

# TOLEDO TELENET INTERNET SERVICE AGREEMENT

(As of July 1<sup>st</sup>, 2010)

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

This agreement sets forth the terms and conditions under which **Toledo Telenet** will provide Internet service to you at your home or business.

**1. The Service.** 1.1 Toledo Telenet Internet Service is a service provided by Toledo Telenet that will provide you interactive access to the Internet as a registered customer or authorized user, subject to the terms and conditions of this Customer Use Agreement ("Agreement"). Toledo Telenet Internet Service is accessible through a personal computer using equipment such as a modem and a network interface card, and software.

1.2 Toledo Telenet will provide you with an Internet connection from a single connection in your home or business via a DSL Broadband Internet Service.

1.2.a "Basic", "Plus" or "Premier" DSL Service or "Bronze", "Silver", "Gold", or "Platinum" FiberNet DSL: Toledo Telenet will provide DSL service and a DSL modem. Toledo Telenet will provide a single dynamic IP address for each authorized modem or computer; OR

1.2.b "Business" DSL Service: Toledo Telenet will provide DSL service and a DSL modem. Toledo Telenet will provide a static block, or "subnet" of IP addresses, as deemed needed, for each authorized modem; OR

1.3 You are entitled to up to 5 megabytes of disk space for your personal web pages. The web space will have the URL of <http://www.toledotel.com/~username/>. Additional disk space will be charged at a monthly rate of \$1.00 per megabyte. Toledo Telenet is not responsible for the content and up keep of personal web pages. Technical support for personal web pages will not be provided.

1.4 No representation, warranty, term or condition other than as specifically set forth in this Agreement shall be binding on Toledo Telenet.

1.5 Toledo Telenet reserves the right to modify the terms of this Agreement, including the charges for installation and service, at any time. Except as otherwise provided in this Agreement, any modification is effective immediately upon posting notification to you by electronic mail, conventional mail, or Web Site, as provided in Section 12. Your continued use of the Toledo Telenet Internet Service following modification to this Agreement shall be deemed as acceptance of such modification.

**2. General Subscriber Obligations** 2.1 You are accepting this Agreement on behalf of yourself and any person who accesses Toledo Telenet Internet Service through your computer, under your screen name or password or through the DSL in your home or business. You assume responsibility to ensure that all such other users understand this Agreement and comply with its terms.

2.2 Toledo Telenet Internet Service is restricted to individuals of at least 18 years of age and business. By subscribing to Toledo Telenet Internet Service, you certify that you are at least 18 years of age and/or an operating business in the State of Washington. Toledo Telenet may, in its sole discretion, accept customers under other billing arrangements.

2.3 You agree to provide Toledo Telenet with accurate, complete and current information, including your legal name, age, address, telephone number(s) and payment data (i.e., credit, debit or charge card numbers and expiration dates) upon subscribing to Toledo Telenet Internet Service. You agree to promptly inform Toledo Telenet if there is any change in the information you provided to Toledo Telenet at the time of enrollment. Failure to provide accurate information constitutes a breach of this Agreement and may result in immediate termination of service to you.

2.4 Toledo Telenet Internet Service is provided to you at your current home or business. You may not transfer your subscription or your rights and obligations under this Agreement to any other person or to yourself at a different location.

### **3. COMPUTER EQUIPMENT REQUIREMENT**

**3.1 CERTAIN MINIMUM CONFIGURATION STANDARDS ARE REQUIRED FOR USING TOLEDO TELENET INTERNET SERVICE. YOU UNDERSTAND THAT TOLEDO TELENET INTERNET SERVICE MAY NOT BE**

**OPERATIONAL WITHOUT THESE MINIMUM REQUIREMENTS WHICH HAVE BEEN IDENTIFIED FOR YOU AND YOU CERTIFY THAT YOUR EQUIPMENT, AT A MINIMUM, CONFORMS TO THIS SET OF TECHNICAL CONFIGURATION REQUIREMENTS.**

