Application to invest in GROWTH TREE INVESTMENTS a 12J VCC



**Incorporated in the Republic of South Africa Registration No. 2018/195570/07**

**SARS Reference No. VCC-0113**

**FSP License No.** **49526**

# DEFINITIONS AND INTERPRETATIONS

In this private placement memorandum and in the annexure hereto, unless the context indicates otherwise, the words in the first column have the meanings stated opposite them in the second column, references to the singular include the plural and *vice versa;* words denoting one gender include the other gender; and expressions denoting a natural person include an artificial person and *vice versa*:

“The Act” or “the Companies Act” The Companies Act, 71 of 2008.

“Application form” the application form in respect of the private placement, attached to and forming part of this private placement memorandum.

“Business day” any day other than a Saturday, Sunday, or official public holiday in South Africa.

“12 J” GROWTH TREE INVESTMENTS LIMITED (2018/195570/07), a private company duly registered and incorporated in accordance with the laws of South Africa.

“Certificated shares” 12 J shares, title to which is represented by a share certificate or

other physical document of title;

“CIPC” Companies and Intellectual Property Commission.

“Company secretary” the company secretary of 12 J.

“Commissioner” Commissioner: South African Revenue Services.

“Directors” the directors of the 12 J.

“Documents of title” share certificates, certified transfer deeds in respect of balance

Receipts or any other documents of title acceptable to 12 J in respect of shares.

“FAIS Act” Financial Advisory and Intermediary Services Act, 37 of 2002.

“FSB” Financial Services Board, administrator of the Financial Services Board Act, 97 of 1990, and the FAIS Act.

“Impermissible trade” trade carried on in respect of immovable property other than as

a trade carried on as an hotel keeper, banking as defined in the Banks Act, 94 of 1990 , money-lending or hire-purchase financing, long-term insurance as defined in the Long-Term Insurance Act, 52 of 1998 , short-term insurance as defined in the Short-Term Insurance Act, 53 of 1998 , financial or advisory services (including legal, tax advisors, stock broking, management consulting, audit or accounting), gambling, liquor, tobacco, arms, ammunition, a franchise or any trade carried out mainly outside of South Africa;

“Income Tax Act” the Income Tax Act, 58 of 1962, as amended.

“IRR” internal rate of return.

“Management” any qualified company or qualified natural persons as appointed by the Directors from time to time.

“Offer”, the private placement of class ‘A’ ordinary shares, in terms of an offer “placement” for subscription.

“PPM” Private Placement Document.

“Prohibited investor” any person, firm or other entity, whose holding or intended

holding of shares in 12 J, may in the sole and conclusive opinion of the directors:

* contravene any provisions of section 12 J of the Income Tax Act.
* cause 12 J or any of its shareholders to suffer any regulatory disadvantage or
* preclude 12 J or any shareholder from the benefits afforded in terms of section 12 J of the Income Tax Act.

“Qualifying company” In terms of section 12 J (1) of the Income Tax Act ‘qualifying

company’ means any company if: (a) that company is a resident.

(b) the company is not a controlled group company in relation to a group of companies contemplated in paragraph (d)(i) of the definition of ‘connected person’; (c) the tax affairs of the company are in order and the company has complied with all the relevant provisions of the laws administered by the Commissioner; (d) the company is an unlisted company as defined in section 41 or a junior mining company; (e) the company is not carrying on any impermissible trade; (f) the sum of the investment income, as defined in section 12 E (4) (c), derived by that company during any year of assessment does not exceed an amount equal to 20 percent of the gross income of that company for that year;

“Qualifying share” An equity share held by a venture capital company which is

issued to that company by a qualifying company, and does not include any share which would have constituted a hybrid equity instrument, as defined in Section 8E (1) but for the three year period requirement contemplated in paragraph (*a*) of the definition of “hybrid equity instrument” in that section; or constitutes a third-party backed share as defined in Section 8EA (1);

“Qualifying investor” any investor who is not a prohibited investor.

“ROI” Return on investment.

“SARS” South African Revenue Service.

“Shares” or “Ordinary Shares” ordinary shares with no par value of in the share capital of 12 J; “Unlisted company” a company not listed on a South African exchange or not licensed

in terms of the Financial Market Act of 2012.

“ZAR” or “R” South African Rand, the official currency of South Africa.

1. **INTRODUCTION AND CONSIDERATION:**
   * The purpose of this PPM is to invite qualifying investors to participate in a private placement of securities in 12 J.
   * In terms of section 96(1) (b) of the Companies Act 2008, this document does not constitute an invitation to the public to subscribe for shares in 12 J*.*
   * The information provided in this PPM is dated 4th December 2018.
   * Venture Capital investments are by their very nature exposed to risks. Information provided in this PPM and its supporting documents must be viewed from that perspective.

