



SIOS

**SIOS Technology® Corp.**  
**Technical Support Agreement**

## **SIOS Technology Corp. Technical Support Agreement**

1. **Programs.** This Technical Support Agreement (the "Support Agreement") covers LifeKeeper® for Linux, LifeKeeper for Windows, SteelEye Data Replication for Linux, SteelEye DataKeeper, SteelEye DataKeeper Cluster Edition, SteelEye Protection Suites, SteelEye vAppKeeper, SIOS-developed and delivered Application Recovery Kits and code developed by SIOS Technology Corp. ("SIOS") as part of a Professional Services engagement (the "Programs").

2. **Term.** Customer will receive Support Services for the period of time set forth on Customer's invoice from the date of Customer's initial purchase ("Initial Term"), as described herein. Upon expiration of the Initial Term, and upon receipt of Customer's payment for renewal of Support Services, Customer will receive Support Services until the expiration of the renewal term. This Agreement shall, unless earlier terminated pursuant to paragraph 8 below, remain in full force and effect for the Initial Term and any renewal term provided that Customer pays the Support Fees (as defined below) to SIOS.

3. **Support Fees.** Any and all payments made for Support Services are non-refundable. There are no refunds or credits for any unused services upon termination of this Support Agreement for any reason or at any time. Payment for Support Services, including the payment of any renewal fee (the "Support Fees"), shall cover all services provided hereunder, but shall not cover costs of any materials, parts, manuals, software, travel or other disbursements as may be necessary or requested by Customer, which shall be billed to Customer as separate costs when they occur. SIOS may change the Support Fees to reflect its then-current standard fees by notice to Customer at least thirty (30) days prior to the date on which the Support Fee payment is due from Customer. Customer shall pay SIOS, at SIOS's current time and material rate, for time and material spent investigating any error or malfunction that SIOS reasonably determines to be the result of a modification that was not made by, nor authorized by SIOS, to the Programs.

4. **Support Services.** During the Initial Term and any renewal term (subject to payment of the Support Fees), SIOS shall perform the following Support Services:

a) **Error Correction.** SIOS shall work to correct all reproducible errors that materially affect the operation of its Programs as follows: Customer shall notify SIOS of any such errors in writing, with a written description of each claimed error and the conditions under which it occurred. SIOS shall work to correct all such errors that it can verify based on Customer information, and shall continue working either until it corrects the error, develops a workaround for that error or determines in good faith that the error cannot be corrected as part of the then current release of the Program (in which event SIOS shall attempt to correct or eliminate the error in the next release of the Program). Customer may notify SIOS of claimed errors by telephone, provided that the written notice described above must be furnished by the next business day, and that

SIOS need not begin work promptly if the telephone information is incomplete or inadequate.

**b) Telephone and Email Support Access and Contact**

**Information.** Customer will have web, email and telephone access to support technicians who are experts in clustering, high availability and data replication during the time periods and at the contact information set forth on Schedule A attached hereto.

**c) Maintenance Updates.** Customers who are covered by a support agreement will receive all standard Maintenance Updates released by SIOS for any Program owned by Customer free of charge. A "Maintenance Update" is a modified version of a Program released by SIOS (usually as a minor point release) generally to its existing Customers without charge, primarily to correct or eliminate errors in the prior release of the Program and also to enhance existing features. Maintenance Updates do not include new versions or upgrades of any Program for which SIOS generally charges an additional fee. Customer is encouraged to subscribe to SIOS's web log at <http://us.sios.com/blog/> to receive automatic notification of the availability of Maintenance Updates and patches. Customers who are covered by a support agreement will receive free of charge all maintenance updates to Programs, defined as changes to the right of the decimal. (Example: Customer purchased LifeKeeper 6.1 and SIOS releases a maintenance update to version 6.2. Customer receives the maintenance update free of charge.) If SIOS releases a new major version of the software, i.e. from version 6 to 7, this is considered a new Program, and Customers who are covered by a support agreement at the time of the new software release can purchase the upgrade at 50% off of the then list price of the new software. Maintenance Updates may be obtained by contacting technical support at support@us.sios.com with the Host ID number of the server that requires the maintenance update.

**d) Replacement Entitlement ID/Activation Codes.** Customers who are covered by a support agreement are entitled to receive replacement entitlement id/activation codes free of charge.

**e) Website Access.** Customers who are covered by a support agreement will have access to the SIOS Support Self-Service Portal which is accessed under the Support item on <http://support.us.sios.com/>. The portal allows the customer to log a case, view open cases and review solutions to technical questions and problems. To obtain access to the portal, contact Support at support@us.sios.com.

**f) Other Services.** SIOS offers certain professional services at its then-current standard hourly rates which can assist with Customer needs that are outside the scope of this Support Agreement. For example, SIOS will, within its abilities and for an additional fee agreed upon by the parties, assist the Customer with providers of other products which may be causing errors within a Program's cluster. To request SIOS Professional Services, contact a SIOS sales representative at sales@us.sios.com or send an email to [services@us.sios.com](mailto:services@us.sios.com).

