

Service Level Agreement

DEFINITIONS

"Agreement"	Means this SLA and the Cover Page.
"Applicable Laws"	Means all applicable laws, statutes and regulations from time to time in force.
"Business Hours"	Means working hours between the hours of 9:00am to 5.30pm Monday to Friday.
"Charges"	Means the sums payable for the Service, as further specified in the Cover Page.
"Client"	Means the client entering into the Agreement, whose further details are provided in the Cover Page.
"Cover Page"	Means the cover page provided with this SLA.
"Critical Issues"	Either (where applicable): (i) a master server going down; (ii) an Issue that prevents the Client from operating with the public; (iii) Critical Software going down; or (iv) POS terminal failure.
"Data Protection Legislation"	a. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of Personal Data. b. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
"Engineer"	Means the Tierney's engineer who will examine any Issues reported.
"Equipment"	Means any equipment as specified on the Cover Page.
"EU GDPR"	Means the General Data Protection Regulation ((EU) 2016/679)
"Extended Hours"	Means Monday to Friday: 5.30pm to 11:00pm and 7:00am to 9:00am, 7.00 am to 11.pm Saturday, Sunday & Bank Holidays, 365 days of the year.
"Impact"	Means, in respect of the tickets referenced at clauses 2.4 and 2.5, the measure of the effect an Issue has on the business operations/processes of the Client, measured by: (i) the number of affected customers and/or locations of the Client; (ii) the potential financial losses of the Client; (iii) the effect on hotel/business-critical applications and services of the Client; and (iv) the security risk caused by the Issue.
"Issue"	Means failure of the Software or Hardware or Equipment to operate in all material respects, including any operational failure or error referred to in the Service Level and Response Times Table provided at clause 4.
"Personal Data"	Means the definitions provided within Data Protection Legislation.
"Personal Data Breach"	
"Processing"	
"Processor"	
"Appropriate Technical and Organisational Measures"	
"Controller"	
"Data Subject"	
"POS"	Means The NCR Aloha or TAPA Restaurant "Point of Sales" Solutions software provided by Tierneys.
"Renewal Month"	Means the month specified in the Cover Page.
"Response Time"	Means the responses times provided in the Service Level and Response Times Table provided at clause 4.
"Service"	All services provided by Tierney's to the Client, as set out in the Cover Page and this SLA.
"SLA"	Means this Service Level Agreement.
"Software"	Any computer program, application, middleware, firmware, and other software operated by the Client, and that Tierney's will provide the Service for, as further specified in the Cover Page.

“Technician”	Means the Tierney’s technician who will review the Issue reported and will seek to either (i) resolve the Issue, or (ii) refer the Issue to an Engineer.
“Tierney’s”	Means Tierney’s Office Automation Limited (further company details provided in the Cover Page).
“UK GDPR”	Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the UK Data Protection Act 2018.
“Urgency”	Means, in respect of the tickets referenced at clauses 2.4 and 2.5, the measure of how long until an Issue is likely to have a significant negative impact on the business of the Client.
“24-Hour Cover”	Any hours that are outside of the Business Hours and Extended Hours.

1. SERVICE AND AVAILABILITY

- 1.1. Tierney’s will provide the Service pertaining exclusively to the Software and Equipment, in line with the terms agreed between the parties in the Cover Page.
- 1.2. Service provided under this Agreement does not assure uninterrupted operation of the Software or Equipment.