# INVESTMENT OPPORTUNITY

* + The Purpose of 12 J is to provide a stable regulated platform for qualifying investors to benefit from this unique investment opportunity and a favorable tax regime:
    - The Income Tax Act No. 58 of 1962 (the Income Tax Act) and the provisions contained in Section 12 J of the Act allows for significant tax benefits to taxpayers. Qualifying Investors can deduct the full value of their investment, in a SARS approved Venture Capital Fund, from their taxable income. This is subject to the terms and conditions as set out in the Income Tax Act. Depending on the tax situation of each qualifying investor this may translate up to a 45% reduction in taxes payable by such an investor.
    - The difficulty experienced by small to medium enterprises in securing bank and other traditional sources of funding and the opportunities emanating from the increasingly popular Business Rescue Provisions of the Companies Act of 2008, provide a unique opportunity favoring venture capital investment.
    - Qualifying Investors will benefit from the combined experience and skills of the 12 J management team who share among them a vast experience in business turnaround and management of their own companies. Their invaluable relationships with institutions have already generated several potential qualifying investment opportunities that are currently being evaluated.

# THE OFFER

* + Participating qualifying investors are offered an opportunity to invest cash with a minimum amount of R250 000 into 12 J by subscribing for class “A” ordinary shares in the company. Subject to the terms of the Income Tax Act such an investment will allow for a 100% tax deduction from taxable income (excluding capital gains), in the qualifying investor’s annual tax return for the relevant year of assessment.
  + Qualifying Investors will receive a tax certificate in respect of funds invested.

# INVESTMENT STRATEGY

* 1. **TARGET INDUSTRY**
     + The 12 J identify and invest in small to medium size companies where there exists a realistic prospect that, through a management intervention and capitalisation process, the target company is expected to return a net profit after tax (NPAT) of 10% on funds invested within a period of three years.

# INVESTMENT PROCESS

* + - The Management together with selected specialists will be responsible for identifying and evaluating potential investments presented to the 12 J investment committee. The selection process will consist of a rigorous due diligence process during which independent industry experts and specialist advisors may be appointed to perform an in-depth analysis of critical elements of a potential business. The due diligence process will include amongst others:
      * Confirmation of compliance with the terms and requirements of section 12 J of the Income Tax Act to be a qualifying company.
      * Legal audit covering all agreements, contracts, compliance, and regulatory matters as well as potential litigation assessment.
      * Trademarks, patent, intellectual capital, unique skills/competitive advantage validation.
      * Environmental risk analysis.
      * Pensions liability.
      * Independent valuations by reputable institutions.

Only if this process yields a favorable result will a formal proposal be presented to the Directors who must approve all investments by a majority. The Directors may appoint its own experts to provide it with independent advice. The decision of the Directors is final.

Once the Directors has approved an investment into a qualifying investee company, Management will be responsible for executing the decision and implementing steps to ensure sound corporate governance, continuous monitoring of the financial and management information ensuring all critical decisions are ultimately in the interest of the shareholders.

Management is mandated to ensure that interventions into underperforming investee companies are swift and as extensive as necessary to protect the interests of the shareholders.

# INVESTOR RETURN

* + Subject to the terms of the Income Tax Act an Individual or a Trust will achieve an initial “benefit” of up to 45% on their investment through a reduction in taxes payable. Companies will benefit in a similar fashion with benefit of up to 28%. By investing in a section12 J company the taxpayer is eligible to deduct 100% of their investment from his (non-capital gain) taxable income. This means that before any ROI has been realised by the taxpayer on their investment the taxpayer gains an initial actual tax “saving”/” benefit" equal to the amount they invested multiplied by the tax rate applicable to that taxpayer.
  + Returns to the taxpayer will most probably be in the form of dividends from the 12 J which does not attract tax in the hands of the taxpayer. Dividends withholding tax is paid over by the VCC to SARS, so the taxpayer receives a return net of tax. By reinvesting dividends, qualifying investors may further enhance the tax benefits in order to optimize their returns. Dividend policy will be determined by the board guided by industry best practice.
  + Investors are urged to consult a suitably qualified tax practitioner and familiarise themselves with the terms of section 12 J of the Income Tax Act.