- 3.2 IF TOLEDO TELENET INSTALLS DSL SERVICE AT YOUR RESIDENCE OR BUSINESS FOR THE USE OF TOLEDO TELENET INTERNET SERVICE, THE USE OF THIS DSL SERVICE SHALL BE STRICTLY LIMITED FOR THE PURPOSES OF ACCESSING TOLEDO TELENET INTERNET SERVICE.**
- 3.3 FOR DSL USERS, TOLEDO TELENET WILL PROVIDE YOU WITH A DSL MODEM TO ACCESS TOLEDO TELENET INTERNET SERVICE AT INSTALLATION. THE DSL MODEM WILL BE INCLUDED IN THE INSTALLATION FEE. (SEE DSL INSTALL/MODEM AGREEMENT FOR COMPLETE TERMS)**
- 4. EXCEPT FOR DSL MODEM, FOR DSL USERS, AND RELATED CONNECTIONS, YOU ARE RESPONSIBLE FOR PROVIDING, AT YOUR COST, ALL OTHER EQUIPMENT AND CONNECTIONS (E.G. PERSONAL COMPUTER, NETWORK INTERFACE CARDS, ETHERNET HUBS, ETC.) REQUIRED FOR ACCESS TO TOLEDO TELENET INTERNET SERVICE.** The DSL Modem supplied and installed by Toledo Telenet, its agents, employees or contractors, under this Agreement, and the **DSL INSTALL/MODEM AGREEMENT** shall become your property after one year (12 months) of fully paid Toledo Telenet DSL Service. Please see the DSL INSTALL/MODEM AGREEMENT for further terms, restrictions and conditions.

#### **5. Service & Installation Charges.**

- 5.1 You acknowledge receipt of notification that the Toledo Telenet Internet Service provided pursuant to this Agreement is priced subject to the rates in effect or presented at the time of installation and in accordance with the type of connection you select. You further acknowledge that you have been informed of the current Rate Schedule prior to installation and provided with a Rate Schedule.
- 5.2 You agree to pay an installation fee, a monthly recurring charge, and all charges for use of Toledo Telenet DSL Service under your account at the rates in effect during the billing period in which the charges were incurred. You agree to pay any local, state and/or federal taxes and fees imposed or levied on or with respect to your subscription to or use of Toledo Telenet Internet Service.
- 5.3 Toledo Telenet reserves the right to change the amount of fees and charges from time to time at its discretion and upon 30 days notice to you in accordance with Section 1.4.
- 5.4 Installation fees are due at the time of installation. Monthly charges are due and payable the 9<sup>th</sup> of each month. Failure to pay the full amount of your account balances 30 days in advance will cause disconnection of service. Toledo Telenet will charge a returned check fee of \$20.00.
- 5.5 If you discontinue service or are disconnected, you agree to pay a reconnect charge before reconnection. You further agree to be charged and to pay any outstanding balance in the event of cancellation, disconnection or termination of your account.
- 5.6 You will be responsible for all expenses (including reasonable attorneys' fees) incurred by Toledo Telenet in collecting any unpaid amounts due in accordance with this Agreement.

#### **6. Charges for On-Line Services/Internet Transactions.**

- 6.1 Through use of Toledo Telenet Internet Service, you may access certain information, products, and services from persons other than Toledo Telenet, for which there is a charge, including certain on-line services such as America Online. **YOU AGREE THAT ALL SUCH FEES OR CHARGES FOR ON-LINE SERVICES, PRODUCTS OR INFORMATION ARE YOUR SOLE RESPONSIBILITY AND NOT THE RESPONSIBILITY OF TOLEDO TELENET.**
- 6.2 **YOU ALSO AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR PROTECTING THE SECURITY OF YOUR CREDIT CARD INFORMATION FROM UNWANTED OR UNAUTHORIZED CHARGES FOR INTERNET BASED TRANSACTIONS.**

#### **7. Service and Performance.**

- 7.1 Toledo Telenet will make reasonable efforts to assure that Toledo Telenet Internet Service will be available to you 24 hours per day 7 days per week. It is possible, however, that there will be interruptions of service.
- 7.2 Toledo Telenet shall not be liable for interruptions caused by failure of equipment or services, failure of communications, power outages, or other interruptions to Toledo Telenet Internet Service.
- 7.3 Toledo Telenet shall not be liable for performance deficiencies caused or created by your equipment.
- 7.4 You shall be responsible to provide for the proper installation, operation and maintenance of your equipment used in connection with the Toledo Telenet Internet Service. Further, you shall ensure that such equipment is technically and operationally compatible with the Toledo Telenet Internet Service and in compliance with applicable Federal Communications Commission rules and regulations.
- 7.5 Toledo Telenet Internet Service is provided over a shared network, and users will contend for bandwidth. As a result, depending among other things upon the intensity of customer use of Toledo Telenet Internet Service, the bandwidth available to you and the speed of service will not always operate at optimum levels. Toledo Telenet does not guarantee bandwidth. However, if Toledo

Telenet determines, in its sole discretion, that your account is using, or has consistently used, an excessive amount of bandwidth, Toledo Telenet may restrict speed, bandwidth usage, and/or terminate your account at any time and without notice. Before taking any such action, Toledo Telenet shall make a reasonable effort to notify you that such action will be taken.

