SOFTWARE MAINTENANCE TERMS

Version China 2019.7.15

These Software Maintenance Terms apply to any quote, order, and order acknowledgment, and any sale of software maintenance services by KLA Corporation, One Technology Drive, Milpitas, California 95035 ("KLA") to any acquirer ("Customer"). KLA does not accept, expressly or impliedly, and KLA hereby rejects, any additional or different terms or conditions that Customer presents, including but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless KLA expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, receiving, accepting or using services or otherwise proceeding with any transaction after receipt of these Software Maintenance Terms or after otherwise being notified that such transactions are subject to these Software Maintenance Terms, Customer agrees to these Software Maintenance Terms and KLA's General Terms, which are incorporated by reference herein and are either attached hereto, or available at www.kla.com/terms or on request.

1. SCOPE AND DEFINITIONS

1.1 Scope. These Software Maintenance Terms apply to Software that is to be installed on Third Party Products (governed by KLA's Standalone Software License Terms), for which KLA has agreed in writing to provide Software Maintenance Services. Maintenance Services for computer programs that are pre-installed, or to be installed, on any KLA Hard- ware are governed by KLA's Hardware Maintenance Terms, which are available at www.kla.com/terms or on request. If KLA performs any services outside the scope of the applicable Standard Services Offering (including, but not limited to, in accordance with Section 3.4 — Other Errors), KLA's then-current Time & Materials Services Terms (which are available at www.kla.com/terms or on request) shall apply; provided, however, that KLA shall not be obligated to perform any services outside the scope of the applicable Standard Services Offering. KLA's obligations under these Software Maintenance Terms shall solely be to undertake the agreed upon services activities and not to achieve certain technical, economical, or other result.

1.2 Definitions. The definitions in KLA's General Terms shall apply in addition to the following definitions:

"Maintenance Period" means a period of twelve (12) consecutive calendar months, or any other period specified by KLA, and such period shall commence on the date specified by KLA or, if not specified by KLA, the date on which KLA first makes Software Maintenance Services available to Customer.

"Major Release" means a release of the Software that contains substantial changes or new features. A new Major Release is designated by a change of the first digit of a release of the Software.

"New Version" means an Update or a Major Release.

"Problem" means the failure of the Software to conform to the applicable Documentation。

"Software Maintenance Services" means the services defined in Section 3 (Software Maintenance Services).

"Standard Services Offering" means KLA's written description of the scope, technical de- tails, procedural requirements and/or price of certain types of standard maintenance and support services programs, which KLA makes available to Customer on KLA's website at www.kla.com/terms or otherwise or upon request.

"Update" means a release of the Software that aims at fixing bugs of the Software or that contains small changes and new features, but not Major Releases.

2. AUTHORIZED SUPPORT CONTACTS. Customer may appoint up to two (2) contact persons who shall participate in any training programs that KLA, at its sole discretion, may offer or require as part of the Software Maintenance Services, and who shall be Customer's support contacts for all requests for Software Maintenance Services and all communications between Customer and KLA regarding Software Maintenance Services ("Authorized Support Contacts"). Customer may request the designation of additional Authorized Support Contacts subject to payment by Customer of additional software maintenance fees at KLA's then-current rates.

3. SOFTWARE MAINTENANCE SERVICES. During the Maintenance Period, KLA will provide the following services (collectively, the "Software Maintenance Services").

3.1 New Versions. KLA will provide those New Versions to Customer that KLA, at its sole discretion, makes generally available to all of KLA's customers that are then receiving Software Maintenance Services under the same Standard Services Offering as Customer hereunder; provided, however, that KLA shall not be obligated to provide Major Releases, unless KLA specifies in the applicable Standard Services Offering or otherwise in a duly signed writing that Major

