlying each performance obligation and use the expected cost plus margin approach to estimate the standalone selling price of each performance obligation. Due to the nature of the work required to be performed on many of our performance obligations, the estimation of total revenue and cost at completion is complex, subject to variables and requires significant judgment. We estimate variable consideration at the most likely amount to which we expect to be entitled. We include estimated amounts in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of our anticipated performance and all information (historical, current and forecasted) that is reasonably available to us.

Contracts are often modified to account for changes in contract specifications and requirements. We consider contract modifications to exist when the modification either creates new or changes the existing enforceable rights and obligations. Most of our contract modifications are for goods or services that are not distinct from the existing contract due to the significant integration service provided in the context of the contract and are accounted for as if they were part of that existing contract. The effect of a contract modification on the transaction price and our measure of progress for the performance obligation to which it relates, is recognized as an adjustment to revenue (either as an increase or a reduction of revenue) on a cumulative catch-up basis.

We have a standard, monthly process in which management reviews the progress and execution of our performance obligations. As part of this process, management reviews information including, but not limited to, any outstanding key contract matters, progress towards completion and the related program schedule, identified risks and opportunities and the related changes in estimates of revenues and costs. The risks and opportunities include management's judgment about the ability and cost to achieve the schedule, technical requirements, and other contractual requirements. Management must make assumptions and estimates regarding labor productivity and availability, the complexity of the work to be performed, the availability of materials, the length of time to complete the performance obligation, execution by our subcontractors, the availability and timing of funding from our customer and overhead cost rates, among other variables.

Based on this analysis, any adjustments to revenue, operating costs and the related impact to operating income are recognized as necessary in the period they become known. These adjustments may result from positive performance and may result in an increase in operating income during the performance of individual performance obligations if we determine we will be successful in mitigating risks surrounding the technical, schedule and cost aspects of those performance obligations or realizing related opportunities. When estimates of total costs to be incurred exceed total estimates to be earned, a provision for the entire loss on the performance obligation is recognized in the period the loss is estimated. Likewise, these adjustments may result in a decrease in operating income if we determine we will not be successful in mitigating these risks or realizing related opportunities. Changes in estimates of net revenue, operating costs and the related impact to operating income are recognized monthly on a cumulative catch-up basis, which recognizes in the current period the cumulative effect of the changes on current and prior periods based on a performance obligation's percentage of completion. A significant change in one or more of these estimates could affect the profitability of one or more of our performance obligations.

Incremental Costs – Our incremental costs of obtaining a contract, which may consist of sales commission and proposal costs, are reviewed and those costs that are immaterial to the financial statements are expensed as they occur. Those costs that are deemed to be material to the contract are deferred and amortized over the period of contract performance. We classify incremental costs as current or noncurrent based on the timing of when we expect to recognize the expense. The current and noncurrent portions of incremental costs are included in prepaid expenses and other current assets and other assets, net, respectively in our consolidated balance sheet. We had no incremental costs that met our materiality threshold in 2022 or 2021.

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Income Taxes – We account for deferred income taxes in accordance with FASB ASC Topic 740 "Income Taxes" ("ASC 740"), which provides for recording deferred taxes using an asset and liability method. We recognize deferred tax assets and liabilities based on differences between the financial statement carrying amounts and the tax bases of assets and liabilities including net operating loss and tax credit carryforwards using enacted tax rates in effect for the year in which the differences are expected to reverse. The provision for income taxes represents the current taxes payable or refundable for the period plus or minus the tax effect of the net change in the deferred tax assets and liabilities during the period. Tax law and rate changes are reflected in income in the period such changes are enacted.

A valuation allowance is recorded to reduce previously recorded tax assets when it becomes more-likely-than-not such asset will not be realized. We evaluate the realizability of deferred tax assets based on all available evidence, both positive and negative, regarding historical operating results, including the estimated timing of future reversals of existing taxable temporary differences, estimated future taxable income exclusive of reversing temporary differences and carryforwards and potential tax planning strategies which may be employed to prevent an operating loss or tax credit carryforward from expiring unused.

We account for uncertain tax positions in accordance with ASC 740. When uncertain tax positions exist, we recognize the tax benefit of the tax positions to the extent that the benefit will more-likely-than-not be realized. The determination as to whether the tax benefit will more-likely-than-not be realized is based upon technical merits of the tax positions as well as consideration of the available facts and circumstances. The Company recognizes interest and penalties related to unrecognized tax benefits in the provision for income taxes.

Earnings per Share – Our basic earnings per share (“EPS”) amounts have been computed based on the weighted average number of shares of common stock outstanding for the period. Diluted EPS amounts include the effect of common stock equivalents associated with outstanding stock options, restricted stock awards and restricted stock units, if including such potential shares of common stock is dilutive. We only had restricted stock awards outstanding during 2022 and 2021.

Treasury Stock – We use the cost method to record treasury stock purchases whereby the entire cost of the acquired shares of our common stock is recorded as treasury stock (at cost). When we subsequently retire these shares, the cost of the shares acquired are recorded in common stock and additional paid-in capital. There were no treasury stock purchases in 2022 and 2021.

Stock-Based Compensation – We have issued stock-based compensation in the form of non-vested restricted stock awards to directors, employees and officers. We apply the provisions of ASC Topic 718 “Compensation – Stock Compensation” (“ASC 718”) and recognize compensation expense over the applicable service for all stock-based compensation based on the grant date fair value of the award.

The Company accounts for restricted stock awards granted to consultants using the accounting guidance included in ASC 505-50 “Equity-Based Payments to Non-Employees” (“ASC 505-50”). All transactions in which services are received in exchange for share-based awards are accounted for based on the fair value of the consideration received or the fair value of the awards issued, whichever is more reliably measurable. Share-based compensation is measured at fair value at the earlier of the commitment date or the date the services are completed.

NOTE 3 – DETAIL OF CERTAIN BALANCE SHEET ACCOUNTS

The components of trade receivables, net as of December 31, 2022 and December 25, 2021, are as follows (amounts in thousands):

	2022	2021
Amounts billed	\$ 9,061	\$ 5,810
Amounts unbilled	619	867
Retainage	93	2,688
Less: Allowance for uncollectible accounts	(2,129)	(1,673)
Trade receivables, net	<u>\$ 7,644</u>	<u>\$ 7,692</u>

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The components of prepaid expense and other current assets are as follows as of December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Prepaid expenses	\$ 1,397	\$ 917
Other receivables – employee	19	41
Other receivable	35	—
Inventory	129	—
Prepaid expenses and other current assets	<u>\$ 1,580</u>	<u>\$ 958</u>

The components of other current liabilities are as follows as of December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Accrual for known contingencies	\$ 17	\$ 104
Customer prepayments	17	4
Warranty reserve	511	—
Gross receipts tax payable	—	35
State income taxes payable	30	33
Unearned revenue	50	—
Insurance payable	509	491
Other current liabilities	<u>\$ 1,134</u>	<u>\$ 667</u>

Our accrual for known contingencies includes litigation accruals, if any. See “Note 16 – Commitments and Contingencies” for further information.

NOTE 4 – PROPERTY AND EQUIPMENT

Property and equipment consist of the following as of December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Computer equipment and software	\$ 1,500	\$ 1,397
Shop equipment	2,609	2,252
Furniture and fixtures	196	197
Leasehold improvements	828	836
Autos and trucks	100	83
	<u>\$ 5,233</u>	<u>\$ 4,765</u>
Accumulated depreciation and amortization	(3,476)	(3,067)
Property and equipment, net	<u>\$ 1,757</u>	<u>\$ 1,698</u>

Depreciation expense was \$0.5 million and \$0.5 million for the years ended December 31, 2022 and December 25, 2021, respectively.

NOTE 5 – REVENUE RECOGNITION

Our revenue by contract type are as follows (amounts in thousands):

	For the Years Ended	
	December 31, 2022	December 25, 2021
Fixed-price revenue	\$ 30,050	\$ 21,205
Time-and-material revenue	10,139	15,205
Total Revenue	<u>40,189</u>	<u>36,410</u>

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NOTE 6 – CONTRACTS

Costs, estimated earnings, and billings on uncompleted contracts consist of the following as of December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Costs incurred on uncompleted contracts	\$ 59,298	\$ 36,429
Estimated earnings on uncompleted contracts	4,464	4,866

Earned revenues	63,762	41,295
Less: billings to date	59,784	39,172
Net costs in excess of billings on uncompleted contracts	\$ 3,978	\$ 2,123
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 4,934	\$ 4,177
Billings in excess of costs and estimated earnings on uncompleted contracts	(956)	(2,054)
Net costs in excess of billings on uncompleted contracts	\$ 3,978	\$ 2,123

Revenue on fixed-price contracts is recorded primarily using the percentage-of-completion (cost-to-cost) method. Revenue and gross margin on fixed-price contracts are subject to revision throughout the lives of the contracts and any required adjustments are made in the period in which the revisions become known. To manage unknown risks, management may use contingency amounts to increase the estimated costs, therefore, lowering the earned revenues until the risks are better identified and quantified or have been mitigated. We had \$1.0 million in contingency amounts as of December 31, 2022 and had \$0.2 million in contingency amounts as of December 25, 2021. Losses on contracts are recorded in full as they are identified.

We recognize service revenue as soon as the services are performed. For clients that we consider higher risk, due to past payment history or history of not providing written work authorizations, we have deferred revenue recognition until we receive either a written authorization or a payment. We had \$0.2 million in deferred revenue for the year ended December 31, 2022 and \$0.0 million for the year ended December 25, 2021. This deferred revenue represents work on not to exceed contracts that has been performed but has not been billed or been recorded as revenue due to our revenue recognition policies as the work was performed outside the contracted amount without obtaining proper work order changes. It is uncertain as to whether these revenues will eventually be recognized by us or the proceeds collected. The costs associated with these billings have been expensed as incurred.

NOTE 7 – DEBT

The components of debt are as follows (amounts in thousands):

	December 31, 2022	December 25, 2021
Revolving Credit Facility (1)	\$ 1,661	\$ 1,035
Total debt	1,661	1,035
Amount due within one year	1,661	—
Total long-term debt	\$ —	\$ 1,035

- (1) On May 21, 2020 (the “Closing Date”), the Company and its wholly owned subsidiaries, ENGlobal U.S., Inc. and ENGlobal Government Services, Inc. (collectively, the “Borrowers”) entered into a Loan and Security Agreement (the “Revolving Credit Facility”) with Pacific Western Bank dba Pacific Western Business Finance, a California state-chartered bank (the “Lender”), pursuant to which the Lender agreed to extend credit to the Borrowers in the form of revolving loans (each a “Loan” and collectively, the “Loans”) in the aggregate amount of up to \$6.0 million (the “Maximum Credit Limit”).

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Set forth below are certain of the material terms of the Revolving Credit Facility:

Credit Limit: The credit limit is an amount equal to the lesser of (a) the Maximum Credit Limit and (b) the sum of (i) 85% of the Borrowers’ Eligible Accounts (as defined in the Revolving Credit Facility), plus (ii) the lesser of (A) 75% of the Borrowers’ Eligible Unbilled Accounts (as defined in the Revolving Credit Facility), or (B) \$3,000,000 plus (iii) the lesser of (A) 20% of Borrowers’ Eligible Fixed Price Accounts, or (B) \$250,000. As of December 31, 2022, the credit limit under the Revolving Credit Facility was \$1.8 million.

Interest: Any Loans will bear interest at a rate per annum equal to the Prime rate (defined as the rate announced as the “prime rate” or “bank prime rate” in the Western Edition of the Wall Street Journal) plus 2.0%; provided that interest will not be less than \$7,500 per month.

Collateral: Lender receives a first priority lien on all assets of the Borrowers, including accounts receivable, inventory, equipment, deposit accounts, general intangibles and investment property.

Maturity: The maturity date is May 20, 2023 and shall be automatically extended for additional periods of one-year each, if written notice of termination is not given by one party to the other at least thirty days prior to the maturity date.

Loan Fee: The Borrowers will pay to Lender a loan fee of 1.00% of the Maximum Credit Limit at the time of funding and annually thereafter on the anniversary date of the initial funding.

Termination Fee: In the event the Borrowers terminate the Revolving Credit Facility prior to the maturity date, the Borrowers will pay to Lender a termination fee of (i) 2.00% of the Maximum Credit Limit, if the termination occurs on or prior to the first anniversary of the Closing Date, (ii) 1.00% of the Maximum Credit Limit, if the termination occurs after the first anniversary of the Closing Date and on or prior to the second anniversary of the Closing Date and (iii) 0.05% of the Maximum Credit Limit, if the termination occurs after the second anniversary of the Closing Date.

Covenants: The Revolving Credit Facility requires the Borrowers to comply with certain customary affirmative covenants, and negative covenants that, among other things, restrict, subject to certain exceptions, the ability of the Borrowers to engage in mergers, acquisitions or other transactions outside of the ordinary course of business, make loans or investments, incur indebtedness, pay dividends or repurchase stock, or engage in affiliate transactions. The Revolving Credit Facility does not require the Borrowers to comply with any financial covenants.

On March 27, 2023, the Company and the Borrowers modified the Revolving Credit Facility with the Lender.

Set forth below are the material terms of the modification to the Revolving Credit Facility:

Credit Limit: The credit limit will not exceed the lesser of \$1,000,000 at any time outstanding (the “Maximum Credit Limit”) minus any reserves, or the sum of (a) 85% of the Borrowers’ Eligible Accounts (as defined in the Revolving Credit Facility) and (b) the lesser of \$500,000 or 75% of the Borrowers’ Eligible Unbilled Accounts (as defined in the Revolving Credit Facility).

As a result of the modification, our current credit limit and outstanding borrowings are \$0.9 million under the Revolving Credit Facility.

Collateral: The Lender maintains a first priority lien on all assets of the Borrowers, including accounts receivable, inventory, equipment, deposit accounts, general intangibles and investment property, except for the Borrowers’ present and after-acquired Accounts Receivable defined in the Priority Agreement between the Borrowers, FundThrough USA Inc. and Pacific Western Bank.

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The future scheduled maturities of our debt are (amounts in thousands):

	Revolving Credit Facility
2023	\$ 1,661
Thereafter	—
	\$ 1,661

NOTE 8 – LEASES

The Company leases land, office space and equipment. Arrangements are assessed at inception to determine if a lease exists and, with the adoption of ASC 842, “Leases,” right-of-use (“ROU”) assets and lease liabilities are recognized based on the present value of lease payments over the lease term. Because the Company’s leases do not provide an implicit rate of return, the Company uses its

incremental borrowing rate at the inception of a lease to calculate the present value of lease payments. The Company has elected to apply the short-term lease exception for all asset classes, excluding lease liabilities from the balance sheet and recognizing the lease payments in the period they are incurred.

The components of lease expense are as follows (amounts in thousands):

	Financial Statement Classification	Year ended December 31, 2022	Year ended December 25, 2021
Finance leases:			
Amortization expense	SG&A Expense	\$ 204	\$ 100
Interest expense	Interest expense, net	44	17
		<u>\$ 248</u>	<u>\$ 117</u>
Operating leases:			
Operating costs	Operating costs	491	507
Selling, general and administrative expenses	SG&A Expense	2,218	1,728
		<u>\$ 2,709</u>	<u>\$ 2,235</u>
Total lease expense		<u>\$ 2,957</u>	<u>\$ 2,352</u>

Supplemental balance sheet information related to leases are as follows (amounts in thousands):

	Financial Statement Classification	December 31, 2022	December 25, 2021
ROU Assets:			
Operating leases	Right of Use asset	\$ 8,072	\$ 4,251
Finance leases	Property and equipment, net	761	979
Total ROU Assets:		<u>\$ 8,833</u>	<u>\$ 5,230</u>

Lease liabilities:

Current liabilities			
Operating leases	Current portion of leases	\$ 1,638	\$ 1,153
Finance leases	Current portion of leases	211	236
Noncurrent Liabilities:			
Operating leases	Long Term Leases	6,669	3,269
Finance leases	Long Term Leases	548	743
Total lease liabilities		<u>\$ 9,066</u>	<u>\$ 5,401</u>

The weighted average remaining lease term and weighted average discount rate are as follows:

	December 31, 2022	December 25, 2021
Weighted average remaining lease term (years)		
Operating leases	7.3	4.8
Finance leases	3.7	4.4
Weighted average discount rate		
Operating leases	11.0%	0.8%
Finance leases	8.2%	2.1%

Maturities of operating lease liabilities as of December 31, 2022 are as follows (dollars in thousands):

	Operating leases	Finance leases	Total
2023	1,836	240	2,076
2024	1,323	223	1,546
2025	1,140	188	1,328
2026	919	158	1,077
2027 and thereafter	4,113	15	4,128
Total lease payments	9,331	824	10,155
Less: imputed interest	(1,024)	(65)	(1,089)
Total lease liabilities	<u>\$ 8,307</u>	<u>\$ 759</u>	<u>\$ 9,066</u>

NOTE 9 – EMPLOYEE BENEFIT PLANS

ENGlobal sponsors a 401(k) plan for its employees. The Company, at the direction of the Board of Directors, may make discretionary contributions. Our employees may elect to make contributions pursuant to a salary reduction agreement upon meeting age and length-of-service requirements. The Company matching contribution for the year ended December 31, 2022 was \$0.2 million. The Company did not match employees' deferrals in the year ended December 25, 2021.

NOTE 10 – STOCK COMPENSATION PLANS

The Company's 2021 Long Term Incentive Plan (the "Long Term Incentive Plan"), currently provides for the aggregate issuance of up to 1,500,000 shares of common stock. The Long Term Incentive Plan provides for grants of non-statutory options, incentive stock options, restricted stock awards, performance shares, performance units, restricted stock units and other stock-based awards, in order to enhance the ability of ENGlobal to motivate current employees, to attract employees of outstanding ability and to provide for grants to be made to non-employee directors. At December 31, 2022, 1,289,949 shares of common stock are available to be issued pursuant to the Long Term Incentive Plan.

We recognized non-cash stock-based compensation expense related to our Long Term Incentive Plan and the expired Amended and Restated 2009 Equity Incentive Plan of \$0.2 million for the year ended December 31, 2022 and \$0.3 million for the year ended December 25, 2021.

Restricted Stock Awards – Restricted stock awards granted to non-employee directors are intended to compensate and retain the directors over the one-year service period commencing July 1 of the year of service. These awards generally vest in quarterly installments beginning September 30th of the year of grant, so long as the grantee continues to serve as a director of the Company as of each vesting date. Restricted stock awards granted to employees generally vest in four equal annual installments on the anniversary date of grant, so long as the grantee remains employed full-time with us as of each vesting date. Restricted stock awards are generally issued as new shares at the time of grant. The grant-date fair value of restricted stock grants is determined using the closing quoted market price on the grant date.

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The following is a summary of the status of our restricted stock awards and of changes in restricted stock outstanding for the year ended December 31, 2022:

	Number of unvested restricted shares	Weighted-average grant-date fair value
Outstanding at December 25, 2021	116,631	\$ 3.07
Granted	114,504	1.31
Vested	133,106	1.98
Forfeited	5,088	4.42
Outstanding at December 31, 2022	<u>92,941</u>	<u>\$ 2.40</u>

As of December 31, 2022, there was \$0.2 million of total unrecognized compensation cost related to unvested restricted stock awards which is expected to be recognized over a weighted-average period of 2 years. During the year ended December 31, 2022, the Company granted the following restricted stock awards:

Date Issued	Issued to	Number of Shares	Market Price	Fair Value
June 9, 2022	Directors (3)	114,504	\$ 1.31	\$ 150,000

During the year ended December 25, 2021, the Company granted the following restricted stock awards:

Date Issued	Issued to	Number of Shares	Market Price	Fair Value
March 9, 2021	Director (1)	5,656	\$ 4.42	\$ 25,000
March 9, 2021	Employees (10)	56,557	\$ 4.42	\$ 250,000
June 1, 2021	Employee (1)	2,778	\$ 3.60	\$ 10,000
August 26, 2021	Directors (3)	75,759	\$ 1.98	\$ 150,000

NOTE 11 – TREASURY STOCK

On April 21, 2015, we announced that the Board of Directors had authorized the repurchase of up to \$2.0 million of our common stock from time to time through open market or privately negotiated transactions, based on prevailing market conditions. We are not obligated to repurchase any dollar amount or specific number of shares of common stock under the repurchase program, which may be suspended, discontinued or reinstated at any time. As of December 25, 2021, the Company had purchased and retired 1,290,460 shares for \$1.6 million under this program. The stock repurchase program was suspended from May 16, 2017 and was reinstated on December 19, 2018. No shares were repurchased during the years ended December 25, 2021 and December 31, 2022. Management does not intend to repurchase any shares in the near future.