- 7.6 If your use or modification of the software, hardware or equipment supplied by Toledo Telenet requires a visit to your home or business for repair or correction, Toledo Telenet reserves the right to charge you for the visit and labor required to correct the situation. Toledo Telenet does not undertake to correct or repair software, hardware or equipment that it does not supply.

## **8. Customer Use.**

- 8.1 You are personally responsible for all use of Toledo Telenet Internet Service under your account. You agree not to resell, redistribute, assign, transfer, or sublicense your access to Toledo Telenet Internet Service in any manner. You agree not to use Toledo Telenet Internet Service for any type of business or commercial enterprise that competes in any way with Toledo Telenet, including (but not limited to) the provision of internet access to others or provision of a server site for FTP, Telnet, RLOGIN, electronic mail, web hosting or other comparable applications. You also agree not to use Toledo Telenet Internet Service to operate as an Internet Service Provider ("ISP") or to operate any other business enterprise in competition with Toledo Telenet Internet Service. You agree that your violation of this Section shall authorize Toledo Telenet, in its sole discretion, to immediately disconnect Toledo Telenet Internet Service to you and terminate this Agreement without notice.
- 8.2 Due to the difficulty in quantifying damages to Toledo Telenet for a violation of this Section 8, you agree to pay liquidated damages to Toledo Telenet in the amount of \$500 (five hundred dollars) per day for each day that you are in violation of this Section 8. These remedies shall be in addition to all others available to Toledo Telenet in law and equity.
- 8.3 YOU MAY, AT YOUR DISCRETION, PERMIT AN AUTHORIZED USER UNDER 18 YEARS OF AGE TO USE TOLEDO TELENET INTERNET SERVICE AND YOU ACKNOWLEDGE THAT YOU ARE RESPONSIBLE TO PROVIDE ADULT SUPERVISION. YOU ACKNOWLEDGE FURTHER THAT TOLEDO TELENET INTERNET SERVICE PROVIDES FULL ACCESS TO THE INTERNET WITHOUT RESTRICTION.
- 8.4 Toledo Telenet will provide you with a dynamic IP address as a component of the "Basic", "Plus" "Premier", "Bronze", "Silver", "Gold", or "Platinum" service. You agree not to alter, modify or tamper with the IP address or those of any person subscribing to Toledo Telenet Internet Service. Toledo Telenet will take back the IP address upon disconnection, discontinuance or termination of service.
- 8.5 You agree not to alter, modify or tamper with any equipment provided by Toledo Telenet, or the configuration of such equipment as set by Toledo Telenet.
- 8.6 Any conduct by you that, in Toledo Telenet's sole discretion, inhibits or restricts any other customer, person or entity from using or enjoying Toledo Telenet Internet Service shall entitle Toledo Telenet to immediately disconnect Toledo Telenet Internet Service to you and terminate this Agreement without notice. You agree to use Toledo Telenet Internet Service only for lawful purposes. You may not use, or allow others to use, your Toledo Telenet Internet Service account, either directly or indirectly, to:
- (1) post, transmit, promote, or facilitate the distribution of any unlawful or illegal material, including but not limited to, material that would constitute or encourage copyright or trademark infringement, a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law;
  - (2) post, transmit, promote, or facilitate the distribution of any unsolicited advertising (including but not limited to mass or bulk e-mail), promotional materials or other forms of solicitation to other individuals or entities;
  - (3) unlawfully access other computers or services, or to cause a disruption of service to other on-line users;
  - (4) cause disruption to Toledo Telenet's backbone network, nodes, or services, or that of other service providers; or
  - (5) establish a web page or site on your computer, without proper authorization from Toledo Telenet.
  - (6) enable persons under 18 years of age to obtain material that is prohibited by law to be sent or displayed.

## **9 LIMITATION OF LIABILITY: NO WARRANTIES.**

**PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY, MADE ON BEHALF OF TOLEDO TELENET AND ALL ITS AFFILIATES.**

- 9.1 DAMAGE TO YOUR HOME OR BUSINESS COMPUTER. EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TOLEDO TELENET SHALL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE, LOSS OR DESTRUCTION TO YOUR EQUIPMENT. IN THE EVENT OF SUCH A GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TOLEDO TELENET SHALL PAY FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED PARTS UP TO A MAXIMUM OF \$3,000 AND SUCH SHALL BE YOUR SOLE REMEDY RELATING TO SUCH ACTIVITY. NEITHER TOLEDO TELENET NOR ITS SUPPLIERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA. IN ADDITION, YOU UNDERSTAND THAT THE OPENING OF YOUR COMPUTER MAY VOID WARRANTIES**

**PROVIDED BY THE COMPUTER MANUFACTURER OR OTHER PARTIES RELATING TO THE COMPUTER'S HARDWARE OR SOFTWARE. YOU HEREBY CONSENT TO THE OPENING OF THE COMPUTER FOR THE INSTALLATION AND REMOVAL OF EQUIPMENT RELATED TO TOLEDO TELENET INTERNET SERVICE. NEITHER TOLEDO TELENET NOR ITS SUPPLIERS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.**

- 9.2 DAMAGE, LOSS OR DESTRUCTION OF SOFTWARE FILES AND/OR DATA YOU UNDERSTAND THAT, AS PART OF THE INSTALLATION OF THE TOLEDO TELENET INTERNET SERVICE, SYSTEM FILES ON YOUR COMPUTER MAY BE MODIFIED OR DELETED. TOLEDO TELENET DOES NOT REPRESENT, WARRANT, OR COVENANT THAT SUCH MODIFICATIONS WILL NOT DISRUPT THE NORMAL OPERATIONS OF YOUR COMPUTER. FOR THESE AND OTHER REASONS, TOLEDO TELENET RECOMMENDS, AND YOU AGREE, THAT YOU WILL BACK UP ALL FILES PRIOR TO INSTALLATION OF THE TOLEDO TELENET INTERNET SERVICE. NEITHER TOLEDO TELENET NOR ITS SUPPLIERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE RESULTING FROM THESE OR OTHER FILE MODIFICATIONS.**
- 9.3 NO WARRANTY/LIMITATION OF LIABILITY. YOU EXPRESSLY AGREE THAT USE OF THE TOLEDO TELENET INTERNET SERVICE, TOLEDO TELENET E-MAIL SERVICES AND SOFTWARE AND EQUIPMENT SUPPLIED BY TOLEDO TELENET OR ITS AGENTS, EMPLOYEES OR CONTRACTORS (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "COMPANY") IS AT YOUR SOLE RISK. THE TOLEDO TELENET INTERNET SERVICE, AND EQUIPMENT AND SOFTWARE SUPPLIED BY THE COMPANY ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. TOLEDO TELENET EXPRESSLY DISCLAIMS ANY WARRANTY OR ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR INTENDED PURPOSE. THE COMPANY'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO USE OF THE TOLEDO TELENET INTERNET SERVICE, E-MAIL SERVICES AND SOFTWARE AND EQUIPMENT SHALL BE THE REPLACEMENT OF ANY DISKETTE OR COMPANY SUPPLIED EQUIPMENT FOUND TO BE DEFECTIVE. IN NO EVENT SHALL THE COMPANY'S LIABILITY TO YOU FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY YOU TO ACCESS AND USE THE TOLEDO TELENET INTERNET SERVICE WITHIN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF REASONABLY FORESEEABLE, ARISING IN ANY MANNER OUT OF THE INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE TOLEDO TELENET INTERNET SERVICE, E-MAIL SERVICES OR COMPANY SUPPLIED SOFTWARE OR EQUIPMENT. THESE LIMITATIONS ARE AGREED TO BE EFFECTIVE EVEN IF THERE IS A TOTAL FAILURE OF ESSENTIAL PURPOSE.**

**9.4 NO LIABILITY FOR UNAUTHORIZED ACCESS.**

**TOLEDO TELENET DOES NOT WARRANT THAT ANY DATA OR FILES SENT OR RECEIVED BY YOU USING TOLEDO TELENET INTERNET SERVICE OVER ITS DSL NETWORK, OR COMMUNICATIONS DIRECTED TO OR RECEIVED FROM OUTSIDE OF THE NETWORK, WILL NOT BE SUBJECT TO UNAUTHORIZED ACCESS BY OTHERS OR THAT OTHER USERS WILL NOT GAIN ACCESS TO YOUR HOME COMPUTER. TOLEDO TELENET HAS NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR SUCH ACTS OR OCCURRENCES. IF YOU CHOOSE TO RUN APPLICATIONS FROM YOUR HOME COMPUTER, WHICH PERMIT OTHERS TO GAIN ACCESS TO IT, YOU MUST TAKE APPROPRIATE SECURITY MEASURES. FAILURE TO DO SO MAY CAUSE IMMEDIATE TERMINATION OF YOUR SERVICE BY TOLEDO TELENET. TOLEDO TELENET IS NOT RESPONSIBLE FOR AND ASSUMES NO LIABILITY FOR ANY DAMAGES RESULTING FROM OTHERS ACCESSING YOUR COMPUTER.**

**IN ADDITION, TOLEDO TELENET INTERNET SERVICE FUNCTIONS AS A LOCAL AREA NETWORK ("LAN") IN THAT EACH CUSTOMER IS A NODE ON THE NETWORK. AS SUCH, USERS OUTSIDE YOUR HOME MAY BE ABLE TO ACCESS YOUR COMPUTER. IN ADDITION, SOME SOFTWARE INCLUDES CAPABILITIES THAT PERMIT OTHER USERS ACROSS A NETWORK SUCH AS THE TOLEDO TELENET INTERNET SERVICE AND THE INTERNET TO GAIN ACCESS TO YOUR COMPUTER AND TO THE SOFTWARE, FILES AND DATA STORED ON THE COMPUTER. FOR EXAMPLE, OPERATING SYSTEMS SUCH AS WINDOWS 95/98 AND APPLE MACINTOSH INCLUDE FILE SHARING AND PRINT SHARING CAPABILITIES WHICH, WHEN ENABLED, MAY PERMIT OTHER USERS TO GAIN ACCESS TO YOUR COMPUTER EVEN IF YOU ARE NOT USING THE TOLEDO TELENET INTERNET SERVICE. TOLEDO TELENET THEREFORE RECOMMENDS THAT YOU DISABLE FILE AND PRINT SHARING AND OTHER CAPABILITIES THAT MAY ALLOW USERS TO GAIN ACCESS TO YOUR COMPUTER. IF YOU CHOOSE TO ENABLE CAPABILITIES SUCH AS FILE SHARING, PRINT SHARING OR OTHER CAPABILITIES**

**THAT MAY ALLOW USERS TO GAIN ACCESS TO YOUR COMPUTER, YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOU DO SO AT YOUR OWN RISK, AND THAT TOLEDO TELENET SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH BY YOU.**

**9.5 No Liability for Viruses** TOLEDO TELENET MAKES NO REPRESENTATION OR WARRANTY THAT ANY SOFTWARE INSTALLED ON THE COMPUTER, INCLUDING SOFTWARE INSTALLED BY TOLEDO TELENET, ITS AGENTS, EMPLOYEES AND CONTRACTORS, OR WHICH YOU MAY DOWNLOAD FROM THE INTERNET, ON-LINE SERVICE PROVIDER, OR OTHER INFORMATION PROVIDER DOES NOT CONTAIN ANY VIRUS OR OTHER DAMAGING OR DESTRUCTIVE ATTRIBUTE. TOLEDO TELENET HAS NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR SUCH ACTS OR OCCURRENCES.

**9.6 No Liability for Content** WHILE TOLEDO TELENET SUPPLIES ACCESS TO THE INTERNET BY TOLEDO TELENET INTERNET SERVICE, IT IS NOT THE PUBLISHER OF ANY INFORMATION PROVIDED BY OTHERS THROUGH THE INTERNET. TOLEDO TELENET DOES NOT REVIEW, CENSOR, OR MONITOR AND IS NOT IN ANY MANNER RESPONSIBLE FOR ANY PROGRAMS OR CONTENT SENT OR ACCESSED OVER THE INTERNET OR MADE AVAILABLE BY ANY INDIVIDUAL, USER, INFORMATION PROVIDER, ON-LINE SERVICE OR CONTENT PROVIDER. SUCH CONTENT OR PROGRAMS MAY INCLUDE, WITHOUT LIMITATION, PROGRAMS OR CONTENT OF AN INFRINGING, ABUSIVE, PROFANE OR SEXUALLY OFFENSIVE NATURE. ALL CONTENT FROM OTHER PARTIES ACCESSED VIA TOLEDO TELENET INTERNET SERVICE IS ACCESSED BY YOU AND THOSE YOU HAVE AUTHORIZED, ALL AT YOUR OWN RISK, AND TOLEDO TELENET ASSUMES NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTION, DAMAGES, SUITS OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH CONTENT ACCESSED USING THE TOLEDO TELENET SERVICE.

