



## SOFTWARE EVALUATION AGREEMENT

### Accelero™ Diameter

This Agreement is entered into between **Diametriq, LLC (“Diametriq”)** with premises at 1990 W. New Haven Ave., Suite 303, Melbourne, FL 32904 USA and the party defined in the registration form completed to request the evaluation ("**Evaluation Licensee**"). Diametriq and Evaluation Licensee may be referred to herein as the “Party” or “Parties”.

1. Diametriq owns trade secrets, copyrights and other proprietary rights in certain source and object code “Diametriq Software”.
2. Evaluation Licensee wishes to acquire a license to such particular portions of Diametriq Software upon the terms set forth herein.
3. Diametriq desires to keep its trade secrets and confidential information from competitors.
4. DEFINITIONS. As used herein, the term shall have the following meanings.
  - 4.1 “Diametriq Software” shall mean the Diametriq Source Code, the Diametriq Object Code, and documentation for Diametriq Accelero™ Diameter.
  - 4.2 “Source Code” shall mean the collection of files that can be converted from human-readable form to an equivalent computer-executable form.
  - 4.3 “Object Code” is the representation of code that a compiler generates by processing a source code file.

## AGREEMENT

### 5. TERMS OF EVALUATION

- 5.1 License to Use Object Code: Diametriq hereby grants to Evaluation Licensee a worldwide, non-exclusive, non-transferable right to use Diametriq Object Code during the term of this agreement for evaluation purposes only.
- 5.2 Retention of Title: Diametriq retains title and ownership of the Diametriq Software and all subsequent copies and modifications, including translations, regardless of the form or media in which or on which the original and other copies may exist. This license is not a sale of the Diametriq Software or any copy thereof.

## **6. DISCLAIMER**

The Software is provided “as is” without warranty of any kind. Diametriq makes no warranties, and Evaluation Licensee receives no warranties, express or implied, statutory or by any communication with Evaluation Licensee, and Diametriq specifically disclaims any implied warranty of merchantability or fitness for a particular purpose. Diametriq does not warrant that the operation of the program will be uninterrupted or error-free. This warranty shall apply to all of the software to the extent created, modified or altered by Diametriq. The above stated express limited warranty shall not apply to any Evaluation Licensee created software used in conjunction with the Diametriq software, or to any Diametriq software, which shall have been subject to misuse, negligence, or accident by Evaluation Licensee.

## **7. TERM AND TERMINATION**

7.1 Term of Agreement: This Agreement shall enter into full force and effect when Evaluation Licensee indicates its acceptance of its terms and conditions by installing and using the Diametriq Software. The Agreement will terminate on the last calendar day of the following month.

7.2 Consequences of Termination: All software and documentation shall be destroyed and all rights granted to Evaluation Licensee in Section 5 are revoked. The provisions of section 8 shall survive the termination of this agreement.

## **8. CONFIDENTIALITY**

8.1 The Evaluation Licensee agrees to retain information about the Diametriq Software in confidence during the term of this Agreement and for a period of two (2) years afterward and shall use reasonable care not to disclose such information to any party by using the same degree of care as the Evaluation Licensee employs with respect to its own information of like importance.

Such restrictions shall not apply to any information which: (a) is or becomes publicly known through no wrongful act on the part of the Evaluation Licensee; (b) is already known to the Evaluation Licensee at the time of disclosure; (c) is rightfully received by the Evaluation Licensee from a third party without breach of this Agreement; (d) is independently developed by the Evaluation Licensee without breach of this Agreement; or (e) is disclosed pursuant to the lawful requirement or request of the Governmental Agency.

## **9. LIMITED LIABILITY**

**IN NO EVENT SHALL DIAMETRIQ HAVE ANY LIABILITY TO THE EVALUATION LICENSEE, (A) FOR ANY CLAIM, LOSS OR DAMAGE, OR (B) FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, BUSINESS REVENUE OR GOOD WILL, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT OR OTHER THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

## **10. GENERAL**

- 10.1 Assignment: Neither this Agreement nor any interest therein shall be transferable or assignable by the Evaluation Licensee under any circumstances.
- 10.2 Law: This Agreement shall be governed by and construed according to the laws of the State of Florida, without reference to its conflicts of laws rules.
- 9.3 Licenses: Nothing contained in this Agreement shall be construed as conferring by implication, estoppels or otherwise upon either Party hereunder any license or other right except the licenses and rights expressly granted hereunder to a Party hereto.
- 9.4 Captions: Paragraph titles or captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, nor the intent of any provision thereof.
- 9.5 Severability: If a provision of this Agreement is held to be unenforceable under applicable law, the unenforced provision will not affect any other provision in this Agreement and this Agreement will be construed as if the unenforceable provision was not present.
- 9.6 Export: Evaluation Licensee shall comply with all applicable laws and regulations applicable to Evaluation Licensee's activities under this Agreement. Without limiting the generality of the foregoing, Evaluation Licensee agrees (a) to comply with all Department of Commerce and other United States export controls and (b) not to produce or distribute Diametriq Software in any country where such production or distribution would be unlawful.