NOTE 12 – REDEEMABLE PREFERRED STOCK

We are authorized to issue 2,000,000 shares of Preferred Stock, par value \$0.001 per share (the “Preferred Stock”). Subject to the terms of our articles of incorporation, the Board of Directors has the authority to approve the issuance of all or any of these shares of the Preferred Stock in one or more series, to determine the number of shares constituting any series and to determine any voting powers, conversion rights, dividend rights and other designations, preferences, limitations, restrictions and rights relating to such shares. While there are no current plans to issue the Preferred Stock, it was authorized in order to provide the Company with flexibility to take advantage of contingencies such as favorable acquisition opportunities.

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NOTE 13 – FEDERAL AND STATE INCOME TAXES

The components of our income tax expense for the years ended December 31, 2022 and December 25, 2021 are as follows (amounts in thousands):

	2022	2021
Current:		
State	39	60
Total current	39	60
Deferred:		
Federal	(37)	(35)
State	37	35
Total deferred	—	—
Total income tax expense	\$ 39	\$ 60

The following is a reconciliation of expected income tax benefit to actual income tax expense for the years ended December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Federal income tax (benefit) at statutory rates	\$ (3,888)	\$ (1,181)
Foreign tax rate adjustment	122	—
State income tax, net of federal income tax effect	(256)	(43)
Nondeductible expenses	188	(31)
Nontaxable PPP Loan Forgiveness	—	(1,044)
State RTA	30	(13)
Prior year adjustments and true-ups	61	(32)
Change in valuation allowance	3,782	2,404
Total tax expense	\$ 39	\$ 60

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The components of the deferred tax asset (liability) consisted of the following as of December 31, 2022 and December 25, 2021 (amounts in thousands):

	2022	2021
Noncurrent Deferred tax assets		
Federal and state net operating loss carryforward	\$ 12,006	\$ 9,503
Tax credit carryforwards	1,977	1,977
Allowance for uncollectible accounts	491	380
Accruals not yet deductible for tax purposes	548	488
Goodwill	177	236
Lease payable	1,897	992
Capitalized R&D expenses	1,086	—
Total noncurrent deferred tax assets	18,182	13,576
Less: Valuation allowance	(16,166)	(12,419)
Total noncurrent deferred tax assets, net	\$ 2,016	\$ 1,157
Noncurrent deferred tax liabilities:		
Depreciation	(10)	(49)
Other	(116)	(126)
Right to use asset	(1,890)	(982)
Total noncurrent deferred tax liabilities	(2,016)	(1,157)
Net deferred tax assets/deferred tax Liabilities	\$ —	\$ —

We account for deferred income taxes in accordance with FASB ASC Topic 740 (“ASC 740”), which provides for deferred taxes using an asset and liability method. We recognize deferred tax assets and liabilities based on differences between the financial statement carrying amounts and the tax bases of assets and liabilities including net operating loss and tax credit carryforwards using enacted tax rates in effect for the year in which the differences are expected to reverse. The provision for income taxes represents the current taxes payable or refundable for the period plus or minus the tax effect of the net change in the deferred tax assets and liabilities during the period. Tax law and rate changes are reflected in income in the period such changes are enacted.

We account for uncertain tax positions in accordance with ASC 740. When uncertain tax positions exist, we recognize the tax benefit of the tax positions to the extent that the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon technical merits of the tax positions as well as consideration of the available facts and circumstances. We recognize interest and penalties related to unrecognized tax benefits in the provision for income taxes. As of December 31, 2022 and December 25, 2021, we do not have any significant uncertain tax positions.

We record a valuation allowance to reduce previously recorded tax assets when it becomes more-likely-than-not such asset will not be realized. We evaluate based on all available evidence, both positive and negative, regarding historical operating results, including the estimated timing of future reversals of existing taxable temporary differences, estimated future taxable income exclusive of reversing temporary differences and carryforwards and potential tax planning strategies which may be employed to prevent an operating loss or tax credit carryforward from expiring unused.

The ultimate realization of the deferred tax assets depends on the ability to generate sufficient taxable income of the appropriate character and in the related jurisdiction in the future. In evaluating our ability to recover our deferred tax assets, we consider the available positive and negative evidence, including our past operating results, the existence of cumulative losses in the most recent years and our forecast of future taxable income. In estimating future taxable income, we develop assumptions, including the amount of pretax operating income, the reversal of temporary differences and the implementation of feasible and prudent tax planning strategies. These assumptions require significant judgment. During 2022, after evaluating all available evidence, we recorded a valuation allowance on all net deferred tax assets.

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For the year ended December 31, 2022, we recognized a total income tax expense of \$39 thousand on a pretax book loss of \$18.5 million compared to an income tax expense of \$60 thousand on a pretax book loss of \$5.6 million for the year ended December 25, 2021. As a result of permanent difference add-backs to taxable income related to meals and entertainment the tax expense increased by \$188 thousand, which decreased the effective tax rate by 1.02%. An increase of \$3.8 million in the valuation allowance decreased the effective tax rate by 20.5%. State income tax (net of Federal) expense in the amount of \$256 thousand increased the effective tax rate by 1.39% mainly due to Texas margins tax. Federal and state tax true-ups decreased tax expense in the amount of \$91 thousand and decreased the effective tax rate by 0.29%.

As of December 31, 2022, the Company has a gross federal net operating loss carry-forward of approximately \$52.9 million, which will begin to expire in 2032. Under the Tax Cuts and Jobs Act of 2017 (“TCJA”), net operating losses (“NOL’s”) generated in tax year 2018 and forward have an indefinite carryforward but are limited to 80% of taxable income when utilized. For NOL’s incurred in tax year 2017 and prior, the limitation to 80% of taxable income does not apply, but the NOL’s are subject to expiration.

NOTE 14 – SEGMENT INFORMATION

Reporting Segments

Our segments are strategic business units that offer our services and products to customers in their respective industry segments. The operating performance of our segments is regularly reviewed with operational leaders in charge of these segments, the Executive Chairman (“CEO”), the chief financial officer (“CFO”) and others. This group represents the chief operating decision maker (“CODM”) for ENGlobal.

We have identified four strategic markets where we have a long history of delivering project solutions and can provide complete project execution. These four targeted markets include: (i) Renewables, (ii) Automation, (iii) Oil, Gas, and Petrochemicals, and (iv) Government Services.

Within the Renewables group, our focus is to design and build production facilities for hydrogen and associated products, together with converting existing production facilities to produce products from renewable feedstock sources. These projects often utilize technologies that are more fuel efficient, and therefore reduce the associated carbon footprint of the facility. Our scope of work on these projects will typically include front-end development, engineering, procurement, mechanical fabrication, automation and commissioning services, and may be performed in conjunction with a construction partner.

Our Automation group provides the design and programming of automated control systems as well as designs, fabricates, integrates and commissions modular systems that include remote instrumentation control stations, on-line process analytical data, continuous emission monitoring, and electric power distribution. Often these packaged systems are housed in a fabricated metal enclosure, modular building or freestanding metal rack, which are commonly included in our scope of work. We provide automation engineering, procurement, fabrication, systems integration, programming and on-site commissioning services to our clients for both new and existing facilities.

Our Oil, Gas, and Petrochemicals group focuses on providing engineering, procurement, construction, and automation services as well as fabricated products to downstream refineries and petrochemical facilities as well as midstream pipeline, storage and other transportation related companies. These services are often applied to small capital improvement and maintenance projects within refineries and petrochemical facilities. For our transportation clients, we work on facilities that include pumping, compression, gas processing, metering, storage terminals, product loading and blending systems. In addition, this group designs, programs and maintains supervisory control and data acquisition (“SCADA”) systems for our transportation clients. This group also provides engineering, fabrication and automation services to clients who have operations in the U.S. oil and gas exploration and development markets. The operations are usually associated with the completion, purification, storage and transmission of the oil and gas from the well head to the terminal or pipeline destination.

Our Government Services group provides services related to the engineering, design, installation and maintenance of automated fuel handling and tank gauging systems for the U.S. military across the globe.

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We have two reportable segments: Commercial and Government Services. Our Renewables, Automation, and Oil, Gas, and Petrochemical groups are aggregated into one reportable segment, Commercial.

Our corporate and other expenses that do not individually meet the criteria for segment reporting are reported separately as Corporate expenses.

Revenue, operating income, identifiable assets, capital expenditures and depreciation for each segment are set forth in the following table. The amount identified as Corporate includes those activities that are not allocated to the operating segments and include costs related to business development, executive functions, finance, accounting, safety, human resources and information technology that are not specifically identifiable with the segments.

Segment information for the years ended December 31, 2022 and December 25, 2021 are as follows (amounts in thousands):

For the year ended December 31, 2022:	Commercial	Government	Corporate	Consolidated
Operating revenues	\$ 32,096	\$ 8,093	\$ —	\$ 40,189
Operating income (loss)	(14,495)	935	(4,767)	(18,327)
Depreciation and amortization	731	14	188	933
Tangible assets	19,526	1,312	8,465	29,303
Goodwill	—	720	—	720
Other intangible assets	—	—	—	—
Total assets	19,526	2,032	8,465	30,023
Capital expenditures	348	23	209	580
For the year ended December 25, 2021:	Commercial	Government	Corporate	Consolidated
Operating revenues	\$ 27,986	\$ 8,424	\$ —	\$ 36,410
Operating income (loss)	(8,599)	32	(4,909)	(13,476)
Depreciation and amortization	394	14	153	561
Tangible assets	12,516	3,068	25,746	41,330
Goodwill	—	720	—	720
Other intangible assets	19	—	—	19
Total assets	12,535	3,788	25,746	42,069
Capital expenditures	58	—	182	240

NOTE 15 – EMPLOYEE RETENTION CREDIT

Pursuant to the CARES Act, the Company is eligible for an employee retention credit subject to certain criteria. Since there are no generally accepted accounting principles for for-profit business entities that receive government assistance that is not in the form of a loan, an income tax credit or revenue from a contract with a customer, we determined the appropriate accounting treatment by analogy

Under an IAS 20 analogy, a business entity would recognize the employee retention credit on a systematic basis over the periods in which the entity recognizes the payroll expenses for which the grant (i.e., tax credit) is intended to compensate when there is reasonable assurance (i.e., it is probable) that the entity will comply with any conditions attached to the grant and the grant (i.e., tax credit) will be received.

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We have accounted for the \$1.7 million and \$1.4 million employee retention credits in the first and third quarters of 2021, respectively, as other income on the Statement of Operations and as a receivable on the Balance Sheet for year ended December 25, 2021. We have received funds for a portion of each quarter we requested the employee retention credits for. For the year ended December 31, 2022, the remaining unpaid employee retention credits of \$1.5 million is accounted for as a receivable on the balance sheet.

NOTE 16 – COMMITMENTS AND CONTINGENCIES

Employment Agreements

We have employment agreements with certain of our executive and other officers with severance terms ranging from six to twelve months. Such agreements provide for minimum salary levels. If employment is terminated for any reason other than 1) termination for cause, 2) voluntary resignation or 3) the employee's death, we are obligated to provide a severance benefit equal to six months of the employee's salary, and, at our option, an additional six months at 50% of the employee's salary in exchange for an extension of a non-competition agreement. The terms of these agreements include evergreen provisions allowing for automatic renewal. No liability is recorded for our obligations under employment agreements as the amounts that will ultimately be paid cannot be reasonably estimated.

Litigation

From time to time, ENGglobal or one or more of its subsidiaries may be involved in various legal proceedings or may be subject to claims that arise in the ordinary course of business alleging, among other things, claims of breach of contract or negligence in connection with the performance or delivery of goods and/or services. The outcome of any such claims or proceedings cannot be predicted with certainty. As of the date of this filing, management is not aware of any such claims against the Company or any subsidiary business entity.

Insurance

We carry a broad range of insurance coverage, including general and business automobile liability, commercial property, professional errors and omissions, workers' compensation insurance, directors' and officers' liability insurance and a general umbrella policy, all with standard self-insured retentions/deductibles. We also provide health insurance to our employees (including vision and dental), and are partially self-funded for these claims. Provisions for expected future payments are accrued based on our experience, and specific stop loss levels provide protection for the Company. We believe we have adequate reserves for the self-funded portion of our insurance policies. We are not aware of any material litigation or claims that are not covered by these policies or which are likely to materially exceed the Company's insurance limits.

NOTE 17 – STOCKHOLDERS' EQUITY

On January 29, 2021, the Company entered into an at market issuance sales agreement (the "Prior ATM Agreement") with B. Riley Securities, Inc. pursuant to which the Company may offer and sell shares of the Company's common stock having an aggregate offering price of up to \$25 million to or through B. Riley, as sales agent, from time to time, in an "at the market offering". Under the Prior ATM Agreement, the Company paid B. Riley an aggregate commission of 3% of the gross sales price per share of common stock sold under the Prior ATM Agreement. In April 2021, 400,538 shares of common stock were issued pursuant to the Prior ATM Agreement for net proceeds of approximately \$1.4 million. The Prior ATM Agreement was subsequently terminated pursuant to its terms on January 7, 2022.

On June 1, 2021, the Company entered into a securities purchase agreement (the "Purchase Agreement") pursuant to which the Company sold and issued an aggregate of 7,142,859 shares of the Company's common stock to certain institutional investors at an offering price of \$2.80 per share in a registered direct offering priced at-the-market under NASDAQ rules for net proceeds of approximately \$18.7 million after deducting the fees of A.G.P./Alliance Global Partners, the placement agent, and related offering expenses of approximately \$1.3 million.

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On January 11, 2022, the Company entered into a sales agreement (the "ATM Agreement") with Lake Street Capital Markets, LLC ("Lake Street") pursuant to which the Company may offer and sell shares of the Company's common stock having an aggregate offering price of up to \$30 million to or through Lake Street, as sales agent, from time to time, in an "at the market offering". The Company is not obligated to make any sales under the agreement and any determination by the Company to do so will be dependent, among other things, on market conditions and the Company's capital raising needs.

NOTE 18 – ACQUISITIONS

On May 18, 2022, ENG Calvert Holdings Ltd., a wholly owned subsidiary of the Company, completed the acquisition of the stock of Calvert Group Belgium NV ("Calvert"), a business that licenses small-scale gas to liquids ("GTL") technology for flare gas and stranded gas applications for specific territories including the Middle East and North Africa. The Company expects to utilize Calvert's basic designs incorporating the GTL technology into small scale GTL plants to be manufactured by the Company in the United States and subsequently shipped internationally.

Pursuant to the accounting guidance in ASC 805, we determined that the acquisition of Calvert did not meet the criteria necessary to constitute a business combination and was accounted for as an asset acquisition which occurs when substantially all of the fair value of gross assets acquired is concentrated in a single identifiable asset or a group of similar identified assets. The determination was based on the gross fair value of the acquisition being concentrated in the license agreement acquired.

The consideration transferred on the acquisition date included \$0.8 million cash, net of cash acquired, and \$0.5 million in common stock issued. In addition, we may pay up to approximately \$1.4 million in cash and issue approximately \$0.6 million in common stock if certain benchmarks are achieved. The Company capitalized \$0.2 million in costs associated with the transaction.

During the fourth quarter of 2022, we determined the carrying amount of the license agreement acquired was no longer recoverable and wrote the balance down to its estimated fair value. Fair value was based on expected future cash flows using Level 3 inputs. The \$2.5 million impairment of the intangible asset and \$1.4 million write down of the related contingent consideration balances are reflected within Operating Costs on the Consolidated Statement of Operations.

NOTE 19 – INTANGIBLE ASSETS

The Company had recognized a \$2.8 million intangible asset for the license acquired in the Calvert acquisition and \$1.4 million of contingent consideration. During the fourth quarter of 2022, we determined the carrying amount of the license agreement acquired was no longer recoverable and wrote the balance down to its estimated fair value. Fair value was based on expected future cash flows using Level 3 inputs. The impairment of the intangible asset and balance are reflected within Operating Costs on the Consolidated Statement of Operations.

NOTE 20 – SUBSEQUENT EVENTS

The Company has evaluated subsequent events through the date these financial statements were issued. The Company determined there were no events, other than as described below, that required disclosure or recognition in these financial statements.

Registered Direct Offering

On February 1, 2023, we entered into a securities purchase agreement (the "RDO Purchase Agreement") providing for the sale and issuance by the Company to a single institutional investor of 3,971,000 shares (the "Shares") of the Company's common stock at an offering price of \$0.85 per Share in a registered direct offering pursuant to the Registration Statement. Concurrently with the sale of the Shares and pursuant to the RDO Purchase Agreement, the Company also sold and issued in a private placement, for no additional consideration to the investor, warrants to purchase up to 3,971,000 shares of the Company's common stock (the "Warrants"). The gross proceeds to the Company from the offerings were approximately \$3.4 million before deducting the placement agent's fees and related offering expenses, and excluding the proceeds, if any, from the exercise of the Warrants. The Company intends to use the net proceeds of the offering for working capital and general corporate purposes. The sale of the Shares pursuant to the RDO Purchase Agreement has reduced the amount of securities that we may sell in a primary offering pursuant to the Registration Statement, including pursuant to the ATM Agreement.

[Table of Contents](#)**Company's Officer Changes**

Mark A. Hess, the former Chief Executive Officer of the Company, resigned from his officer positions with the Company and its subsidiaries effective February 10, 2023.

The Board of Directors appointed William A. Coskey, P.E., the Company's Chairman of the Board of Directors, as the Company's Executive Chairman effective February 7, 2023.

Roger Westerlind, the former President of the Company, was terminated effective March 17, 2023.

Revolving Credit Facility

On March 27, 2023, the Company modified the Revolving Credit Facility agreement which reduced our credit limit and outstanding borrowings to \$0.9 million.

Priority Agreement

On March 27, 2023, the Company entered into an invoice factoring agreement. The agreement provides the flexibility to receive funds early for a subset of customers at a discount rate of 2.75% to 8.25% depending on the length of payment terms with the customer.

[Table of Contents](#)**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

ITEM 9A. CONTROLS AND PROCEDURES**(a) Disclosure Controls and Procedures**

Disclosure controls and procedures are controls and other procedures of a registrant designed to ensure that information required to be disclosed by the registrant in the reports that it files or submits under the Exchange Act is properly recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's ("SEC") rules and forms. Disclosure controls and procedures include processes to accumulate and evaluate relevant information and communicate such information to a registrant's management, including its Executive Chairman and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosures.

We evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2022, as required by Rule 13a-15 of the Exchange Act. Based on the evaluation described above, our Executive Chairman and Chief Financial Officer have concluded that, as of December 31, 2022, our disclosure controls and procedures were effective insofar as they are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Our disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(b) Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as that term is defined in Exchange Act Rule 13a-15(f). Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external reporting purposes in accordance with generally accepted accounting principles ("GAAP"). Our internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of our financial statements in accordance with GAAP, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design safeguards into the process to reduce, although not eliminate, this risk. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or because the degree of compliance with the policies or procedures may deteriorate.

