

UTV RENTALS OF THE BLACK HILLS, LLC.

UTV RENTAL AGREEMENT

READ CAREFULLY BEFORE SIGNING. YOU ARE RESPONSIBLE FOR UNDERSTANDING AND ABIDING BY ALL THE TERMS AND CONDITIONS HEREIN.

The undersigned agrees to rent the property described below; that he/she has examined said property and found it to be in good working condition and working order and will return it in as good condition as received; that he/she will pay promptly all charges which accrue because of this rental and be responsible for any damages to said property. The undersigned agrees that he/she and all passengers shall wear a DOT or Snell-approved helmet at all times the vehicle is operated and that he/she and all passengers shall wear the supplied seat belts. The undersigned agrees to abide by the rules of designated roadways and stay on roads or forest trails.

The undersigned agrees to be responsible for all physical damage to the UTV and authorizes the holding of a valid credit card number as security to assure the payment of any physical damage to the UTV(s).

Additional terms and conditions appear on the back of this Agreement and are a part of this Rental Agreement.

Renter Name

Address

All additional passenger names:

Unit rented:

Time Out: _____

Time In: _____

Rental amount per hour: \$_____ (rent is calculated to the nearest half hour) and excludes sales tax.

Rent includes provided helmets, laminated map, full tank of fuel.

Unit must be returned with a full tank of gas, or the same will be charged to Renter at the then-going rate at Custer Crossing gas station.

Charges will be assessed to Renter as follows: (a) excessive mud/trash to be cleaned up by Owner: \$100.00; (b) laminated map not returned: \$50.00; (c) helmet not returned: \$250.00 for each helmet; (d) late fees for failure to return at the expected time in: \$50.00 for each 30 minutes late; (e) cost for disabling or damaging vehicle tracker: \$100.00; (f) physical damage to the UTV: the actual cost for repair or replacement by any cause whatsoever including but not limited to excessive use at highway or near highway speeds for extended periods of time.

No refunds for early returns or bad weather.

RELEASE AND INDEMNIFICATION AGREEMENT

1. **Definitions.** The person who is using, driving, operating and/or riding as a passenger in the Side-By-Side All-Terrain Vehicle (hereinafter referred to as UTV) shall be referred to hereinafter as "Participant." The "Undersigned" means only the Participant when the Participant is 18 years or older OR it means both the Participant and the Participant's parent or legal guardian when the Participant is under the age of 18. "Released Parties" refers to Custer Crossing and UTV Rentals of the Black Hills, LLC, and each of their respective successors in interest, affiliated organizations and companies, parent and sister companies, insurance carriers, agents, contractors, subcontractors, employees, representatives, assignees, officers, directors, owners, members, partners, and shareholders. The "Activity" means renting and/or operating, driving riding (as a passenger) a UTV, and otherwise taking part in UTVing and all other activities related to or ancillary to these activities.

2. **Assumption of Risk.** Undersigned agrees and understands that taking part in the Activity can be hazardous and involves the risk of physical injury and/or death. Undersigned acknowledges that the Activity is inherently dangerous and fully realizes the dangers of participating in the Activity. The risks and dangers of the Activity include but are not limited to: extreme physical demands and exertion, exhaustion, lack of or difficulty in instruction, lack of or difficulty in communication, lack of medical attention or equipment, defective or malfunctioning equipment, misuse of equipment, improper operation of equipment (e.g., acceleration, throttling and braking errors), choice of course, changing conditions, changing weather conditions, collisions, speed, UTV rollover, UTV ejection, terrain, man-made and natural obstacles and/or obstructions and/or dangers, falling objects, encounters with other UTVs and/or other motor vehicles, becoming lost or separated, lack of shelter, storms, lightning, hail, snow and other adverse weather, Participant's poor health or physical condition, known or latent health conditions, including cardiac conditions, mental distress or panic from exposure to any one of the above, misunderstanding or underestimation of risks and abilities, lack of training, accidents at Released Party's premises and facilities, accidents during transportation to and from Activities, infection or exposure to viruses or bacteria, other illnesses, and negligence or poor choices of others, including negligence of guides and employees of Released Parties and other Participants. Undersigned acknowledges and understands that the description of the risks above is not complete and that participating in the Activities may be dangerous and may include other risks. Recognizing the risks and dangers, Undersigned understands the nature of the activity and voluntarily chooses for Participant to participate in and expressly assume all risks and dangers of the participation in the Activity, whether or not described above, known or unknown, inherent or otherwise.

