

TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement:

Associates means related entity/party, employees, servants, agents, contractors, project manager or invitees of a party.

Authority means a local, state or federal government (including a minister, official, department or agency of any government); a corporation, authority or body that is constituted under Law for a public purpose; a holder of a statutory office for a public purpose, or a person charged with the administration of a Law; or a court, tribunal or commission constituted under statute or regulation.

Claim means any allegation, debt, cause of action, liability, claim, cross-claim, proceeding, contribution claim, action, investigation, prosecution, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Complex means the land and all improvements from time to time which comprise the marina complex, including the Hardstand Area.

Contractor means a person (including but not limited to a body corporate) who is engaged by the Customer or Marina to perform works or services on the Craft while it is in the Complex, whether or not that person is an Associate of the Marina.

Cost means any loss, damage, cost, legal costs (on a solicitor own client basis), administration fees, collection fees, expense or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, or direct or indirect.

Craft means the Craft identified at Section C of this Agreement.

Customer means the party identified as the customer in Section A of this Agreement.

Equipment means but is not limited to machinery, equipment, gear, ropes, lines, chains and tackle of, on or attached to the Craft.

Exclusions means the specific services, terms, conditions of matters specified as such in Section H and/or Schedule 1.

Insurances means the insurance policies and minimum cover limits (per occurrence) specified in Section G.

Marina means the party identified as the marina in Section B of this Agreement.

Hardstand Area means that area of the Complex specified by the Marina for the hardstanding of Crafts.

Law means any law in force, available, in effect or applicable within the jurisdiction of this Agreement made by a relevant Authority including, without limitation principals in equity or at common law; statutes, regulations or by-laws; and any rulings, guidelines, directions, awards or codes.

Lifting Fee means the fees payable by the Customer to the Marina under this Agreement as set out in Schedule 1.

Other Charges means any amounts other than the Lifting Fees payable by the Customer to the Marina under this Agreement.

Penalty Interest means the Federal Court of Australia's prejudgement interest rate as amended by the relevant Authority from time to time.

PPSA means *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Property Securities Register maintained under the Personal Property Securities Act 2009 (Cth).

Representative means the party identified as the Customer's representative at Section A of this Agreement.

Rules and Regulations means the rules, regulations or by-laws for the Complex as determined and amended by the Marina in its absolute discretion and notified to the Customer.

Security Deposit means the amount specified in Schedule 1.

Services means the Craft lifting and other services set out in Section H and/or Schedule 1 but specifically do not include any Exclusions.

Special Conditions means any additional document containing special conditions listed in Section H.

Term means the term of this Agreement commencing on the commencement date and ending on the expiry date listed in Section F.

2. AGREEMENT AND TERM

- (a) The Marina must provide the Services to the Customer during the Term.

- (b) The Marina may arrange for any of the Services or part of the Services to be carried out by a Contractor.
- (c) Prior to the commencement of any Services the Customer must obtain the consent of the Marina for any works to the Craft. The Customer must provide all disclosures regarding the works to the Marina including details of Contractors, Associates and risk controls to be implemented.
- (d) If the Marina agrees to continue providing the Services after the Expiry Date:
 - (i) the Services will be provided to the Customer on the terms of this Agreement applicable at the Expiry Date;
 - (ii) during any such period, the Marina may by notice in writing to the Customer increase the Lifting Fees or Cost; and
 - (iii) this Agreement may be terminated by either the Marina or the Customer by giving one month's written notice to the other party.

3. LIFTING FEES AND OTHER CHARGES

- (a) In consideration of the Marina providing the Services and performing its other obligation under this Agreement, the Customer must:
 - (i) upon demand by the Marina, pay all Costs incurred by the Marina or a Contractor in carrying out of any agreed Services to the Craft;
 - (ii) make payments due under this Agreement without set-off, counterclaim, withholding or deduction and by any method the Marina reasonably requires; and
 - (iii) pay to the Marina Penalty Interest on any Lifting Fee or other moneys due by the Customer to the Marina but unpaid for 14 days, from the due date up until the money is received by the Marina;
 - (iv) pay direct to White Bay 6 Marine Park sub-licensee/contractors for Services to the Craft on demand before the Craft is returned to the water or leaves the Complex.
- (b) All accounts and/or invoices rendered by the Marina to the Customer are on the basis of "errors and omissions excepted" ("E & OE") and may be amended. The parties will be responsible to pay or be credited such properly amended account and/or invoices.

