

POLYPAD API STANDARD TERMS AND CONDITIONS

This API License Agreement (this “**Agreement**”), effective as of the License Effective Date set forth above, is by and between Licensor and Licensee set forth below. Licensor and Licensee may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

Background. Licensor desires to license the API to Licensee; and Licensee desires to obtain a license from Licensor to the API, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

- a. “**Licensor**” means Amplify Education, Inc. of 55 Washington St. Ste 800, Brooklyn, NY 11201, USA.
- b. “**Term**” means 12 months commencing on the License Effective Date
- c. “**API**” means the Polypad JavaScript API, which allows access to and embedding of the Polypad Software in apps and websites, and any API documentation or other API materials made available to Licensee by Licensor, including any Updates.
- d. “**Applications**” means any applications developed by Licensee to interact with the API.
- e. “**Licensor Software**” means the Polypad Software, consisting of virtual manipulatives and interactive digital whiteboard tools.
- f. “**Updates**” means any updates, bug fixes, patches, or other error corrections to the API that Licensor generally makes available free of charge to all licensees of the API.

2. License.

- a. **License Grant.** Subject to and conditioned on Licensee's payment of Fees and compliance with all the terms and conditions set forth in this Agreement, Licensor hereby grants Licensee a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the Term to use the API for Permitted Use in each case as defined above.
- b. **Use Restrictions.** Licensee shall not use the API for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as expressly set forth in this Agreement, Licensee shall not at any time, and shall not permit others to: (i) copy, modify, or create derivative works of the API, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the API; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the API, in whole or in part; (iv) remove any proprietary notices from the API; (v) use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) combine or integrate the API with any software, technology, services, or materials not authorized by Licensor; (vii) design or permit Applications to disable, override, or otherwise interfere with any Licensor-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; (viii) use the API in any of of the Applications to replicate or attempt to replace the user experience of the Polypad Software; or (ix) attempt to cloak or conceal Licensee's identity or the identity of the Applications when requesting authorization to use the API.

- c. **Reservation of Rights.** Licensor reserves all rights not expressly granted to Licensee in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Licensee or any third party any intellectual property rights or other right, title, or interest in or to the API.

3. Licensee Responsibilities.

- a. Licensee is responsible and liable for all uses of the API resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.
- b. Without limiting the generality of the foregoing, Licensee is responsible for all acts and omissions of Licensee's end users in connection with the Application and their use of the API, if any. Any act or omission by Licensee's end user that would constitute a breach of this Agreement if taken by Licensee will be deemed a breach of this Agreement by Licensee. Licensee shall take reasonable efforts to make all of Licensee's end users aware of this Agreement's provisions as applicable to such end user's use of the API and shall cause end users to comply with such provisions.
- c. Licensee shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on Licensor's website from time to time. Without limiting the generality of the foregoing,
 - i. Licensee shall monitor the use of the Applications for any activity that violates applicable laws, rules, and regulations or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior, and promptly restrict any offending users of the Applications from further use of the Applications.
 - ii. Licensee shall ensure that the number of persons using the API does not exceed the number of Authorized Users.
 - iii. Licensee shall notify Licensor as soon as it becomes aware of any unauthorized use of the API or the Polypad Software by any person;
 - iv. Licensee is solely responsible for posting any privacy notices and obtaining any consents from Licensee's end users required under applicable laws, rules, and regulations for their use of the Applications.
- d. Licensee will use commercially reasonable efforts to safeguard the API (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee will promptly notify Licensor if Licensee becomes aware of any infringement of any intellectual property rights in the API and will fully cooperate with Licensor in any legal action taken by Licensor to enforce Licensor's intellectual property rights.

4. Updates

- a. During the Term, Licensor shall provide Licensee, at no additional charge, all Updates, each of which are a part of the API and are subject to the terms and conditions of this Agreement. Licensee acknowledges that Licensor may require Licensee to obtain and use the most recent version of the API. Updates may adversely affect how the Applications communicate with the Polypad Software. Licensee is required to make any changes to the Applications that are required for integration as a result of such Update at Licensee's sole cost and expense.

- b. The Licensee must use commercially reasonable efforts to conform to best practice in use of the API. This includes use of a recommended supported minor version (e.g. v1.13) of the relevant API, along with other best practices documented at mathigon.org/polypad and discussed with Licensee from time to time.

5. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. Collection and Use of Information. Licensor may collect certain information through the API or the Polypad Software about Licensee or any of Licensee's employees, contractors, or agents. By accessing, using, and providing information to or through the API or the Polypad Software, Licensee consents to all actions taken by Licensor with respect to Licensee's information in compliance with the then-current version of Licensor's privacy policy and data protection requirements, available at <http://www.amplify.com/privacy>.