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In order to evaluate the effectiveness of our internal control over financial reporting as of December 31, 2022, as required by Section 404 of the Sarbanes-Oxley Act of 2002, our management conducted an assessment, including testing, based on the criteria set forth in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO Framework"). A material weakness is a control deficiency, or a combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of our annual or interim financial statements will not be prevented or detected. In assessing the effectiveness of our internal control over financial reporting, management did not identify a material weakness in internal control over financial reporting as of December 31, 2022. We have concluded that our internal control over financial reporting at December 31, 2022 was effective.

(c) No Attestation Report of the Registered Public Accounting Firm

This Report does not include an attestation report of the Company's independent registered public accounting firm regarding the Company's internal control over financial reporting. Management's report was not subject to attestation by the Company's independent registered public accounting firm pursuant to an exemption for smaller reporting companies under Section 989G of the Dodd-Frank Act. We qualify for the Dodd-Frank Act exemption from the independent auditor attestation requirement under Section 404(b) of the Sarbanes-Oxley Act for smaller reporting companies.

(d) Changes in Internal Control over Financial Reporting

No changes in our internal controls over financial reporting occurred during the quarter ended December 31 2022, that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

On March 27, 2023, the Company and its wholly owned subsidiaries, ENGlobal U.S., Inc. and ENGlobal Government Services, Inc. (collectively, the "Borrowers") entered into an invoice factoring agreement (the "Priority Agreement") with FundThrough USA, Inc. (the "Priority Lender") to purchase certain accounts receivable of the Borrowers with the consent of the lender under the Loan and Security Agreement (the "Revolving Credit Facility").

Set forth below are the material terms of the Priority Agreement between the Borrowers and the Priority Lender:

Eligible Accounts are limited to the specific customers defined in the Priority Agreement.

The cost to fund an invoice is a percentage of the invoice amount that ranges from 2.75% to 8.25% depending on the length of the payment terms with the customer.

The Borrower has granted the Priority Lender a security interest in all of the Borrower's present and after-acquired accounts receivable of the customers defined in the Priority Agreement.

On March 27, 2023, the Borrowers modified the Revolving Credit Facility with Pacific Western Bank dba Pacific Western Business Finance, a California state-chartered bank (the "Lender"), in connection with the Priority Agreement between the Borrowers and FundThrough USA Inc.

Set forth below are the material terms of the modification of the Revolving Credit Facility:

Credit Limit: The credit limit will not exceed the lesser of \$1,000,000 at any time outstanding (the "Maximum Credit Limit") minus any reserves, or the sum of (a) 85% of the Borrowers' Eligible Accounts (as defined in the Revolving Credit Facility) and (b) the lesser of \$500,000 or 75% of the Borrowers' Eligible Unbilled Accounts (as defined in the Revolving Credit Facility).

As a result of the modification, our current credit limit and outstanding borrowings are \$0.9 million under the Revolving Credit Facility.

Collateral: The Lender maintains a first priority lien on all assets of the Borrowers, including accounts receivable, inventory, equipment, deposit accounts, general intangibles and investment property, except for the Borrowers' present and after-acquired Accounts Receivable defined in the Priority Agreement.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

Not applicable.

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PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required in response to this item will be set forth in our definitive proxy statement for the 2023 annual meeting of stockholders or an amendment to this Report and is incorporated herein by this reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required in response to this item will be set forth in our definitive proxy statement for the 2023 annual meeting of stockholders or an amendment to this Report and is incorporated herein by this reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required in response to this item will be set forth in our definitive proxy statement for the 2023 annual meeting of stockholders or an amendment to this Report and is incorporated herein by this reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required in response to this item will be set forth in our definitive proxy statement for the 2023 annual meeting of stockholders or an amendment to this Report and is incorporated herein by this reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required in response to this item will be set forth in our definitive proxy statement for the 2023 annual meeting of stockholders or an amendment to this Report and is incorporated herein by this reference.

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PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements

The consolidated financial statements filed as part of this Form 10-K are listed and indexed in Part II, Item 8.

(a)(2) Schedules

All schedules have been omitted since the information required by the schedule is not applicable, or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the consolidated financial statements and notes thereto.

(a)(3) Exhibits

EXHIBIT INDEX

Exhibit No.	Description	Incorporated by Reference to:			
		Form or Schedule	Exhibit No.	Filing Date with SEC	SEC File Number
3.1	Restated Articles of Incorporation of Registrant dated January 29, 2021	8-K	3.1	1/29/2021	001-14217
3.2	Second Amended and Restated Bylaws of Registrant dated April 14, 2016	8-K	3.1	4/15/2016	001-14217
4.1	Registrant's specimen common stock certificate	S-3	4.1	10/31/2005	333-29336
*4.2	Description of Registrant's Securities Registered under Section 12 of the Securities Exchange Act of 1934.				
+10.1	ENGlobal Corporation Incentive Bonus Plan Dated effective July 1, 2009	8-K	10.1	8/17/2009	001-14217
+10.2	Form of Restricted Stock Unit Award Agreement between Registrant and its Independent Non-employee Directors	10-Q	10.2	8/11/2008	001-14217
+10.3	Form of Restricted Stock Award Agreement of 2009 Equity Incentive Plan between Registrant and its independent directors	10-Q	10.1	8/10/2009	001-14217
**+10.4	Form of Indemnification Agreement between Registrant and its Directors and Executive Officers				

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+10.5	Employment Agreement between ENGlobal Corporation and Mark A. Hess effective December 18, 2012	8-K	10.7	12/20/2012	001-14217
10.6	Lease Agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated January 27, 2005	10-K	10.11	3/28/2008	001-14217
10.7	First Amendment to the Lease Agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated April 5,	10-K/A	10.26	3/29/2007	001-14217

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10.8	Second Amendment to the Lease Agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated June 15, 2005	10-K/A	10.27	3/29/2007	001-14217
10.9	Third Amendment to the Lease Agreement between Oral Roberts University and ENGlobal Eng Inc. dated December 28, 2005	10-K/A	10.28	3/29/2007	001-14217
10.10	Fourth Amendment to the Lease Agreement between Oral Roberts University and ENGlobal Eng, Inc. dated February 27, 2006	10-K/A	10.29	3/29/2007	001-14217
10.11	Fifth Amendment to the Lease Agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated July 28, 2006	10-K/A	10.30	3/29/2007	001-14217
10.12	Sixth Amendment to the Lease agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated June 20, 2007	10-K	10.17	3/28/2008	001-14217
10.13	Seventh Amendment to the Lease agreement between Oral Roberts University and ENGlobal Engineering, Inc. dated November 12, 2010	10-K	10.11	3/15/2018	001-14217
10.14	Eighth Amendment to the Lease agreement between Oral Roberts University and ENGlobal U.S. Inc. dated May 15, 2012	10-K	10.12	3/15/2018	001-14217
10.15	Ninth Amendment to the Lease agreement between Oral Roberts University and ENGlobal U.S. Inc. dated August 22, 2017	10-K	10.13	3/15/2018	001-14217
10.16	Tenth Amendment to the Lease Agreement between Oral Roberts University and ENGlobal U.S., Inc. dated August 23, 2018	10-Q	10.2	11/8/2018	001-14217
10.17	Lease Agreement between Koll Bren Fund V, LP and ENGlobal Corporate Services, Inc. dated March 4, 2005	10-K	10.14	3/15/2018	001-14217
10.18	First Amendment to the Lease Agreement between Koll Bren Fund V, LP and ENGlobal Corporate Services, Inc. dated November 3, 2005	10-K	10.15	3/15/2018	001-14217
10.19	Second Amendment to the Lease Agreement between Koll Bren Fund V, LP and ENGlobal Corporate Services, Inc. dated July 31, 2006	10-K	10.16	3/15/2018	001-14217
10.20	Third Amendment to the Lease Agreement between Koll Bren Fund V, LP and ENGlobal Corporate Services, Inc. dated April 18, 2007	10-K	10.17	3/15/2018	001-14217
10.21	Fourth Amendment to the Lease Agreement between YPI North Belt Portfolio, LLC and ENGlobal Corporate Services, Inc. dated March 1, 2010	10-Q	10.2	3/5/2010	001-14217
10.22	Fifth Amendment to the Lease Agreement between YPI North Belt Portfolio, LLC and ENGlobal U.S. Inc. dated April 18, 2016	10-K	10.19	3/15/2018	001-14217
10.23	Sixth Amendment to the Lease Agreement between YPI North Belt Portfolio, LLC and ENGlobal U.S. Inc. dated June 5, 2018	10-Q	10.1	11/8/2018	001-14217
10.24	Lease Agreement between El Dorado Office 3, L.P. and ENGlobal U.S. Inc. dated September 9, 2013	10-K	10.20	3/15/2018	001-14217
10.25	Lease Agreement between Carson Portwall Management LLP and ENGlobal Systems, Inc. dated November 12, 2008	10-K	10.21	3/15/2018	001-14217

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10.26	First Amendment to the Lease Agreement between Carson Portwall Management LLP .and ENGlobal Systems, Inc. dated December 10, 2008	10-K	10.22	3/15/2018	001-14217
10.27	Second Amendment to the Lease Agreement between Carson Portwall Management LLP .and ENGlobal US Inc. dated September 7, 2015	10-K	10.23	3/15/2018	001-14217
10.28	Lease Agreement between Bryan Bateman Properties LLC .and ENGlobal US. Inc. dated August 23, 2017	10-K	10.24	3/15/2018	001-14217
+10.29	ENGlobal U.S. Inc. Redacted Growth Initiative Plan	10-Q	10.1	11/12/2019	001-14217
10.30	Office Lease between 700 17th Street, LLC and ENGlobal U.S. Inc., dated January 23, 2019	10-Q	10.1	5/13/2019	001-14217
10.31	U.S. Small Business Administration Note dated as of April 13, 2020, by ENGlobal Corporation in favor of Origin Bank, as lender	8-K	10.1	4/16/2020	001-14217
10.32	Loan and Security Agreement dated as of May 18, 2020, by and among ENGlobal Corporation, ENGlobal U.S., Inc., ENGlobal Government Services, Inc., and Pacific Western Bank, a California bank, as lender	8-K	10.1	5/26/2020	001-14217
+10.33	ENGlobal Corporation 2021 Long Term Incentive Plan	DEF 14A	Appendix A	7/15/2021	001-14217
10.34	Sales Agreement, dated January 11, 2022, by and between ENGlobal Corporation and Lake Street Capital Markets, LLC.	8-K	1.1	1/11/2022	001-14217
10.35	Securities Purchase Agreement, dated June 1, 2021, by and among ENGlobal Corporation and the purchasers identified on the signature pages thereto	8-K	10.1	6/3/21	001-14217
+10.36	Executive Employment Agreement between ENGlobal U.S. Inc. and Roger Westerlind effective December 16, 2020	10-K	10.37	3/11/22	001-14217
10.37	Third Amendment to the Lease Agreement between Carson Portwall Management, LLC. and ENGlobal US Inc. dated April 2019	10-K	10.38	3/11/22	001-14217
10.38	Fourth Amendment to the Lease Agreement between Carson Portwall Management, LLC. and ENGlobal US Inc. dated December 20, 2021	10-K	10.39	3/11/22	001-14217
10.39	Eleventh Amendment to the Lease Agreement between Oral Roberts University and ENGlobal U.S., Inc. dated September 25, 2019	10-K	10.40	3/11/22	001-14217
10.40	Twelfth Amendment to the Lease Agreement between Oral Roberts University and ENGlobal U.S., Inc. dated November 11, 2020	10-K	10.41	3/11/22	001-14217
10.41	Sublease Agreement between FMC Technologies, Inc. and ENGlobal U.S., Inc. dated May 20, 2021	10-K	10.42	3/11/22	001-14217
+10.42	Form of Restricted Stock Unit Award Agreement of the 2021 Long Term Incentive Plan between Registrant and its Independent Non-employee Directors	10-K	10.43	3/11/22	001-14217
*10.43	Invoice Factoring Agreement between ENGlobal Corporation, ENGlobal U.S., Inc., and ENGlobal Government Services, Inc. and FundThrough USA, Inc.				
*10.44	Modified Loan and Security Agreement by and among ENGlobal Corporation, ENGlobal U.S., Inc., ENGlobal Government Services, Inc., and Pacific Western Bank, a California bank, as lender				
*10.45	Thirteenth Amendment to the Lease Agreement between Oral Roberts University and ENGlobal U.S., Inc. dated August 24, 2022				

*10.46	Lease Agreement between V Energy Industrial Park I, LLC and ENGlobal U.S., Inc. dated September 1, 2022			
14.1	Code of Business Conduct and Ethics of Registrant dated June 15, 2017	14.1	3/27/2020	001-14217
14.2	Code of Ethics for Chief Executive Officer and Senior Financial Officers of Registrant dated June 15, 2017	14.2	3/27/2020	001-14217
*21.1	Subsidiaries of the Registrant			
*23.1	Consent of Moss Adams LLP			
*31.1	Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14 or 15d-14			
*31.2	Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14 or 15d-14			
**32.1	Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14(b) or 15d-14(b) and 18 U.S.C. Section 1350			
**32.2	Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14(b) or 15d-14(b) and U.S.C. Section 1350			
*101.ins	Inline XBRL instance document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document Interactive Data Files.			
*101.sch	Inline XBRL taxonomy extension schema document			
*101.cal	Inline XBRL taxonomy extension calculation linkbase document			
*101.def	Inline XBRL taxonomy extension definition linkbase document			
*101.lab	Inline XBRL taxonomy extension label linkbase document			
*101.pre	Inline XBRL taxonomy extension presentation linkbase document			
*104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)			

* Filed herewith
** Furnished herewith
+ Management contract or compensatory plan or arrangement

ITEM 16. FORM 10-K SUMMARY

None.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

ENGlobal Corporation

Dated: March 31, 2023

By: /s/ William A. Coskey
William A. Coskey
Executive Chairman

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

By: <u>/s/ Darren W. Spriggs</u> Darren W. Spriggs Chief Financial Officer, Treasurer (Principal Financial and Accounting Officer)	March 31, 2023
By: <u>/s/ William Coskey</u> William A. Coskey, P.E. Executive Chairman and Director (Principal Executive Officer)	March 31, 2023
By: <u>/s/ Mark A. Hess</u> Mark A. Hess, Director	March 31, 2023
By: <u>/s/ Christopher Sorrells</u> Christopher Sorrells, Director	March 31, 2023
By: <u>/s/ Lloyd Kirchner</u> Lloyd Kirchner, Director	March 31, 2023
By: <u>/s/ Kevin M. Palma</u> Kevin M. Palma, Director	March 31, 2023

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Description of Registrant's Securities Registered under Section 12 of the Securities Exchange Act of 1934

The following description sets forth certain material terms and provisions of the common stock of ENGlobal Corporation, which is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). This description also summarizes relevant provisions of the Nevada Revised Statutes ("NRS"). The following description is a summary and does not purport to be complete. It is subject to, and qualified in its entirety by reference to, the relevant provisions of the NRS, and to our Restated Articles of Incorporation dated January 29, 2021 (collectively, the "Articles of Incorporation") and our Second Amended and Restated Bylaws dated April 14, 2016 (the "Bylaws"), which are filed as Exhibit 3.1 and Exhibit 3.2, respectively, to the Annual Report on Form 10-K of which this Exhibit 4.2 is a part, and are incorporated by reference herein. We encourage you to read the Articles of Incorporation and the Bylaws, and the relevant provisions of the NRS for additional information. Unless the context requires otherwise, all references to "we," "us," "our" and the "Company" in this Exhibit 4.2 refer solely to ENGlobal Corporation and not to its subsidiaries.

Authorized and Outstanding Capital Stock

The Company is authorized to issue 75,000,000 shares of common stock, par value \$0.001 per share ("Common Stock"), and 2,000,000 shares of undesignated preferred stock, par value \$0.001 per share ("Preferred Stock"). As of March 23, 2023, there were 39,771,617 shares of Common Stock and no shares of Preferred Stock issued and outstanding.

Common Stock

Voting. Holders of shares of the Common Stock are entitled to one vote for each share held of record on matters properly submitted to a vote of our stockholders. Stockholders are not entitled to vote cumulatively for the election of directors.

Dividends. Subject to the dividend rights of the holders of any outstanding series of Preferred Stock, holders of shares of Common Stock will be entitled to receive ratably such dividends, if any, when, as, and if declared by our Board of Directors out of the Company's assets or funds legally available for such dividends or distributions.

Liquidation and Distribution. In the event of any liquidation, dissolution, or winding up of the Company's affairs, holders of the Common Stock would be entitled to share ratably in the Company's assets that are legally available for distribution to its stockholders. If the Company has any Preferred Stock outstanding at such time, holders of the Preferred Stock may be entitled to distribution preferences, liquidation preferences, or both. In such case, the Company must pay the applicable distributions to the holders of its Preferred Stock before it may pay distributions to the holders of Common Stock.

Conversion, Redemption, and Preemptive Rights. Holders of the Common Stock have no preemptive, subscription, redemption or conversion rights.

Sinking Fund Provisions. There are no sinking fund provisions applicable to the Common Stock.

Anti-Takeover Effects of Nevada Law and the Articles of Incorporation and Bylaws

General. Certain provisions of the Articles of Incorporation and Bylaws, and certain provisions of the NRS could make our acquisition by a third party, a change in our incumbent management, or a similar change of control more difficult. These provisions, which are summarized below, are likely to reduce our vulnerability to an unsolicited proposal for the restructuring or sale of all or substantially all of our assets or an unsolicited takeover attempt. The summary of the provisions set forth below does not purport to be complete and is qualified in its entirety by reference to the Articles of Incorporation and the Bylaws and the relevant provisions of the NRS.

Authorized but Unissued Shares. Our authorized but unissued shares of common stock and preferred stock are available for future issuance, subject to any limitations imposed by the listing standards of The Nasdaq Capital Market. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make it more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise..

No Action by Written Consent. Our Bylaws provide that no action required or permitted to be taken at a meeting of the stockholders may be taken by written consent.

Advance Notice Requirements. Stockholders wishing to nominate persons for election to our Board of Directors at a meeting or to propose any business to be considered by our stockholders at a meeting must comply with certain advance notice and other requirements set forth in our Bylaws.

Special Meetings. Our Bylaws provide that special meetings of stockholders may only be called by the President or Secretary, by a majority of the Board of Directors, or by the President at the written request of at least fifty percent (50%) of the number of shares of the Company then outstanding and entitled to vote.

Board Vacancies. Our Bylaws provide that any vacancy on our Board of Directors, howsoever resulting, may be filled by a majority vote of the remaining directors.

Removal of Directors. Our Bylaws provide that any directors may be removed either with or without cause at any time by the vote of stockholders representing two-thirds of the voting power of the issued and outstanding capital stock entitled to vote.

Nevada Anti-Takeover Statutes. The NRS contains provisions restricting the ability of a Nevada corporation to engage in business combinations with an interested stockholder. Under the NRS, except under certain circumstances, business combinations with interested stockholders are not permitted for a period of two years following the date such stockholder becomes an interested stockholder. The NRS defines an interested stockholder, generally, as a person who is the beneficial owner, directly or indirectly, of 10% of the outstanding shares of a Nevada corporation. In addition, the NRS generally disallows the exercise of voting rights with respect to "control shares" of an "issuing corporation" held by an "acquiring person," unless such voting rights are conferred by a majority vote of the disinterested stockholders. "Control shares" are those outstanding voting shares of an issuing corporation which an acquiring person and those persons acting in association with an acquiring person (i) acquire or offer to acquire in an acquisition of a controlling interest and (ii) acquire within ninety days immediately preceding the date when the acquiring person became an acquiring person. An "issuing corporation" is a corporation organized in Nevada which has two hundred or more stockholders, at least one hundred of whom are stockholders of record and residents of Nevada, and which does business in Nevada directly or through an affiliated corporation. The NRS also permits directors to resist a change or potential change in control of the corporation if the directors determine that the change or potential change is opposed to or not in the best interest of the corporation.

