iCURECELIAC DATA ACCESS AGREEMENT

1. Celiac Disease Foundation (the “PROVIDER”), having a primary place of business at 20350 Ventura Blvd., Ste. 240, Woodland Hills, CA 91364, will provide the RECIPENT (as specified on the attached Appendix) with access to record-level data from PROVIDER’s iCureCeliac® patient registry as set forth on the Appendix attached hereto (the “DATA”).

2. The DATA will be used by RECIPENT for the purpose set forth on the Appendix and for no other purpose (the “RESEARCH”). In the event the RECIPENT wishes to change the RESEARCH, the RECIPENT must obtain the prior written approval of the PROVIDER, which may be withheld in the PROVIDER’s sole discretion.

3. The DATA shall not be further distributed to others by RECIPENT without the PROVIDER’s prior written consent, which may be withheld in the sole discretion of the PROVIDER. Furthermore, the RECIPENT agrees to take appropriate precautions to guard against unauthorized individuals gaining access to the DATA, either accidentally or deliberately. These precautions include the use of firewalls, password protection, and similar practices.

4. The RECIPENT shall have all rights in, and title to, any results of the RESEARCH, except as otherwise set forth in this Section 4, and agrees to acknowledge PROVIDER as the source of the DATA in any publications and/or presentations reporting use of such DATA with the language “The authors would like to thank the Celiac Disease Foundation for the use of iCureCeliacTM data to conduct this study.” The PROVIDER may request status from the RECIPENT on the progress of use of the DATA. The RECIPENT agrees to respond to such requests in a timely manner. The RECIPENT agrees to provide the results of the RESEARCH, including, without limitation, all publications, abstracts and the data specified in the Appendix (the “DERIVED DATA”), to the PROVIDER by no later than the time of publication or such earlier date as is set forth in the Appendix. The PROVIDER shall have the right to issue press releases in respect to its role in providing material used by RECIPENT to obtain RESEARCH results. In addition, the PROVIDER shall have the right to use the DERIVED DATA for its own purposes, and to provide the DERIVED DATA to others to be used by such others for such purposes as PROVIDER shall determine in its sole discretion.

5. Any DATA delivered pursuant to this Agreement is understood to be experimental in nature. The PROVIDER MAKES NO REPRESENTATIONS AND, EXCEPT AS PROVIDED IN SECTION 7 HEREIN, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. The RECIPENT assumes all liability for damages that may arise from its use, or storage of the DATA or any byproducts or derivatives thereof. The PROVIDER will not be liable to the RECIPENT for any loss, claim or demand made by the RECIPENT, or made against the PROVIDER by any other party, due to or arising from the use of the DATA by the PROVIDER, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

6. The RECIPENT agrees to use the DATA in compliance with all applicable statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 to the extent it is applicable. The PROVIDER represents and warrants that it has obtained the approval of such board, that it will conduct the RESEARCH in accordance with the requirements of such board and that it will promptly report to the PROVIDER any failure to so comply. The RECIPENT shall also promptly report to PROVIDER any unanticipated problems involving risks to subjects or others.

7. The PROVIDER represents and warrants that it has materially complied with applicable laws relating to the handling and use of DATA, and is otherwise authorized to provide the DATA to the RECIPENT for purposes set forth in this Agreement. The PROVIDER represents and warrants that proper approval from an Institutional Review Board, or equivalent, and proper informed consent from relevant parties has been obtained in connection with the collection of the DATA, and with respect to its use by the PROVIDER or others in the RESEARCH, including commercial entities for commercial purposes, and that the PROVIDER is otherwise in compliance with laws and regulations which address protection of human subjects.

8. The RECIPENT agrees not to attempt to learn the identity of any person whose information is contained in the DATA, and shall not present or publish data in which an individual can be identified.

9. The RECIPENT agrees to compensate the PROVIDER for the DATA. The compensation may include the payment to the PROVIDER of a fee for the DATA as set forth on the Appendix attached hereto. The PROVIDER will invoice the RECIPENT upon provision of access to the DATA or on an earlier date at the request of the RECIPENT. Payment terms are net 30 days.

