

## Terms of Use

The following User Agreement ("Agreement") governs the use of the NASCAR Fan Council ("Website"), including, without limitation, participation in its bulletin boards, forums, chats, and all other areas (except to the extent stated otherwise on a specific page) as provided by Vision Critical Communications Inc. ("Service Provider," "we," or "our"), on behalf of National Association for Stock Car Auto Racing, Inc. ("NASCAR").

### **THIS WEBSITE IS INTENDED FOR U.S. RESIDENTS ONLY.**

Please read the terms contained in this Agreement carefully. You can access this Agreement any time at [www.nascarfanCouncil.com](http://www.nascarfanCouncil.com). **Your use of and/or registration on any aspect of the Website will constitute your agreement to comply with these terms.** If you do not agree with these terms, please do not use the Website.

In addition to reviewing this Agreement, please read our Privacy Policy. Your use of the Website constitutes agreement to its terms and conditions as well.

The Agreement may be modified from time to time; the date of the most recent revisions will appear on this page, so check back often. Continued access of the Website by you will constitute your acceptance of any changes or revisions to the Agreement.

Service Provider and NASCAR shall have the right at any time to change or discontinue any aspect or feature of the Website, including, but not limited to, content, hours of availability, and equipment needed for access or use.

Your failure to follow these terms, whether listed below or in bulletins posted at various points in the Website, may result in suspension or termination of your access to the Website, without notice, in addition to the Service Provider's other remedies.

YOU ACKNOWLEDGE AND AGREE THAT ALL INFORMATION AND COMMUNICATIONS ARISING PURSUANT TO THIS WEBSITE DURING ANY AND ALL DISCUSSIONS, QUESTIONNAIRES, SURVEYS, BULLETIN BOARDS, FORUMS, CHATS, ETC. SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO ANY THIRD PARTY OR USED FOR ANY PURPOSE EXCEPT FOR THE PURPOSES STATED HEREIN.

### **I. Registration and Account Creation**

#### **1. REGISTRATION INFORMATION:**

The Service Provider may at times require that you register and/or set up an account to use certain portions of the Website, or the Website as a whole. In order to do so, you may be provided, or required to choose, a password, User Id, and/or other registration information

(collectively, "Registration Information"). You agree and represent that all Registration Information provided by you is accurate and up-to-date. If any of your Registration Information changes, you must update it by using the appropriate update mechanism on the Website, if available. Otherwise, contact our Privacy Policy Coordinator as described in our Privacy Policy.

## **2. USE OF USER ID/PASSWORD:**

A. If you register and/or set up an account on the Website, you will be solely responsible for maintaining the confidentiality of your Registration Information. You may not authorize others to use your Registration Information. The right to use the Website is personal to you, and you may not sub-license, transfer, sell or assign your Registration Information and/or this Agreement to any third party without our written approval. Any attempt to do so will be null and void and shall be considered a material breach of this Agreement.

B. You are solely responsible for all usage or activity on your account including, but not limited to, ensuring that all use of your Registration Information complies fully with the provisions of this Agreement and the use of the account by any person who uses your Registration Information, with or without authorization, or who has access to any computer on which your account resides or is accessible.

C. If you have reason to believe that your account is no longer secure (for example, in the event of a loss, theft or unauthorized disclosure or use of your Registration Information or any credit, debit or charge card number stored on the Website), you must promptly change the affected Registration Information by using the appropriate update mechanism on the Website, if available, or notify our Privacy Policy Coordinator as described in our Privacy Policy.

## **II. Terms of Usage:**

### **1. USE OF THE WEBSITE BY YOU:**

A. Unless otherwise specified, the Website is intended for your personal use only. You may not authorize others to use the Website, and you are responsible for all use of the Website by you and by those you allow to use, or provide access to, the Website.

B. The Website contains material that is protected by local, state, and federal copyright, trademark and other intellectual property laws. You may not modify, copy, reproduce, republish, upload, post, transmit, download or distribute in any way any material, including code and software and all intellectual property, from the Website. You may download material from the Website and may use the Website for your personal use only, provided you keep intact all copyright and other proprietary notices.

C. The Website is not intended for users under the age of 13, and the Service Provider does not knowingly collect personally identifiable information from users under the age of 13. Such users

are expressly prohibited from submitting their personally identifiable information to us, and from using our forums and chat areas; any information submitted by such users will not knowingly be used, posted, or retained by us.