# RISK

* + There are several risks associated with an investment in 12 J. These consists of generic risks and would include amongst others international financial market risk, South African economic and political risk, risk associated with specific qualifying companies, reliance on key personnel as well as Section 12 J Venture Capital specific risks. The latter would include amongst others, loss of Section 12 J Venture Capital status, initial lack of liquidity as investments are typically optimized over a three to seven-year term, and the restrictions and limitations in terms of being limited to purchase “Qualifying” shares in “Qualifying” companies as set out in this PPM.
  + This investment must be viewed as high risk. The tax deductibility of the amount invested in the relevant tax year within which it is invested mitigates this risk to an extent.
  + Several structural and management procedures, some of which are set out in the next paragraph, are aimed at reducing risk.

# RISK MANAGEMENT

* + A highly experienced Board of Directors sharing a vast experience in managing businesses will oversee the company, the Manager’s performance and the maintenance of the 12 J’s VCC status.
  + 12 J will be coordinated in terms of a compliance co – ordination contract.
  + Funds received by 12 J will be invested into a diversified portfolio of unlisted qualifying companies which fit its investment objectives and strictly adhere to the terms stipulated in Section 12 J of the Income Tax Act.
  + Co-operation and co-investing with other section 12 J venture capital companies will be considered when larger investee companies offer suitable value to the shareholders of 12 J
  + In order to ensure optimum benefit for shareholders, cash not invested into qualifying companies during the first 36 months commencing on the date of approval by the Commissioner of a company as a venture capital company, as stipulated by section 12 J of the Income Tax Act, will be invested into suitable investment products. The Directors will always try to minimize risk with such investments.
  + Professional indemnity and fidelity insurance are in place to comply with the requirements of FAIS.

# NATURE OF THE BUSINESS

* + 12 J is a Venture Capital Company registered with the FSB and the SARS as a “Venture Capital Company” in terms of Section 12 J of the Income Tax Act 1962.
  + As prescribed by the Income Tax Act the sole objective of 12 J is the “*management of investments in qualifying companies”.*
  + 12 J will identify and acquire “qualifying shares” in “qualifying companies” as defined by the Income Tax Act. With reference to a “qualifying company” The Income Tax Act stipulates that:
    - The company must be a resident.
    - The company must not be a controlled group company in relation to a group of companies.
    - The company’s tax affairs must be in order (a tax clearance certificate must be requested from SARS to support this requirement).
    - The company must be an unlisted company as defined in (section 41 of the Income Tax Act) or a junior mining company; a junior mining company may be listed on the Alternative Exchange Division (AltX) of the JSE Limited.
    - During a year of assessment, the sum of the investment income derived by the company must not exceed 20% of its gross income for that year of assessment.
    - The company must not carry on any of the following impermissible trades:
      * Any trade carried on in respect of immoveable property, except trade as a hotelkeeper (includes bed and breakfast establishments).
      * Financial service activities such as banking, insurance, moneylending and hire-purchase financing;
      * Provision of financial or advisory services including legal, tax advisory, stock broking, management consulting, auditing, or accounting.
      * Operating casinos or other gambling related activities including any other games of chance.
      * Manufacturing, buying or selling liquor, tobacco products or arms or ammunition; or
      * Any trade carried on mainly outside the Republic.
  + The primary goal of 12 J is the optimization of shareholder value. In order to achieve this goal, the Directors will monitor, facilitate and coordinate any required interventions and enhancements in “qualifying companies” in order to optimise returns to shareholders.
  + Where appropriate, 12 J will exit the investment by disposing of investments for capital gain, whether by outright sale or management buyout. The sale of an investment may be for cash or appropriate securities or a combination of both. In the event that investee companies are listed on one or more stock exchanges the distribution of dividends to shareholders of 12 J may take the form of shares.
  + 12 J may, in due course, be listed on an appropriate Securities Exchange if it is in the interest of shareholders.

# DIRECTORS OF 12 J

* + Stephanus Johannes Jansen van Vuuren CA (SA) 8104085181081
  + Nico Venter
  + Nadia Vorster
  + The Directors have been issued with all 100 class “C” shares in their personal names that will entitle them to 2,5% of all dividends paid by the 12 J.

# COMPLIANCE MANAGERS

* + Regulatory compliance of the 12 J will be co-ordinated by the Compliance Co-ordinator.
  + The Compliance Co-ordinator will be responsible for ensuring continued compliance with all relevant 12 J related regulatory processes including SARS, FSB, FAIS, FIC and CIPC.
  + The Compliance Co-ordinator can charge a monthly management fee.