软件维护条款

2019 **年** ***7*** **月** ***15*** **日中国用版本**

本软件维护条款适用于 KLA Corporation, One Technology Drive, Milpitas, California, 95035（"KLA"）对任何购买人（"客户"）的软件维护服务的任 何报价、订单、订单确认书或任何出售。KLA 不明示或默示地接受而且 KLA 特此拒绝承认客户提出的任何附加或不同的条款或条件，包括但不限于任何 订单、接受函、确认书或其它文件中包含或提及的或商业惯例或此前的业务 惯例确立的任何条款或条件，除非 KLA 在正式签署的书面文件中明确清楚 地同意该等条款和条件。客户在收到本软件维护条款后或在被以其它方式告 知交易受本软件维护条款约束后，订购、接收、接受或使用服务或另行继续 任何交易的，即表示客户同意本软件维护条款以及 KLA 一般条款（该等条 款经在此提及而纳入本条款，或可从 www.kla.com/terms 网址或向 KLA 求 索获得）。

1. 范围和定义

1.1 范围。 本软件维护条款适用于 KLA 已书面同意为其提供软件维护服务、 将安装在第三方产品上的软件（受 KLA 独立软件许可条款约束）。任何 KLA 硬件上预装或将安装的计算机程序的维护服务，受 KLA 硬件维护条款约束， 该等条款可从 www.kla.com/terms 网址或向 KLA 求索获得。如果 KLA 在适 用的标准服务单范围之外提供任何服务，包括但不限于按照第 3.4 条（其它 错误）要求的服务，则应适用 KLA 届时有效的时间和材料服务条款（可从 www.kla.com/terms 网址或向 KLA 求索获得）；但是，KLA 并无义务在适 用的标准服务单范围之外履行任何服务。KLA 在本软件维护条款项下的义 务，仅限于实施约定的服务活动，而不是达到若干技术的、经济的或其它结 果。

1.2 定义。 除下述定义外，适用 KLA 一般条款中的定义：

"维护期" 指自 KLA 书面指明的日期起（或，如 KLA 未指明日期，则自 KLA 首次向客户提供软件维护服务之日起）连续十二（12）个日历月的期间。

"主要版本"指包含实质性的变更或新特色的软件版本。新的主要版本以变 更软件版本的首位数来标识。

"新版本"指升级或主要版本。

"问题"指软件不符合有关文档。

"软件维护服务"指第 3 条（软件维护服务）定义的服务。

"标准服务单"指对 KLA 在其网站 www.kla.com/terms、或以其它方式、 或应要求提供给客户的若干标准维护和支持服务方案的范围、技术细节、程 序要求和/或价格的书面描述。

"升级"指旨在解决软件故障的或包含小的变更或新特色的软件版本，但主 要版本除外。

2. 授权支持联系人。客户可指定最多两（2）名联系人，他们将参加 KLA 自 行决定作为软件维护服务的一部分提供的或要求的任何培训项目，并将担任 一切软件维护服务请求以及客户与 KLA 间一切有关软件维护服务通讯的客户 支持联系人（"授权支持联系人"）。客户可在按 KLA 届时有效的费率支付 额外的软件维护费后，要求指定额外的授权支持联系人。

3. 软件维护服务。维护期内，KLA 将提供下述服务（合称"软件维护服 务"）：

3.1 新版本。 KLA 将提供依其自行决定向当时获取与客户同一标准服务单项 下软件维护服务的一切 KLA 用户普遍提供的新版本。除非 KLA 在有关标准服 务单或正式签署的书面文件中规定主要版本受客户收到的软件维护服务的保 障，否则，KLA 没有义务提供主要版本。新版本将按 KLA 自行认为适当的形 式、格式以及介质提供给客户。KLA 保留不制作任何新版