2. SERVICE PROCEDURE

- 2.1. During Business Hours, Client contacts will log calls with Tierney’s by calling the contact details provided in the “How to Contact” support document provided with this Agreement, which may be amended from time to time. Tierney’s will notify the Client of any amendments to this support document.
- 2.2. Extended Hours and 24-Hour Cover (if included within the scope of the Service as set out within the Cover Page) are available by contacting the numbers provided within the “How to Contact” support document provided with this Agreement. The Extended Hours and 24-Hour Cover phone lines are to cover Critical Issues only.
- 2.3. Where the Client is required to leave a voicemail, this should contain the following:
 - a. The name of the person calling.
 - b. The name of the Client’s business.
 - c. Department details, if applicable.
 - d. The phone number at which the person logging the call can be contacted at.
 - e. A brief description of the Issue.
- 2.4. Where an Issue is reported by a Client during Business Hours, a Technician will log the Issue into Tierney’s PSA system, and an email will be issued to the Client stating the ticket number and the nature of the Issue.
- 2.5. The ticket will be triaged to determine the Impact and Urgency of the Issue and an appropriate priority level will be assigned for a Technician, in accordance with clause 4 below.
- 2.6. Within the appropriate Response Time, a Technician will contact the Client, and if possible, resolve the Issue remotely. If the Issue cannot be resolved remotely, the Technician will issue a scheduled time for an Engineer call-out.
- 2.7. If a call-out must be re-scheduled with a variance greater than three hours either way of the original agreed call-out time, then the relevant Client contact will be notified. If the Client wishes to vary the call-out time, they must notify Tierney’s by email. If the call-out is rescheduled by the Client and therefore falls outside of the agreed time limitations, Tierney’s will not be deemed in breach of its obligations.
- 2.8. When the Engineer arrives on-site, he/she will liaise with the relevant Client contact on the details of the Issue.
- 2.9. While on site the Engineers will only deal with the Issue(s) currently assigned to them. All Issues must be reported through the call logging procedure.
- 2.10. If the Engineer deems the Issue to be caused by a third-party supplier, the Issue will be classed as solved, and Tierney’s will not be held liable.
- 2.11. If an Engineer is unable fix an Issue on-site, Tierney’s will notify the Client within 2 hours of the intended next visit/steps.
- 2.12. Whilst Tierney’s will endeavour to solve all Issues logged in accordance with the call logging procedure with the Extended Hours and 24 Hours Cover lines in a timely manner, all calls logged validly during these times will be classed as commencing at 9.00am of the next working day, as far as procedures and Response Times are concerned. Tierney’s will, however, use all reasonable operational efforts to ensure that the affected Software or Equipment can function within the Response Time.

3. EQUIPMENT AND LABOUR

3.1. All costs associated with:

- i. The labour of Tierney's staff, and
- ii. The replacement of certain Equipment;

will be considered inclusive in the agreed Charges, where the Client has opted to include "Break / Fix Cover" in its (i) standard maintenance cover, (ii) extended maintenance cover, or (iii) POS hardware support cover, subject to the exclusions provided at clause 5.

3.2. Where the Client has not opted for a cover that includes "Break / Fix Cover", a quote for the replacement of any Equipment will be provided by Tierney's to the Client. Active manufacturer warranty options may also be implemented.

3.3. Where an offsite repair of Equipment is necessary (and provided for within this Agreement):

- i. Similar replacement Equipment will be provided by Tierney's until the original Equipment is repaired and returned to site; or
- ii. Identical replacement Equipment will be provided by Tierney's as a permanent replacement.

4. SERVICE LEVELS AND RESPONSE TIMES

Priority	Priority Explained	Examples of Priority Issues	First Support Plan* Response Time	Escalated Resolution Plan* Response Time
Urgent	- Whole company is affected. - Major business processes are stopped. - Any fault that will cause all staff to be unable to do their job.	The Critical Issues.	1 hour	3.5 hours
High	- Departments or large group of users are affected. - Major business processes are stopped, but there is a reasonable workaround.	Faults which seriously affect the operation of the business, such as email, payroll and account faults.	2 hours	8 hours
Medium	- One user or a small group of users have reported that their major business processes have stopped.	Individual operators or key individuals' functions are down (e.g., email account).	4 hours	32 hours
Low	- One user or a small group of users reported that the business is degraded, but there is a reasonable workaround. - Departments or large group of users are affected by an irritation (not a stoppage). - One user or a small group of users are affected by an irritation (not a stoppage).		8 hours	72 hours

***First Line Support Plan**, is the amount of time acceptable for support to action an Issue logged.

***Escalated Resolution Plan**, is the additional time allowed after an Issue is logged for a plan to be agreed and put in place to deal with the Issue. If the Issue cannot be resolved via regular remote support; this may include an on-site call-out, or remote support with senior Engineers, as appropriate.