Stock Exchange Listing

The Common Stock is traded on the NASDAQ Capital Market under the symbol "ENG."

Transfer Agent and Registrar

The transfer agent and registrar for the Common Stock is Computershare Investor Services, LLC located at P.O. Box 30170, College Station, TX 77842-3170 and its telephone number is 1-800-662-7232.

PRIORITY AGREEMENT

THIS PRIORITY AGREEMENT (the "Agreement") is dated March 27, 2023

AMONG:

Pacific Western Bank
(2020094737-1)

(the "Bank")

AND:

FUNDTHROUGH INC.

(the "Lender")

AND:

ENGlobal U.S., Inc.

(the "Borrower")

WHEREAS:

A. The Borrower has granted or agreed to grant to the Bank a registered security interest, in all of the Borrower's present and after-acquired personal property, and such other security as the Bank may from time to time receive from the Borrower to secure present and future debts and obligations of the Borrower to the Bank (the "Bank Security");

B. The Borrower has granted or agreed to grant to the Lender a registered security interest, in all of the Borrower's present and after-acquired Accounts Receivable listed on Schedule A attached hereto, and the proceeds thereof (the "Lender Collateral");

C. The parties hereto have agreed to enter into this Agreement in order to set out the respective priorities of the Bank Security and the Lender Collateral;

NOW THEREFORE in consideration of the premises and other good and valuable consideration, the parties hereto covenant and agree as follows:

ARTICLE 1 - CONSENT

- 1.01 The Bank hereby acknowledges its consent to the creation and issue by the Borrower to the Lender of the Lender Collateral and to the incurring by the Borrower of the indebtedness evidenced thereby.
 - 1.02 The Lender hereby acknowledges its consent to the creation and issue by the Borrower to the Bank of the Bank Security and to the incurring by the Borrower of the indebtedness evidenced thereby.
-

ARTICLE 2 - INTERPRETATION

- 2.01 The preamble hereto forms an integral part of this Agreement.
- 2.02 In this Agreement, the following terms shall have the following meanings:
- (a) "Accounts Receivables" means all debts, accounts, claims, demands, monies and choses in action which are now or which may at any time hereafter be due, owing to or accruing due to or owned to the Borrower, together with all books, records, documents, papers and electronically recorded data and any other documents or information of any kind which in any way evidences or relates to any or all of the said debts, accounts, claims, demands, monies and choses in action, provided that the term "Accounts Receivables" herein shall not include any proceeds from the sale, disposition or realization of the personal property of the Borrower other than Inventory, further provided that "Accounts Receivable" shall include payment intangibles, contract rights, purchase orders, returned goods and reclamation claims, in each case associated with inventory, but shall not include any of such relating to goods that are not inventory; and

ARTICLE 3 - PRIORITIES

- 3.01 (a) The Bank Security is hereby subordinated to the security constituted by the Lender Priority Collateral to the extent of the Borrower's indebtedness to the Lender from time to time, together with all accrued interest thereon and all reasonable costs, charges and expenses incurred by the Lender in connection therewith, including all interest, fees and expenses during any Insolvency Proceeding (whether or not recoverable in such Insolvency Proceeding).
- (b) The Lender shall have no collateral or security other than the Lender Collateral. The Bank has priority over all Bank Security with respect to all of the Borrower's present and after acquired personal property and proceeds thereof, except Lender Collateral (the "Bank Priority Collateral"). Lender's lien and security interest in the Lender Priority Collateral shall be senior to Bank's interest or security in the Bank Security that is Lender Priority Collateral.
- 3.02 The subordinations and postponements herein shall apply in all events and circumstances regardless of:
- (a) the date of execution, attachment, registration or perfection of any security interest held by the Bank or the Lender, or;
 - (b) the date of any advance or advances made to the Borrower by the Bank or the Lender; or
 - (c) the date of default by the Borrower under any of the Bank Security or the Lender Collateral or the dates of crystallization of any floating charges held by Bank or the Lender; or
 - (d) any priority granted by any principle of law or any statute, including the Uniform Commercial Code ("UCC").
- 3.03 Any proceeds, including, without limitation, any insurance proceeds received by the Borrower or by the Bank or the Lender in respect of the collateral charged by the Bank Priority Collateral or the Lender Priority Collateral shall be dealt with according to the preceding provisions hereof as though such proceeds were paid or payable as proceeds of realization of the collateral for which they compensate and shall be turned over to Lender or Bank as appropriate.
- 3.04 This Agreement shall continue in full force and effect after the filing by or against Borrower of a petition under the U.S. Bankruptcy Code (the "Code") or in the event of any other insolvency proceeding or readjustment of any or all of the debts of Borrower including an assignment for the

benefit of creditors, the appointment of a receiver for Borrower's business or assets, a composition or arrangement, or any other action or proceeding involving the dissolution or winding up of the affairs of Borrower's business or assets (individually and collectively, an "Insolvency Proceeding").

- 3.05 Each of the parties hereto shall permit any of the other parties hereto and their employees, agents and contractors, access at all reasonable times to any property and assets of the Borrower upon which it has a prior charge or security interest in accordance with the terms hereof and to permit such other party to remove such property and assets from the premises of the Borrower at all reasonable times without interference, provided that such other party shall promptly repair any damage caused to the premises by the removal of any such property or assets.
- 3.06 Lender agrees that it will not interfere, in any manner, with Bank's security interests in and liens upon the Bank Priority Collateral or take any action by way of enforcement or application of its security interests in or liens upon the Bank Priority Collateral unless and until Bank shall have advised Lender, in writing, that Borrower has irrevocably paid in full in cash and satisfied the Borrower's debt owed to Bank, or that Bank has consented to any such interference, enforcement, or application.
- 3.07 Bank agrees that it will not interfere, in any manner, with Lender's security interests in and liens upon the Lender Priority Collateral or take any action by way of enforcement or application of its security interests in or liens upon the Lender Priority Collateral unless and until Lender shall have advised Bank, in writing, that Borrower has irrevocably paid in full in cash and satisfied the Borrower's debt owed to Lender, or that Lender has consented to any such interference, enforcement, or application.

ARTICLE 4 - COVENANTS OF THE BORROWER

- 4.01 The Borrower hereby confirms to and agrees with the Bank and the Lender that so long as any of the indebtedness of the Borrower to the Bank and the Lender remains outstanding, it shall stand possessed of its assets so charged for the Bank and for the Lender in accordance with their respective interests and priorities as herein set out.

ARTICLE 5- GENERAL

- 5.01 From time to time upon request therefor the Bank and the Lender may advise each other of the particulars of the indebtedness and liability of the Borrower to each other and all security held by each therefor.
- 5.02 The Bank and the Lender each agree that it will not transfer or assign any of its security from the Borrower without first obtaining from the proposed assignee or transferee an agreement to be bound by the provisions of this Agreement.
- 5.03 Intentionally Omitted.
- 5.04 Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be addressed and delivered to the parties hereto as follows:

For the Bank:

19820 N. 7th Avenue, Suite 100
Phoenix, Arizona 85027

Attention: John Ten Hagen
Email: jtenhagen@pacwest.com

For the Lender:

260 Spadina Avenue, Suite 300
Toronto, ON M5T 2E4

Attention: Steven Uster, Director
E-mail: steven@fundthrough.com

- 5.05 Each of the Borrower, the Bank and the Lender shall do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to the interests of this Agreement; provided however, that no consent of the Borrower shall be necessary to any amendment of the terms hereof by the Bank and the Lender unless the interests of the Borrower are directly affected thereby.
- 5.06 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. A facsimile counterpart of this Agreement shall be fully effective for all purposes.
- 5.07 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 5.08 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under the hand(s) of their duly authorized officer(s) on the date first above written.

FUNDTHROUGH INC.



Per:
Steven Uster,
Co-founder and CEO


I have the authority to bind the Corporation.

[signature page follows]

ENGlobal U.S., Inc.

Per: 
Name: Darren Spriggs
Title: CFO

Pacific Western Bank

Per: 
Name: John Ten Hagen
Title: Vice President

SCHEDULE A

Accounts Receivable owing from EOG Resources, Lewis Energy Group and XTO Energy Group.

□ □ □ □ □
□ □ □ □ □



PACIFIC WESTERN
BUSINESS FINANCE

**Third Modification to Loan and Security
 Agreement**

Borrower: ENGlobal CORPORATION
 ENGlobal U.S., Inc.
 ENGlobal Government Services, Inc.

Address: Energy Tower III, 11740 Katy Freeway, Suite 1100, Houston Texas 77079

Date: March 27, 2023

THIS THIRD MODIFICATION TO LOAN AND SECURITY AGREEMENT is entered into between **Pacific Western Bank dba Pacific Western Business Finance**, a California state-chartered bank ("Lender"), with its headquarters' office located at 19820 N. 7th Avenue, Suite 100, Phoenix, Arizona 85207, and the borrower named above ("Borrower") whose chief executive office is located at the above address.

The parties hereto agree to amend the Loan and Security Agreement between them, dated May 18, 2020 (as amended, the "Loan Agreement"), as follows, effective as of March 16, 2023. (Capitalized terms used but not defined in this Modification shall have the meanings set forth in the Loan Agreement.)

1. **Modified Credit Limit to reduce the Maximum Credit Limit.** Section 1 of the Schedule to the Loan and Security Agreement is hereby amended in its entirety to read as follows:

1. CREDIT LIMIT
 (Section 1.1):

The Loan shall consist of revolving loans (the "Revolving Loan") in an aggregate amount not to exceed the lesser of **\$1,000,000.00** at any time outstanding (the "Maximum Credit Limit") minus any Reserves, or the sum of clauses (a) and (b) below, minus any Reserves:

(a) **85%** (the "Eligible Accounts Advance Rate") of the amount of Borrower's Eligible Accounts (as defined in Section 8 of the Loan Agreement); plus

(b) the lesser of the following:

(i) \$500,000.00, or

(ii) 75% (the "Eligible Unbilled Accounts Advance Rate") of the amount of Borrower's Eligible Unbilled Accounts (as defined in Section 8 of the Loan Agreement).

Loans shall first be deemed made under Section 1(a) above to the extent available, and then under Section 1(b). No Revolving Loan will be made against Eligible Fixed Price Accounts.

The "Eligible Accounts Advance Rate" together with the "Eligible Unbilled Accounts Advance Rate" are sometimes referred to herein as the "Advance Rate".

Lender may, from time to time, adjust the Advance Rate, in its Permitted Discretion, upon notice to the Borrower, based on changes in collection experience with respect to Accounts, or other issues or factors relating to the Accounts or other Collateral or Borrower. Lender shall have the right to determine from time to time, in its Permitted Discretion, whether Loans are made under clause (a) or (b) above, and whether Payments are applied to Loans made under clause (a) or (b) above. Subject to the terms hereof, Loans may be borrowed, repaid, and re-borrowed, until the Maturity Date. After the Maturity Date, no further Revolving Loans will be made. If Borrower consists of more than one Person, in Lender's discretion Loans may be made separately to each Borrower based on the Eligible Accounts of each Borrower.

3. Fee. At the time of the execution of this Modification, Borrower agrees to pay to Lender a one-time fee in the amount of Five Thousand and 00/100 Dollars (\$5,000.00), in connection herewith.

4. Representations True. Borrower represents and warrants to Lender that all representations and warranties set forth in the Loan Agreement, as amended hereby, are true and correct.

5. General Release. In consideration for Lender entering into this Modification, Borrower hereby irrevocably releases and forever discharges Lender, and its successors, assigns, agents, shareholders, directors, officers, employees, agents, attorneys, parent corporations, subsidiary corporations, affiliated corporations, affiliates, participants, and each of them (collectively, the "Releasees"), from any and all claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of action, of every nature and description, known and unknown, which Borrower now has or at any time may hold, by reason of any matter, cause or thing occurred, done, omitted or suffered to be done prior to the date of this Modification (collectively, the

"Released Claims"). Borrower hereby irrevocably waives the benefits of any and all statutes and rules of law to the extent the same provide in substance that a general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, and, without limiting the foregoing, Borrower irrevocably waives any benefits it may have under California Civil Code Section 1542 which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Borrower represents and warrants that it has not assigned to any other Person any Released Claim, and agrees to indemnify Lender against any and all actions, demands, obligations, causes of action, decrees, awards, claims, liabilities, losses and costs, including but not limited to reasonable attorneys' fees of counsel of Lender's choice and costs, which Lender may sustain or incur as a result of a breach or purported breach of the foregoing representation and warranty.

6. **Waiver.** Nothing herein constitutes a waiver of any default or Event of Default under the Loan Agreement or any other Loan Documents, whether or not known to Lender.

7. **General Provisions.** This Modification, the Loan Agreement, any prior written amendments to the Loan Agreement signed by Lender and Borrower, and the other written documents and agreements between Lender and Borrower set forth in full all of the representations and agreements of the parties with respect to the subject matter hereof and supersede all prior discussions, representations, agreements and understandings between the parties with respect to the subject hereof. Except as herein expressly amended, all of the terms and provisions of the Loan Agreement, and all other documents and agreements between Lender and Borrower shall continue in full force and effect and the same are hereby ratified and confirmed. The terms and provisions of Sections 9.19 (titled "Governing Law; Jurisdiction; Venue"), 9.20 (titled "Dispute Resolution") and 9.22 (titled "Mutual Waiver of Jury Trial") of the Loan Agreement shall apply to this Modification, and the same are incorporated herein by this reference. This Modification may be executed and delivered by exchanging original signed counterparts, or signed counterparts by facsimile, pdf or other electronic means, or a combination of the foregoing, and this Modification shall be fully effective if so executed and delivered.

[Signatures on Next Page]

Borrower:

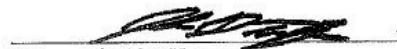
ENGlobal CORPORATION



By: Darren Spriggs
Title: CFO

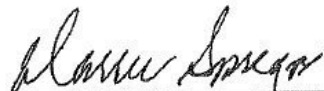
Lender:

Pacific Western Bank



By: John Ten Hagen
Title: Vice President

ENGlobal U.S., Inc.



By: Darren Spriggs
Title: CFO

ENGlobal Government Services, Inc.



By: Darren Spriggs
Title: CFO

THIRTEENTH AMENDMENT TO LEASE

This agreement (the "Thirteenth Amendment") made as of the 24th day of August, 2022, between Oral Roberts University, an Oklahoma corporation ("Landlord") and ENGlobal U.S., Inc., successor-by-merger to ENGlobal Engineering, Inc., a Texas Corporation ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated January 27, 2005 as amended by a First Amendment to Lease dated April 7, 2005, a Second Amendment to Lease dated June 13, 2005, a Third Amendment to Lease dated December 28, 2005, a Fourth Amendment to Lease dated February 27, 2006, a Fifth Amendment to Lease dated July 26, 2006, a Sixth Amendment to Lease dated June 20, 2007, a Seventh Amendment to Lease dated November 12, 2010, an Eighth Amendment to Lease dated May 15, 2012, a Ninth Amendment to Lease dated August 22, 2017, a Tenth Amendment to Lease dated August 22, 2018, an eleventh Amendment to Lease dated September 25th, 2019 and a Twelfth Amendment to Lease dated November 11th, 2020 (as so amended, the "Lease"); and

WHEREAS, Landlord and Tenant (the "parties") now desire to amend and modify the Lease in the following particulars;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. The provisions of this Thirteenth Amendment shall supersede any inconsistent provisions contained in the Lease, whether such inconsistent provisions are contained in the printed portion of the Lease or any addendum, rider or exhibit annexed thereto. All capitalized items not otherwise defined herein shall have the same meanings ascribed to them in the Lease.
2. **Lease Term.** The Lease Term is extended to and shall expire on December 31, 2023, unless sooner terminated or extended to a later day under any other term or provision of the Lease.
3. **Premises.** The Premises shall consist of a total of 35,432 square feet of Net Rentable Area contained in suites 120, 3300, 3400 and 3500.
4. **Base Rental.** Effective January 1, 2021, Base Rental shall be \$372,036.00 per annum (\$31,003.00 per month).
5. **Broker.** Tenant agrees to indemnify, defend and save Landlord harmless from and against any claims for fees or commissions related to this amendment.
6. Except as herein expressly amended or modified the terms and conditions of the Lease are hereby ratified and confirmed and shall remain in full force and effect.
7. This Thirteenth Amendment shall not constitute an agreement by Landlord or Tenant and shall not be binding upon Landlord or Tenant unless and until this Thirteenth Amendment shall be executed by Landlord and Tenant.
8. This Thirteenth Amendment may be changed only in writing, signed by both parties, and shall be binding upon and inure to the benefit of Landlord and Tenant, their respective heirs, successors and, as permitted, their assigns.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Twelfth Amendment to Lease as of the date first written above.

LANDLORD:

Oral Roberts University,
an Oklahoma corporation

By: 

Name: Tim R. Philley

Title: C.O.O.

TENANT:

ENGlobal U.S., Inc.
a Texas corporation

By: 

Name: Roger Westerland

Title: President

LEASE AGREEMENT**TABLE OF CONTENTS**

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Exhibits

- A Leased Premises Legal Description
- B Leased Premises Site Plans
- B-1 Overall Site Plan
- C Construction Rider
- C-1 Representative Electrical Buildout
- D Environmental/Hazardous Waste Agreement
- E Additional Rent Costs

THE SUBMISSION OF THIS LEASE FOR EXAMINATION BY TENANT AND/OR EXECUTION THEREOF BY TENANT DOES NOT CONSTITUTE A RESERVATION OF OR OPTION FOR THE LEASED PREMISES AND THIS LEASE SHALL BECOME EFFECTIVE ONLY UPON EXECUTION BY ALL PARTIES HERETO AND DELIVERY OF A FULLY EXECUTED COUNTERPART HEREOF BY LANDLORD TO TENANT.

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into by and between the Landlord and Tenant effective this the 1st day of September, 2022 in accordance with the terms and conditions hereinafter set forth.

ARTICLE I. BASIC PROVISIONS AND CERTAIN DEFINED LEASE TERMS

1.1 When used herein, the following terms shall have the indicated meanings:

- A. Landlord: V Energy Industrial Park I, LLC
- B. Landlord's Address: 1130 Enclave Pkwy., Houston, TX 77077
- C. Tenant: ENGLOBAL US, Inc., a Texas corporation

Contact Address of Tenant:

ENGlobal US, Inc.
11740 Katy Freeway, 11th Floor
Houston, Texas 77079
Attn: Legal, Susan Holmes

- D. Leased Premises: The real property consisting of the building at 3012 Venergy Dr. Brookshire, TX 77423 (the "Building"), as well as the parking area, as shown on Exhibit A.
- E. Lease Term: Beginning on the Commencement Date and expiring on the Termination Date.
- F. Commencement Date: September 1, 2022
- G. Termination Date: 120 months from the Commencement Date.

H. Rent is payable in monthly installments as follows:

Month 1:	\$19,125.00
Month 2 - Substantial Completion:	\$28,697.00
Substantial Completion-Month 12:	\$38,250.00
Months 13 - 24:	\$40,500.00
Months 25 - 36:	\$42,750.00
Months 37 - 48:	\$45,000.00
Months 49 - 60:	\$47,250.00
Months 61 - 72:	\$47,250.00
Months 73 - 84:	\$47,250.00
Months 85 - 96:	\$49,500.00
Months 97 - 108:	\$49,500.00
Months 109 - 120:	\$49,500.00

Such amounts shall be subject to adjustment as set forth in Section 1.06 of the Construction Rider attached hereto as **Exhibit "C"**.