4. CUSTOMER'S OBLIGATIONS & ACKNOWLEDGEMENTS

- (a) During the Term the Customer agrees to:
 - (i) not, under any circumstances attempt to undertake any of the Services;
 - (ii) not use the any plant or equipment owned or provided by the Marina to perform any of the Services;
 - (iii) not obstruct in any way the provision of the Services;
 - (iv) ensure that the Craft is kept in a clean, sound, seaworthy and watertight condition;
 - (v) at its Cost, observe perform and fulfil all requirements of any Law affecting the Craft and ensure that all licences and registrations for the Craft are maintained;
 - (vi) not do anything on the Complex or the Craft which is immoral, unlawful, noxious, offensive, hazardous, or likely to cause nuisance or injury to the Marina or to any other person;
 - (vii) keep the Craft free of people, animals, pets, pests, insects and vermin while the Services are being performed;
 - (viii) follow the reasonable directions of the Marina or its Associates and ensure that the Customer's Associates do the same; and
 - (ix) comply with the Rules and Regulations, including ensuring access to the Hardstand Area is restricted to those who have been granted permission by the Marina and have completed any and all inductions, safety briefings, and qualifications as required by management.
- (b) The Customer acknowledges and agrees that:
 - (i) the Marina's obligations under this Agreement are limited to providing the Services which do not include the Exclusions, inspecting, assessing or assuming responsibility for the condition of the Craft;
 - (ii) the Marina reserves the right to refuse to lift the Craft if, upon inspection, it believes the Craft is unsafe to lift, will cause damage to the Craft, or if the necessary information has not been provided.
 - (iii) the Craft and all property which may be on the Craft during the Term is at the sole risk of the Customer.
 - (iv) it must notify the Marina in writing of all Contractors engaged to work on the Craft. All Contractors must be approved by the Marina, register their attendance daily, complete all required inductions, provide necessary documentation including insurance, and abide by all Rules and Regulations;
 - (v) Services performed by the Marina may be prioritised over those requested by the Customer or Contractor to maintain efficient operations; and

- (vi) the Marina and its Associates do not warrant or represent in any way the quality or standard of services of any contractors engaged by the Customer to undertake work or services on the Craft.
- (c) Nothing in this clause will remove or abrogate the non-excludable warranties or guarantees provided under the Competition and Consumer Act 2010 (Cth) as amended or the Australian Consumer Law, or any other Law that may apply to the extent that they are applicable to this Agreement.

5. RULES AND REGULATIONS

The Marina reserves the right to create, amend or cancel any Rules and Regulations as the Marina considers is necessary for the proper management, safety, care or cleanliness of the Marina's property and the Complex. The Customer and its Associates must comply with any Rules and Regulations and any amendments will bind the Customer when notice of them has been given by the Marina or its Associates to the Customer in writing, any public notice board at the Complex or on its website. The Marina will not be liable for any non-enforcement concerning any of the Rules and Regulations.

6. CUSTOMER'S REPRESENTATIVE

The Customer irrevocably authorises:

- (a) its Representative to do all things on behalf of the Customer; and
- (b) the Marina to contact, liaise with and deal with the Customer's Representative,

in respect of all matters relating to or arising in connection with this Agreement. To avoid any doubt, any action or inaction of the Customer's Representative will be considered to be the action or inaction of, and be binding on, the Customer for the purposes of this Agreement.