**g) Application Recovery Kits (ARK).** SIOS has developed ARKs for

Linux and Windows environments. Customers on an active support agreement can actively exchange or add ARKs for SteelEye Protection Suite (SPS) implementations up to the maximum allowed under the SPS license part number (up to two (2), up to four (4) or up to six (6) ARKs).

h) **Customer Obligations.** Customer will cooperate with SIOS in connection with SIOS's performance of the Support Services hereunder and shall provide SIOS with such information concerning Customer's operations as SIOS shall reasonably request and as shall be necessary for the performance of Support Services hereunder. Customer must provide information about the type of hardware in the Customer's environment, additional software that Customer is using that may or may not share system resources, Customer system error messages, application and system logs and any other information requested by SIOS relating to the Program and Customer's use and configuration thereof. The completeness and accuracy of information provided by Customer to SIOS will affect SIOS's ability to provide Support Services.

5. **Limits of Coverage.** SIOS's obligation to provide Support Services shall be subject to the following:

a) **Current Release.** SIOS provides Support Services only for the most current release and, for a three (3) year period following the release of the most current version, the one prior release of a Program, including Maintenance Updates. If Customer is using an older version of a Program that SIOS is no longer supporting, then Customer must purchase an upgrade to the most current version in order to obtain Support Services. If SIOS end of life's a Program, then SIOS shall support the most current version of such Program for one (1) year from the date of the end of life of such Program. SIOS posts a [Product Support Schedule](http://support.us.sios.com/) on its Support website at <http://support.us.sios.com/> which denotes end of support dates for Programs.

b) **Registration.** To obtain Support Services, Customer must first register via SIOS's web site at <http://support.us.sios.com/>. Such registration enables Customer to obtain both permanent product license keys and product support. SIOS will not support Programs for which SIOS cannot identify a corresponding registered Host ID number or registered product license key.

c) **Third Party Products and Systems.** SIOS does not provide Support Services for (i) software that is not a SIOS Program and (ii) Programs running on versions of operating systems that are no longer supported by the operating system vendor.

d) **Configuration, Installation and Consulting Services.** Support Services do not include assistance with (i) hardware configuration, (ii) operating system installation, configuration or troubleshooting, (iii) network installation or configuration, (iv) integration with third party products, (v) development assistance for the building of custom recovery kits, (vi) solutions architecture, design, integration and implementation services, (vii) best practices consulting and (viii) upgrade planning. Supported hardware and software configurations are set forth at <http://support.us.sios.com/> as well as on Program documentation.

**6. Modifications by Customer.** Customer shall not modify, create any derivative work of or incorporate any other software into the Programs or any portion thereof. SIOS shall not be responsible for maintenance of or for repair of errors or malfunctions occasioned by any modification or enhancement to the Programs made by Customer or by anyone other than SIOS. Any modifications or enhancements made by Customer or by anyone other than SIOS shall be grounds for immediate termination of this Support Agreement.

**7. WARRANTY AND LIABILITY.** ALL SERVICES AND MATERIALS ARE PROVIDED BY SIOS "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL SIOS , ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND/OR CONSULTANTS, BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES EVEN IF SIOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM THE SERVICES PROVIDED HEREUNDER. SIOS'S CUMULATIVE LIABILITY HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE SUPPORT FEES ACTUALLY PAID BY CUSTOMER FOR THE SUPPORT SERVICES AS OF THE DATE SUCH CLAIM AROSE. SIOS SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA OR FOR ANY CLAIM OR DEMAND AGAINST THE CUSTOMER BY ANY THIRD PARTY ON ACCOUNT OF SERVICES PERFORMED HEREUNDER.

Supported hardware and software configurations are set forth at <http://support.us.sios.com/> as well as on Program documentation. SIOS shall have no responsibility or liability under this Support Agreement or any warranty hereunder, if any, to correct, validate, bring into compliance or otherwise remedy any problem with the Program(s) that is caused in whole or in part due to the incompatibility of Customer's environment, hardware or software with the Program(s).

SIOS recommends that the Programs be installed by a SIOS certified specialist. However, if the Customer elects to install the Programs without the assistance of a SIOS certified specialist, the Customer is solely responsible for ensuring that the Programs are installed properly to achieve their intended results and the results actually obtained. Accordingly, SIOS shall have no responsibility or liability under this Technical Support Agreement or any warranty hereunder, to the extent such warranty exists, to correct, validate, bring into compliance or otherwise remedy any problem with the Program(s) that is caused in whole or in part by the improper or inadequate installation of the Program(s) by Customer or incompatibility of Customer's environment, hardware or software with the Program(s).