Versions are covered by the Software Maintenance Services that Customer receives. New Versions will be made available to Customer in such form and format and on such media as KLA in its discretion deems appropriate. KLA reserves the right not to create any New Versions and to market new versions of the Software as new products for additional consideration, e.g., as a Major Release or otherwise. Customer may use New Versions only instead of, but not in addition to, the updated Software. New Versions are covered by these Software Maintenance Terms, but, without limiting Section 5.3 (Disclaimer), are not covered by the warranties applicable to the updated Software. Notwithstanding the foregoing, Customer's use of any New Versions shall be subject to the infringement indemnity provisions of KLA's General Terms and Customer's use of the New Versions shall additionally be subject to all license limitations and restrictions contained in the Standalone Software License Terms applicable to the updated Software. KLA Corporation owns, retains and reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to the New Versions, subject only to the limited rights that KLA expressly grants herein. Without limiting the foregoing, Customer acknowledges that nothing herein shall constitute a sale of any New Versions (or any Intellectual Property in and to the New Versions) including any copies and portions thereof.

本，以及将软件新 版本作为新产品（如主要版本或其它形式）进行营销、获取额外对价的权 利。客户仅可将新版本用于取代被更新软件，而不得再行使用被更新软件。 新版本受本软件维护条款保障，但是，在不限制第 5.3 条（免责声明）的条 件下，其不受适用于被更新软件的保证的保障。虽有前述规定，客户对任何新版本的使用，应受 KLA 一般条款中侵权赔偿条款的约束，而且，客户对新 版本的使用，还应受适用于被更新软件的独立软件许可条款的一切许可限制 和约束的制约。除 KLA 在本条款项下明示授予的有限权利外，KLA Corporation 拥有、保留、保持新版本的所有权、产权及一切权益，包括但不限于新版本的一切专有权利。在不限制前述一般性的同时，客 户认知，本条款中的任何规定，均不构成任何新版本或其任何知识产权（包 括其任何拷贝或任何部分）的销售。

3.2 Support. During the support hours specified in the applicable Standard Services Offering, KLA shall, via telephone, e-mail, or KLA's technical support website, if any, provide the following services ("Support") (i) respond to Customer's questions regarding Problems; and (ii) if the Authorized Support Contacts report Problems to KLA with a detailed description of the Problem, use commercially reasonable efforts to correct any reproducible programming Problem that materially affects the operation of the Software by delivering an add-on program to correct such Problem, identifying a work-around or detour solution, or specifying a plan for correcting the Problem.

3.2 支持。在有关标准服务单规定的支持时间内，KLA 将通过电话、电子邮件 或 KLA 技术支持网站（如有），提供下述服务（"支持"）：(i)回应客户有 关问题的询问；(ii)如果授权支持联系人向 KLA 详尽描述、报告了问题，则 K- T 将尽商业上合理的努力，通过交付纠正问题的增补程序，确定迂回救助法 或绕道方案，或说明问题纠正计划，纠正实质影响软件运行的任何可重现编 程问题。

3.3 Problems Reporting, Response, Resolution, and Escalation. Customer shall inform KLA of a Problem by providing the information required to correct the Problem as specified in the applicable Standard Services Offering or as otherwise reasonably requested by KLA, based on which KLA will assign to the Problem a severity level. KLA reserves the right to downgrade at any time the assigned severity level (i) if the Problem is determined to be less severe than originally reported; (ii) as KLA provides solutions to lessen the impact of the Problem; or (iii) if KLA is unable to effectively provide Support due to Customer's failure to comply with its cooperation duties under these Software Maintenance Terms and KLA's General Terms. If KLA specifies any response and resolution times in the applicable Standard Services Offering or otherwise, such response and resolution times shall constitute targets only.

3.3 问题报告、回应、解决和逐级上报。客户应通过提交有关标准服务单规 定的纠正问题所需信息，或 KLA 另行合理要求提供的信息，将问题告知 K- T，KLA 将依照该等信息指定问题的严重级别。有下列情形之一的，KLA 保留 随时调低指定的严重级别的权利：(i)问题被认定为没有原先报告的严重的； (ii) KLA 正在提供解决方案，减少问题影响；(iii)因客户未遵守其在本软件维护 条款和 KLA 一般条款下的合作义务，KLA 不能有效提供支持的。如果 KLA 在有 关标准服务单或其它文件中规定了任何回应和解决时间，该等回应和解决时 间应仅构成目标。

3.4 Other Errors. If KLA believes that an error reported by Customer is not due to a Problem, KLA will so notify the Customer, who may then either (i) instruct KLA to proceed with Software Maintenance Services regarding said error at the Customer's possible expense, as further specified in this Section 3.4; or (ii) advise KLA that the Customer does not wish the error pursued, in which case KLA may elect, at its sole discretion, not to pursue the error without liability therefor. If the Customer requests that KLA proceeds with Software Maintenance Services regarding an error, and KLA subsequently determines that the error was not due to a Problem, KLA's then-current Time & Materials Services Terms shall apply to any error identification or correction efforts undertaken by KLA and repair costs incurred by KLA.

3.4 其它错误。 如果 KLA 认为，客户报告的错误可能不是问题引起的，则 K- T 将照实告知客户，客户可(i)指示 KLA 对有关错误进行软件维护服务，客户 可能需按本 3.4 条的进一步规定支付费用；或(ii)告知 KLA 其不想处理该错 误，这时， KLA 可依其自行决定，选择不处理该错误而无需承担任何责任。 如果客户要求 KLA 对一项错误进行软件维护服务，而随后 KLA 认定错误不是 问题引起的，则 KLA 届时有效的时间和材料服务条款应适用于 KLA 进行的任 何错误查明或纠正工作以及 KLA 发生的修理费用。

3.5 Limitations and Exclusions. KLA shall not be obligated to provide Software Maintenance Services if such Software Maintenance Services are required due to (i) Customer's mishandling, abuse, misuse, or use of the Software other than in accordance with KLA's operation instructions; (ii) use of the Software with hardware or software that were not expressly specified in writing by KLA as suited for use with the Software; (iii) changes to the Customer environment, in which the Software were provided; (iv) actions of persons other than KLA; (v) installation, maintenance, or repair of Software by someone other than KLA, except maintenance performed by Customer if an to the extent authorized by KLA in a duly signed writing; or (vi) Force Majeure conditions as defined in KLA's General Terms. KLA shall not be obligated to provide Software Maintenance Services for (a) Software that has been modified by someone other than KLA, unless such modifications were directed or approved by KLA in writing and made in strict conformance with all specifications and instructions provided in such writing; or (b) Software that KLA modified in accordance with Customer's request, specifications, or instructions. KLA shall only be obligated to provide Software Maintenance Services for (y) the most recent version of the Software and (z) for prior versions of the Software for a period of twelve (12) months following the announcement of the retirement of a version of the Software by KLA. KLA shall have no obligation to provide Software Maintenance Services for any other versions of the Software.

3.5 限制和排除。 因下列情形而需要软件维护服务的，KLA 无义务提供该等 服务：(i) 客户不当操作、滥用、不当使用或未按 KLA 操作指示使用软件；(ii) 将软件与 KLA 未书面明示规定适合与软件合用的硬件或软件合用；(iii) 软件提 供时的客户环境发生变化；(iv) KLA 之外的人的作为；(v) KLA 之外的人安装、 维护或修理软件，但客户经 KLA 以正式签署的书面文件授权进行的维护除 外；(vi) KLA 一般条款定义的不可抗力情形。有下述情形的，KLA 没有义务提 供软件维护服务：(a) 软件被 KLA 之外的人修改，除非该等修改经 KLA 书面指示或批准，并严格按该等书面文件中的一切规格和指示执行；或(b) KLA 按客 户请求、规格、指示修改的软件。KLA 仅有义务为(a) 软件的最新版本，和 (b)KLA 宣布软件的一个版本停用之后十二(12)个月内的软件先前版本，提供软 件维护服务。KLA 无义务为软件的任何其它版本提供软件维护服务。

4. PAYMENT. KLA may invoice Customer quarterly in advance for the performance of Software Maintenance Services at KLA's current standard rates, which are available on request and Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

4. 支付。 KLA 可按其现行有效的标准费率（可向 KLA 求索获得），按季度 提前就软件维护服务的履行向客户出具发票，客户应在发票日后三十（30） 日内按一般条款规定支付。

5. LIMITED WARRANTY AND DISCLAIMER

5. 有限保证和免责声明

5.1 Limited Warranty. KLA will perform Software Maintenance Services substantially in accordance with the applicable Standard Services Offering.

