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**DEFENCE**

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1. The Respondent submits that the Claimants application involves, in the opinion of its Legal Department, arguments relating to complex points of law and as such it submits this dispute falls outside the scope of the scheme pursuant to CISAS rule 2 (j) , no defence to this claim in arbitration proceedings should be required.
2. The Respondent has made the above point at length to CISAS administration, who have decided, over its strong objections, that this case is suitable for arbitration, it is the opinion of the administrators, who to the best of the Respondents knowledge have no legal training whatsoever, that this case does not involve complex legal arguments, they have directed that we proceed with this and several other claims using this template.
3. CISAS, is an informal adjudication scheme, it is not a court of law, as such CISAS rule 2 (j) exists to prevent Claimants arguing complex points of law in adjudication proceedings, which are not suitable to hear these arguments. Any claims involving complex legal arguments should be rejected by administrators in accordance with the rules.

Due to the above, not unreasonably, the members of staff employed by the Respondent to reply to CISAS claims have no formal legal training, and are not qualified to respond to the legal issues raised by the Claimant, or provide legal judgments and rulings in support of its position, therefore, the Claimants Legal arguments will not be addressed in this defence.

4. The Respondents Legal Department again, not unreasonably are of the view that they should not have to submit defences to CISAS claims, based on points of law in support of its position, due to the rules, and its opinion that CISAS is not a suitable forum to hear these arguments.
5. The Respondent submits that if the Claimant wishes to argue points of law, they should be directed to their local county court, where their legal arguments can be made in a court of competent jurisdiction, defended by a representative of the Respondent with suitable legal qualifications and ruled on by a Judge. Judges are the only people who can rule with authority on issues on points of law.

In addition, neither party in this claim has the right of appeal if it feels, that CISAS incorrectly rules on the complex points of law raised.

6. The adjudicator whilst obliged to rule in line with existing law, can only rule on the information before them, they are not, to the best of the Respondents knowledge, required to seek out rulings and decisions, made in previous court cases in support of the Respondents position, this places a significant imbalance in favour of the Claimant into these adjudication proceedings.
7. Points 1-6 as stated above have been put to CISAS administration. The Respondent is extremely disappointed with CISAS' handling of this matter to date.
8. The Respondent objects to CISAS ruling on the attached pages of the Claimants application [ORG1]. These pages include arguments on the following topics.

- Determining what are and are not liquidated damages.
  - The Claimant is referring to Mobile Connections, the Retailer, as an agent of the Respondent and appears to be inferring apparent and ostensible authority in agency law, determining agency status is a complex point of law, best suited to a court.
  - The Unfair Terms in Consumer Contract Regulations.
  - The Claimant is alleging a breach of the Telecommunications Act 2003 by the Respondent, they are making an allegation that the Respondent has acted unlawfully, determining whether or not an unlawful action has taken place, is not in the opinion of the Respondent within the purview of the Adjudicator.
  - The Claimant makes allegations relating to unlawful penalty charges, makes reference to numerous previous court proceedings, including partial extracts from judgments in Crown, High and Appeal court cases, determining what it is not a lawful penalty is not something which can be fairly decided in adjudication proceedings.
9. The Respondent submits that the Claimant entered into a contract with Orange on 20 April 2007 for the supply of network services to two mobile phones. The current terms of which are contained in the Terms and Conditions for the supply of Orange Network Services ("The Contract") [ORG1]. A copy of these terms is supplied with all Orange devices, customers are apprised of the contractual terms and provided with a copy prior to the commencement of the contract.
10. The Respondent is the provider of network services and is not party to any arrangement between the retailer and the Claimant for the refund of line rental (the "cash back offer").

The cash back offer was a separate contract agreed with the Claimant by Mobile Connections after the conclusion of The Contract with the Respondent. In support of this point the Respondent offers the following arguments;

1. When the credit check and security checks required for acceptance of the Respondent's service, as detailed in paragraph 10 of the contract had been completed successfully and the contract was agreed, it communicated this information to Mobile Connections and agreed the payment of commission. At this point the Respondent's business with the Claimant was concluded, it had no further knowledge, information or involvement in any further negotiations which were agreed after "The Contract" was negotiated.
  2. Mobile Connections used the commission paid by the Respondent to finance to "the cash back offer" which they and they alone agreed with the Claimant, this offer could only have been arranged after the Respondent agreed to pay commission to Mobile Connections. Negotiations in relation to the payment of "the cash back offer" could not be carried out until connection to the Respondent's network and the payment of commission to finance this offer had been completed.
  3. How Mobile Connections used the commission paid to them was not a matter within the Respondent's purview, is not something which the Respondent has any or control over and is not something for which it is responsible.
11. The "cash back offer" was solely provided and administered by Mobile Connections who also traded as Dial A Mobile Ltd and is over and above the contract for the provision of network services.

The Respondent has not now, or ever paid cash back to the Claimant or instructed another party to do so on its behalf. The retailer has also not undertaken to pay "the cash back offer" on the

Respondent's behalf or given the impression that it was doing with so with or without our instruction.