5. EXCLUSIONS

- 5.1. Service under this Agreement does not include the provision of any advice, service, analysis or assessment of the suitability of the Clients' Equipment to deal with:
- i. Repair of damage or increase in service time caused by accessories, alterations, attachments or other devices not furnished by Tierney's.
 - ii. Repairs to damaged programs or data files resulting from hardware failure, improper operation, inadequate power or cooling provision, viruses, malicious behaviour or attacks, loss of data due to error in backup procedure, or insufficient backup volumes.
 - iii. Furnishing supplies, or accessories, or other consumable items; making specification changes (including BIOS or Firmware revisions) or performing services connected with relocation of equipment; or adding or removing accessories, attachments or other devices.
 - iv. Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused using non-approved supplies.
 - v. Service of accessories, alterations, attachments or other devices not furnished by Tierney's.
 - vi. Additional service time and/or replacement parts due to delayed access to Client's premises / equipment to be serviced or engineering changes - installation and control.
 - vii. Repair of damage or increase in service time caused by; accident such as breakage, shock or spillage; misuse or abuse; disaster which shall include but not be limited to fire, flood, water, wind and lightning; transportation; neglect or misuse.
 - viii. Such service which is impractical for Tierney's to render because of alterations in, or attachments to, an item or its connection by mechanical or electrical means to another device.
 - ix. Relocation of items and costs associated with relocation. Relocation to another country may result in Tierney's no longer being able to maintain an item.
 - x. General queries on usage of items listed within the Agreement.

6. CLIENT'S RESPONSIBILITIES

- 6.1. The Client shall:
- i. co-operate with Tierney's in all matters relating to the Service;
 - ii. provide Tierney's, in a timely manner, access to the Client's premises, office accommodation, data and other facilities as required by Tierney's to complete the Service;
 - iii. provide to Tierney's in a timely manner all documents, information, items and materials in any form (whether owned by the Client or third party) required in connection with the Service and ensure that they are accurate and complete in all material respects;
 - iv. inform Tierney's of all health and safety and security requirements that apply at any of the Client's premises.
 - v. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Tierney's to provide the Service.
 - vi. If Tierney's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Tierney's shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

7. CHARGES

- 7.1. The Client agrees to pay the Charges as indicated in the Cover Page. The Charges will be reviewed annually and one month's prior written notice of any proposed changes will be notified to the Client in advance of the Renewal Month.

- 7.2. Changes in Equipment specifications may result in an adjustment of the Charges. Tierney's will notify the Client of the adjustment, and this will become effective upon the installation of the specific change.
- 7.3. All prices quoted are exclusive of VAT and delivery, and are valid for 28 days.
- 7.4. In addition to the Charges due under this Agreement, the Client agrees to pay any taxes resulting from this Agreement.

8. INVOICING

- 8.1. The Charges will be invoiced in advance.
- 8.2. Payment is made by direct debit unless otherwise agreed by Tierney's.
- 8.3. In the event of non-adherence by the Client to the payment terms outlined on the Invoice(s) or of any other failure by the Client to comply with any of the payment obligations under this Agreement, Tierney's shall be entitled, at its own discretion, to withhold Service until such time as the Client is no longer indebted to Tierney's and/or has fulfilled its own obligations, as the case may be, without prejudicing any other remedies to which Tierney's may be entitled under the terms of this Agreement.

9. DISCLAIMERS

- 9.1. The parties acknowledge that the Agreement is a service agreement, and that Tierney's do not warrant that:
 - i. The operation of the Equipment or Software will be uninterrupted or error free;
 - ii. The functions or performance of the Equipment or Software will meet with the Client's requirements.
- 9.2. Tierney's disclaim all representations or warranties, express or implied, made to the Client or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any service or any goods provided incidental to the Service.