10. The PROVIDER and the RECIPENT shall keep confidential all business information or data of the other party which are made available to it hereunder. The obligations of confidentiality shall not apply to information which a party can show was already known to it, information which is or becomes part of the public domain through no fault of it or information which is given to it by a third party who has a right to do so, or information which is independently developed without use of the other party’s information. The requirements of confidentiality shall remain in effect for a period of five (5) years following expiration or termination of this Agreement and are assumed by the parties’ successors and assigns.

11. The RECIPENT agrees to defend, indemnify and hold harmless the PROVIDER, its subsidiaries, parent corporations, affiliates, affiliated hospitals, officers, directors, partners, shareholders, employees, agents, and their successors and assigns (collectively, the “Indemnities”) from and against any claim, suit, demand, loss, damage, expense (including reasonable attorney’s fees of Indemnitee (s) and those that may be asserted by a third party) or liability (collectively, “Losses”) imposed upon the Indemnitee(s) by any third party arising from or related to: (a) any breach of the RECIPENT’s representations and warranties under this Agreement; and (b) the RECIPENT’s use of the DATA, the RESEARCH results and any products or services derived therefrom. The foregoing indemnification shall not apply in the event and to the extent that a court of competent jurisdiction or a duly appointed arbitrator determines that such Losses arose as a result of the PROVIDER’s gross negligence, intentional misconduct or material breach of this Agreement.

12. The PROVIDER acknowledges that the DATA has the potential for carrying computer viruses or otherwise harmful agents and agrees to treat the DATA accordingly, for instance by scanning it with virus protection tools prior to use.

13. Miscellaneous

13.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL AND/OR SPECIAL DAMAGES SUFFERED BY THE OTHER WHICH ARISE OUT OF THIS AGREEMENT OR USE OF DATA OR RESEARCH RESULTS.
13.2 The parties shall be independent contractors. Nothing within this Agreement shall be construed to create a partnership or joint venture between the PROVIDER and the RECIPIENT, nor shall either party’s employees, servants, agents or representatives, whether working for compensation or voluntarily, be considered the employees, servants, agents or representatives of the other. Neither party shall have any express or implied right or authority to assume or create any obligation on behalf of, or in the name of, the other party; or to bind the other party to any contract, agreement or undertaking with any third party.

13.3 If any provision of this Agreement is held to be invalid or unenforceable and it cannot be amended to conform with applicable laws so as to be valid and enforceable, then such provision shall be stricken and the remainder of this Agreement shall remain in full force and effect to carry out intentions of the parties as nearly as reasonably possible.

13.4 Neither party shall be liable for any failure to perform as required by this Agreement to the extent that such failure is due to circumstances beyond such party’s reasonable control.

13.5 This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to any choice or conflict of laws rule or principle that would result in the application of the laws of any other jurisdiction. Each party irrevocably and unconditionally submits any legal action or proceeding relating to this Agreement to the exclusive general jurisdiction of courts located within the State of California and appellate courts thereof and consents that any such action or proceeding may be brought in such courts and waives any objection to personal jurisdiction or venue therein.

13.6 This Agreement, together with the attached Appendix, constitute the entire agreement of the parties with respect to the provision of the DATA and may be amended only by a written agreement signed by the RECIPIENT and the PROVIDER.

13.7 Either party may terminate this Agreement on 30 days prior written notice to the other, provided, however, that (a) termination shall not affect any payments then due hereunder, and (b) Sections 3 – 6, 8, 10, 11 and 13 shall survive such termination. The RECIPIENT shall, upon the termination of this Agreement and at the request of the PROVIDER, return or destroy all provided DATA.

RECIPIENT:___________________
By: _________________________
(Signature)
Name: _______________________
Date: ________________
Title: ________________

PROVIDER: CELIAC DISEASE FOUNDATION

By: _________________________
(Signature)
Name: Marilyn G. Geller
Date: ________________
Title: Chief Executive Officer
APPENDIX TO iCURECELIAK DATA ACCESS AGREEMENT

RECIPIENT:

ACCESS DATE FROM:    ACCESS DATE TO:

RESEARCH:

FEE TO PROVIDER:

DATE TO PROVIDE RESEARCH RESULTS:

DERIVED DATA TO BE PROVIDED UNDER SECTION 4: