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 INJAZAT TECHNOLOGY FUND B.S.C.

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

INJAZAT TECHNOLOGY FUND B.S.C.,  
 Judgment Creditor,  
 v.  
 DR. HAMID NAJAFI & MICHAEL CUMMISKEY  
 Judgment Debtors.

Case No. CV11-04133 PJH  
 CONFIDENTIALITY ORDER [BY  
 STIPULATION OF THE PARTIES]  
 Judge: Nathanael M. Cousins  
 United States Magistrate Judge

**[if by consent]** The parties to this Consent Confidentiality Order have agreed to the terms of this Order.

Accordingly, it is ORDERED:

**[if not fully by consent]** A party to this action has moved that the Court enter a confidentiality order.

The Court has determined that the terms set forth herein are appropriate to protect the respective interests of the parties, the public, and the Court. Accordingly, it is ORDERED:

1       1.       PURPOSES AND LIMITATIONS

2           Disclosure by the Producing Party is likely to involve production of confidential, proprietary, or  
3 private information for which special protection from public disclosure and from use for any purpose other  
4 than enforcing the Receiving Party's Judgment may be warranted. Accordingly, the Parties hereby  
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The Parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
7 discovery and that the protection it affords from public disclosure and use extends only to the limited  
8 information or items that are entitled to confidential treatment under the applicable legal principles. The  
9 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
10 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set  
11 forth the procedures that must be followed and the standards that will be applied when a party seeks  
12 permission from the court to file material under seal.

13       2.       DEFINITIONS

14           2.1       Challenging Party: a Party or Non-Party that challenges the designation of information or  
15 items under this Order.

16           2.2       "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,  
17 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
18 26(c).

19           2.3       Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
20 their support staff).

21           2.4       Designating Party: a Party or Non-Party that designates information or items that it  
22 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

23           2.5       Disclosure or Discovery Material: all items or information, regardless of the medium or  
24 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in  
26 this matter.

27           2.6       House Counsel: attorneys who are employees of a party to this action. House Counsel  
28 does not include Outside Counsel of Record or any other outside counsel.

1           2.7     Expert: a person with specialized knowledge or experience in matters of post-judgment  
2 collection and asset search and recovery including, but not limited to, location of hidden assets, financial  
3 investigations and accounting forensics, who has been retained by a Party or its counsel to serve as an  
4 expert witness or as a consultant in this action.

5           2.8     Judgment: the judgment entered on May 4, 2012 in the above-captioned litigation.

6           2.9     Non-Party: any natural person, partnership, corporation, association, or other legal entity  
7 not named as a Party to this action.

8           2.10    Outside Counsel of Record: attorneys who are not employees of a party to this action but  
9 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
10 party or are affiliated with a law firm which has appeared on behalf of that party.

11          2.11    Party: any party to this action, including all of its officers, directors, employees,  
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13          2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
14 this action.

15          2.13    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
16 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
17 retrieving data in any form or medium) and their employees and subcontractors.

18          2.14    Protected Material: any Disclosure or Discovery Material that is designated as  
19 confidential.

20          2.15    Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
21 Party.

22     3.     SCOPE

23           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
24 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
25 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
26 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
27 conferred by this Stipulation and Order do not cover the following information: (a) any information that is  
28 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain

1 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,  
2 including becoming part of the public record through trial or otherwise; and (b) any information known to  
3 and/or documents obtained by the Receiving Party prior to the disclosure, or any information and/or  
4 documents obtained by the Receiving Party after the disclosure from a source who obtained the  
5 information lawfully and under no obligation of confidentiality to the Designating Party.

6 4. DURATION

7 Even after final disposition of this proceeding, the confidentiality obligations imposed by this  
8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
9 otherwise directs. Final disposition shall be deemed to be the later of (1) the payment in full of the  
10 Judgment or (2) the execution of an agreement between the Parties that the Judgment has been satisfied in  
11 full.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Producing  
14 Party that designates information or items for protection under this Order must take care to limit any such  
15 designation to specific material that qualifies under the appropriate standards. The Designating Party must  
16 designate for protection only those parts of material, documents, items, or oral or written communications  
17 that qualify – so that other portions of the material, documents, items, or communications for which  
18 protection is not warranted are not swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be  
20 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
21 retard the case development process or to impose unnecessary expenses and burdens on other parties)  
22 expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it designated for  
24 protection do not qualify for protection, that Designating Party must promptly notify all other Parties that  
25 it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but  
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1 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix  
2 the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions  
3 of the material on a page qualifies for protection, the Producing Party also must clearly identify the  
4 protected portion(s) (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or materials available for inspection need not  
6 designate them for protection until after the inspecting Party has indicated which material it would like  
7 copied and produced. During the inspection and before the designation, all of the material made available  
8 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
9 documents it wants copied and produced, the Producing Party must determine which documents, or  
10 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,  
11 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected  
12 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing  
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
14 margins).

15 (b) for testimony given in examinations or in other proceedings, that the Designating Party  
16 identify on the record before the close of the examination that its testimony is protected. This clause  
17 applies as well to any temporary designations of confidentiality that were made pending this order.

18 (c) for information produced in some form other than documentary and for any other  
19 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
20 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or  
21 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
22 identify the protected portion(s).