**9.7 No Liability for Use in Hazardous Environments** THE TOLEDO TELENET INTERNET SERVICE AND ANY SOFTWARE PROVIDED OR INSTALLED BY TOLEDO TELENET ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OF RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS (WITHOUT LIMITATION) IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. TOLEDO TELENET AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USE.

**9.8 Prices Lower as a Result of Limitations of Liability.** THE PRICES FOR TOLEDO TELENET INTERNET SERVICES ARE ESTABLISHED IN EXPRESS RELIANCE ON THE ENFORCEABILITY OF THIS SECTION 9 AND THE PRICES ARE LOWER THAN THEY WOULD BE WITHOUT THE LIMITATIONS SET FORTH IN THIS SECTION 9.

## **10. Indemnification.**

10.1 You agree to indemnify, defend and hold harmless Toledo Telenet, its affiliated companies, partners, licensors, employees and agents from and against all losses, expenses, damages, liabilities, and costs, including reasonable attorneys' fees, arising out of any violation of this Agreement, the selection or use of your identification, or any activity related to your account by you or any other person accessing Toledo Telenet Internet Service using your account.

## **11. Termination.**

11.1 This Agreement, the license provided herein, and your right to use Toledo Telenet Internet Service may be terminated by Toledo Telenet at any time for any reason, with 30 days written notice by Toledo Telenet to you. In addition, you may terminate this Agreement at any time upon the return of the DSL modem and related connecting equipment to Toledo Telenet or notifying Toledo Telenet Customer Service if connected via dial-up access. Your bill will be pro rated for any prepaid service and will offset any outstanding amounts owed to Toledo Telenet.

11.2 Toledo Telenet does not visit your home upon termination to restore or reconfigure the home computer.

11.3 The provisions of Sections 5 (Payment Terms), 9 (Limitation of Liability: No Warranties) and 10 (Indemnification) shall survive any termination of this Agreement.

**12. Notice.** 12.1 Toledo Telenet may deliver notice to you by means of electronic mail on Toledo Telenet Internet Service or by written communication delivered by first class United States mail to your address on record in Toledo Telenet's account information.

12.2 You may give notice to Toledo Telenet at any time by written communications delivered by first class United States mail, postage prepaid, or overnight courier to Toledo Telenet at the following address:

*Toledo Telenet  
P.O. Box 669  
Toledo, WA 98591  
Attention Customer Service*

**13. Entire Agreement.** 13.1 This Agreement, including future modifications by Toledo Telenet in accordance with Section 1.4 of this Agreement, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto.

**14. Force Majeure.** 14.1 Toledo Telenet's performance hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor disputes, inability to obtain the necessary supplies and the like.

**15. Severability.** 15.1 If one or more of the provisions in this Agreement are found to be unenforceable or invalid, including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the Agreement shall continue in effect.

**16. No Waiver.** 16.1 Failure of Toledo Telenet to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

**17. Governing Law.** 17.1 This Agreement shall be governed by and construed under the laws of the state of Washington, without regard to the choice of law provisions thereof. The courts of the state of Washington in Lewis County and the federal courts sitting in the state of Washington shall have exclusive jurisdiction to hear and decide all controversies that may arise under or concerning this Agreement. You may not bring any claim, suit or proceeding arising under or concerning this Agreement more than one (1) year after the date the cause of action arose.

**18. Export.** 18.1 The United States export control laws regulate the export and re-export of technology originating in the United States. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals. You agree to abide by these laws, including but not limited to the Export Administration Act, the Arms Export Control Act and their implementing regulations, and not to transfer, by electronic transmission or otherwise, any content derived from the Toledo Telenet Internet Service to either a foreign national or a foreign destination without first obtaining any required government authorization. You further agree not to upload to the Toledo Telenet Internet Service any data or software that cannot be exported without prior written government authorization.

**19. Assignment.** 19.1 Toledo Telenet may assign its rights and obligations under this Agreement. This Agreement may not be assigned or transferred by you, as further set forth in Section 2.4.