7. RELOCATION

- (a) The Marina is irrevocably authorised to move and store the Craft, and to make reasonable use of the Craft's Equipment, at either a place within the Complex or another place where:
 - (i) relocation is required or desired due to operational requirements, the Marina is irrevocably authorised to relocate the Craft to another location within the Complex;
 - (ii) the Craft has sunk or partially sunk or appears at risk of sinking;
 - (iii) the Craft poses a risk to the safety of any persons, property, other vessels, the environment or waterway;
 - (iv) in the event of any default and/or termination of this Agreement or where the Marina is exercising a right or discharging an obligation under this Agreement;
 - (v) the Marina is complying with a lawful direction or notice issued by a relevant Authority or complying with any relevant Law; and/or
 - (vi) the Marina is responding to, or preparing for, an emergency,while the Craft is anywhere within the Complex.
- (b) For the purposes of clauses 7(a), 14(a) and 16:
 - (i) any such taking of, moving, recovery, removal and/or storage will be at the sole Cost and risk of the Customer and will be a debt due and owing to the Marina; and
 - (ii) the Marina will not be responsible for the condition of the Craft (and any property or Equipment on the Craft) and if the Craft (or part thereof) is damaged or in need of maintenance or repair the Marina may, but is not obligated to, rectify or undertake repairs to the Craft and/or Equipment required to safely exercise the Marina's rights.

8. LIABILITY AND RISK

- (a) The Customer acknowledges by entering into this Agreement that the Customer has relied upon its own enquiries and satisfied itself as to the condition and suitability of the Complex, the access to the Complex and the Marina's property.
- (b) To the full extent permitted by Law, the Customer assumes all risk and liability for and in respect of the use of the Complex and other facilities of the Marina and the use of the Customer's Craft and Equipment, whether by the Customer or its Associates.
- (c) The Customer and its Associates are responsible for all rubbish, refuse and discharges associated with or originating from the Craft whatsoever including without limitation bilge, engine and other oils, discarded Equipment, fire extinguishers, gas bottles, flares, barnacles, marine growth and paint scraping, etc.
- (d) The Customer acknowledges and agrees that the Craft may undergo fair wear and tear and deteriorate whilst in the Complex or being lifted. This may include but not be limited to oxidization, corrosion, condensation, perishing of plastics, rubbers, seals and hoses, development or increase of leaking, water ingress, deterioration in electrical system, settling and sedimentation of oils and petroleum products, seizure

of moving parts due to lack of use and deterioration of other mechanical, paint work, materials, hull and built up structure, deterioration arising from the Craft being in the said facility or arrangement for a long period.

9. INDEMNITY

The Customer will be liable for and indemnifies the Marina and its Associates from and against any and all Costs and Claims arising from or in connection with any action or inaction caused or contributed to by the Customer or its Associates including without limitation: any injury or death of any person; any loss, damage or destruction of property belonging to the Marina, its Associates or another person; and/or default under this Agreement, except to the extent that the Marina or its Associates caused or contributed to the Costs or Claims.

10. AUSTRALIAN CONSUMER LAW

All conditions and warranties, express or implied, whether arising by Law or otherwise, as to the condition, suitability, quality, fitness or safety of the Complex provided by the Marina are hereby excluded or limited. Nothing in this document will remove or abrogate the non-excludable warranties or guarantees provided under the Competition and Consumer Act 2010 (Cth) as amended or the Australian Consumer Law, or any other Law that may apply to the extent that they are applicable to this Agreement.

11. INSURANCE

- (a) The Customer must take out and maintain the Insurances on terms reasonably required by the Marina.
- (b) The Customer's Insurances must be on a 'claims occurring' basis and provided by insurers that are authorised under a relevant Law or by a relevant Authority to provide the Insurances in Australia.
- (c) The Customer must give the Marina:
 - (i) evidence, including but not limited to a certificate of currency and policy documents, that it has taken out and holds the Insurances as and when reasonably required by the Marina; and
 - (ii) immediate notice if any of the Insurances are renewed, replaced, cancelled, limited or excluded.
- (d) The Customer must not do anything which may affect rights under the Insurances or any insurance policy taken out by the Marina or another person.

12. PPSA

- (a) The Customer as the beneficial owner states that it is absolutely entitled to grant this security interest and hereby charges in favour of the Marina all of its personal property present and future and wheresoever situated with the payment to the Marina of all monies secured by this Agreement. Such security interest will be a non-circulating and specific security interest on all of the abovementioned personal property now or in the future belonging to the Customer and a circulating security interest on all other personal property of the Customer.
- (b) The Customer authorises the Marina:
 - (i) to undertake and the Customer agrees to pay to the Marina whether in advance or in arrears at the discretion of the Marina for searches undertaken of the PPSR, insurers, registration authorities, government authorities, Roads and Maritimes Services, courts and police for the purposes of ascertaining as to the Customer's and the Craft's status, applicable finance, encumbrances or other noted items in the PPSR and relevant information as to title and condition concerning the Craft; and
 - (ii) pursuant to Section 18E of the Privacy Act 1988 (Cth) the Customer authorises the Marina in waiver of the Customer's rights to make confidential enquiries of and obtain information from finance providers, bankers, insurers, registration authorities, government authorities, Roads and Maritime Services, courts and police with respect to the Craft, its status, title, condition and with respect to the Customer and the Customer's legal status including any proceedings against the Customer and/or the Craft, and any indebtedness of the Customer and/or the Craft as to any specific credit debt and credit generally and to obtain information including but not limited to a payout figure, daily rate of interest, the nature of any security or finance interest claimed over the Craft or with respect to the Customer. The Customer authorizes the Marina to communicate to and receive from the said persons and entities what would otherwise be confidential information concerning the Customer and Customer's indebtedness and the indebtedness of the Craft for the purposes of this Agreement including securing payment or repayment as the case may be for the Craft, discharge of indebtedness and remuneration of and payment to the Marina and/or the Marina's costs and expenses including but not limited to legal costs and expenses under this Agreement.
- (c) For the purposes of this paragraph: (i) "Financing statement" has the meaning given to it by the PPSA; (ii) "Financing change statement" has the meaning given to it by the PPSA; (iii) "Security Agreement" means the security Agreement under the PPSA created between the Customer and the Marina whether described as a security interest, charge or other expression herein and without limiting those other expressions; and (iv) "security interest" has the meaning given to it by the PPSA and without limiting the meaning in the PPSA includes this document however described.

- (d) The Customer agrees that its execution of the respective parts of this Agreement and the provisions set out herein constitute a security Agreement for the purposes of the PPSA and create the security interest as set out in the respective executed document.
- (e) The Customer must indemnify or pay the Marina at the Marina's sole discretion for all Costs incurred or to be incurred in registering a financing statement or financing change statement in the PPSR or releasing any interest thereunder.
- (f) The Customer must not create or set in chain to be created a financing statement or financing change statement in respect of a security interest without the prior written consent of the Marina.
- (g) The Customer will not register, cause to be registered or do any action or execute anything which may enable the registration of a financing statement or a financing change statement in relation to the Personal Property secured herein in favour of a third party without the prior written consent of the Marina.
- (h) The Customer must immediately advise the Marina of any material change in its business practices, corporate structure, directorship, shareholdings, financial structure, solvency or personal bankruptcy which would otherwise jeopardise the security interests of the Marina.
- (i) The Marina and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by the Agreement of guarantee.
- (j) The Customer hereby waives the Customer's rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA.
- (k) The Customer waives its rights as a grantor and or a debtor pursuant to sections 142 and 143 of the PPSA.
- (l) The parties agree that the Customer is the debtor for the purposes of Section 275(6) (a) of the PPSA and that the parties will not disclose information of the kind mentioned in Section 275(1) of the PPSA. This clause constitutes a confidentiality Agreement for the purpose of Section 275(6) (a) of the PPSA.
- (m) In the event of the Customer's default of this Agreement, the Marina may appoint a receiver and or manager of the Customer as the case may be without derogating from its other rights under this Agreement.

13. DEFAULT

Where an agreement is made for payment to be made after launch, each of the following is an event of default:

- (a) the Lifting Fee, Security Deposit, Other Charges, Costs or any other amounts payable to the Marina or the Contractor under this Agreement remains unpaid for seven (7) days after demand for payment has been made in writing by the Marina to the Customer;
- (b) the Customer is in default of this Agreement, of any relevant Law, the requirements of any Authority and/or the Rules and Regulations and such default continues for a period of seven (7) days or more after notice in writing has been made by the Marina to the Customer requiring remedy of same;
- (c) the Customer is in default of any other Agreement with the Marina relating to the Craft including without limitation any berthing, storage or other services agreement;
- (d) the Customer enters into any form of bankruptcy, liquidation, insolvency or is wound up or dissolved, enters into a scheme of arrangement for creditors, is placed under administration, or trustee in bankruptcy, a receiver or receiver and manager is appointed; or
- (e) if the Customer enters into any discussion or negotiation with creditors, is subject to execution of debt proceedings, examination summons, writ of execution, charging order, injunction, has issued against it a Statement of Claim or Statutory Demand or any equivalent event however described.

14. CONSEQUENCES OF DEFAULT

- (a) Without prejudice to the marina's rights in law or equity, if the Customer is in default under this Agreement the Marina:
 - (i) may suspend all or part of the Services and/or this Agreement;
 - (ii) may exercise any of its rights under clause 12 including taking any steps required to perfect and register a security interest over the Craft and/or Equipment to secure any amounts and Costs owing to the Marina;
 - (iii) subject to any prior demand or notice required under this Agreement or by Law, the Marina may terminate this Agreement by notice in writing to the Customer;
 - (iv) may remove the Craft to another area within the Complex or an offsite storage area; and
 - (v) will have a lien over the Craft and the Customer's Equipment on the Craft until the default is remedied and/or all outstanding moneys are paid and shall be entitled to take such action as may be necessary to prevent the removal of the Craft from the Complex or offsite storage area.
- (b) Following the expiry, termination or end of this agreement, the Customer must:

- (i) stop using and fully vacate the Hardstand Area;
 - (ii) remove the Craft and all Equipment from the Complex (unless permitted us use any part of the Complex under another agreement with the Marina); and
 - (iii) pay all amounts payable to the Marina under this Agreement including reimbursement for the Cost of Rectifying any damage caused by the Customer,
by the time specified in a written termination notice from the Marina (subject always to the rights of the Marina under this Agreement to retain possession of, to sell, or dispose of, the Craft and/or Equipment).
- (c) Termination of this Agreement will not affect any accrued rights and remedies either party may have against each other.

15. POWER OF ATTORNEY

The Customer irrevocably appoints the Marina, the Marina's Associates and any receiver or manager appointed by the Marina to be the Customer's joint and several attorneys to execute, sign and perform in the Customer's name and on its behalf all agreements, instruments, acts and things whatsoever:

- (a) which the Customer is required or reasonably expected to execute, sign and perform under this Agreement; and
- (b) in order to exercise the rights or powers conferred on the Marina, or any receiver or manager appointed by the Marina (as the case may be), under this Agreement including without limitation under Clause 16.

16. POWER OF SALE AND DISPOSAL

- (a) If the Customer fails to perform their obligations under Clause 14(b) the Customer authorises the Marina to take possession of the Craft, its fittings and/or contents and authorises the Marina to sell the Craft and its Equipment fittings and/or contents either by public or private sale.
- (b) The Craft may be sold at a publicly advertised auction, with the auction being advertised at least seven (7) days (or another time prescribed by Law) before it occurs.
- (c) If a public auction is not practical, the Craft may be sold by private sale under the following conditions:
 - (i) at least seven (7) days (or another time prescribed by Law) notice of the private sale must be given to all parties who have an interest in the Craft;
 - (ii) the Marina must reasonably believe that the best price will be achieved by private sale; and
 - (iii) the Marina must take reasonable care to ensure that the Craft is sold for the best price obtainable in the circumstances, which may include obtaining offers from multiple buyers or obtaining and following the advice of a professional valuer.
 - (iv) The Customer authorises the Marina to charge all Costs relating to the sale, taking possession and any unpaid fees and charges against the Customer, which will be a debt due and owing to the Marina.
 - (v) If the Craft is sold, the sale proceeds will be distributed in the following order of priority:
 - (A) firstly, to the Marina in respect of all Costs (including those incurred to sell the Craft) and debts owed by the Customer;
 - (B) secondly, to any other claimant or Authority who holds an interest in the Craft or has the authority to receive funds and provides sufficient evidence of such to the Marina; and
 - (C) lastly, any remaining funds from the net sale proceeds to the Customer.
- (d) If the Marina has made all reasonable efforts to sell the Craft but it remains unsold, or (in the reasonable opinion of the Marina) if the Craft is in such poor condition that it needs to be disposed of (including without limitation where it is in disrepair, sinking, or posing an environmental hazard), the Customer irrevocably authorises the Marina to dispose of the Craft in any way they see fit. The Customer will be responsible for all Costs involved in the disposal as a debt due and owing to the Marina.