To elaborate on the above point regarding the administration of "the cash back offer":

Mobile Connections required the Claimant to present their bills from the Respondent at their premises or provided the Claimant with stamped addressed envelopes, they did this so that the Claimant could send copies of their bills to them after they had received the bills from the Respondent.

Once they received the bills from the Claimant, Mobile Connections processed the payments and provided any sums the Claimant was due under the terms of the contract between the Claimant and Mobile Connections.

The Respondent denies that Mobile Connections were acting as its agent when they agreed the cash back offer with the Claimant. The evidence submitted by the Claimant does not support this.

12. The Claimant remains liable for the full cost of the service plan they have agreed to for the minimum connection period in accordance with the Terms and Conditions for the Supply of Orange Network Services, which state as follows:

### 1. Definitions

**Minimum Term:** the minimum period for the supply of Services as specified in your Service Plan commencing on the date of Registration, where no period is specified in the Service Plan a minimum period of 12 months from the date of Registration will apply.

### 2 your Contract and the Minimum Term your Contract runs for at least the Minimum Term

**2.1** For each Device you own, your Contract starts on the date of Registration and will continue for the Minimum Term and thereafter You have limited rights to terminate your Contract during the Minimum Term as described in Section 4.

#### terminating your Contract during the Minimum Term

**4.2** You may terminate your Contract before the Minimum Term has expired if you pay us:

**4.2.1** all Charges that are due, plus

**4.2.2** a lump sum equivalent to the total of all the monthly or other periodic Charges still remaining on your initial Minimum Term agreement (except in the circumstances set out in Conditions 4.3 and 15.1).

13. The Respondent denies that the above section of the contract is unenforceable or that it is a penalty charge.
14. The Respondent refers the adjudicator to paragraph 14 of the contract, the provision of a phone by the retailer, is irrelevant to this dispute as it forms no part of the Claimants contract.
15. No mention of "the cash back offer" is made in "The Contract".
16. The closure of Mobile Connections which occurred on 31 August 2007 became well known due to press reports on this date, and further reports in the press in the following weeks. Mobile Connections entered administration on 17 September 2007 [Document: ORG 3] the reasons for this are listed by the independent administrator on page 4 of ORG 3, when it became known to

the Claimant that “the cash back offer” would not be paid, the Claimant began to seek release from “The Contract” with the Respondent without agreeing to pay the further charges stipulated in section 4.2 above, despite both contracts being separate and unrelated.

17. The Respondent refers the adjudicator to paragraph 1 above regarding how the terms of “The Contract” were communicated to the Claimant, paragraph 2 of “The Contract” regarding how it commences and the Claimant’s bills in the section labeled “billing details” [Document: ORG 4].

The bills clearly indicate the Claimant’s Service Plan along with the existence of contracts with the Respondent and the length of these contracts in the section labeled “billing details”. The front and the reverse of the bills advise our customers to contact us if they have any queries regarding the bills. The Claimant has used the Respondent’s service, paid these bills without question, query or comment for several months and accepted these contracts.

18. The Respondent draws the attention of the adjudicator in detail to the order form provided by Mobile Connections and submitted by the Claimant with their application [Document: ORG 5].

Of interest in this document specifically is the section labeled tariff details, this shows that the Claimant was entering into a contract with the Respondent, they also show, the cost of this contract, the minutes the Claimant would receive and the duration of the Claimant’s contracts with the Respondent.

This document also shows separately the details of the Claimants cash back. The document was as can be seen printed by Mobile Connections, it makes such statements as “Cashback paid by us” and “When you take out one of our special offer deals you are entitled to claim a cash back”

The Terms and Conditions of “the cash back offer” section 2 & section 4 state:

*“I understand that to claim my cash back credit I must send in my monthly mobile phone bill in the self addressed envelopes provided on a monthly basis and the mobile phone number I am claiming for, is in use and the sim and original phone connected are used together as sold in the contract you obtained and have not been disconnected or I will lose my cashback entitlement for that month”*

*“I understand that if during the promotion period I change my tariff and/or my agreement with the service provider is terminated for whatever reason, and that I must make and receive calls from the paired Handset/SIMcard provided with the contract”*

The Respondent believes this document clearly establishes that there are two separate contracts in existence, one for the provision of network services provided by the Respondent, the other for the provision of “the cash back offer” provided by Mobile Connections alone.

19. The Respondent submits that the entries on the Claimants credit file are an accurate reflection of their payment history, communicated to third parties as agreed by the claimant in paragraph 19 of their contract.
20. The Respondent submits that the Claimant has not substantiated their claim for compensation, nor provided sufficient reason for the terms of the contract to be set aside. The Respondent refers the adjudicator to paragraph 18 of the contract regarding the sums claimed in compensation.

The Respondent believes that the facts stated in this Defence are true.  
I am duly authorised by the Respondent to sign this statement.