7. Intellectual Property Ownership; Feedback.

- a. Licensee acknowledges that, as between Licensee and Licensor, (a) Licensor owns all right, title, and interest, including all intellectual property rights, in and to the API and the Polypad Software and any associated marks and (b) Licensee owns all right, title, and interest, including all intellectual property rights, in and to the Applications, excluding the aforementioned rights in Section 8(a).
- b. If Licensee or any of Licensee's employees, contractors, and agents sends or transmits any communications or materials to Licensor by mail, email, telephone, or otherwise, suggesting or recommending changes to the API or the Polypad Software, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), all such Feedback is and will be treated as non-confidential. Licensee hereby assigns to Licensor on Licensee's behalf, and on behalf of Licensee's employees, contractors, and agents, all right, title, and interest in, and Licensor is free to use, without any attribution or compensation to Licensee or any third party, any

ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Licensor is not required to use any Feedback.

- 8. Disclaimer of Warranties.** THE API AND POLYPAD SOFTWARE ARE PROVIDED "AS IS" AND LICENSOR SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE API, POLYPAD SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF LICENSEE'S OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.
- 9. Indemnification.** Licensee agrees to indemnify, defend, and hold harmless Licensor and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to (a) Licensee's use or misuse of the API, (b) Licensee's breach of this Agreement, and (c) the Applications, including any end user's use thereof. In the event Licensor seeks indemnification or defense from Licensee under this provision, Licensor will promptly notify Licensee in writing of the claim(s) brought against Licensor for which Licensor seeks indemnification or defense. Licensor reserves the right, at Licensor's option and in Licensor's sole discretion, to assume full control of the defense of claims with legal counsel of Licensor's choice. Licensee may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by Licensor or bind Licensor in any manner, without Licensor's prior written consent. In the event Licensor assumes control of the defense of such claim, Licensor will not settle any such claim requiring payment from Licensee without Licensee's prior written approval.
- 10. Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (a) ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE API; OR (b) ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM LICENSEE MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.
- 11. Term and Termination.**

 - a. **Term.** The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect for the duration specified above (the "Term").
 - b. **Termination.**

 - i. Licensor may terminate or suspend this Agreement, any rights granted herein, and Licensee's licenses under this Agreement, in Licensor's sole discretion, at any time and for any reason, by

providing a thirty (30) day notice to Licensee or revoking access to the API at the expiration of such notice.

- ii. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach.
 - iii. Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- c. **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement for any reason all licenses and rights granted to Licensee under this Agreement will also terminate and Licensee must cease using, destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls all copies of the API and Licensor Marks.
- d. **Survival.** Any terms that by their nature are intended to continue beyond the termination or expiration of this Agreement will survive termination.

12. Miscellaneous.

- a. **Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof. Any disputes relating to or arising in connection with this Agreement shall be finally settled in arbitration under the rules of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said rules. The award shall be final and binding and enforceable in any court of competent jurisdiction. The arbitration shall be held in New York, NY in the English language. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit the parties' rights to seek interim injunctive relief or to enforce an arbitration award in any court of law.
- b. **Successors and Assigns; No Third-Party Beneficiaries.** This Agreement will inure to the benefit of the parties, and their permitted successors and assigns. Licensee may not assign or otherwise transfer (by operation of law or otherwise) any rights, nor delegate or subcontract any obligations, under this Agreement without Licensor's prior consent. Any assignment in violation of the foregoing will be null and void and of no force or effect. Except as explicitly stated herein, this Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.
- c. **Independent Contractor.** Nothing contained in this Agreement is intended nor will it be construed as creating a partnership or joint venture between Licensee and Licensor, nor is anything contained in this Agreement intended to be construed as creating or requiring any on-going or continuing relationship or commitment between Licensee and Licensor, except as specifically set forth in this Agreement. In fulfilling its obligations pursuant to this Agreement, each party will be acting as an independent contractor.

- d. **Publicity.** Neither party will disclose the terms or existence of this Agreement or their relationship to any other person without the prior written approval of the other party.
- e. **Entire Agreement; Amendment and Waiver.** This Agreement, including any SOWs entered into pursuant hereto and all exhibits and addenda attached hereto, constitutes the entire agreement between the parties respecting the subject matter hereof and supersede and replace all prior oral or written agreements, understandings, or representations between the parties related thereto. No amendment or waiver of any term of this Agreement will be valid unless made in a writing signed by authorized representatives of both parties. Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision of this Agreement.
- f. **Hierarchy of Terms; Severability.** In the event that there are any conflicts between the terms of this Agreement and the terms of any SOW, the terms of this Agreement will control unless the parties expressly state their intention to the contrary in the SOW. The terms of this Agreement and the SOW will control over any terms of any purchase order, acknowledgment, invoice, or other documents issued by the Licensee. If any provision of this Agreement is found to be invalid, unenforceable, void, or voidable for any reason whatsoever, the remainder of this Agreement will not be affected. To the extent a provision of this Agreement is held to be invalid, unenforceable, void, or voidable, the parties agree that such provisions will be amended, but only to the extent required by law, to conform as nearly as possible, in accordance with applicable law.
- g. **Notices.** All notices must be in writing and addressed to the relevant party at its address set forth in the signature blocks below (or to such other address such party specifies in writing). All notices and other communications must be delivered to the person designated below by (i) email or (ii) nationally or internationally recognized courier service or postal service, return receipt requested. Such notices will be deemed effective when received or, in the case of email notices, when the recipient acknowledges having received the email (with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section).