D. You shall not post, use, and/or transmit through the Website any material which violates or infringes in any way upon the rights of others, which is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, indecent, offensive, abusive, harassing, racist, hateful, profane, or otherwise objectionable, which encourages conduct that would constitute a criminal offense, give rise to civil liability, or that otherwise violates any municipal or local, county, state, or federal law, statute, ordinance or regulation or, which, without Service Provider's express prior approval, contains advertising or any solicitation with respect to products or services which deemed by our and/or NASCAR's sole discretion, is determined to be detrimental to other users' ability to use the Website. Any conduct by you that in Service Provider's discretion restricts or inhibits any other user from using or enjoying the Website will not be permitted. You shall not use the Website to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with the Website. You agree to use the Website only for lawful purposes and you acknowledge that your failure to do so may subject you to civil and criminal liability.

E. You shall not upload, post, or otherwise make available on the Website any material protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right and the burden of determining that any material is not protected by copyright rests with you. You shall be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting material to any public area of the Website, you automatically grant, or warrant that the owner of such material has expressly granted Service Provider and NASCAR the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media, or technology now known or hereafter developed for the full term of any copyright that may exist in such material. You also permit any other user to access, view, store, or reproduce the material for that user's personal use. You hereby grant Service Provider and NASCAR the right to edit, copy, publish, and distribute any material made available on the Website by you.

F. The Website contains copyrighted material, trademarks, and other proprietary information, including, but not limited to, text, software, photos, images, design, video, graphics, music and sound, and the entire contents and look and feel of the Website are copyrighted as a collective work under the United States copyright laws. NASCAR and Service Provider own a copyright in the selection, coordination, arrangement, and enhancement of such content, as well as in the content original to it. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part. You may download copyrighted material for your personal use only. Except as otherwise expressly

permitted under copyright law, no copying, distribution, retransmission, publication, performance, caching or commercial exploitation of downloaded material will be permitted without the express permission of Service Provider and NASCAR. In the event of any permitted copying, distribution, or publication of copyrighted material, no changes in or deletion of author attribution, trademark legend, or copyright notice shall be made. You acknowledge that you do not acquire any ownership rights by downloading copyrighted material.

G. You agree not to disrupt, overwhelm, attack, modify, or interfere with the Website or its associated software, hardware, and/or servers in any way, and you agree not to impede or interfere with others' use of the Website. You agree that you will not post any software, files, or links to other sites, and that you will not post any content that contains viruses, corrupted files, or any other similar software or programs that may adversely affect the operation of the Website, or feature of the Website. You further agree not to alter or tamper with any information or materials on or associated with the Website.

H. Other than connecting to the Service Provider's servers by http requests using a Web browser, you may not attempt to gain access to the Service Provider's servers by any means, including, without limitation, by using administrator passwords or by masquerading as an administrator while using the Website or otherwise.

I. You acknowledge that neither the Service Provider nor NASCAR has reviewed and endorsed the content of any sites linked to from this Website and are not responsible for the content or actions of any other sites linked to from this Website. Your linking to any service or site is at your sole risk.

J. The nature of this Website is interactive and public. By posting content, you understand and acknowledge that any materials, ideas, or other communications you transmit in any manner and for any reason will not be treated as confidential or proprietary. Furthermore, you acknowledge and agree that any ideas, concepts, techniques, procedures, methods, systems, video, scripts, music, photographs, designs, plans, charts, or other materials ("Materials") you transmit in connection with this Website may be used by the Service Provider or NASCAR, including all rights therein, without limitation, all rights of copyright and patent rights, trademark and trade dress rights, renewal rights, rights to use, exploitation, licensing and sale, to, right now and forever, use, copy, publish, display, perform, edit, modify, alter, adopt, record or re-record, distort, make derivative works from, make composites containing, or seek any available legal protection in such Materials and resulting works or materials, or any portion thereof, in any manner and for any purpose (including without limitation advertising, trade, merchandising, or promotional activities) whatsoever, alone or in connection with any other materials, in any forms or media known now or hereafter, and without any inspection or pre- or post-approval by you.

K. The foregoing provisions of Section II (1) are for the benefit of Service Provider, NASCAR, and each of their respective subsidiaries, parent companies, affiliates, and third party content

providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## **2. COMMENTS BY OTHERS ARE NOT ENDORSED BY SERVICE PROVIDER OR NASCAR:**