5.2 Exclusive Remedy. If the Software Maintenance Services fail to conform to the limited warranty set forth in Section 5.1 (Limited Warranty), Customer may terminate Software Maintenance Services in accordance with Section 6.3 (Termination for Cause) if KLA fails to cure a non-conformance within thirty (30) days after receiving Customer's detailed request to cure the non-conformance. Termination shall not affect (i) Customer's obligations to pay for Software Maintenance Services already performed before KLA receives Customer's request to cure; or (ii) any other obligations of Customer under these Software Maintenance Terms. THE REMEDY EXPRESSLY PROVIDED OR REFERENCED IN THIS SECTION 5.2 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST KLA WITH RESPECT TO ANY NON-CONFORMANCE OF SOFTWARE MAIN- TENANCE SERVICES OR NEW VERSIONS.

5.3 Disclaimer. EXCEPT AS SPECIFIED IN SECTION 5.1 (LIMITED WARRANTY), KLA MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SOFTWARE MAINTENANCE SERVICES OR NEW VERSIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KLA DISCLAIMS ALL IMPLIED WARRANTIES AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRAN- TIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT. CUSTOMER SHALL HAVE NO WARRANTY CLAIM UNDER SECTION 5.1 (LIMITED WARRANTY), UNLESS KLA RECEIVES CUSTOMER'S WRITTEN REQUEST TO CURE A NON-CONFORMANCE WITHIN THIRTY (30) DAYS AFTER ITS OCCURRENCE.

6. TERM AND TERMINATION

6.1 Term and Renewals. KLA will provide Software Maintenance Services during the Maintenance Period, which shall not be automatically renewed. If Customer wishes to obtain Software Maintenance Services beyond the initial Maintenance Period or for additional Software, Customer has to submit a new order.

6.2 Termination for Convenience. Either party may terminate Software Maintenance Services or exclude individual types of Software from the scope of Software Maintenance Services with ninety (90) days' written notice to the other party.

6.3 Termination for Cause. Either party may terminate Software Maintenance Services by written notice, effective immediately, if the other party fails to cure any material breach of these Software Maintenance Terms within thirty (30) days after receiving a written notice from the non-breaching party detailing the alleged material breach.

6.4 Automatic Termination. Software Maintenance Services shall be automatically terminated with respect to Software for which the license has expired or was terminated for any reason.

6.5 Consequences. Unless KLA validly terminates for cause due to Customer's material breach of these Software Maintenance Terms, Customer shall be entitled to receive a proportionate refund of any prepaid fees applicable to the terminated portion of the Maintenance Period. If Customer validly terminates Software Maintenance Services for cause because of KLA's material breach of these Software Maintenance Terms, Customer shall also be entitled to receive a proportionate refund of any fees applicable to the thirty (30) days immediately preceding the termination. Otherwise, Customer shall not be entitled to receive any refunds. Without limiting the foregoing, Customer shall not be entitled to receive a refund of prepaid fees for Software Maintenance Services that are terminated in accordance with Section 6.4 (Automatic Termination). If KLA terminates Software Maintenance Services because of Customer's material breach of these Software Maintenance Terms, Customer shall return to KLA all New Versions, KLA's Confidential Information and other tangibles and intangibles received in connection with Software Maintenance Services, without retaining any copies thereof and all licenses granted to Customer under these Software Maintenance Terms for New Versions shall be automatically revoked.