I. [Intentionally deleted.]

J. Security Deposit: \$45,000.00 be paid on the Commencement Date.

K. Permitted Use: Officing, energy and industrial engineering, fabrication, or any other use which is reasonably comparable, only.

1.2 Each of the foregoing Basic Provisions and Certain Defined Lease Terms shall be construed in conjunction with the references thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the foregoing Basic Provisions and Certain Defined Lease Terms shall be construed to incorporate each term set forth above.

ARTICLE 2. GRANTING CLAUSE

2.1 In consideration of the obligation of Tenant to pay Rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord the Leased Premises for the Lease Term.

2.2 EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, AND ARTICLE 22 HEREOF, TENANT ACKNOWLEDGES THAT LANDLORD HAS MADE NO WARRANTIES TO TENANT AS TO THE CONDITION OF THE LEASED PREMISES, EITHER EXPRESS OR IMPLIED, AND LANDLORD EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, MARKETABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 3. CONSTRUCTION AND ACCEPTANCE OF LEASED PREMISES

3.1 The Leased Premises shall be delivered to the Tenant prior to the Substantial Completion of the Landlord Work set forth in the the Construction Rider attached as **Exhibit "C"**.

3.2 Upon Delivery of Possession and occupancy by Tenant, Tenant shall be deemed to have acknowledged that (a) it has inspected and accepts the Leased Premises, specifically including the existing leasehold improvements (if any) that will remain and benefit Tenant, (b) the Building and improvements comprising the Leased Premises are suitable for the purposes for which they are leased, (c) the Leased Premises are in good and satisfactory condition, and (d) no representation as to the repair of the Leased Premises, nor promises to alter, remodel or improve

the Leased Premises have been made by Landlord, unless otherwise expressly set forth in this Lease or the Construction Rider.

3.3 If Tenant actively prevents or hinders Landlord from constructing the improvements contemplated by the Construction Rider, the Monthly Rent shall increase to \$38,250 prior to Substantial Completion of the Landlord Work; provided, however, Landlord shall provide written notice to Tenant of any such delays caused by Tenant and Landlord shall consider only those days of delay caused by Tenant after Tenant's receipt of such written notice when determining the deemed occurrence of the Commencement Date.

3.4 Landlord shall provide a certificate of occupancy or the like, to Tenant.

ARTICLE 4. RENT, ADDITIONAL RENT, AND SECURITY DEPOSIT, AND GUARANTY

4.1 Rent shall accrue hereunder from the Commencement Date, or as stated in Section 1.1, and shall be payable at the address of Landlord, or such other place as Landlord shall designate in writing to Tenant. Landlord hereby acknowledges receipt from Tenant of the Prepaid Rent, to be applied to the first accruing installments of Rent (i.e. the first month after the Commencement Date).

4.2 Tenant shall pay to Landlord the Rent, without demand, deduction or setoff, except as provided in this Lease. The first monthly installment of Rent shall be due and payable on the Commencement Date, and installments in the respective amounts specified in Section 1.1 shall be due and payable on or before the first day of each succeeding calendar month during the Lease Term.

4.3 Should Landlord fail to receive any Rent due under this Lease within five (5) business days after such payment is due. Tenant agrees to pay Landlord as a late charge, three percent (3%) of the base rent in order to compensate Landlord for expenses incurred for processing late payments.

4.4 If there is presently in effect or hereafter adopted any nature of sales tax or use tax or other tax on rents or other sums received by Landlord under this Lease (herein referred to as "Rent Sales Tax"), then to the extent that such Rent Sales Tax is enacted as a substitution for all or a portion of the real estate taxes due on the Leased Premises, Tenant will also pay Landlord a sum equal to the amount of such Rent Sales Tax. The term "Rent Sales Tax" shall not include any income taxes applicable to Landlord, nor shall it include taxes payable under Chapter 171 of the Texas Tax Code (Franchise Tax).

4.5 This Lease is a triple net lease, and Tenant shall pay assessments, taxes, insurance and the costs of any maintenance obligations imposed herein on Tenant subject to the terms and conditions provided herein.

4.6 INTENTIONALLY OMITTED.

4.7 Landlord and Tenant are knowledgeable and experienced in commercial transactions and agree that the provisions of this Lease for determining Additional Rent payable by Tenant, as identified on Exhibit E, are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges. ACCORDINGLY, TENANT VOLUNTARILY AND KNOWINGLY WAIVES (TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF THE TENANT UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS MAY BE HEREAFTER AMENDED OR SUCCEDED.

ARTICLE 5. USE AND CARE OF LEASED PREMISES

5.1 The Leased Premises shall be used and occupied only for the Permitted Use, and all uses customarily and incidentally related thereto. Outside storage shall be permitted in compliance with applicable law. Tenant shall at its own cost and expense obtain any and all licenses and permits necessary for any such use. Tenant shall comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the Leased Premises, all at Tenant's sole expense, except to the extent caused by Landlord.

5.2 Tenant shall, at its own expense, comply with all laws, orders, and requirements of all governmental entities with reference to Tenant's particular use and occupancy of the Leased Premises.

5.3 Tenant agrees to comply with the terms, covenants and provisions of the Environmental/Hazardous Waste Agreement which is attached as Exhibit "D".

**ARTICLE 6. MAINTENANCE AND REPAIR OF LEASED PREMISES
AND ALTERATIONS**

6.1 Subject to the Landlord's Warranty (as defined in the Construction Rider), Landlord will have no duty to repair or maintain the Leased Premises or to make any replacement of any of improvements to the Leased Premises. Except to the extent the same results from a breach of Landlord's Warranty or as otherwise provided in this Lease, Landlord will not be liable for any damage or injury, fatal or nonfatal, resulting from any damage, defect or disrepair of any improvements placed at or constituting any portion of the Leased Premises.

6.2 Except as otherwise provided in this lease, Tenant shall keep the Leased Premises, including the roof, walls, slab, parking lot, driveway and sidewalk (if any), in a reasonable good and clean condition and shall at its sole cost and expense make all needed repairs, including cracked or broken glass, windows, doors, heating system, plumbing work, pipes and fixtures, air-conditioning equipment, electrical equipment and fixtures, utility lines, and the interior and exterior of the Leased Premises generally, together with such repairs, replacements and alterations required by any governmental authority. Tenant shall make all necessary repairs and replacements of its fixtures required for the proper conduct of its business. Tenant shall maintain all landscaping at or about the Leased Premises (or originally installed by Tenant in accordance with the terms hereof) in a neat and attractive condition. At the expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises, including all improvements located thereon (except as otherwise provided in the Lease) in reasonably good condition, reasonable wear and tear, casualty and condemnation excepted. In addition to the Landlord's Warranty, Landlord agrees to afford to Tenant the benefit of any guaranties or warranties of third parties which may be applicable to the Leased Premises, including, without limitation, air-conditioning equipment and other machinery and equipment installed by Landlord in the Leased Premises, without recourse upon Landlord.

6.3 With respect to any repairs, maintenance, renewals or replacements required by the provisions of this Lease to be made or provided by Tenant, Landlord may request, in writing, that Tenant make such repairs or perform such maintenance or provide such renewal or replacements, and, upon Tenant's failure or refusal to initiate any such work that is required by the provisions of this Lease within thirty (30) days after such written notice is delivered to Tenant by Landlord, and thereafter to diligently pursue such work to completion (or, in the case of an emergency, if Tenant fails or refuses to commence such work as soon as reasonably possible following Landlord's notice), Landlord shall have the right (but shall not be obligated), to make such repair, perform such maintenance or provide such renewal or replacement; thereupon Tenant will, at Landlord's election, on demand pay (or reimburse Landlord for) the reasonable cost thereby incurred by Landlord. For these purposes an "emergency" shall be deemed to exist if, in the good faith judgment of Landlord, prompt action is needed in order to prevent death, bodily injury or substantial property damage. Any such sum which Tenant becomes liable to pay to or reimburse Landlord for hereunder may be treated by Landlord as a portion of the rental due and owing by Tenant to Landlord provided that Landlord delivers thirty (30) day prior written notice to Tenant of such sum and includes paid invoices and reasonable supporting documentation of the work completed. If Landlord makes any such repairs, performs any such maintenance, or provides any such renewal or replacement, or undertakes to do so, then Landlord shall not be liable to Tenant for any loss or damage that may occur to Tenant's merchandise, fixtures, or other property, or to Tenant's business incident to such action by Landlord, provided that Landlord takes reasonable measures to not interfere with Tenant's business operations and except for any damage or loss caused by Landlord's negligence or willful misconduct.

6.4 Tenant, at its own cost and expense, regularly maintain and service all hot water, heating and air conditioning systems and equipment within the Leased Premises. Tenant's maintenance and service must include all services reasonably required by the equipment manufacturer in its operations/maintenance manual.

6.5 Tenant shall not make any openings in the roof or exterior walls, nor make any structural alterations, additions, or improvements to the Leased Premises without the prior written consent of Landlord (which consent shall

not be unreasonably withheld, conditioned or delayed), except for the installation of removable trade fixtures or decorative improvements which may be installed without drilling, cutting or otherwise defacing the roof or structural elements other than the floor or walls) of the Building. All alterations, additions, improvements and fixtures (other than trade fixtures and equipment which may be made or installed in connection with the operation of Tenant's business) upon the Leased Premises, including, but not limited to, the HVAC system, pipes, paneling or other wall covering, any linoleum or other floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor of the Leased Premises, shall remain upon and be surrendered with the Leased Premises and become the property of Landlord at the expiration or earlier termination of this Lease, all without credit or compensation to Tenant unless Landlord requests their removal in writing at the time Landlord approves such improvements, in which event, Tenant shall remove the same and restore the Leased Premises to its original condition at Tenant's sole cost and expense. All plumbing or other electrical wiring connections exposed as result of the removal of Tenant's removable trade fixtures, shall be kept by Tenant in a safe and workmanlike manner. Notwithstanding anything contained to the contrary herein, Tenant shall, without Landlord's consent, have the right to make nonstructural improvements, alterations or decorations to the Building or Leased Premises, employing contractors selected by Tenant, provided the costs of each improvement, alteration or decoration does not exceed \$50,000.00. Notwithstanding anything to the contrary in this Lease, all inventory, equipment, fixtures and furnishings of Tenant in or attached to the Leased Premises may be removed by Tenant at any time during the Term, provided that any damage caused by such removal will be promptly repaired by Tenant at its expense. Any such property not so removed before the expiration of the Term shall become the property of Landlord unless reasonably promptly removed by Tenant following Landlord's written request.

6.6 If, at any time, during the term of this Lease or any renewal or extension thereof, any governmental agency or body requires a modification or change in the Leased Premises or any part thereof, including, without limitation, the Americans with Disabilities Act of 1990 (the "ADA"), which results from Tenant's use of the Leased Premises, Tenant shall make such modifications or change at its sole cost, unless Landlord and Tenant agree that Landlord shall perform such work, then Tenant shall pay to the Landlord, on demand, the mutually agreed cost of such modification or change.

6.7 All construction work done by Tenant shall be performed in a good and workmanlike manner, in compliance with all governmental requirements. All costs of such work shall be paid promptly so as to prevent the assertion of any liens for labor or materials. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from such work. Whenever Tenant proposes to do any construction work that would require Landlord's consent, it shall first furnish to Landlord plans and specifications in such reasonable detail as Landlord may request covering all such work. In no event shall any construction work be commenced without Landlord's written approval of such plans and specifications, and Tenant furnishing Landlord with such insurance and other assurances as Landlord shall reasonably require.

ARTICLE 7. LANDLORD'S RIGHT OF ACCESS

7.1 Landlord, its employees, contractors, agents and representatives, shall have the right to enter upon the Leased Premises during normal business hours, upon not less than forty eight (48) hours prior written notice (except in the case of emergency, in which case Landlord will give such notice as may be reasonable under the circumstances), for the purpose of inspecting the same, or of making repairs to the Leased Premises permitted by the terms of the Lease, or of showing the Leased Premises to prospective purchasers, tenants (during the last six (6) months of the term) or lenders; provided that the exercise of such right of entry does not unreasonably interfere with Tenant's use of or access to the Leased Premises and, in the event of non-emergencies, Tenant may designate a representative to accompany Landlord and any such prospective purchasers, tenants or lenders while in the Leased Premises. In an emergency, Landlord (or such other persons and firms) may use any means to open any door into or in the Leased Premises without any liability therefore.

ARTICLE 8. SIGNS AND ROOF

8.1 To the extent permitted by law, Tenant shall have the right to (a) install outside the interior surface of the perimeter walls of the Leased Premises any lighting or awnings, or any decorations or paintings, (b) install any drapes, blinds, shades, or other coverings on the windows and entrance doors, or (c) erect or install any signs, window or door lettering, placards, decorations, or advertising media or any type which can be viewed from outside of the

Leased Premises, subject to Landlord's prior written consent. All signs installed shall be kept in good condition and in proper operating order at all times. Tenant shall repair, replace, and/or paint any building fascia surface which is damaged as a result of Tenant's removal or alteration of its signage. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations shall conform at Tenant's expense in all respects to the criteria established by applicable governmental laws, ordinances, regulations, or other requirements. Tenant shall have the right to install and maintain venting, telecommunication and other equipment on the roof, subject to Landlord's prior written consent to the installation plans, and subject to the supervision, at Tenant's reasonable cost, of Landlord's roof contractor if any such work would otherwise void Landlord's roof warranty.

ARTICLE 9. UTILITIES

9.1 Landlord agrees to provide normal water, electricity, and telephone service connections to the Leased Premises, which connections, regardless of location, shall hereafter be maintained by Tenant. Except as included in the Landlord Work, Tenant will at its own cost and expense pay for all water, sanitary sewer, gas, electricity and other utilities used in connection with the Leased Premises, including the connection cost thereof. Such payments shall be made directly to the supplier of any utility separately metered (or submetered) to the Leased Premises.

9.2 Should any governmental body or agency determine that the Tenant's use of the sanitary sewer system serving the Leased Premises causes the sewerage standards of the Leased Premises to exceed the maximum permitted amount promulgated by such governmental body or agency, which causes an increase in the sanitary sewer rates or charges applicable to the Leased Premises, Tenant shall, at the option of the Landlord, be required to pay the amount of such increased charges. In the event that a governmental body or agency requires a separate water or sewer line, then the water or sewer line will be installed on the Leased Premises by the Landlord, and maintained by Tenant.

9.3 Landlord shall not be liable for any interruption whatsoever in utility services due to fire, accident, strike, acts of God, or other causes beyond the control of Landlord, except to the extent that such cessation or interruption is due to the willful misconduct or gross negligence of Landlord or its employees, agents or contractors.

ARTICLE 10. INSURANCE

10.1 Tenant shall obtain and maintain through the Lease Term the following policies of insurance:

- A. Basic causes of loss - special form insurance (formerly known as "All Risk"), covering the replacement costs, without deduction for depreciation, of (i) all Building, alterations, additions, partitions, and improvements both currently situated on the Leased Premises and those installed or placed on the Leased Premises by Tenant or by Landlord on behalf of Tenant, and (ii) all of Tenant's personal property located in and on the Leased Premises (including, but not limited to, the HVAC system and plate glass).
- B. Commercial General Liability Insurance against claims for bodily injury, death, sickness and property damage occurring in or about the Leased Premises, such insurance to afford protection of not less than \$2,000,000.00 for personal or bodily injury or death of any person, \$2,000,000.00 for any single occurrence, and an umbrella limit of \$5,000,000.00.
- C. Rental loss insurance, with coverage for at least 12 months, sufficient to cover Tenant's rental obligations under this Lease.
- C. Worker's compensation insurance and employer's liability insurance, in compliance with statutory requirements.
- D. Automobile bodily injury and property damage insurance covering Tenant's vehicles with proper limits, but not less than \$1,000,000.00 combined single limit for personal or bodily injury or death to any number of person, and an umbrella limit of \$3,000,000.00.

Tenant shall deliver to Landlord, prior to the Commencement Date, certificates of such insurance and shall, at all times during the Lease Term, deliver to Landlord upon Landlord's request, true and correct copies of said insurance policies. The policy or policies shall (i) other than the worker's compensation insurance, name Landlord and Landlord's lender, as an additional insured, (ii) provide that they will not be canceled or reduced in coverage without thirty (30) days notice to Landlord, (iii) contain a loss payable clause designating Tenant, Landlord, and Landlord's lender as loss payees as their respective interest may appear, (iv) insure an occurrence and not a claims made basis, (v) contain a replacement cost endorsement, Texas Standard Form 164, or equivalent, (v) contain a deductible of not more than \$500,000.00, and (vi) be primary coverage, so that any insurance coverage obtained by Landlord shall be in excess thereto. Tenant shall deliver to Landlord certificates of renewal at least thirty (30) days prior to the expiration date of each such policy and copies of certificates of new policies at least thirty (30) days prior to terminating any existing policies. All policies of insurance required to be obtained and maintained by Tenant shall be subject to the reasonable approval of Landlord as to terms, coverage, and issuer.

10.2 Landlord and Tenant hereby waive and release all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party may now or hereafter have by subrogation or otherwise against the other party or against any of the other party's officers, directors, shareholders, partners or employees for any loss or damage that may occur to the Leased Premises, Tenant's improvements or any of the contents of any of the foregoing by reason of fire or other casualty, or by reason of any other cause except gross negligence or willful misconduct (thus including simple negligence of the parties hereto or their officers, directors, shareholders, partners or employees), that could have been insured against under the terms of the fire and extended coverage insurance policy required to be obtained and maintained under this Article 10; provided, however, that the waiver set forth in this Section shall (a) be ineffective against any insurer of Landlord or Tenant to the extent that the waiver is prohibited by the laws or insurance regulations of the state in which the Leased Premises is located or would invalidate any insurance coverage of Landlord or Tenant, and (b) not apply to any deductibles on insurance policies carried by Landlord or Tenant and to any coinsurance penalty which Landlord or Tenant might sustain. Landlord and Tenant hereby agree to cause (if available) an endorsement to be issued to their respective insurance policies recognizing this waiver of subrogation.

10.3 A. Except as hereinafter provided, Tenant hereby assumes liability for, and agrees to defend, indemnify, protect and hold harmless Landlord, its successors, assigns, affiliates, directors, shareholders, partners, contractors, employees and agents (all of the prior parties individually and collectively, the "Landlord's Related Parties") from and against, all liabilities, obligations, fines, demands, judgments, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including court costs and reasonable attorneys' fees) of every kind or character (a) arising from any breach, violation or non-performance of any term, provision, covenant, agreement or condition on the part of Tenant hereunder, (b) recovered from or asserted against any of the Landlord's Related Parties on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of or be caused, either approximately or remotely, wholly or in part, by any negligence or willful misconduct on the part of Tenant or any of its agents, servants, employees, or contractors, and/or invitees or of any other person entering upon the Leased Premises under or with the express or implied invitation or permission of Tenant; (c) arising from or arising out of the occupancy by Tenant, its agents, servants, employees, or contractors of the Leased Premises or arising from or out of any event, circumstance, or occurrence within the Leased Premises, howsoever caused. Such indemnification of Landlord and any of the Landlord's Related Parties by Tenant shall be effective unless such damage, injury, claim or loss results from the negligence or willful misconduct of Landlord, any of Landlord's Related Parties or any of their duly authorized agents, contractors or employees.