**8. Termination.** SIOS may terminate this Agreement upon ten (10) days' written notice to Customer in the event Customer fails to pay any Support Fee within thirty (30) days from the date of invoice or breaches any of the terms set forth herein. Customer may terminate this Agreement immediately at any time, provided that it is responsible for the full amount of all payments due through the end of the term, unless termination is due to breach by SIOS. Reinstatement of Support Services after termination of this Support Agreement will require payment of maintenance fees back to the date on which this Agreement was terminated.

**9. License Rights.** Any and all Program modifications, workarounds, patches and/or Maintenance Updates provided by SIOS in connection with the Support Services hereunder shall be considered part of the Program(s) to which they apply and owned exclusively by SIOS, and Customer's rights and/or licenses thereto shall be governed by Customer's then-current agreement with SIOS regarding such Program(s).

## **10. General**

a) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing signed by both parties.

b) **Assignment.** Customer may not assign this Agreement without prior written consent by SIOS. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.

c) **Enforceability.** If any provision of the Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or

enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

d) **Law and Forum.** This Agreement (and any and all amendments thereto) and its validity, construction and performance shall be governed in all respects by the laws of the State of California. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in San Mateo County, California, and the parties hereby agree and consent to such jurisdiction and venue.

e) **Non-Waiver.** The failure of either Customer or SIOS to insist upon strict performance of any of the provisions contained herein shall in no way constitute a waiver of future violations of the same or any other provision.

f) **No Third Party Rights.** This Agreement does not create any rights in any third parties, except assigns, successors of heirs expressly permitted hereunder.

## **Schedule A**

### **Regional Competence and Support Center and Contact Methods**

SIOS Technology Technical Support can be contacted by:

- Entering a case via the SIOS Support Portal located at: [SIOS Support Portal](#)
- Sending an email to the appropriate Competence and Support Center
- Sending an email to [support@us.sios.com](mailto:support@us.sios.com)

SIOS has established Competence and Support Centers in select geographies to provide customers and business partners with access to support in local languages and time zones and access to professionals with significant technical expertise in SIOS Programs.

**For After Hours Support For Critical Issues:** Outside of business hours and on the weekends, emergency support with guaranteed two-hour response time 24 hours per day, 7 days per week, 365 days per year is included under Product Support. After hours Support is only available for critical issues involving a down production system or application where your data cannot be accessed using the SIOS Technology products. These issues are handled by contacting the numbers below. Non-critical issues are handled during business hours.

- Phone +1-803-808-4270 (Worldwide)
- Toll Free 1-877-457-5113

**For After Hours Support For Non-Critical Issues:** If a Customer contacts the above numbers and requests that support services for non-critical issues be performed during non-business hours ("After Hours Support"), SIOS shall escalate and handle such requests but reserves the right to charge the Customer an After Hours Support fee at the then current rates, which may be changed from time to time by SIOS. The current rate for After Hours Support is \$250.00 per hour with a minimum charge of \$250.00 per incident to be charged even if less than an hour of support services is performed.

<b>Region</b>	<b>Contact</b>	<b>Language</b>	<b>Countries</b>
North and South America	+1 877-457-5113 (United States), +1 803-808-4270 (Worldwide), <a href="mailto:support@us.sios.com">support@us.sios.com</a> Hours 8am -- 8pm EST Monday thru Friday	English	USA and all other countries not listed below.
Central Region and Eastern Europe	+49 (0) 1805 876920 (0,14 €/ minute) <a href="mailto:support@steeleye.de">support@steeleye.de</a> Hours 8am – 6pm Monday thru Friday	German, English	Eastern Europe: Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia, Macedonia and Montenegro UK and Ireland
United Kingdom and Ireland	+ 44 (0) 121 569 2505 <a href="mailto:support@openminds.co.uk">support@openminds.co.uk</a> Hours 9am – 5pm Monday thru Friday	English	
Scandinavia, Baltic countries and CIS	+358-20-7598112 <a href="mailto:support@nordicmind.com">support@nordicmind.com</a> Hours 8am – 5pm CET Monday thru Friday	English, Finnish, Scandinavian	Scandinavia: Denmark, Finland, Iceland, Norway, Sweden Baltic Countries: Estonia, Latvia, Lithuania CIS: Russia, Ukraine, Belarus, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan Japan
Japan	<a href="https://www.sios.com/products/bcp/lkdk/contact/support_lk.html">https://www.sios.com/ products/bcp/lkdk/ contact/support_lk.html</a>	Japanese	
China	Contact Local Reseller where purchased		China
Taiwan	Contact Local Reseller where purchased		Taiwan
Asia Pacific Other	<a href="http://www.providencesolutions.net/support">http://www.providencesolu tions.net/support</a> or <a href="mailto:support@providence&lt;br/&gt;solutions.net">support@providence solutions.net</a> Hours 8am – 6pm Monday thru Friday	English – Local Dialects	Malaysia, Singapore, India, Indonesia, Sri Lanka, Pakistan, Bangladesh, Brunei, Vietnam, Cambodia, Philippines