# COSTS

* + The 12 J is authorised to deduct the following fees:
    - An annual fee of 2% levied on the amount of capital invested by the qualifying investor.
    - A 20% performance fee in year 5
    - Running, Administration and Directors cost will be according to a budget that will be approved before every financial year by the shareholders.
    - Over and above the budgeted expenses ad-hoc professional fees can be paid to outside parties for advice regarding new investments by the 12 J in qualifying companies and must be approved by the Directors.
  + The Directors will always be remunerated in line with industry best practice.

# MANAGMENT

* + The Management will be responsible for all matters relating to qualifying investee companies including the total investment cycle ranging from the identification and provisional selection of appropriate qualifying investments, the optimization of investee companies, identifying and executing the appropriate exit strategies most beneficial to 12 J’s shareholders.
  + Management will source, appoint and monitor suitably qualified business managers/consultants to optimize the activities and returns from the qualifying investee companies if it deems it necessary.
  + Management will be entitled to 100% of Class B shares that will entitle them to 20% of all dividends paid by the 12 J.

# SALE OF SHARES

* + Investors should view their investment in 12 J as a medium-term investment and the premature re-sale of shares within the first five years from date of investment is not recommended.
  + However, should an investor wish to sell their shares in 12 J prematurely, the Board of 12 J will endeavour to assist in facilitating the placement of such shares subject to the following considerations.
    - Shareholders are encouraged to first offer the shares to 12 J and existing shareholders.
    - The repurchase price of the shares may be restricted to the value at which the share was purchased or at a discount.

# FINANCIAL INFORMATION

* + The financial year end will be annually on the last day of the month of February.
  + Annual financial statements will be prepared in compliance with IFRS for SMMES.
  + Dividend Policy
    - Ordinary share dividends will be paid at the end of the business year or earlier, at the discretion of the directors.
    - It is the intention of 12 J to return realized investment surpluses as and when they arise to shareholders by way of dividends, subject to Dividend Withholding Tax where applicable.
  + The directors of 12 J have endeavoured to ensure that the terms of this PPM is in line with the terms of the 12 J Memorandum of Incorporation (MOI). In the event of a discrepancy the shareholders agree and authorise the directors irrevocably to procure that the MOI is so amended. In the event that it is necessary to amend the MOI in order to procure the enforcement of any of the provisions of this private placement memorandum or to carry into effect the intention underlying any of the provisions of this private placement memorandum each shareholder agrees to exercise such voting rights and use all other reasonable endeavours (whether by convening any necessary shareholders meeting or executing any written shareholders resolution or voting in favour of any special resolution or otherwise) to procure that the MOI is so amended.

# LOANS BORROWING AND CASH MANAGEMENT

* + At the date of the PPM 12 J has made no loans, cash advances or provided security for any loans on behalf of any person, company or institution.
  + The borrowing powers of 12 J are not limited but all loans have to be approved by the board with a two thirds majority.
  + **Section 12 J of the Income Tax Act requires that “…**at least 80 per cent of the expenditure incurred by the company in that period to acquire assets held by the company was incurred to acquire qualifying shares issued to the company by qualifying companies…”. The period referred to is before “**…**the expiry of a period of 36 months commencing on the date of approval by the Commissioner of a company as a venture capital company in terms of subsection (5)
  + In order to ensure optimum benefit for shareholders, cash not invested in qualifying companies during this period will be invested in suitable investment products as approved by the Directors. Surplus funds generated will be applied to fund further investments in qualifying companies and the running costs of 12 J.

# TERMS OF THE PRIVATE PLACEMENT MEMORANDUM

* + This private placement seeks to raise investment capital through the subscription agreement attached and will issue the shares at one class ‘A’ Ordinary share per R250 000.00 invested by investors in 12 J. The proceeds of the offer will be utilised in compliance with the provisions of Section 12 J of the Income Tax Act No. 58 of 1962 (the Act).
  + Investors wishing to participate in this private placement are required to complete the “undertaking to subscribe” attached to this PPM and return the same to 12 J. Individual investors are required to subscribe for a minimum amount of R250 000 per single addressee acting as principal.
  + If you are in any doubt as to the action that you should take, you should consult your banker, broker, legal adviser, accountant or other professional adviser.

# DETAILS OF PRIVATE PLACEMENT

Details of this private placement are set out below:

* + The minimum number of class ‘A’ ordinary shares an applicant acting as principal may subscribe for is 1 up to a maximum of 20.
  + The subscription is available in a once off lump sum payment only.
  + The subscription price is R250 000 (Two hundred and fifty thousand) per class ‘A’ ordinary share.
  + This subscription will close on 28 February 2020
  + The Directors reserve the right to increase the number of shares offered in order to raise additional capital should demand justify such a decision.
  + The directors of 12 J reserve the right to accept or refuse, in whole or in part, any applications made in terms of the private placement, or to abate any or all applications (whether or not received timeously) in such manner as they in their sole and unfettered discretion may determine.