B. Except as hereinafter provided, Landlord hereby assumes liability for, and agrees to defend, indemnify, protect and hold harmless Tenant, its successors, assigns, affiliates, directors, shareholders, partners, contractors, employees and agents (all of the prior parties individually and collectively, the "Tenant's Related Parties") from and against, all liabilities, obligations, fines, demands, judgments, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including court costs and reasonable attorneys' fees) of every kind or character (a) arising from any breach, violation or non-performance of any term, provision, covenant, representation, warranty, agreement or condition on the part of Landlord hereunder, and/or (b) recovered from or asserted against any of the Tenant's Related Parties on account of injury or damage to person or property to the extent that any such damage or injury may be incident to, arise out of or be caused, either approximately or remotely, wholly or in part, by any negligence or willful misconduct on the part of Landlord or any of Landlord's Related Parties. Such indemnification of Tenant and any of the Tenant's Related Parties by Landlord shall be effective unless such damage, injury, claim or

loss results from the negligence or willful misconduct of Tenant, any of Tenant's Related Parties or any of their duly authorized agents, contractors or employees.

10.4 The provisions of this Article shall survive the expiration or termination of this Lease with respect to any occurrence, accident, claim, or liability occurring prior to such expiration or termination. The indemnification provided by this Article is subject to the Landlord's waiver of recovery specified above, to the extent of Landlord's recovery of loss proceeds under policies of insurance described above.

10.5 Notwithstanding anything to the contrary set forth herein, Landlord and Tenant each expressly waive any cause of action or right of recovery which either may have hereafter against the other, and neither party shall be liable to the other (by way of subrogation or otherwise), for any loss or damage, as the case may be, to the extent covered by any insurance policy carried or required to be carried hereunder, EVEN THOUGH SUCH LOSS MIGHT HAVE BEEN OCCASIONED BY THE NEGLIGENCE OR WILLFUL ACTS OR OMISSIONS OF THE LANDLORD OR TENANT OR THEIR RESPECTIVE EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES, whether or not such policy shall have been obtained by the party sustaining such loss or damage.

ARTICLE 11. NON-LIABILITY FOR CERTAIN DAMAGES

11.1 Except as specifically provided herein or to the extent caused by the negligence or willful misconduct of Landlord or any of Landlord's Related Parties, Landlord and Landlord's Related Parties shall have no responsibility or liability to Tenant, or to Tenant's officers, directors, shareholders, partners, employees, agents, contractors or invitees, and Tenant hereby waives and releases any claims against Landlord and Landlord's Related Parties for bodily injury, death, property damage, business interruption, loss of profits, loss of trade secrets or other direct or consequential damages occasioned by (a) force majeure, (b) vandalism, theft, burglary, robbery, rape, murder, assault and other criminal acts (other than those committed by Landlord or any of Landlord's Related Parties) (c) (after two years after Delivery of Possession) water leakage, the backing up of drains or flooding, or (d) the repair, replacement, maintenance, damage, destruction or relocation of the Leased Premises, except to the extent caused by Landlord's negligence or willful misconduct.

11.2 Any and all security of any kind for Tenant, Tenant's agents, employees or invitees, the Leased Premises, or any personal property thereon (including, without limitation, any personal property of any sublessee) shall be the sole responsibility and obligation of Tenant, and shall be provided by Tenant at Tenant's sole cost and expense. Tenant acknowledges and agrees that the Landlord shall have no obligation or liability whatsoever with respect to the same. Tenant may, at Tenant's sole cost and expense, install alarm systems in the Leased Premises provided such installation complies with the provisions of Article 6 hereof. Removal of such alarm systems shall be Tenant's sole responsibility and, at Tenant's sole cost and expense, shall be completed prior to the Lease termination and all affected areas of the Leased Premises shall be repaired and/or restored in a good and workmanlike manner to the condition that existed prior to such installation.

ARTICLE 12. DAMAGE BY CASUALTY

12.1 Tenant shall give prompt notice to Landlord of any damage caused to the Leased Premises by fire or other casualty, including a description of the damage and, as far as is known to Tenant, the cause of the damages.

12.2 In the event (a) the improvements located on the Leased Premises are totally destroyed, (b) the improvements located on the Leased Premises are partially destroyed but in Landlord's reasonable opinion, cannot be restored to an economically viable and quality project, (c) the insurance proceeds payable to Landlord as result of such casualty are, in Landlord's reasonable opinion, inadequate to restore the portion remaining to an economically viable and quality project, and Tenant refuses to fund any such shortfall, or (d) less than twelve (12) full calendar months remain in the Lease Term, Landlord may, at its election exercisable by the giving of notice to Tenant within sixty (60) days after the casualty, terminate this Lease as of the date of the casualty or the date Tenant is deprived of possession of the Leased Premises (whichever is later). In the event Landlord does not exercise its termination right as aforesaid, Landlord shall, within thirty (30) days after the casualty, provide written notice to Tenant of Landlord's reasonable estimate of the amount of time necessary to complete restoration of the Leased Premises (the "Restoration Notice"). If the restoration time is estimated to exceed one hundred twenty (120) days after the date of casualty, Tenant may elect to terminate this Lease on notice to Landlord no later than thirty (30) days after Tenant's receipt of the Restoration

Notice. If this Lease is not terminated as a result of a casualty, Landlord shall promptly restore the Leased Premises to substantially the condition in which the same existed prior to the casualty. Landlord's obligation to rebuild and repair shall in any event be limited to restoring the Leased Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures and equipment installed by Tenant ("Tenant's Work"), but including the Landlord's Work, as described in the applicable exhibit attached to this Lease. Tenant shall make available to Landlord all property insurance proceeds payable on account of such damage or destruction, except such proceeds which are on account of Tenant's Work or Tenant's furniture, fixtures, equipment and other personal property of Tenant. It is understood that Landlord will progress bill Tenant and Tenant, in exchange for lien waivers and such other documentation as is reasonably requested by Tenant, will pay Landlord for such restoration work on a monthly basis as such work is performed; provided, however, such obligation of Tenant shall be limited to the amount of applicable insurance proceeds actually received by Tenant. During the period of restoration, Rent shall be abated to the extent that Landlord receive the rental loss insurance as provided in Section 10.1.C and the Leased Premises are rendered untenable and, after the period of restoration, Rent shall be reduced in the proportion that the area of the Leased Premises remaining tenantable after the casualty bears to the area of the Leased Premises just prior to the casualty or, if greater, in proportion to Tenant's loss of use of the Leased Premises. Notwithstanding anything herein to the contrary, in the event the restoration of the Leased Premises is not completed, for any reason, within 60 days after the estimated completion date set forth in the Restoration Notice, Tenant shall have the right to terminate this Lease on written notice to Landlord.

12.3 Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Leased Premises requires that the insurance proceeds (except such proceeds which are on account of Tenant's Work or Tenant's furniture, fixtures, equipment and other personal property of Tenant) be applied to such indebtedness, Landlord shall have no obligation to perform the restoration work described in Section 12.1 unless Tenant elects to proceed under subsection (b) below. In the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Leased Premises requires that the insurance proceeds be applied to such indebtedness, Landlord shall provide prompt written notice thereof to Tenant and Tenant shall have the right to either (a) terminate this Lease, or (b) provide the funds necessary to perform the restoration work and withhold such amounts from the next installments of Rent due hereunder.

12.4 Tenant, in the event of a casualty loss to the Leased Premises which shall be restored by Landlord pursuant to Section 12.1, shall make available to Landlord the amount of the deductible applicable to the insurance policy maintained pursuant to Article 10 of this Lease on the terms set forth in Section 12.3 above, if needed to complete such restoration after disbursement of all insurance proceeds.

ARTICLE 13. CONDEMNATION

13.1 If during the term of this Lease, an authority with the power of eminent domain condemns all of the Leased Premises, then this Lease shall terminate on the date such authority takes possession of the Leased Premises. If less than all the Leased Premises is condemned, then Tenant shall have the right to terminate this Lease if a portion of the improvements on the Leased Premises should be condemned in such a manner that the balance of the Leased Premises, in Tenant's reasonable determination, are not fit for the continued use by Tenant for the Permitted Use (a "Substantial Portion"). Tenant shall exercise the termination rights of this Section no later than thirty (30) days after the condemning authority takes possession of the portion of the Leased Premises. Immediately upon the taking of possession of the portion of the Leased Premises taken by the condemning authority, if this Lease is not terminated, the Rent shall be reduced in proportion to the interior area of the Leased Premises so taken or, if greater, in proportion to Tenant's loss of use of the Leased Premises. Landlord and Tenant shall compute any such reduction in Rent within thirty (30) days after taking of possession and Landlord shall credit Tenant any overpayment of Rent by Tenant against future installments of Rent.

13.2 In the event the Tenant does not elect to terminate this Lease pursuant to the above Section, Landlord shall restore the Leased Premises remaining after the taking to substantially the same condition to which they existed prior to the taking. Any such restoration work shall be performed within a reasonable time period, done diligently and continually until completed. The Landlord's obligations to rebuild and repair shall in any event be limited to restoring the Leased Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any Tenant's Work, but including the Landlord's Work, as described in the applicable exhibit attached to this Lease. Any restoration work by Landlord on the Leased Premises shall not constitute an eviction or disturbance of Tenant's

use and possession of the Leased Premises or a breach by Landlord of any of its obligations under this Lease or render Landlord liable for damages or entitle Tenant to be relieved from any of its obligations under this Lease (with the exception of a proportionate reduction in Rent) or grant Tenant any right of off-set or recoupment. Rent shall abate to the extent Tenant cannot use all or any portion of the Leased Premises during the reconstruction of any of the improvements on the Leased Premises.

13.3 All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the fee and any and all improvements thereon, whether as damages or as compensation, will be the property of Landlord; provided, however, that all sums awarded or agreed upon between Tenant and the condemning authority for the taking of Tenant's leasehold interest in the Leased Premises, Tenant Work, Tenant's Removable Trade Fixtures and Tenant's moving costs will be the property of Tenant (the "Tenant's Share of Award") and Landlord hereby assigns Tenant's Share of Award to Tenant. Tenant hereby assigns to Landlord all proceeds awarded for the condemnation of the Leased Premises so long as such proceeds are not compensation or damages payable to Tenant for Tenant's Share of Award. Tenant agrees that the condemning authority shall cause all checks and drafts issued by it for the taking of the fee and the award for improvements, whether as compensation or as damages, to be issued payable to the order of Landlord. Landlord agrees that the condemning authority shall cause all checks and drafts issued by it for the Tenant's Share of Award, whether as compensation or damages, to be issued payable to Tenant. Upon request of Landlord, Tenant agrees to promptly execute such instrument, or instruments, as Landlord may reasonably request as evidence of the Tenant's cessation of interest in such portion of the Leased Premises that is condemned by such authority and that this Lease continues to be effective as to the balance of the Leased Premises not condemned (if applicable), provided that no such instrument or instruments shall increase the obligations of Tenant or further restrict Tenant's rights hereunder.

ARTICLE 14. ASSIGNMENT AND SUBLETTING

14.1 Tenant shall not assign this Lease nor sublet all or any part of the Leased Premises without prior written consent of Landlord. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of this Section shall be void. Upon the occurrence of an Event of Default (as defined below), if all or any part of the Leased Premises are then assigned or sublet, Landlord, in addition to any other remedies provided by this Lease or provided by law, may, at its option, collect directly from the assignee or subtenant all Rent becoming due to the Tenant by reason of the assignment or subletting. Notwithstanding any subletting or assignment by Tenant, Tenant and/or Guarantor shall remain fully liable for the performance of all covenants in this Lease to be performed by Tenant and/or Guarantor. Any sums collected directly by Landlord from the assignee or subtenant shall not be construed to constitute a novation or a release of Tenant from the further performance of its obligations under this Lease. The sale or transfer of the assets of, or ownership interest in, Tenant shall be deemed to be an assignment. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses incurred in connection with any proposed assignment or sublease that requires Landlord consent, not to exceed Five Thousand and No/100 Dollars (\$5000.00). Notwithstanding the foregoing, Tenant shall have the right, without regard to any obligation imposed on Tenant by this Lease, including without limitation the obligation to obtain Landlord's prior consent, to assign the Lease or sublet all or any portion of the Leased Premises to: (i) any entity resulting from a merger or consolidation with Tenant; (ii) any entity controlled by, controlling or under common control with Tenant; or (iii) in connection with a sale of all or substantially all of the assets of Tenant located at the Leased Premises (any entity described in (i)-(iii), inclusive, being hereinafter referred to as a "Tenant Affiliate").

14.2 If this Lease is assigned to any person or entity pursuant to the provision of the Bankruptcy Code, 11 U.S.C. § 101 et. seq., (the "Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment (except those monies or other consideration attributable to trade fixtures or Tenant Work) shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord.

14.3 Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed, without further act or deed, to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

14.4 Landlord shall have the right to transfer, assign, or encumber (subject to Article 19) in whole or in part, its rights and obligations in the building and property that are the subject of this Lease. In the event of the transfer and assignment by Landlord of its interest in this Lease and in the building containing the Leased Premises to a person expressly assuming the Landlord's obligations under this Lease, Landlord shall thereby be released from any further responsibility hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to Landlord to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest of Landlord; and, upon acknowledgment by such successor of receipt of such security and its express assumption of the obligation to account to Tenant for such security in accordance with the terms of this Lease, Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE 15. PROPERTY TAXES AND ASSESSMENTS

15.1 Tenant shall, pay and discharge all Taxes (as defined herein) each calendar year (or portion of the calendar year) during the Lease Term. For the purposes of this Lease, the term "Taxes" shall mean and refer to all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums (whether now existing or arising hereafter, whether foreseen or unforeseen and whether under the present system of real estate taxation or some other real estate related system), that may become due during the term of this Lease on the Leased Premises and any improvements or other property thereon, whether belonging to Landlord or Tenant, or to which either of them may become liable in relation thereto. The term "Taxes" shall also include all penalties, interest and other charges payable by reason of any delay or failure or refusal of Tenant to make timely payments as required pursuant to this Article; provided, however, that Landlord shall be obligated to pay any such charges caused by Landlord's failure to timely forward tax invoices to Tenant. Notwithstanding anything herein to the contrary, Taxes shall not include and Tenant shall have no liability for (a) any inheritance, estate, succession, transfer, gift, franchise, or capital stock tax; (b) any income taxes arising out of or related to ownership and operation of income producing real estate; (c) any excise taxes imposed upon Landlord based upon gross or net rentals or other income received by it; or (d) any taxes payable under Chapter 171 of the Texas Tax Code (Franchise Tax). Landlord shall pay all "roll-back taxes" imposed because of a change in use, as set forth above.

15.2 Tenant may dispute and contest the amount of Taxes, and in such case, such disputed item need not be paid until finally adjudged to be valid. Tenant shall have the right to employ a tax consulting firm to assure a fair tax burden on the Leased Premises with the applicable taxing authority. Tenant agrees to pay the cost of such consulting. Tenant shall be entitled to the benefit of any refund or abatement of any Taxes, penalty, fine, and interest thereon received by Landlord which have been paid by Landlord but for which Landlord previously has been reimbursed in full by Tenant, including without limitation any abatement of Taxes pursuant to the program for granting tax abatement in a reinvestment zone created in Waller County, Texas.

15.3 Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Leased Premises. If any such taxes are levied or assessed against Landlord or Landlord's property and (a) Landlord pays the same, or (b) the assessed value of Landlord's property is increased by inclusion of such personal property and fixtures and Landlord pays the increased taxes, then, upon demand, Tenant shall pay to Landlord such taxes.

15.4 If, at any time during the primary term of this Lease or any renewal or extension thereof, any unknown special assessments should be made against the Leased Premises whether for street improvements or other purposes, each monthly installment of Rent required to be paid by Tenant to Landlord under the terms of this Lease shall be increased by a sum equal to the fraction (having a numerator of one and a denominator of the number of months the appropriate governmental agency levying such assessment permits Landlord to pay for same) of the amount of such assessment. Any assessments for previously known improvements, roadways, etc that were previously contemplated are excluded from this section. Such increase shall become effective on the first day of the month following the month in which such assessment or expenditure is required to be paid by Landlord and shall continue until the expiration or earlier termination of the Lease Term and any renewals or extensions thereof, or until the expiration of that number of months (being the number of months the appropriate governmental agency levying such assessment permits Landlord to pay for same) after the first such increased Rent payment shall become due, whichever event shall first occur.

ARTICLE 16. DEFAULTS AND REMEDIES

16.1 The following events shall be deemed to be "Events of Default" by Tenant under this Lease:

- A. Tenant shall fail to pay within seven (7) business days after receipt of written notice of Tenant's failure to pay any installment of Rent or other sums owed to Landlord promptly when due.
- B. Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled, terminated, expire, reduced, or materially changed, except, in each case, as permitted in this Lease or for a period of five (5) business days after notice from Landlord.
- C. Tenant shall fail to comply with any material term, provision, or covenant of this Lease, other than those specified in Paragraph A or B of this Section 16.1, and shall not begin the cure of such failure within thirty (30) days after written notice thereof to Tenant and thereafter pursue such cure to completion with reasonable diligence;
- D. Tenant or Lease Guarantor shall become insolvent, make an assignment for the benefit of creditors; file a petition under any section or chapter of the Bankruptcy Code, or under any similar law or statute of the United States of America or any State thereof, and such insolvency proceeding or petition shall not be dismissed within sixty (60) days.
- E. A receiver or trustee shall be appointed for the Leased Premises or for all or substantially all of the assets of Tenant or Lease Guarantor, and such appointment shall not be dissolved within sixty (60) days.
- F. Tenant shall do or permit to be done anything which creates a lien upon the Leased Premises, except were Tenant, within 30 days after receipt of written notice of the filing of such lien, (a) satisfies such lien, or (b) (i) in good faith disputes the underlying charges, establishes an escrow for the disputed amount if required by applicable law, and pursues with reasonable diligence the resolution of such claim and lien, and (ii) causes such lien to be released not less than 10 days prior to the date of any execution sale or the exercise of any right of removal of any part of the Leased Premises by such lien claimant.

16.2 Upon the occurrence of any such Event of Default, Landlord shall have the option to pursue any one or more of the following remedies in addition to all other rights, remedies and recourses afforded Landlord hereunder or by law or equity, without any notice or demand whatsoever, except as may be specifically provided herein:

- A. Terminate this Lease.
- B. Enter upon and take possession of the Leased Premises in accordance with all applicable laws, without terminating this Lease.
- C. Alter all locks and other security devices at the Leased Premises with or without terminating this Lease, and pursue, at Landlord's option, one or more remedies pursuant to this Lease, Tenant hereby specifically waiving any state or federal law to the contrary.
- D. Enter upon the Leased Premises using whatever legal means available to Landlord, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action, unless caused by the gross negligence or willful misconduct of Landlord.

16.3 Upon any such Event of Default, Tenant shall immediately upon demand surrender the Leased Premises to Landlord, and if Tenant fails so to do, Landlord, without waiving any other remedy it may have, may enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying such Leased Premises or any part thereof using whatever legal means available to Landlord. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or violation of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default.

16.4 If Landlord terminates this Lease pursuant to Section 16.2 above, at Landlord's option, Tenant shall be liable for and shall pay to Landlord, the sum of all Rent and other payments owed to Landlord hereunder accrued to the date of such termination, plus, as liquidated damages, an amount equal to the present value (using the current "prime" interest rate quoted in The Wall Street Journal, or should such index no longer exist, a comparable index, plus six percent (3%) of the total Rent and other payments owed hereunder for the remaining portion of the Lease Term, calculated as if the Lease Term expired on the date set forth in Section 1.1, less the then fair market rental of the Leased Premises for such period, as all such amounts shall be determined by a court of competent jurisdiction hearing any dispute arising out of such termination of this Lease.

