

1 MARGARET A. CRAWFORD (Bar No. 238205)
 mcrawford@mcrawfordlaw.com
 2 **LAW OFFICES OF MARGARET A. CRAWFORD**
 3900 Greenwood Ave
 3 Oakland, CA 94602
 Tel: (415) 412-4952

4 JOHN H. "TREY" ALLEN, III
 5 trey@jacksonallenfirm.com
 JENNIFER WILLIAMS
 6 jennifer@jacksonallenfirm.com
JACKSON ALLEN & WILLIAMS, LLP
 7 3838 Oak Lawn Avenue, Suite 1100
 Dallas, Texas 75219
 8 Tel: (214) 521-2300
 Facsimile: (214) 528-7755
 9 *Admitted Pro Hac Vice*

10 Attorneys for Plaintiff
 STRAYFIELD LIMITED

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

13 STRAYFIELD LIMITED)	CASE No. 2:11-cv-02631-LKK-GGH
)	
14 Plaintiff,)	
)	PROPOSED STIPULATED PROTECTIVE
15 v.)	ORDER FOR LITIGATION INVOLVING
)	HIGHLY SENSITIVE CONFIDENTIAL
16 RF BIOCIDICS, INC., AND ALLIED MINDS, INC.)	INFORMATION AND/OR
)	TRADE SECRETS
17 Defendants.)	

20 1. PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely to involve production of confidential,
 22 proprietary, or private information for which special protection from public disclosure and from use for any
 23 purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties to this action
 24 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The Parties
 25 acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery
 26 and that the protection it affords from public disclosure and use extends only to the limited information or
 27 items that are entitled to confidential treatment under the applicable legal principles. The parties further
 28 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them

1 to file confidential information under seal; Civil Local Rule 140 and 141 and General Order 164 set forth
2 the procedures that must be followed and the standards that will be applied when a party seeks permission
3 from the court to file material under seal. The parties further acknowledge that filing documents under seal
4 will only be permitted upon a particularized showing of good cause, or if the information sought to be
5 protected is to be used in potentially dispositive matters, a showing of compelling reasons.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
8 items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
10 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
11 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
16 – ATTORNEYS’ EYES ONLY”.

17 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
18 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
19 and tangible things), that are produced or generated in disclosures, r responses to discovery in this matter, or
20 outside of formal discovery if produced at the request of the opposing party.

21 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
22 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
23 in this action, (2) is not a past employee of a Party or of a Party’s competitor, and (3) at the time of
24 retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

25 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
26 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
27 would create a substantial risk of serious harm that could not be avoided by less restrictive means.
28

1 2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel does
2 not include Outside Counsel of Record or any other outside counsel.

3 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity
4 not named as a Party to this action.

5 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but
6 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
7 party or are affiliated with a law firm which has appeared on behalf of that party.

8 2.11 Party: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
11 this action.

12 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
13 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
14 retrieving data in any form or medium) and their employees and subcontractors.

15 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
16 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
18 Party.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
22 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
23 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
24 conferred by this Stipulation and Order do not cover information that is in the public domain at the time of
25 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving
26 Party as a result of publication not involving a violation of this Order, including becoming part of the public
27 record through trial or otherwise.

28

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
3 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
4 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
5 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
6 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions
7 or applications for extension of time pursuant to applicable law.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
10 Party that designates information or items for protection under this Order must take care to limit any such
11 designation to specific material that qualifies under the appropriate standards after specific review of the
12 particular document. To the extent it is practical to do so, the Designating Party must designate for
13 protection only those parts of material, documents, items, or oral or written communications that qualify –
14 so that other portions of the material, documents, items, or communications for which protection is not
15 warranted are not swept unjustifiably within the ambit of this Order.

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

20 If it comes to a Designating Party’s attention that information or items that it designated for
21 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
22 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
24 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

25 Material that qualifies for protection under this Order must be clearly so designated before the
26 material is disclosed or produced.

27 Designation in conformity with this Order requires:

28 (a) for information in documentary form (e.g., paper or electronic documents, but excluding

1 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
3 contains protected material. If only a portion or portions of the material on a page qualifies for protection,
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings
5 in the margins) and must specify, for each portion, the level of protection being asserted.

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

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
18 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
19 protected testimony and specify the level of protection being asserted. When it is impractical to identify
20 separately each portion of testimony that is entitled to protection and it appears that substantial portions of
21 the testimony may qualify for protection, the Designating Party may invoke on the record (before the
22 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
23 portions of the testimony as to which protection is sought and to specify the level of protection being
24 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21
25 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
26 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
27 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
28 EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
2 proceeding to include Protected Material so that the other parties can ensure that only authorized individuals
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
4 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 Transcripts containing Protected Material shall have an obvious legend on the title page that the
7 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
8 line numbers as appropriate) that have been designated as Protected Material and the level of protection
9 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
10 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
11 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
13 be treated only as actually designated.

14 (c) for information produced in some form other than documentary and for any other
15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the information or item
18 warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and
19 specify the level of protection being asserted.