17. MISCELLANEOUS

- (a) If the Customer seeks to substitute another vessel for the Craft then it must give prior written notice to the Marina. If the Marina consents, the parties must execute a new agreement (on terms and conditions acceptable to the Marina acting reasonably) to replace this Agreement.
- (b) The rights granted by this Agreement is personal only. Nothing in this Agreement will confer on the Customer any right as a tenant of the Complex or the Marina's property, nor create the relationship of landlord and tenant.
- (c) The Customer certifies that it is the legal and beneficial owner or duly authorised agent of the owner of the Craft and that the Customer will be personally liable for all Costs and Claims whatsoever nature arising out of this Agreement.
- (d) The Customer states as an essential term of this Agreement that the Craft is not the subject of any defect notice, registration cancellation, suspension, levy of debt, proceeds or crime order, injunction, charging

order, seizure, confiscation or similar and is not stolen or otherwise illegally obtained or held, nor are there any proceedings against the Customer or the Craft with respect to defect notice, registration cancellation, suspension, levy or debt, proceeds or crime, injunction, charging, seizure, confiscation or similar.

- (e) The Customer must comply with and must cause all of its Associates to comply with the requirements of all Laws relating to the use and occupation of the Complex and Marina's property, including any requirement relating to pollution and the prevention of potential harm to the environment.
- (f) A notice must be in writing, in English and signed by the party giving it, or by their agent and delivered by hand or sent by prepaid post or email to the party's address specified in this document, or any other address notified by a party to the other party as its address for service. A notice is taken to be received at the times specified below:
 - (i) if hand delivered – when delivered;
 - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia); or
 - (iii) if sent by email – when the sender's email system generates a message confirming successful transmission of the entire document.
- (g) This Agreement constitutes the whole agreement between the Marina and the Customer in relation to its subject matter and the Customer warrants that it has not relied upon any statement, representation, or warranty made by the Marina or its Associates which is not expressed in this Agreement.
- (h) Time is of the essence in this document in respect of an obligation to pay monies.
- (i) The parties to this Agreement agree to do all things, take all steps necessary and execute all relevant documents to give commercial effect to this Agreement.
- (j) In this clause the expressions "GST", "supply", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999. Unless otherwise expressly stated all amounts stated to be payable under this Agreement are exclusive of GST. If GST is imposed on any supply made by the Marina under or in accordance with this Agreement, the Customer must pay to the Marina an additional amount equal to the GST payable on or for the taxable supply.
- (k) Rights accrued to a party up to the expiry, termination or replacement of this Agreement and indemnities given by a party under this Agreement survive the expiry, termination or replacement of this Agreement. It is not necessary for the Marina to incur Cost or make payment before enforcing a right of indemnity under this Agreement.
- (l) The Customer must not assign, sublet, part with possession or encumber this Agreement or the rights and obligations under it without the prior written consent of the Marina, which will not be unreasonably withheld.
- (m) An obligation on, warranty by, or right of two or more persons, or a party that comprises two or more persons, is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (n) The parties agree that this Agreement may be signed by identical counterparts (which may be a physical or electronic copy) and each counterpart will be deemed to be an original and together they constitute one document once the counterparts have been exchanged (including by electronic transmission) by the parties.
- (o) To the extent of any inconsistency between the Special Conditions and any other provisions of this Agreement, the Special Conditions will prevail.
- (p) If any part of this Agreement is unenforceable, illegal or void then it may be severed and the rest of this Appointment shall remain in force with any necessary interpretive amendments being made.
- (q) This Agreement is governed by the Law in force in the Australian state or territory in which the Complex is situated. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that state or territory, and any court that may hear appeals from any of those courts for any proceeding in connection with this Agreement, and waives any right it may have to claim that those courts are an inconvenient forum.