The Service Provider is a distributor (and not a publisher) of content supplied by you and other users. Accordingly, Service Provider has no more editorial control over such content than does a public library, bookstore, or newsstand. Any opinions, advice, statements, services, offers, or other information or content expressed or made available by you or any other user of the Website are those of the respective author(s) or distributor(s) and not of Service Provider and/or NASCAR. Neither Service Provider, NASCAR, nor any other user guarantees the accuracy, completeness, or usefulness of any content, nor its merchantability or fitness for any particular purpose (refer to [Section II \(8\)](#) below for the complete provisions governing limitation of liabilities and disclaimers of warranty). In many instances, the content available through the Website represents the opinions and judgments of you and the respective user not under contract with Service Provider or NASCAR. The Service Provider and NASCAR do not endorse, support, sanction, encourage, verify, or agree with the comments, opinions, or statements posted on forums, blogs, or otherwise contained in the Website. Any information or material placed online, including advice and opinions, are the views and responsibility of those who post the statements and do not represent the views of the Service Provider or NASCAR. You agree that the Service Provider and NASCAR are not responsible, and shall have no liability to you, with respect to any information or Materials posted by others, including defamatory, offensive, or illicit material, even material that violates this Agreement. Please seek the advice of professionals, as appropriate, regarding the evaluation of any specific information, opinion, advice, or other content.

## **3. USE OF MATERIAL SUPPLIED BY YOU:**

For information regarding use of personal information you supply or communicate to the Website, please see our Privacy Policy. Except as expressly provided otherwise in the Privacy Policy, you agree that by posting messages, uploading files, inputting data, or engaging in any other form of communication with or through the Website, you grant us and NASCAR a royalty-free, perpetual, non-exclusive, unrestricted, worldwide license to use, copy, publish, edit, reproduce, modify, alter, adopt, record or re-record, distort, adapt, translate, enhance, transmit, distribute, publicly perform, display, make derivative works from, make composites containing or sublicense any and all Material and any such communication (including your identity and information about you) in any medium (now in existence or hereinafter developed) and for any purpose, including commercial purposes, and to authorize others to do so without your approval. In addition, please be aware that any Materials you disclose in publicly accessible portions of the Website will be available to all users of the Website, so you should be mindful of personal information and other content you may wish to post. **THE SERVICE PROVIDER AND NASCAR HEREBY DISCLAIM ANY AND ALL LIABILITY THAT MAY ARISE IN CONNECTION WITH ANY AND ALL MATERIALS POSTED, UPLOADED, OR SUPPLIED BY YOU ON THE WEBSITE.**

#### 4. COPYRIGHTS:

The Service Provider and NASCAR respect the rights of all copyright holders and in this regard, Service Provider and NASCAR have adopted and implemented a policy that provides for the termination in appropriate circumstances of users, subscribers, registrants, and account holders who infringe the rights of copyright holders. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide Service Provider's Copyright Agent the following information required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, 17 U.S.C. 512:

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b. Identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- d. Information reasonably sufficient to permit us to contact the complaining party;
- e. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For copyright inquiries under the Digital Millennium Copyright Act please contact:

Copyright Agent  
Suite 700  
858 Beatty Street  
Vancouver, BC V6B 1C1  
Phone: [VCCI: ACCEPTABLE CONTACT INFO?]  
Fax:  
Email: [copyrightagent@visioncritical.com](mailto:copyrightagent@visioncritical.com)

#### 5. INDEMNIFICATION:

You are solely responsible for, and will defend, indemnify and hold harmless the Service Provider, NASCAR and their affiliates, and each of their respective shareholders, directors, members, officers, employees, agents, successors, assigns, representatives, and third party service providers from and against any and all claims, demands, and litigation (collectively "Claims") and any and all liability, loss, damages, or expenses (including attorneys fees) arising from or in any way related to: your submissions; your unauthorized use of Material obtained through the Website; your breach of this Agreement; your infringement of any trademark, service mark, copyright, patent, process, method or device or other proprietary right in connection with the Website and your use of the Website and this Agreement; and/or any such acts or omissions through your use of the Website.

#### **6. EDITING AND DELETIONS:**

The Service Provider and NASCAR reserve the right, but undertake no duty, to review, edit, move or delete any material provided for display or placed on the Website or its bulletin boards, in its sole discretion, without notice.

#### **7. ADDITIONAL TERMS:**

The Service Provider reserves the right to change and/or post, from time to time, additional terms of usage that apply to specific parts of the Website. Such additional terms will be posted in the relevant parts of the Website. Your continued use of the Website constitutes your agreement to comply with these additional terms.

#### **8. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY:**

YOU ACKNOWLEDGE THAT YOU ARE USING THE WEBSITE AT YOUR OWN RISK. THE WEBSITE IS PROVIDED "AS IS", AND THE SERVICE PROVIDER, NASCAR, THEIR AFFILIATES OR PARENT COMPANIES OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS HEREBY EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF ACCURACY, RELIABILITY, TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, CONDITION, GUARANTEE OR REPRESENTATION, WHETHER ORAL, IN WRITING, OR IN ELECTRONIC FORM, INCLUDING, BUT NOT LIMITED TO, THE ACCURACY, CONTENT, OR COMPLETENESS OF ANY INFORMATION CONTAINED THEREIN OR PROVIDED BY THE WEBSITE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. NEITHER SERVICE PROVIDER, NASCAR, THEIR AFFILIATES OR PARENT COMPANIES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS REPRESENT OR WARRANT THAT ACCESS TO THE WEBSITE WILL BE UNINTERRUPTED OR THAT THERE WILL BE NO FAILURES, ERRORS OR OMISSIONS OR LOSS OF

TRANSMITTED INFORMATION, OR THAT NO VIRUSES WILL BE TRANSMITTED ON THE WEBSITE.

THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. YOU SPECIFICALLY ACKNOWLEDGE THAT NEITHER SERVICE PROVIDER NOR NASCAR ARE LIABLE FOR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF OTHER USERS, SUBSCRIBERS, OR THIRD-PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

IN NO EVENT WILL SERVICE PROVIDER, NASCAR AND THEIR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTIES FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, ARISING OUT OF OR IN CONNECTION WITH: THIS AGREEMENT; THE PROVIDING OF THE WEBSITE HEREUNDER; THE SALE OR PURCHASE OF ANY GOODS OR MERCHANDISE; YOUR ACCESS TO OR INABILITY TO ACCESS THE WEBSITE, INCLUDING FOR VIRUSES ALLEGED TO HAVE BEEN OBTAINED FROM THE WEBSITE; AND YOUR USE OF OR RELIANCE ON THE WEBSITE OR ANY OF THE MERCHANDISE, INFORMATION, OR MATERIALS AVAILABLE ON THE WEBSITE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU HEREBY AGREE TO RELEASE THE SERVICE PROVIDER, NASCAR, AND THEIR AFFILIATES, AND EACH OF THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED WITHIN THE WEBSITE, OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO THE USER, OR FOR ANY AND ALL CLAIMS, DEMANDS, DAMAGES (ACTUAL AND CONSEQUENTIAL), EXPENSES, COSTS, LOSSES AND LIABILITIES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH YOUR USE OF THIS WEBSITE OR OCCASIONED THEREBY. NEITHER SERVICE PROVIDER, NASCAR, NOR THEIR AFFILIATES, PARENT COMPANIES, OR THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT OR GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY, OR COMPLETENESS OF THIS INFORMATION AND/OR MATERIALS. ADDITIONALLY, THERE ARE NO WARRANTIES AS TO THE RESULTS OBTAINED FROM THE USE OF THE INFORMATION AND/OR MATERIALS.



**9. TERMINATION OR SUSPENSION OF ACCESS TO THE WEBSITE:**

Either Service Provider or NASCAR may terminate this Agreement at any time. Without limiting the foregoing, the Service Provider shall have the right to immediately terminate and/or suspend your account and/or your ability to access the Website or any portion thereof, for any or no reason whatsoever, or may prevent your use of this Website with or without notice to you. You agree that you do not have any rights in this Website and that neither the Service Provider nor NASCAR will have any liability to you if this Website is discontinued or your ability to access it is terminated.

**10. MONITORING:**

The Service Provider and NASCAR shall have the right, but not the obligation, to monitor the content of the Website, including chat rooms and forums, to determine compliance with this Agreement and any operating rules established by Service Provider and NASCAR and to satisfy any law, regulation, or authorized government request. The Service Provider and NASCAR shall have the right in their sole discretion to edit, refuse to post, or remove any Material submitted to or posted on the Website. Without limiting the foregoing, Service Provider and NASCAR shall have the right to remove any material that Service Provider and NASCAR, in their sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

**11. JURISDICTION:**

The Service Provider and NASCAR make no representation that Materials or any other material on the Website are appropriate, available or legal in any particular location. Those who choose to access the Website do so on their own initiative and are responsible for compliance with any and all municipal or local, county, state and federal laws, statutes, ordinances and regulations, if and to the extent such laws, statutes, ordinances and regulations are applicable.

YOU AGREE THAT THIS AGREEMENT, FOR ALL PURPOSES, SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISIONS. YOU AGREE THAT THE FEDERAL COURT OF THE MIDDLE DISTRICT OF FLORIDA OR, AT THE OPTION OF THE SERVICE PROVIDER AND/OR NASCAR, ANY STATE COURT LOCATED IN VOLUSIA COUNTY, FLORIDA, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN YOU AND US AND/OR NASCAR, PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, OR TO ANY MATTER ARISING THEREFROM, OR ANY OTHER DOCUMENT EXECUTED AND DELIVERED IN CONNECTION HERewith OR THEREWITH.

**12. MISCELLANEOUS:**

This Agreement and any operating rules for the Website established by Service Provider and NASCAR constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.