



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2 (1) OF THE
SPECIAL INVESTIGATIONS UNIT AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)**

CASE NO: GP11/2022

BEFORE THE HONOURABLE MODIBA J
On 20 MARCH 2024

In the matter between:

SPECIAL INVESTIGATING UNIT

Applicant

and

ESKOM SOC LIMITED

First Respondent

**SYSTEMS APPLICATIONS PRODUCTS
(SOUTH AFRICA) (PTY) LTD**

Second Respondent

ORDER

Having read the papers filed of record and having considered the matter, by agreement between the parties, the following order is made:

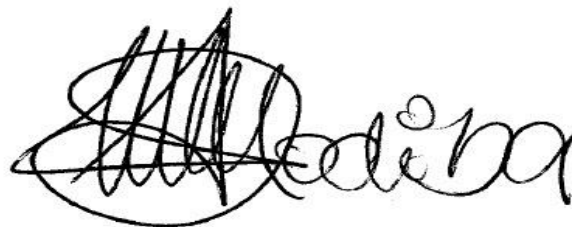
1. The SAP Services Agreement Order Form No. 01 concluded between the first respondent (**Eskom**) and the second respondent (**SAP**) on 25 November 2016 (**the Enabling Agreement**) is declared constitutionally invalid and set aside.
2. The Order Form for SAP Cloud Services agreement concluded between the first respondent (**Eskom**) and the second respondent (**SAP**) on 15 December 2016 (**the Cloud Services Agreement**) is declared constitutionally invalid and set aside.
3. Subject to the provisions of paragraph 4 below:
 - 3.1. the declarations in paragraphs 1 and 2, respectively, of the Enabling Agreement and the Cloud Services Agreement (**the Agreements**) as constitutionally invalid and unlawful shall not affect any right, title or interest which accrued to Eskom or SAP pursuant to these Agreements, including any software licences or services which Eskom received under the Agreements;
 - 3.2. SAP shall be considered to have been fully compensated for all such software licences or services under the Agreements; and
 - 3.3. it is recorded that SAP undertakes:
 - 3.3.1. to treat Eskom's entitlement to continue to rely on the software licences which accrued under the Agreements as unaffected by the Settlement Agreement entered into between the applicant (**the SIU**), Eskom and SAP the terms of which are reflected in this Order (**the Settlement Agreement**) or the declarations of invalidity and unlawfulness in paragraphs 1 and 2; and

3.3.2. not to raise or use the conclusion of the Settlement Agreement, the declarations of constitutional invalidity and unlawfulness of the Agreements in paragraphs 1 and 2, or any other argument related to the matters settled under the Settlement Agreement in any future engagements with Eskom whether in the context of future contract negotiations or the like.

4. Consequent upon the setting aside of the Agreements, SAP shall repay an amount of **R500 000 000.00** (five hundred million Rand) in respect of amounts paid by Eskom to SAP in respect of the Agreements, which shall be in full and final settlement in respect of any claim the SIU or Eskom had or may have against SAP and/or any of its current or former directors, principals or employees arising from or in connection with the Agreements and/or the proceedings under the above case number.
5. Payment in terms of 4 above shall be made by SAP to the SIU within 7 court days of the date of this Order into the following bank account:

Bank:	First National Bank
Account holder:	Special Investigating Unit
Account number:	██████████
Account type:	Public Sector Business Account
Reference:	SYS003ESKR11

6. No order as to costs.

A handwritten signature in black ink, appearing to read 'L. Modiba', with a large, stylized initial 'L'.

JUDGE L. MODIBA
PRESIDENT OF THE SPECIAL TRIBUNAL
20 March 2024

To: Registrar of the Special Tribunal

Attorney for the applicant: Ms S Zondi, Office of the State Attorney, Pretoria.

Attorney for the second respondent: Ms M Rawlinson, Nortons Inc.