3. **Release and Indemnification.** In consideration of the Participant being permitted to participate in the Activity, the Undersigned agrees to irrevocably and unconditionally release, forever discharge and agree not to sue or bring any other legal action against the Released Parties with respect to any and all claims and causes of action of any nature, including, but not limited to, claims of negligence; negligence *per se*, misrepresentation; premises liability; products liability; other tort claims; wrongful death; statutory claims and violations; breach of warranty; breach of local, state and federal laws; and/or breach of contract. Undersigned hereby agrees to indemnify, defend and hold harmless the Released Parties from and against any and all liability, cost, expense or damage of any kind or nature whatsoever, including, but not limited to, property loss, medical bills, loss of income, impairment, disfigurement, and from any suits, claims or demands (including Undersigned's claims and third party claims), including legal fees, attorney fees and expenses whether or not in litigation, arising out of, or related to, Participant's participation in the Activity. Such obligation on the part of Undersigned shall survive beyond the period of Participant's participation in the Activity.

4. **Use and Damage.** The UTV is rented “as is” and with no warranties, express or implied. Undersigned accepts full responsibility for the care of the rental UTV during the rental period. Undersigned agrees to pay for any damage that occurs to the rental UTV regardless of the circumstances under which such damage may occur. Undersigned agrees to pay for any lost rental income for the period the UTV is out of service due to damage for which Undersigned is responsible. Undersigned agrees to pay for any costs incurred in the retrieval of the rented UTV which is left on trail for non-mechanical reasons. Undersigned agrees to pay all costs, including reasonable attorney’s fees, incurred by Released Parties to collect any sums due or to enforce any terms of this Agreement. Undersigned agrees to pay interest at the rate of 18% per annum on all sums owed to Released Parties. Undersigned agrees that Released Parties are authorized and shall have the right to charge Undersigned’s valid credit card for any sums owed.

5. **Use of UTV.** Use of the UTV is limited to the trails on the maps provided for use by Participant. Undersigned and Participant agrees not to operate the UTV on private property and shall be solely liable for any trespass onto private property and any damage which may occur. Participant shall obey all signage and rules of using trails including speed on trails. Participant shall not cause any littering to occur and shall be solely responsible for any litter or garbage of Participant or Undersigned.

6. **Use of Image.** In consideration of participating in this event, Undersigned hereby gives the Released Parties the irrevocable right to use my picture, portrait or photograph in all forms of media, in all manners of advertising, trade, sale or any other lawful purposes and I waive any right to inspect or approve the finished version(s), including written copy that may be created and appear in connection therewith.

7. **Minor Acknowledgement.** In the case of a minor Participant (under 18 years of age), Undersigned parent or legal guardian acknowledges that he/she is not only signing this Agreement on his/her behalf, but that he/she is also signing on behalf of the minor and that the minor shall be bound by all the terms of this Agreement. Additionally, by signing this Agreement as the parent or legal guardian of a minor, the parent or legal guardian understands that he/she is also waiving rights on behalf of the minor that the minor may otherwise have. Undersigned parent or legal guardian agrees that, but for the foregoing, the minor would not be permitted to participate in the Activity. By signing this Agreement without a parent or legal guardian’s signature, Participant, under penalty of fraud, represents that he/she is at least 18 years of age. If signing as the parent or legal guardian of a minor Participant, signing adults represent, under penalty of fraud, that he/she is a parent or legal guardian of the minor Participant.

8. **Miscellaneous.** Undersigned further agrees and understands: (a) Participant will not engage in any activities prohibited by any applicable laws, statutes, regulations and ordinances; (b) this Agreement shall be governed by the laws of the State of South Dakota and the exclusive jurisdiction and venue for any claim arising out of this Agreement shall be in the state courts located in Lawrence County, South Dakota; (c) This Agreement constitutes the entire agreement between the parties hereto and supersedes and all prior written contracts, arrangements, communications or representations, whether oral or written, between the parties relating to the subject matter hereof including, but not limited to, any prior or future representations about the Activity itself or the safety thereof; (d) Undersigned understands and acknowledges that this Agreement is a contract and shall be binding to the fullest extent permitted by law. If any part of this Agreement is deemed to be unenforceable, the remaining terms shall remain enforceable between the parties. It is the intent of Undersigned that this Agreement shall be binding upon the assignees, subrogors, distributors, heirs, next of kin, executors and personal representatives of Undersigned; (e) Time is considered of the essence in the performance of the terms of this contract.