16.5 If Landlord repossesses the Leased Premises without terminating the Lease, Tenant, at Landlord's option, shall be liable for and shall pay Landlord on demand all Rent and other payments owed to Landlord hereunder, accrued to the date of such repossession, plus all amounts required to be paid by Tenant to Landlord as the same become due until the date of expiration of the Lease Term as stated in Section 1.1, diminished by all amounts received by Landlord through reletting of the Leased Premises during such remaining term (but only to the extent of the Rent herein reserved). Actions to collect amounts due by Tenant to Landlord under this Section may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease Term.

16.6 Upon termination of this Lease or upon termination of Tenant's right to possession of the Leased Premises, Landlord shall use commercially reasonable efforts to relet the Leased Premises. If Landlord does relet, Landlord may relet such portion of the Leased Premises, for such period, to such tenant, and for such use and purpose as Landlord, in the exercise of its reasonable discretion, may choose. Tenant shall not be entitled to the excess of any rent obtained by reletting over the Rent herein reserved;

16.7 The rights, remedies and recourses of Landlord for an Event of Default shall be cumulative and no right, remedy or recourse of Landlord, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other. Anything in this Lease to the contrary notwithstanding, if Tenant is in default hereunder, Landlord shall not be entitled to receive from Tenant any consequential, special or punitive costs or damages incurred by Landlord as a result of Tenant's default.

16.8 Provisions of this Lease may not be waived orally or impliedly, but only by the party entitled to the benefit of the provision evidencing the waiver in writing. Thus, neither the acceptance of Rent by Landlord following an Event of Default (whether known to Landlord or not), nor any other custom or practice followed in connection with this Lease, shall constitute a waiver by Landlord of such Event of Default or any other or future Event of Default. Further, the failure by Landlord to complain of any action or inaction by Tenant, or to assert that any action or inaction by Tenant constitutes (or would constitute, with the giving of notice and the passage of time) an Event of Default, regardless of how long such failure continues, shall not extinguish, waive or in any way diminish the rights, remedies and recourses of Landlord with respect to such action or inaction. No waiver by Landlord of any provision of this Lease or of any breach by Tenant of any obligation of Tenant hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Tenant of the same or any other provision hereof. Landlord's consent to any act by Tenant requiring Landlord's consent shall not be deemed to render unnecessary the obtaining of Landlord's consent to any subsequent act of Tenant. No act or omission by Landlord (other than Landlord's execution of a document acknowledging such surrender), including the delivery of the keys to the Leased Premises, shall constitute an acceptance of a surrender of the Leased Premises.

16.9 Upon any Event of Default, Tenant shall also pay to Landlord all reasonable, documented and direct costs and expenses incurred by Landlord, including court costs and reasonable expenses incurred by Landlord, in (a)

retaking or otherwise obtaining possession of the Leased Premises, (b) removing and storing Tenant's or any other occupant's property, (c) repairing, restoring, or otherwise putting the Leased Premises into as good a condition as that in which it was originally delivered to Tenant, subject to reasonable wear and tear, casualty and condemnation, (d) reletting all or any part of the Leased Premises, (e) paying or performing the underlying obligation which Tenant failed to pay or perform, and (f) enforcing any of Landlord's rights, remedies or recourses arising as a consequence of the Event of Default.

16.10 Landlord shall be in default hereunder only if Landlord has failed, within thirty (30) days from the receipt by Landlord of notice from Tenant of any alleged default by Landlord, to begin and pursue with reasonable diligence the cure of any alleged default of Landlord hereunder within a reasonable period of time. In the event of any default by Landlord, Tenant shall have the right to pursue any available remedies at law or in equity, including without limitation the equitable remedy of specific performance; provided, however, except as otherwise expressly provided herein, Tenant may offset Rent only after Tenant recovers a final, non-appealable judgment against Landlord.

16.11 If Landlord defaults under this Lease and, as a consequence of the default, Tenant recovers a money judgment against Landlord and/or any of the Landlord Related Parties, the judgment shall be satisfied only out of, and Tenant hereby agrees to look solely to, the interest of Landlord and/or any of the Landlord Related Parties in the Leased Premises, including proceeds thereof, as the same may then be encumbered, and neither Landlord nor any Landlord Related Parties shall otherwise be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than their interest in the Leased Premises. Under no circumstances whatsoever shall Landlord or any Landlord Related Party ever be liable hereunder in any capacity for consequential damages or special damages. This Section shall not limit any right of Tenant to obtain specific performances of Landlord's obligations hereunder or to take any right of offset under Section 16.11 of this Lease.

16.12 In the event Landlord commences any proceedings against Tenant for non-payment of Rent or any other sum due and payable by Tenant hereunder, Tenant will not interpose any counterclaim or other claim against Landlord of whatever nature or description in any such proceedings except mandatory counterclaims; and in the event Tenant interposes any such counterclaim or other claim against Landlord in such proceedings, Landlord and Tenant stipulate and agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counterclaim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Landlord and Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of such counterclaim or any other claim asserted by Tenant.

ARTICLE 17. LANDLORD'S LIEN

17.1 Landlord waives its rights to distraint, possession or landlord's lien (statutory or otherwise) against the property of Tenant. In consideration thereof, Tenant grants to Landlord the absolute unconditional right to dispose (whether by sale or otherwise) of any property of Tenant which Tenant fails to remove from the Leased Premises when and as required by the terms of this Lease upon the expiration or earlier termination of this Lease, and thereafter and fails to remove the same within thirty (30) days after Tenant's receipt of Landlord's written demand for such removal. Tenant agrees that Landlord shall not be liable for any damages to or claims by Tenant as a result of Landlord exercising its right to dispose of Tenant's property as provided above.

ARTICLE 18. SURRENDER AND HOLDING OVER

18.1 Upon the expiration or termination of the Lease Term for whatever cause, or upon the exercise by Landlord of its right to re-enter the Leased Premises without terminating this Lease, Tenant shall immediately, quietly and peaceably surrender to Landlord possession of the Leased Premises in "broom clean" and good order, condition and repair, except only for reasonable wear and tear, casualty and condemnation, and the portions of the Leased Premises, which Landlord was required to maintain. If Tenant fails to surrender possession as herein required, Landlord may initiate any and all legal action as Landlord may elect to dispossess Tenant and all of its property, and all persons or firms claiming by, through or under Tenant and all of their property, from the Leased Premises, and may remove from the Leased Premises and store (without any liability for loss, theft, damage or destruction thereto) any such property at Tenant's cost and expense. If Tenant fails to surrender possession of the Leased Premises in the condition herein required, Landlord may, at Tenant's expense, restore the Leased Premises to such condition, subject to casualty and condemnation.

18.2 For so long as Tenant remains in possession of the Leased Premises after the expiration or termination of the Lease Term, or exercise by Landlord of its re-entry right, Tenant shall be deemed to be occupying the Leased Premises as a month to month tenant, subject to all of the obligations of Tenant under this Lease, except that the monthly Rent shall be 125% the monthly Rent in effect immediately prior to such expiration, termination or exercise by Landlord. Subject to Landlord's right to evict Tenant, such increase in Rent shall be deemed to be Landlord's sole and exclusive remedy for such holding over. No such holding over shall extend the Lease Term.

ARTICLE 19. SUBORDINATION, ATTORNMEN AND ESTOPPEL

19.1 Landlord shall use its best efforts to obtain from the holder of any mortgage or deed of trust covering the Leased Premises a subordination, non-disturbance and attornment agreement ("SNDA") in form and substance acceptable to Tenant. Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust, or other lien presently existing or hereafter placed upon the Leased Premises as a whole, and to any renewals and extensions thereof; provided, however, Tenant's rights under this Lease shall not be disturbed unless there is an Event of Default by Tenant. Tenant agrees to execute such instruments subordinating this Lease as Landlord may reasonably request, provided such subordination shall be upon the express condition that this Lease shall be recognized by the mortgagee, and that the rights of Tenant shall remain in full force and effect during the term of this Lease so long as there is no Event of Default by Tenant.

19.2 Upon the written request of any person or party succeeding to the interest of Landlord (and assuming the obligations of Landlord under this Lease) as a result of a foreclosure or a transfer in lieu of foreclosure, Tenant shall automatically become the tenant of and attorn to such successor in interest without any change in any of the terms of this Lease. No such successor in interest shall be (a) bound by any payment of rent for more than one month in advance, except payments of security for the performance by Tenant of Tenant's obligations under this Lease, or (b) subject to any offset, defense or damages arising out of a default or any obligations of any preceding Landlord, or (c) as to Landlord's lender, bound by any amendment of this Lease entered into after Tenant has been given notice of the name and address of Landlord's lender and without the written consent of Landlord's lender or its successor in interest. The subordination, non-disturbance and attornment clauses of this Article 19 shall be self-operative and no further instruments of subordination, non-disturbance and attornment need be required by any mortgagee or successor in interest thereto. Nevertheless, upon the written request therefor and without any compensation or consideration being payable to Tenant, Tenant agrees to execute, have acknowledged and deliver such instruments as may be reasonably acceptable to Tenant to confirm the same.

19.3 Landlord and Tenant shall promptly execute and deliver to each other, at such time or times as either may request, a certificate stating:

- i) Whether or not the Lease is in full force.
- ii) Whether or not the Lease has been modified or amended in any respect, and submit such copies of such modifications or amendments, if any.

- iii) Whether or not there are any existing defaults under the Lease as far as the party executed the certificate knows and specifying the nature of such defaults, if any.
- iv) Such other factual information regarding the Lease as may be reasonably requested.

19.4 Notwithstanding anything contained herein to the contrary, in the event of any default by Landlord in performing its covenants or obligations hereunder, Tenant shall not exercise any rights it may have on account of such default until (i) Tenant gives written notice of such default (which notice shall specify the exact nature of said default and how the same may be cured) to each holder of any such mortgage or deed of trust who has theretofore notified Tenant in writing of its interest and the address to which notices are to be sent, and (ii) each such holder fails to cure or cause to be cured said default within thirty (30) days from the receipt by such holder of such notice by Tenant.

19.5 If requested by Landlord, but not more than once per calendar year, Tenant shall provide Landlord with a copy of the most recently completed financial statement of Tenant, which financial statement shall contain a balance sheet and profit and loss statement. Landlord agrees to keep such financial statement in strict confidence; provided, however, Landlord may disclose such information to its representatives, consultants, lender, and prospective purchasers of the Leased Premises provided and on the condition that such parties agree in writing to keep such financial statements in strict confidence; provided however, Tenant shall be under no obligation to furnish such financial statements so long as Tenant is wholly-owned subsidiary of a publicly held company whose stock is traded on a stock exchange in the United States of America.

ARTICLE 20. NOTICES

20.1 Except as otherwise provided herein, all notices, demands, requests, and other communications required or permitted hereunder shall be given in writing and sent by personal delivery, or expedited delivery service with proof of delivery, or United States mail, postage prepaid, registered or certified mail, return receipt requested, or facsimile (provided that such facsimile is confirmed by expedited delivery service or by United States mail in the manner previously described), addressed to the addressee at such party's address set forth herein, or to such other address as such party may specify by written notice, sent in accordance with this paragraph at least fifteen (15) days prior to the date of the giving of such notice. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of mail, three (3) business days after the date of deposit in an official depository of the United States mail, or in the case of either delivery service, or facsimile, upon receipt. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request or other communication sent. For the purposes of notice, the address of (a) Landlord shall be at the address specified in Section 1.1, and (b) Tenant shall be the address recited in Section 1.1 until the Commencement Date, and thereafter, the address of the Leased Premises. Each party shall have the continuing right to change its address for notice hereunder by the giving of fifteen (15) days' prior notice to the other party in accordance with this Section.

20.2 If and when included within the term "Landlord", as used in this Lease, there is more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Landlord. If and when included within the term "Tenant", as used in this Lease, there is more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment.

ARTICLE 21. MISCELLANEOUS

21.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto. It expressly understood and agreed that neither the method of computation of rent, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

21.2 The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

21.3 Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, neither shall be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord or Tenant.

21.4 All obligations of Landlord and Tenant under the terms of this Lease shall be payable and performable in Waller County, Texas. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Lease.

21.5 Landlord hereby covenants and agrees that provided there is no Event of Default by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the continuance of this Lease have the peaceable and quiet enjoyment and possession of the Leased Premises.

21.6 Words of any gender used in this Lease shall be held and construed to include any gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

21.7 This Lease, together with the attached exhibits, contains the entire agreement between the parties, and supersedes any prior understandings or written or oral agreements between the parties. No amendment, modification or alteration of this Lease shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

21.8 Time is of the essence with respect to each date or time specified in this Lease by which an event is to occur.

21.9 The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest, legal representatives and assigns, except as otherwise herein expressly provided or limited. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including but not limited to any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by attorney.

21.10 If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

21.11 Tenant hereby warrants and represents to Landlord that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease, and agrees to defend, indemnify and hold Landlord harmless from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization of Tenant, or any affiliate of Tenant, in connection with this Lease except to the extent owed to Tenant's Broker. Landlord agrees to pay all commissions due any brokers and Landlord hereby warrants and represents to Tenant that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this Lease, and agrees to defend, indemnify and hold Tenant harmless from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization of Landlord, or any affiliate of Landlord, in connection with this Lease.

21.12 Any amount due from Tenant to Landlord which is not paid when due shall bear interest at the rate of 10% per annum, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure the default in payment.

21.13 As used in this Lease, the symbol "\$" shall mean United States dollars, the lawful currency of the United States.

21.14 Tenant represents and warrants to Landlord that (a) Tenant is duly organized, legally existing, and in good standing in the State of Texas; (b) Tenant has full right and authority to execute, deliver and perform this Lease; and (c) the person executing this Lease on behalf of Tenant was authorized to do so.

21.15 This Lease (including any Exhibit hereto) shall not be recorded without the prior written consent of Landlord.

21.16 All Exhibits and written addenda hereto are incorporated herein for any and all purposes.

21.17 This Lease may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

21.18 In the event of any litigation between the Landlord and the Tenant arising out of an alleged breach of this Lease by either of them and such litigation terminates upon the issuance of a final, unappealable judicial order, the unsuccessful party therein shall pay the successful party's reasonable attorneys fees and expenses in such litigation. This provision shall inure only to the Landlord, Tenant, and Guarantor, and their respective successors and permitted assigns, if any.

ARTICLE 22. LANDLORD'S REPRESENTATIONS AND WARRANTIES

22.1 In addition to the other representations and warranties made herein, Landlord hereby represents and warrants to Tenant that as of the date hereof the following representations and warranties are true, correct and complete and that the same will be true, correct and complete on and as of the Commencement Date:

A. Landlord warrants and represents that the execution and delivery of this Lease by the signatory hereto on behalf of Landlord and the performance of this Lease by Landlord have been duly authorized by Landlord and this Lease is binding upon Landlord and enforceable against Landlord in accordance with its terms.

B. Landlord warrants and represents that it is and shall be the owner of fee simple title to the Leased Premises, free and clear of all liens, encumbrances, covenants, conditions, restrictions, rights of way, easements, leases, tenancies, licenses, claims, options, and any other matters which would impair the marketability of title to the Leased Premises.

C. Landlord represents and warrants that there are no condemnation or judicial proceedings, administrative actions or examinations, claims or demands of any type which have been instituted or which are pending or threatened against Landlord with respect to the Leased Premises or any part thereof. There are no actions or proceedings pending or to the best of Landlord's knowledge, threatened against Landlord with respect to the Leased Premises before any court or administrative agency which would result in any material adverse change in the condition and operation of the Leased Premises. In the event Landlord receives notification of any of the foregoing prior to Commencement Date, copies of such notice shall be provided to Tenant by Landlord within three (3) days following its receipt thereof, but in no event later than the Commencement Date.

D. Landlord represents and warrants that Landlord is duly organized and validly existing under the laws of the State of Texas; that the execution and delivery of this Lease and the transaction contemplated hereto have been duly authorized by Landlord and that the performance of Landlord's obligations under this Lease will not violate its organizational documents, the provisions of any applicable law or agreement to which it is a party or under which it is bound.

E. Landlord represents and warrants that the Leased Premises will be delivered on the Commencement Date free of any occupants, tenants or rights of first refusal, right of reverter or rights of first offer relating to the Leased Premises, other than as provided in this Lease; any service contracts or management agreements; and any employee, employment agreements or union contract affecting the Leased Premises.

F. Landlord represents and warrants that Landlord has not filed any proceeding or petition in, nor received notice that any proceeding or petition has been filed against Landlord in bankruptcy or insolvency, or for reorganization or for the appointment of a receiver, custodian or trustee, or for the arrangement of debts under any state or federal statute relating to debtor protection or insolvency, and further that Landlord is not insolvent and will not be rendered insolvent by the consummation of the transaction contemplated by this Lease.

G. Landlord represents and warrants that it has received no notice of any violations of building, fire, air pollution, or Environmental Law (as defined in Exhibit D hereto) and that Landlord has no knowledge of any violations, or suits or judgments threatened or pending relating to violations, at the Leased Premises or any portion of the Leased Premises of any such laws, ordinances and regulations.

H. Landlord represents and warrants that there are no special taxes or assessments pending and/or unpaid with respect to any improvements not yet completed on the Leased Premises.

I. Landlord represents and warrants that there are no Substances (as that term is defined in Exhibit E hereto), asbestos-containing materials or underground storage tanks on the Leased Premises, or any condition on the Leased Premises which violates the terms of any applicable Environmental Law.

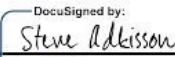
J. Landlord represents and warrants that the Leased Premises are, as of the date of this Lease, in compliance with all applicable zoning, municipal, county, state and federal laws (including the Americans with Disabilities Act and other laws of a similar nature), or ordinances and regulations, and that the Leased Premises are currently zoned to allow the Permitted Use.

K. All other representations and warranties of Landlord contained in this Lease are true, correct and complete.

All representations made by Landlord in this Section 22.1 shall survive the execution of this Lease and, if later, the Commencement Date.

