

# Terms of Use

Last Updated: October 14, 2015

Please read these Terms of Use ("Terms") thoroughly. By downloading, accessing or using the desktop or mobile applications, websites, or other products or services (collectively, the "Services") of Cloaked Display Technologies LLC and FunVid Apps LLC (collectively, "CloakedCo", "we" or "us"), you agree to be bound by these Terms. If you do not agree to these Terms, do not use the Services.

We may change or modify these Terms at any time and for any reason in our sole discretion. If we make changes to these Terms, we will provide notice of such changes, such as by notice posting on the Services, sending a notification, or updating the "Last Updated" date above. Your use of the Services will confirm your acceptance of the revised Terms. We encourage you to review often the Terms to ensure you understand the terms and conditions that apply to your use of the Services. If you do not agree to the amended Terms, you must stop using the Services and delete your Cloaked™ account.

## Age Limitation

Cloaked™ is intended for use by people who are 13 years of age or older. Persons under the age of 13 are prohibited from creating Cloaked™ accounts.

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms, and to abide by and comply with these Terms. In addition, you affirm that you have not been previously suspended or removed from the Services and do not have more than one Cloaked™ account.

We may, in our sole discretion, refuse to offer the Services to any person or entity. We may, without notice and in our sole discretion, terminate your right to use the Services, or any portion of thereof, and block or prevent your future access to and use of the Services or any portion thereof.

## Data Collection

By using the Cloaked™ application you agree to allow CloakedCo to collect information about your usage of the application, including using the Services to send or receive a message, photo, video, or GIF (a "Cloak"). For example, when you open a message, you agree that we can share the fact you took these actions with the sender of the message. You also agree to let CloakedCo collect certain types of information from and about your

device. For more information about the information we collect from you and your device and Cloaked™ privacy practices, please review our Privacy Policy.

## **Content of User**

The Services consist of interactive features and areas that allow users to create, post, transmit and/or store content, including but not limited to photos, videos, text, graphics, items or other materials (collectively, "User Content"). You understand that your User Content may be viewable by others and that you have the ability to control who can access such content by adjusting your privacy settings. You agree that you are solely responsible for your User Content and that CloakedCo is not responsible or liable for any User Content.

## **Feedback**

You agree that any feedback, suggestions, ideas or other information or materials regarding Cloaked™ or the Services that you provide, whether by email or otherwise ("Feedback"), are non-confidential and shall become the sole property of CloakedCo. We will be entitled to the unrestricted use and dissemination of such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you. You waive any rights you may have to the Feedback (including any copyrights or moral rights). We like hearing from users, but please do not share your ideas with us if you expect to be paid or want to continue to own or claim rights in them.

## **Cloaked™ Content**

Unless otherwise stated, all materials contained on or within the Services, including, but not limited to, text, graphics, images, code, illustrations, designs, icons, photographs, video clips, and written and other materials (collectively, "Cloaked™ Content"), as well as their selection and arrangement, are protected by copyright, trademark, trade dress, patent, and/or other intellectual property laws, and unauthorized use of Cloaked™ Content may violate such laws and these Terms. Except as expressly provided in these Terms, CloakedCo does not grant any express or implied rights to use Cloaked™ Content. You agree that you will not copy, reproduce, republish, frame, download, transmit, modify, display, reverse engineer, sell, or participate in any sale of, rent, lease, loan, assign, distribute, license, sublicense, or exploit in any way, in whole or in part, Cloaked™ Content, the Services or any related software, except as expressly stated in these Terms.

You are hereby granted a limited, nonexclusive, non-sublicensable license to access and use the Services and Cloaked™ Content. This license is revocable at any time. This license is subject to these Terms and does not include:

- The distribution, public performance or public display of Cloaked™ Content;
- Modifying or otherwise making any derivative uses of the Services or Cloaked™ Content, or any portion thereof;
- Use of any scraping, data mining, robots or similar data gathering or extraction methods;
- Downloading (other than page caching) any portion of the Services, Cloaked™ Content or any information contained therein, except as expressly permitted on the Services;
- Accessing the Cloaked™ API with an unauthorized or third-party client; and
- Any use of the Services or Cloaked™ Content other than for their intended purposes. Any use of the Services or Cloaked™ Content other than as specifically authorized in these Terms, without the prior written permission of CloakedCo, is strictly prohibited and will terminate the license to use Cloaked™ granted in these Terms.

## **Prohibited Activities**

In addition to the other restrictions outlined in these Terms, you agree that you will not:

- Use the Services for any purpose that is illegal, beyond the scope of their intended use, or otherwise prohibited in these Terms;
- Use the Services in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Services, or that could damage, disable, overburden or impair the functioning of the Services in any manner;
- Compromise the security of the Services;
- Send any unsolicited or unauthorized advertising, spam, solicitations or promotional materials;
- Use any robot, spider, crawler, scraper or other automated means or interface not provided by us to access the Services or to extract data;
- Reverse engineer any aspect of the Services or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any area, content or code of the Services;
- Use or attempt to use another user's account without authorization;
- Attempt to circumvent any content filtering techniques we employ, or attempt to access areas/features of the Services that you are not authorized to access;

- Attempt to indicate in any manner that you have a relationship with us or that we have endorsed you or any products or services without our express written consent to do so;
- Engage in any harassing, intimidating, predatory or stalking conduct;
- Impersonate any person or entity or otherwise misrepresents your affiliation with a person or entity;
- Violate the publicity, privacy or data protection rights of others, including by taking pictures of another individual without receiving that individual's consent;
- Infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
- Buy, sell, rent, lease, or otherwise offer in exchange for any compensation, access to your Cloaked™ account, Cloaks, a Cloaked™ username, or a friend link without CloakedCo's prior written consent;
- Develop any third-party applications that interact with User Content or the Services without our prior written consent; and
- Use the Services for any illegal or unauthorized purpose or engage in, encourage, or promote any activity that violates these Terms.

You further agree to abide by any third-party terms that apply when posting reviews of Cloaked™, including the iTunes App Store Terms of Service. Cloaked™ usernames in app store reviews is strictly prohibited and may result in the deletion of your Cloaked™ account.

## **Account Security**

After opening a Cloaked™ account, you accept all responsibility for any activity that occurs while logged into your account. You are responsible for making sure that you keep your password secure and safe. You agree that you will not share your password with others or do anything that might jeopardize the security of your account.

When you first create a Cloaked™ account, we ask for your mobile number in order to verify your account. Please be aware that your carrier's text messaging fees apply for mobile number verification.

## **Modifications to the Services**

We reserve the right to modify or discontinue, temporarily or permanently, the Services or any features or portions thereof without prior notice. You agree that we will not be liable for any modification, suspension or discontinuance of the Services or any part thereof.

## **Copyright Policy**

CloakedCo respects the intellectual property rights of others. In accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable laws, we have adopted a policy of, upon notice, restricting access to or deleting content that infringes a third party's copyright and, in appropriate circumstances and in our sole discretion, terminating account holders or other users of the Services who are deemed to be repeat infringers of a third party's copyrighted work.

If you believe that anything on the Services infringes any copyright that you own or control, you may file a notice of such infringement, in compliance with the requirements of 17 U.S.C. 512(c)(3), with our designated agent:

Free Vector Law Group  
Attn: CloakedCo Counsel  
520 Pike Street, Suite 2500  
Seattle, WA 98101  
Fax: (866) 925-6979

## **Disclaimer**

THE SERVICES AND THE CLOAKED™ CONTENT ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. IN ADDITION, WHILE CLOAKED™ ATTEMPTS TO PROVIDE A GOOD USER EXPERIENCE, WE CANNOT AND DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL ALWAYS BE SECURE OR ERROR-FREE OR THAT THE SERVICES WILL ALWAYS FUNCTION WITHOUT DELAYS, DISRUPTIONS OR IMPERFECTIONS.

## **Note to International Users**

The Services are hosted in the United States. If you are a user accessing the Services from the European Union, Asia, or any other region with laws or regulations governing personal data collection, use, and disclosure, that differ from United States laws, please be advised that through your continued use of the Services, which are governed by U.S. law, you are transferring your personal information to the United States and you consent to that transfer.

## **Disputes**

### **1) Indemnification**

By agreeing to these Terms you agree to indemnify, defend and hold harmless CloakedCo, our managing members, shareholders, employees, affiliates, licensors and suppliers (the "Cloaked™ Parties") from and against any and all complaints, charges, claims, damages, losses, costs, liabilities, and expenses (including attorneys' fees) due to, arising out of, or relating in any way to (a) your use of the Services; (b) any User Content you post, upload, use, distribute, store or otherwise transmit through the Services; (c) your violation of these Terms; or (d) your violation of the rights of another.

### **2) Limitation of Liability**

Except where prohibited by law, in no event will CloakedCo or the Cloaked™ Parties be liable for any indirect, special, punitive, incidental, exemplary or consequential damages that result from (a) the use of, or inability to use, the Services; (b) the provision of the Services or any materials available therein; or (c) the conduct of other users of the Services, even if CloakedCo has been advised of the possibility of such damages. You assume total responsibility for your use of the Services. Your only remedy against CloakedCo for dissatisfaction with the Services or any content is to stop using the Services. If, notwithstanding these Terms, CloakedCo is found liable to you for any damage or loss which arises out of or is in any way connected with your use of the Services or any content, CloakedCo's liability shall in no event exceed \$1.00. Some jurisdictions do not allow limitations of liability, so the foregoing limitation may not apply to you.

### **3) Arbitration**

PLEASE READ THE FOLLOWING PARAGRAPH CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH CLOAKEDCO AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You and CloakedCo agree to arbitrate any dispute arising from these Terms or your use of the Services, except that you and CloakedCo are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and CloakedCo agree (a) that any arbitration will occur in King County, Washington; (b) that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and (c) that the state or federal courts of King County, Washington have exclusive jurisdiction over any appeals of an arbitration award and over any suit, if any, between the parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AND CLOAKEDCO WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR REPRESENTATIVE ACTION OR PROCEEDING.

### **4) Forum and Venue**

A lawsuit, if any, by you or CloakedCo against the other will occur in state or federal court in King County, Washington. You and CloakedCo agree that the jurisdiction and venue of these courts is exclusive.

## **Applicable Law**

Any dispute between you and CloakedCo will be governed by these Terms and the laws of the State of Washington and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction.

## **Severability**

If any provision of these Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

## **Complete Agreement**

These Terms supersede all prior understandings regarding the same and represent the complete agreement between you and CloakedCo.

## **Questions and Comments**

CloakedCo welcomes comments, questions, concerns, or suggestions. Please send feedback to us by visiting [www.CloakedApp.com](http://www.CloakedApp.com).