23 (d) for evidence given pending this Order, all such evidence that has been designated as  
24 confidential pending this Order shall be treated as Protected Material under the terms of this Order.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
26 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
27 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party  
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1 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
2 Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Producing Party's confidentiality designation is  
6 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
7 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality  
8 designation by electing not to mount a challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
10 providing written notice of each designation it is challenging and describing the basis for each challenge.  
11 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
12 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
13 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
14 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14  
15 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its  
16 belief that the confidentiality designation was not proper and must give the Producing Party an opportunity  
17 to review the designated material, to reconsider the circumstances, and, if no change in designation is  
18 offered, to explain the basis for the chosen designation. The Producing Party shall not unreasonably  
19 withhold its consent to the change in designation of a given item from confidential to non-confidential.  
20 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
21 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
22 meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
24 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and  
25 in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial  
26 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
27 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent  
28 declaration affirming that the movant has complied with the meet and confer requirements imposed in the

1 preceding paragraph. Failure by the Designating Party to make such a motion including the required  
2 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
3 designation for each challenged designation. In addition, the Challenging Party may file a motion  
4 challenging a confidentiality designation at any time if there is good cause for doing so, including a  
5 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought  
6 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has  
7 complied with the meet and confer requirements imposed by the preceding paragraph.

8           The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
9 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
10 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
11 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
12 confidentiality as described above, all parties shall continue to afford the material in question the level of  
13 protection to which it is entitled under the default designation until the court rules on the challenge.

#### 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15           7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
16 produced by another Party or by a Non-Party in connection with this case only for the enforcement of the  
17 Judgment. Such Protected Material may be disclosed by the Receiving Party only to the categories of  
18 persons and under the conditions described in this Order. When the action has been terminated, a  
19 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

20           Protected Material must be stored and maintained by a Receiving Party at a location and in a  
21 secure manner that ensures that access is limited to the persons authorized under this Order.

22           7.2 Disclosure of Confidential Information or Items. Unless otherwise ordered by the court or  
23 permitted in writing by the Designating Party, a Receiving Party may disclose any information or item  
24 designated confidential only to:

25                   (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
26 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
27 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto  
28 as Exhibit A;

1 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
2 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
5 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
6 Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed  
10 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their examinations, witnesses in the action to whom disclosure is reasonably  
12 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
13 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
14 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court  
15 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or a custodian or  
17 other person who otherwise possessed or knew the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19 LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation that compels  
21 disclosure of any information or items designated in this action as confidential, that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
23 of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
25 other litigation that some or all of the material covered by the subpoena or order is subject to this  
26 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
28 Designating Party whose Protected Material may be affected.



1           If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
2 court order shall not produce any information designated in this action as confidential before a  
3 determination by the court from which the subpoena or order issued, unless the Party has obtained the  
4 Designating Party's permission. The Designating Party shall bear the burden and expense of seeking  
5 protection in that court of its confidential material – and nothing in these provisions should be construed as  
6 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another  
7 court.

8           9.       A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
9               LITIGATION

10                   (a)       The terms of this Order are applicable to information produced by a Non-Party in  
11 this action and designated as confidential. Such information produced by Non-Parties in connection with  
12 this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions  
13 should be construed as prohibiting a Non-Party from seeking additional protections.

14                   (b)       In the event that a Party is required, by a valid discovery request, to produce a  
15 Non-Party's confidential information in its possession, and the Party is subject to an agreement with the  
16 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

17                               (1)       promptly notify in writing the Requesting Party and the Non-Party that  
18 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

19                               (2)       promptly provide the Non-Party with a copy of the Stipulated Protective  
20 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
21 information requested; and

22                               (3)       make the information requested available for inspection by the Non-Party.

23                   (c)       If the Non-Party fails to object or seek a protective order from this court within 14  
24 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
25 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a  
26 protective order, the Receiving Party shall not produce any information in its possession or control that is  
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1 subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup> Absent a  
2 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
3 court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material  
6 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving  
7 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
8 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
9 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such  
10 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto  
11 as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
13 MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
15 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are  
16 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
17 whatever procedure may be established in an e-discovery order that provides for production without prior  
18 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
19 agreement on the effect of disclosure of a communication or information covered by the attorney-client  
20 privilege or work product protection, the parties may incorporate their agreement in the stipulated  
21 protective order submitted to the court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
24 modification by the court in the future.

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27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1           12.2    Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
2 Party waives any right it otherwise would have to object to disclosing or producing any information or  
3 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right  
4 to object on any ground to use in evidence of any of the material covered by this Protective Order.

5           12.3    Filing Protected Material. Without written permission from the Designating Party or a  
6 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
7 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
8 must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed  
9 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
10 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request  
11 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
12 entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal  
13 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party  
14 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
15 instructed by the court.

16    13.    FINAL DISPOSITION

17           Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
18 Party must return all Protected Material to the Producing Party or destroy such material. As used in this  
19 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other  
20 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned  
21 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the  
22 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,  
23 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
24 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format  
25 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
26 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
28 consultant and expert work product, even if such materials contain Protected Material. Any such archival



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Injazat Technology Fund B.S.C. v. Hamid Najafi and Michael Cumiskey, Case No. CV11-04133 PJH*. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]