# SHARE CAPITAL

* + 12 J is authorized in terms of section 36(1) of the Companies Act to issue up to 10 000 000 class ‘A’ Ordinary shares, 10 000 000 class ‘B’ Ordinary shares and 100 class “C” Ordinary shares. In this regard, it is recorded that in respect of everyone class ‘A’ Ordinary shares issued by 12 J to its ‘A’ Ordinary shareholders, the company will issue 1 class ‘B’ Ordinary shares to the Management for a subscription price of R0,01 (one cent) per share. Class “C” shares was issued to the directors of the 12 J.
  + The holders of each class ‘A’ Ordinary share shall have the rights and privileges associated herewith in terms of the Act and the MOI including:
    - The right to be entered in the securities register as the registered holder of such class ‘A’ Ordinary share.
    - The right to receive notice of, attend, participate in, speak at and vote, in person or by proxy, on any matter to be considered at any meeting of the holders of the ordinary shares, on the basis that each class ‘A’ Ordinary share shall confer one vote on the holder thereof at any meeting of the shareholders in the case of a vote by means of a poll;
    - The right to receive a portion of the total net assets of the company remaining upon its liquidation or winding up; and
    - Any other rights attaching to the class ‘A’ Ordinary shares in terms of the Act or any other law.
  + The holders of each class ‘B’ Ordinary share shall have the rights and privileges associated therewith in terms of the Act and the MOI including.
    - The right to be entered in the securities register as the registered holder of such class ‘B’ Ordinary share.
    - The right to receive notice of, attend, participate in, speak at and vote, in person or by proxy, on any matter to be considered at any meeting of the holders of the Ordinary shares, on the basis that each class ‘B’ Ordinary share shall confer one vote on the holder thereof at any meeting of the Ordinary shareholders in the case of a vote by means of a poll;
    - The right to receive a portion of the total net assets of the company remaining upon its liquidation or winding up; and
    - Any other rights attaching to the class ‘B’ Ordinary shares in terms of the Act or any other law.
  + The holders of each class ‘C’ Ordinary share shall have the rights and privileges associated therewith in terms of the Act and the MOI including.
    - The right to be entered in the securities register as the registered holder of such class ‘C’ Ordinary share;
    - The right to receive notice of, attend, participate in, speak at and vote, in person or by proxy, on any matter to be considered at any meeting of the holders of the Ordinary shares, on the basis that each class ‘C’ Ordinary share shall confer one vote on the holder thereof at any meeting of the Ordinary shareholders in the case of a vote by means of a poll;
    - Have no right to receive a portion of the total net assets of the company remaining upon its liquidation or winding up; and
    - Any other rights attaching to the class ‘C’ Ordinary shares in terms of the Act or any other law.

# UNDERTAKING TO SUBSCRIBE

* + Applications must be made on the attached application form only. (Annexure A, B AND C)
  + Applications are irrevocable and may not be withdrawn once submitted.
  + The private placement is for a minimum subscription amount of R250 000 per single addressee acting as principal.
  + Applicants should consult their brokers, bankers or other professional advisers in case of doubt as to the correct completion of the application form.
  + No receipts will be issued for application forms, application monies or any supporting documentation and applications will only be regarded as completed when the relevant electronic transfer has been paid or affected.
  + The directors accept no responsibility, nor will they be held liable, for any damages or loss suffered by any applicant as a result of any inability by such parties to allocate payments, as a result of an illegible irrevocable undertaking to subscribe or otherwise, pursuant to payment being made, or purporting to have been be made, nor will such parties be liable for any damages or loss suffered by any applicant should 12 J or the directors be unable, for any reason whatsoever, to reconcile a payment or purported payment with a particular undertaking to subscribe. In the case of any dispute regarding alleged payment, 12 J and/or the directors, reserve the right to determine in their sole discretion what evidence constitutes satisfactory proof of payment.
  + All alterations on this application form must be authenticated by full signature.
  + To the extent that subscription monies emanate from blocked rand accounts, such applications will be dealt with in terms of the Exchange Control Regulations that may be applicable.

I/we hereby confirm that I/we acknowledge and accept all the terms and conditions of the private placement as contained in the Private Placement Memorandum.

This done and signed at on the day of 2020

Signature Date

Duly Authorized

Full name or Company name