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
21 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
22 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
23 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation
28 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant

1 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
4 providing written notice of each designation it is challenging and describing the basis for each challenge.
5 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
6 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
7 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
8 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 10
9 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
10 belief that the confidentiality designation was not proper and must give the Designating Party an opportunity
11 to review the designated material, to reconsider the circumstances, and, if no change in designation is
12 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
13 of the challenge process only if it has engaged in this meet and confer process first or establishes that the
14 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
16 the Designating Party shall file and serve a motion to retain confidentiality in compliance with Civil Local
17 Rules 140, 141 and 141.1 and General Order 164 if applicable within 21 days of the initial notice of
18 challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their
19 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming
20 that the movant has complied with the meet and confer requirements imposed in the preceding paragraph.
21 Failure by the Designating Party to make such a motion including the required declaration within 21 days
22 (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged
23 designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation
24 at any time if there is good cause for doing so, including a challenge to the designation of a deposition
25 transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
26 competent declaration affirming that the movant has complied with the meet and confer requirements
27 imposed by the preceding paragraph.

28 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

1 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
2 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
3 Designating Party has waived the confidentiality designation by failing to file a motion to retain
4 confidentiality as described above, all parties shall continue to afford the material in question the level of
5 protection to which it is entitled under the Producing Party's designation until the court rules on the
6 challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
9 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
10 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
11 persons and under the conditions described in this Order. When the litigation has been terminated, a
12 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

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

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
16 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
17 item designated "CONFIDENTIAL" only to:

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

22 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
23 to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
24 and Agreement to Be Bound" (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
26 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
27 Bound" (Exhibit A);

28 (d) the court and its personnel;

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

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

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

11 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
12 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
16 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto
18 as Exhibit A;

19 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
20 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures
22 set forth in paragraph 7.4(a)(1), below, have been followed;

23 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
24 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as
25 to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, and Professional
28 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (f) the author or recipient of a document containing the information or a custodian or other
3 person who otherwise possessed or knew the information.

4 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

6 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
7 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
8 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
9 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks
11 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
12 her primary residence, (3) attaches a copy of the Expert’s current resume, and (4) identifies the Expert’s
13 current employer(s),

14 (b) A Party that makes a request and provides the information specified in the preceding
15 respective paragraph may disclose the subject Protected Material to the identified Expert unless, within 10
16 days of delivering the request, the Party receives a written objection from the Designating Party. Any such
17 objection must set forth in detail the grounds on which it is based.

18 (c) A Party that receives a timely written objection must meet and confer with the
19 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within
20 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
21 the Expert may file a motion as provided in compliance with Civil Local Rules 140, 141 and 141.1 and
22 General Order 164 if applicable seeking permission from the court to do so. Any such motion must describe
23 the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House
24 Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
25 suggest any additional means that could be used to reduce that risk. In addition, any such motion must be
26 accompanied by a competent declaration describing the parties’ efforts to resolve the matter by agreement
27 (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by
28 the Designating Party for its refusal to approve the disclosure.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving
2 that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the
3 Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

16 If the Designating Party timely seeks a protective order, the Party served with the subpoena
17 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court from
19 which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The
20 Designating Party shall bear the burden and expense of seeking protection in that court of its confidential
21 material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
22 Party in this action to disobey a lawful directive from another court.

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

25 (a) The terms of this Order are applicable to information produced by a Non-Party in
26 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
27 ONLY". Such information produced by Non-Parties in connection with this litigation is protected by the
28 remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a
Non-Party from seeking additional protections.

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

4 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
5 of the information requested is subject to a confidentiality agreement with a Non-Party;

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

9 3. make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court within 14
11 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
12 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
13 protective order, the Receiving Party shall not produce any information in its possession or control that is
14 subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a
15 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
16 court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
26 MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently
28 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving

1 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
2 modify whatever procedure may be established in an e-discovery order that provides for production without
3 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
4 agreement on the effect of disclosure of a communication or information covered by the attorney-client
5 privilege or work product protection, the parties may incorporate their agreement in the stipulated protective
6 order submitted to the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
9 modification by the court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
11 Party waives any right it otherwise would have to object to disclosing or producing any information or item
12 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
13 object on any ground to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. Without written permission from the Designating Party or a
15 court order secured after appropriate notice to all interested persons, a Party may not file in the public record
16 in this action any Protected Material. A Party that seeks to file under seal any Protected Material must
17 comply with Civil Local Rules 140 and 141 and General Order 164. Protected Material may only be filed
18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
19 Pursuant to Civil Local Rule 140, 141 and 141.1 and General Order 164, a sealing order will issue only
20 upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
21 otherwise entitled to protection under the law and upon a particularized showing of good cause, or if the
22 information sought to be protected is to be used in potentially dispositive matters, a showing of compelling
23 reasons. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 141
24 and General Order 164 is denied by the court, then the Receiving Party may file the Protected Material in
25 the public record unless otherwise instructed by the court.

26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
28

1 Receiving Party must return all Protected Material to the Producing Party or destroy such material, although
2 counsel may keep a copy of the case file and court record, including pleadings and written responses to
3 discovery but must continue to maintain the confidentiality of any Protected Material that is kept.. As
4 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,
5 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
6 Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing
7 Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1)
8 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2)
9 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
10 format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
11 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
12 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
13 consultant and expert work product, even if such materials contain Protected Material. Any such archival
14 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17
18
19 DATED: _____
20 Attorneys for Plaintiff
21 Strayfield Limited

22 DATED: _____
23 Attorneys for Defendants
24 Allied Minds, Inc/ and RF Biocidics, Inc.

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: April 25, 2012 /s/ Gregory G. Hollows
27 _____
28 Gregory G. Hollows
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern District
6 of California on [date] in the case of _____ [**insert formal name of the case and the number and**
7 **initials assigned to it by the court**]. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to
9 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]

26
27
28