6.6 Survival. Sections 4 (Payment), 5 (Limited Warranty and Disclaimer), and this Section 6 of these Software Maintenance Terms and KLA's General Terms shall survive any termination of these Software Maintenance Terms, provided that Customer's licenses to any New Versions shall only survive so long as Customer continues to fully comply with all provisions of these Software Maintenance Terms and KLA's General Terms. For some Software, New Versions that Customer received under these Software Maintenance Terms are automatically disabled upon termination or expiration of Software Maintenance Ser- vices as specified by KLA in the applicable Standard Services Offering or otherwise.

7. PREVAILING LANGUAGE. The English language version of these Software Maintenance Terms shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.

5.1 有限保证。KLA将基本遵守有关标准服务单履行软件维护服务。

5.2 排他性救济。 如果软件维护服务未符合第 5.1 条（有限保证）规定的有 限保证，且 KLA 未在收在客户要求补救该履行不符的详尽请求后三十（30） 日内补救该不符，则客户可按第 6.3 条（因故终止）终止软件维护服务。终 止不得影响：(i) 客户对在 KLA 收到客户补救请求之前已履行的软件维护服务 的付款义务；(ii) 客户在本软件维护条款项下的任何其它义务。本 5.2 条明示 规定的或提及的救济，是客户的唯一的、排他性的救济，代替客户就软件维 护服务不符或新版本不符而对 KLA 享有的一切其它权利或救济。

5.3 免责声明。 除第 5.1 条（有限保证）另有规定外，KLA 对任何软件维护 服务或新版本不作任何明示陈述或保证。在适用法律最大允许范围内，KLA 不作出任何默示保证和陈述，包括但不限于任何适销性、特定用途适合性以 及无侵权的默示保证和陈述，而且，除非 KLA 在不符发生后三十（30）日内收到客户的书面补救请求，否则，客户不得根据第 5.1 条（有限保证）提出 任何保证要求。

6. 期限和终止

6.1 期限和续展。 KLA 将在维护期内提供软件维护服务，维护期不得自动续 展。如果客户希望在初始维护期之后或为额外的软件取得软件维护服务，则 客户必须提交新的订单。

6.2 随意终止。 任何一方均可经提前九十（90）天书面通知对方，而终止软 件维护服务或者将个别软件排除在软件维护服务范围之外。

6.3 因故终止。 如果一方未在收到守约方发出的载明指称实质违反本软件维 护条款的书面通知后三十（30）日内纠正该等实质违约，则另一方可经书面 通知该方而终止软件维护服务，终止立即生效。

6.4 自动终止。对于许可已到期或许可因任何原因而被终止的软件，其软件 维护服务将自动终止。

6.5 后果。 除非 KLA 因客户对本软件维护条款的实质违约而有效因故终止软 件维护服务，否则，客户有权就被终止的维护期部分获得相应比例的任何预 付款退款。如果客户因 KLA 对本软件维护条款的实质违约而有效因故终止软 件维护服务，则客户还应有权获得终止前三十（30）天任何适用收费的相应 比例的退款。其它情形下，客户无权获得任何退款。在不限制前述规定的条 件下，软件维护服务按第 6.4 条（自动终止）终止时，客户无权获得任何软 件维护服务预付款退款。如果 KLA 因客户的实质违约而终止软件维护服务， 则客户应向 KLA 退还一切新版本、KLA 保密信息，以及客户收到的与软件维 护服务有关的其它有形或无形物，且不得保留任何拷贝，而且，在本软件维 护条款下就新版本授予客户的一切许可，均自动撤销。

6.6 继续有效。 KLA 一般条款，以及本软件维护条款的第 4 条（支付）、第 5 条（有限保证和免责声明）、本第 6 条，在本软件维护条款终止后继续有 效。但客户对任何新版本的许可权利，仅在客户继续全面遵守本软件维护条 款以及 KLA 一般条款的所有规定时，才继续有效。客户在本软件维护条款下 收到的某些软件版本，在软件维护服务按 KLA 在有关标准服务单或其它文件 中的规定终止或期满时，自动禁用。

7. 作准文本. 本软件维护条款的英文文本在所有方面，均为作准文本，具有法律约束力。 文本间有任何不符时，以英文本为准。