LANDLORD:

DATE: September 19, 2022 V Energy Industrial Park I, LLC

By:  _____
Steve Adkisson
Managing Member

TENANT:

DATE: September 12, 2022 ENGlobal US, Inc., a Texas Corporation

By:  _____
Mark A. Hess
CEO

EXHIBIT "A"**LEASED PREMISES LEGAL DESCRIPTION**

All that certain 9.7998 acres of land situated in the H. & T. C. Railroad Company Survey, Section 83, Abstract No. 159, Waller County, Texas, being out of a called 14.595 acres of land conveyed to Venergy Industrial Park I, LLC, as described in the deed recorded in Document No. 2000608 of the Waller County Official Public Records of Real Property (W.C.O.P.R.R.P.), and out of a called 95.890 acres of land conveyed to Venergy Industrial Park II, LLC, as described in the deed recorded in Document No. 2000609 of the (W.C.O.P.R.R.P.), said 9.7998 acres being more particularly described by metes and bounds as follows:

COMMENCING at a 1-1/4 inch iron rod found at the common northeast corner of said Section 83 and said 95.890 acres, same being the southeast corner of the J. M. Bennett Survey, Section 86, Abstract No. 282, the southwest corner of the H. & T. C. Railroad Company Survey, Section 93, Abstract No. 164, and the northwest corner of the J. M. Bennett Survey, Section 96, Abstract No. 285, all in Waller County, Texas, also being the intersection of the south right-of-way line of Morrison Road (80 feet wide right-of-way easement granted to Waller County, as described in the instruments recorded in Volume 152, Page 619 and Volume 176, Page 496, both of the Waller County Deed Records (W.C.D.R.)) with the east right-of-way line of Pattison Road (40 feet wide (at this point) right-of-way easement granted to Waller County, as described in the instrument recorded in Volume 143, Page 514 of the W.C.D.R.), said 1-1/4 inch iron rod also being situated in the west line of a called 118.748 acres of land described in the deed recorded in Volume 482, Page 829 of the W.C.D.R.;

THENCE South 00 deg. 44 min. 32 sec. East, along and with the east line of the 95.890 acres and said west line of the 118.748 acres, a distance of 876.55 feet to a 1/2 inch iron rod found at an angle point;

THENCE South 00 deg. 46 min. 40 sec. East, continuing along and with the east line of the 95.890 acres and the west line of the 118.748 acres, a distance of 1,374.00 feet to a 1/2 inch iron rod with cap found at an angle point;

THENCE South 00 deg. 45 min. 21 sec. East, continuing along and with the east line of the 95.890 acres and the west line of the 118.748 acres, a distance of 264.29 feet to a 1/2 inch iron rod found at an angle point;

THENCE South 00 deg. 33 min. 38 sec. East, continuing along and with the east line of the 95.890 acres and the west line of the 118.748 acres, a distance of 586.06 feet to a 1/2 inch iron rod found at an angle point;

THENCE South 00 deg. 52 min. 39 sec. East, continuing along and with the east line of the 95.890 acres and the west line of the 118.748 acres, a distance of 522.04 feet to a point for corner, from which a 5/8 inch iron rod with cap set for the northeast corner of said 14.595 acres bears South 00 deg. 52 min. 39 sec. East, a distance of 77.28 feet;

THENCE South 89 deg. 13 min. 46 sec. West, over and through the 95.890 acres, a distance of 58.49 feet to a point at the northeast corner and POINT OF BEGINNING of the herein described 9.7998 acres of land;

THENCE South 00 deg. 46 min. 14 sec. East, continuing over and through the 95.890 acres, at a distance of 77.30 feet pass an upper south line of the 95.890 acres and the north line of the 14.595 acres, continuing over and through the 14.595 acres in all a total distance of 928.00 feet to a point at the southeast corner of the herein described tract of land;

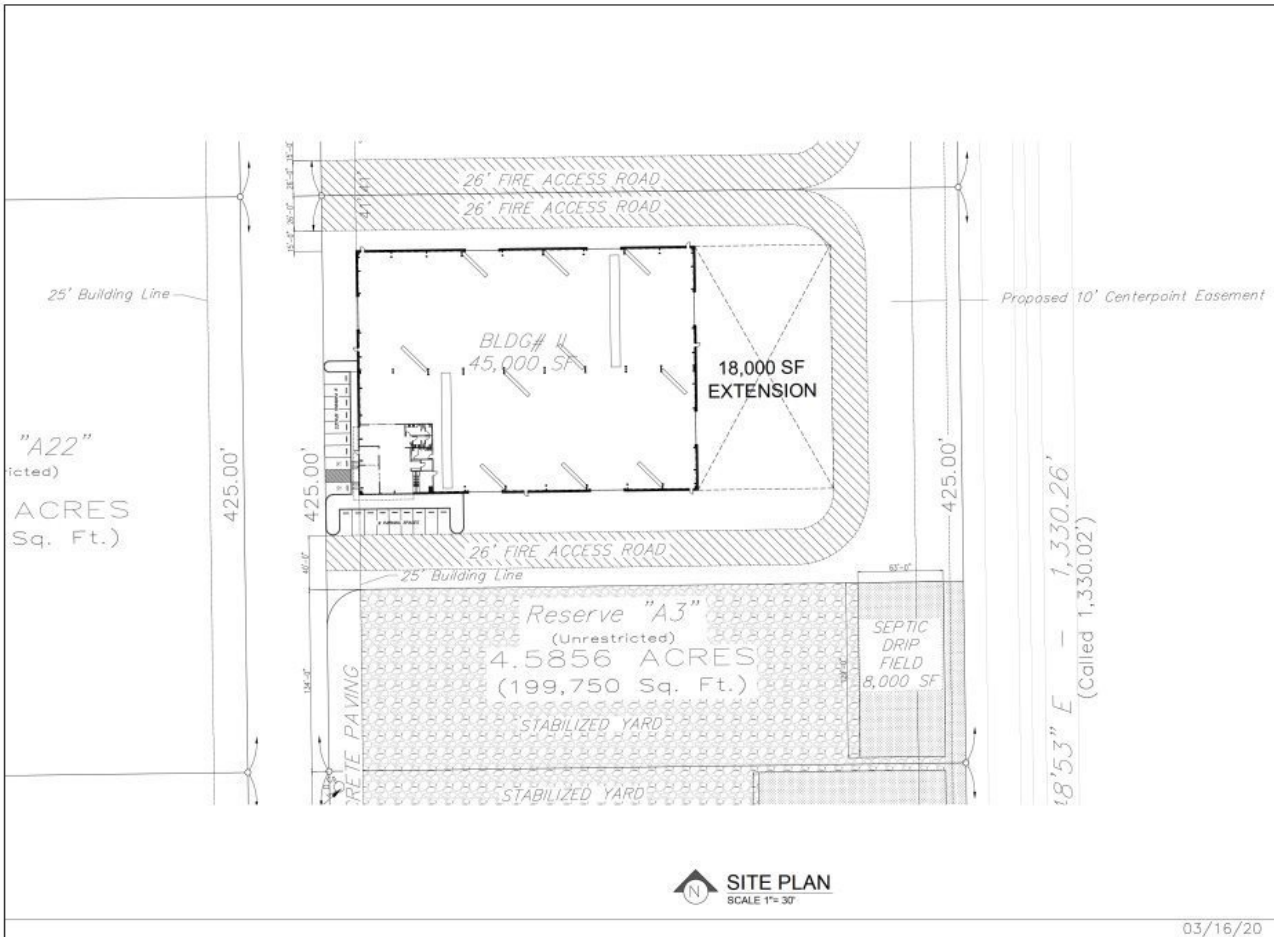
THENCE South 89 deg. 13 min. 46 sec. West, continuing over and through the 14.595 acres, at a distance of 439.25 feet pass the west line of the 14.595 acres and an east line of the 95.890 acres, continuing over and through the 95.890 acres in all a total distance of 460.00 feet to a point at the southwest corner of the herein described tract of land;

THENCE North 00 deg. 46 min. 14 sec. West, continuing over and through the 95.890 acres, a distance of 928.00 feet to a point at the northwest corner of the herein described tract of land;

THENCE North 89 deg. 13 min. 46 sec. East, continuing over and through the 95.890 acres, a distance of 460.00 feet to the POINT OF BEGINNING and containing within these metes and bounds 9.7998 acres (426,880 square feet) of land.

EXHIBIT "B"
LEASED PREMISES SITE PLAN

3173302v1 04877.01053



EFFECTIVE AND ESCAPE		
NO.	DATE	DESCRIPTION

V-GAS BUILDING II
V-GAS DRIVE @ HWY 529, WALLER COUNTY

MILTON ARCHITECTS

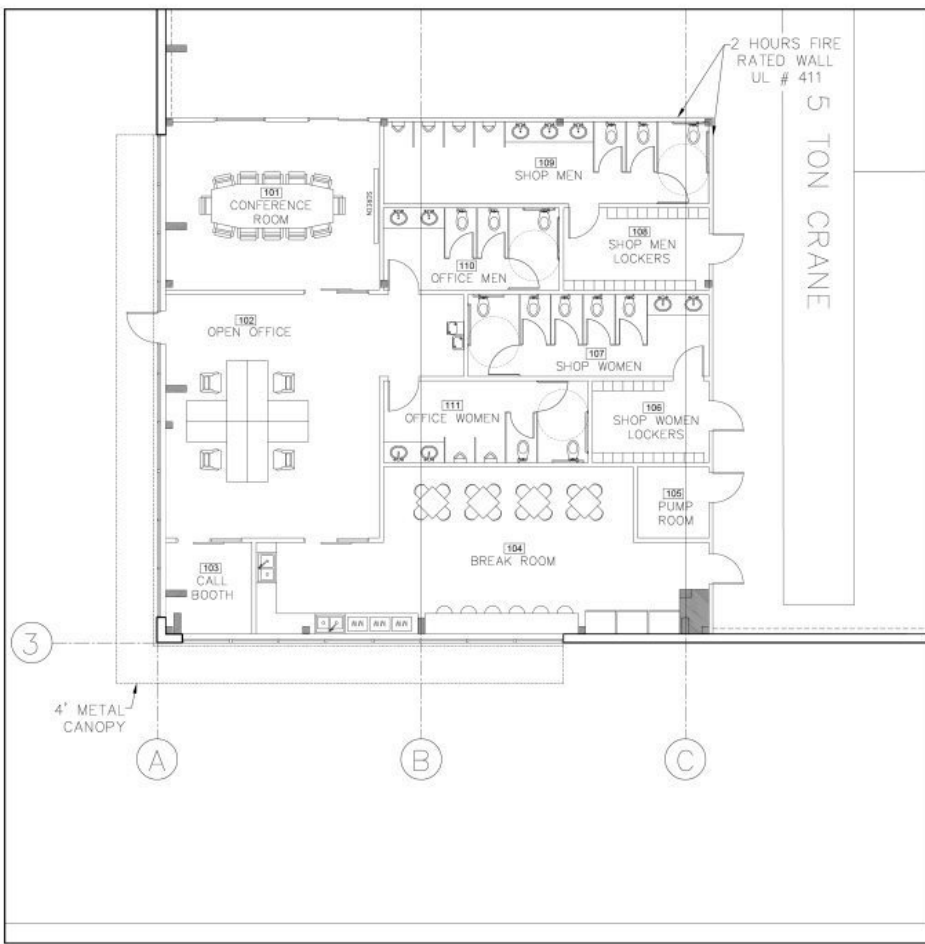
STATE OF MISSISSIPPI

PROJECT TITLE: **V-GAS BUILDING II**

DATE: 03/16/20

SCALE: 1" = 30'

A1.0



EFFECTIVE AND ESCAPE		
NO.	DATE	DESCRIPTION

V-GAS BUILDING II
V-GAS DRIVE @ HWY 529, WALLER COUNTY

MILTON ARCHITECTS

STATE OF MISSISSIPPI

PROJECT TITLE: **V-GAS BUILDING II**

DATE: 12/11/20

SCALE: 1/4" = 1'

A2.1

EXHIBIT "C"

CONSTRUCTION RIDER

This Construction Rider is attached to and forms a part of that certain Lease Agreement (the "Lease") ENGloabl Corporation, a Nevada corporation, as "Tenant".

Article I - Landlord Work

Section 1.01. Landlord will perform the work to the Leased Premises (the "Landlord Work") based upon the Melvin Electric Build-Out Narrative attached as Exhibit "C-1" hereto and made a part hereof (the "Plans"). Any changes to the Plans must be submitted to the Landlord within seven (7) days after the execution of this Agreement. Landlord shall have no obligation to modify the Plans in the manner indicated by Tenant; provided, however, that Landlord will not unreasonably withhold approval or disapproval of immaterial changes proposed by Tenant.

Section 1.02. Landlord or its contractor shall purchase all necessary building permits.

Section 1.03 If, during the construction of the Landlord Work, Tenant desires Landlord to do any additional work different from or in excess of the Landlord Work ("Additional Work"), Tenant shall submit to Landlord detailed proposed plans of such Additional Work. Landlord shall submit a budget and schedule (including any effect on the schedule for the remainder of the Landlord Work) to Tenant for the Additional Work within ten (10) days after delivery of the plans for the Additional Work, and upon written approval from Tenant, Landlord shall proceed with the Additional Work. Landlord shall have no obligation to perform any Additional Work or make any change orders unless Tenant shall execute within ten (10) days after receipt from Landlord of a written request, a change order in a form reasonably acceptable to Tenant and Landlord's contractor.

Section 1.04 Notwithstanding anything to the contrary herein, Landlord will not perform work with a cost in excess of \$180,000.00 (One Hundred Eighty-Seven Thousand Dollars) unless Tenant provides funds to the Landlord for the excess cost in advance of the performance of the work.

Section 1.05 Landlord will give Tenant access to inspect the Landlord Work upon ten (10) days written notice, but any such inspection shall be at Tenant's own risk.

Section 1.07. Landlord agrees that Landlord will achieve Substantial Completion of Landlord Work on or before 180 days after the execution of the Lease, in accordance with the Plans unless Landlord's failure so to complete is caused by governmental restrictions, strikes, lockouts, shortages of labor or material, disease, Acts of God, war or civil commotion, fire unavoidable casualty, inclement weather or any cause beyond the reasonable control of Landlord (any one or more of the reasons for Landlord's failure so to complete being herein referred to as "Excusable Delays"), in which event Landlord shall have a period of time equal to the total of all Excusable Delays in addition to the time specified above in which to complete such construction; provided and on the condition that Landlord shall have notified Tenant in writing within ten (10) business days after the first occurrence of any Excusable Delay.

Section 1.08. Substantial Completion in accordance with Plans by Landlord shall be evidenced by approval after inspection by local building inspector. Landlord will provide written Notice of Substantial Completion to Tenant, whereupon the rent due shall be prorated so that the balance of the month after Substantial Completion shall be paid at the full monthly rent; specifically, the rent for the balance of the month after Substantial Completion shall be equal to: (38,250 divided by the number of days of the month) multiplied by (number of days of the month remaining including and after the date of Substantial Completion). Any rent due for the balance of the month in which Substantial Completion occurs shall be due on the next date that rent is due. Upon Substantial Completion, Landlord agrees to transfer any Contractor warranties of the Landlord Work, which shall be the only warranty of the Landlord Work provided by the Landlord ("Landlord Warranty").

EXHIBIT "C"- 1

REPRESENTATIVE – NOT FINAL

- 180' – 600A 480V Feeder Only
- 600A 480V 2 Section Panel
- 1-45KVA Transformer
- 1-125A 120/208V Panel
- 15-30A 480V Circuit and connections for Pipe Fab Area as requested
- 15-20A 120V Outlets for Pipe Fab Area as requested
- 3-100A 480V Curcuts to Disconnects for Sub Arcs
- 1-30A 480V Disconnect for Shear Area
- 1-40A 480V Disconnect for Press Area
- 70'-400A 480V Feeder
- 400A 480V 2 Section Panel
- 1-45kVA Transformer
- 1-125A 120/208V Panel
- 2-15A 480V Disconnect for Saws
- 1-62A 480V & 1-240V 40A Disconnects for Pipe Profilers
- 1-50A 480V Disconnect for Drill Line
- 1-62A 480V & 1-40A 240V Discnnect for Burn Table
- Power existing cranes and overhead doors

EXHIBIT "D"**ENVIRONMENTAL/HAZARDOUS WASTE AGREEMENT**

Tenant hereby agrees that (1) no activity will be conducted on the Leased Premises that will produce any Substance (as defined below), except for such activities that are part of the ordinary course for Tenant's business activities (the "Permitted Use") provided the Permitted Use is conducted in material compliance with all Environmental Laws (as defined below); (2) the Leased Premises will not be used in any manner for the storage of any Substances except for the storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Materials") provided such Permitted Materials are properly stored in a manner and location in material compliance with all Environmental Laws; (3) no portion of the Leased Premises will be used as a landfill or a hazardous materials dump; (4) Tenant will not install any underground tanks of any type; (5) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (6) Tenant will not permit any Substances to be brought onto the Leased Premises, except for the Permitted Materials described above or upon written permission from Landlord, and if so brought thereon, the same shall be removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws. The term "Substances", as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the use, storage, handling, disposal, transportation or removal of which is regulated, restricted prohibited or penalized by any "Environmental Law", which term shall mean any federal, state or local law, ordinance or other statute of a governmental or quasi-governmental authority relating to pollution or protection of the environment and shall specifically include, but not be limited to, any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and any amendments or successors in function thereto. Upon Landlord's written request, Tenant will provide to Landlord with copies of any applicable material safety data sheets regarding any Substance brought on the Leased Premises, but only to the extent such material safety data sheets are required to be prepared by Tenant pursuant to any Environmental Laws. Landlord or Landlord's representative shall have the right but not the obligation, upon reasonable prior written notice to Tenant, to enter the Leased Premises for the purpose of inspecting the storage, use and disposal of Permitted Materials to ensure compliance with all Environmental Laws. Tenant shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency or Environmental Law. Should it be determined that Permitted Materials are being improperly stored, used, or disposed of, in violation of any Environmental Laws, then Tenant shall immediately take such corrective action as reasonably requested by Landlord to comply with applicable Environmental Laws. Should Tenant fail to commence such corrective action within ten (10) days (or 24 hours in the case of emergency) and thereafter to diligently pursue such corrective action to completion, Landlord shall have the right to perform such work and Tenant shall promptly reimburse Landlord for any and all reasonable, documented and direct costs associated with said work. If at any time during or after the term of the Lease, the Leased Premises are found to be so contaminated by Tenant or caused to be subject to said conditions by Tenant in violation of this Exhibit "D", Tenant shall diligently institute proper and thorough cleanup procedures at Tenant's sole cost.

Exhibit "E"**ADDITIONAL RENT SCHEDULE**

The following is a list of the most recent Additional Rent expenses pursuant to section 4.7 of the Lease and the last known amount for each cost, and whether paid directly by Tenant or reimbursed to Landlord. This is a Triple Net Lease and Tenant acknowledges that Additional Rent may include other expenses based on Tenant's share of VEnergy Industrial Park.

Building II pass-through costs (estimated monthly)	
Security and Cameras	\$ 1,200
CAM	\$ 500
Property Tax	\$ 7,083
Internet	\$ 800
PM	\$ 428
Total	\$ 10,011

SUBSIDIARIES OF REGISTRANT

ENGlobal U.S., Inc.	Incorporated in the State of Texas
ENGlobal Government Services, Inc.	Incorporated in the State of Texas
ENGlobal Technologies, LLC	Incorporated in the State of Texas
ENGlobal Calvert Holdings Ltd.	Ireland
Calvert Group Belgium NV	Belgium

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333- 129336, No. 333-136830, No. 333-252572, and No. 333-269721) and Form S-8 (No. 333-127803, No. 333-161246, No. 333-193214, No. 333-205378, No. 333-239095, and No. 333-259084) of ENGlobal Corporation (the “Company”), of our report dated March 31, 2023, relating to the consolidated financial statements the Company (which report expresses an unqualified opinion and includes an explanatory paragraph relating to a going concern uncertainty), appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2022.

/s/ Moss Adams LLP

Houston, Texas
March 31, 2023

**Certification by the Principal Executive Officer Pursuant
to Section 302 of the Sarbanes-Oxley Act of 2002**

I, William A. Coskey, P.E., certify that:

1. I have reviewed this Report on Form 10-K of ENGlobal Corporation;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d) Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2023

/s/ William A. Coskey
William A. Coskey, P.E.
Executive Chairman

**Certification by the Principal Financial Officer Pursuant
to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Darren W. Spriggs, certify that:

1. I have reviewed this Report on Form 10-K of ENGlobal Corporation;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d) Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2023

/s/ Darren W. Spriggs

Darren W. Spriggs
Chief Financial Officer

Certification by the Principal Executive Officer Pursuant to 18 U. S. C. Section 1350,
as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U. S. C. Section 1350, I, William A. Coskey, P.E., hereby certify that, to my knowledge, the Annual Report on Form 10-K of ENGlobal Corporation for the fiscal year ended December 31, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of ENGlobal Corporation.

Date: March 31, 2023

/s/ William A. Coskey

William A. Coskey, P.E.

Executive Chairman

This certification accompanies this Report on Form 10-K pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

Certification by the Principal Financial Officer Pursuant to 18 U. S. C. Section 1350,
as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U. S. C. Section 1350, I, Darren W. Spriggs, hereby certify that, to my knowledge, the Annual Report on Form 10-K of ENGlobal Corporation for the fiscal year ended December 31, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of ENGlobal Corporation.

Date: March 31, 2023

/s/ Darren W. Spriggs

Darren W. Spriggs
Chief Financial Officer

This certification accompanies this Report on Form 10-K pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.