10. LIMITATION OF LIABILITY

- 10.1. References to liability in this clause 10 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 10.3. Nothing in this clause 10 shall limit the Client's payment obligations under this Agreement.
- 10.4. Nothing in this Agreement limits any liability which cannot legally be limited, including (but not limited to) liability for:
 - i. death or personal injury caused by negligence;
 - ii. fraud or fraudulent misrepresentation; and
 - iii. breach of the terms implied by the Supply of Goods and Services Act 1893.
- 10.5. Subject to the limitations set out in this clause 10, Tierney's total aggregate liability to the Client under this Agreement shall not exceed once the amount of the annual Charges agreed within the Cover Page for the specific Equipment or Software that caused the damage, or that are the subject matter of or are directly related to the cause of the action.
- 10.6. In no event shall Tierney's be held liable for a Client's claims for any of the following losses:
 - i. loss of profits;
 - ii. loss of sales or business;
 - iii. loss of agreements or contracts;
 - iv. loss of anticipated savings;
 - v. loss of use or corruption of software, data or information;
 - vi. loss of or damage to goodwill; and
 - vii. indirect or consequential loss.

11. DATA PROTECTION

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Tierney's is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by Tierney's, the duration of the processing and the types of Personal Data and categories of Data Subject.

- 11.3. Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful collection and processing of the Personal Data by Tierney's on behalf of the Client for the duration and purposes of this Agreement.
- 11.4. Without prejudice to the generality of clause 11.1, Tierney's shall, in relation to any Personal Data processed in connection with the performance by Tierney's of its obligations under this Agreement:
- a. process that Personal Data only on the documented written instructions of the Client (which are set out in Schedule 1) unless Tierney's is required by Applicable Laws to otherwise process that Personal Data. Where Tierney's is relying on Applicable Laws as the basis for processing Personal Data, Tierney's shall promptly notify the Client of this before performing the processing required, unless the Applicable Laws prohibits Tierney's from so notifying the Client;
 - b. ensure that it has in place Appropriate Technical and Organisational Measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - c. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - d. not transfer any Personal Data outside of the European Economic Area (where Tierney's Irish entity is the contracting party specified in the Cover Page) or the United Kingdom (where Tierney's UK entity is the contracting party specified in the Cover Page) unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. the Client or Tierney's has provided appropriate safeguards in relation to the transfer;
 - ii. Tierney's complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iii. Tierney's complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - e. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - f. notify the Client without undue delay on becoming aware of a Personal Data Breach;
 - g. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless required by Applicable Laws to store the Personal Data; and
 - h. maintain complete and accurate records and information to demonstrate its compliance with this clause 11.
- 11.5. Tierney's shall not permit another sub-Processor to process the Client's Personal Data without the prior written approval of the Client. Those sub-Processors who are approved by the Client as at the date of this Agreement are set out in Schedule 1. Tierney's shall be liable for the acts and omissions of its sub-Processors as if such acts or omissions were its own.

12. CONFIDENTIALITY

- 12.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2. Each party may disclose the other party's confidential information:
- i. to its employees, personnel, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
 - ii. as may be required by Applicable Laws, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

13. TERM AND TERMINATION

- 13.1. This Agreement begins on the start date as stated on the Cover Page.
- 13.2. The Agreement will remain in force until the Renewal Month. It will then be automatically extended for annual period(s) until all agreed Service items have been completed under this Agreement.
- 13.3. The Client agrees to provide Tierney's with three month's written notice of cancellation of the Agreement prior to the Renewal Month.
- 13.4. Tierney's may terminate the Agreement where the Client is in material breach of the Agreement, upon 30 days' written notice specifying the nature of the breach, and if such breach has not been cured within this thirty-day period. For the avoidance of doubt, non-payment of the Charges will be considered a material breach.

14. MODIFICATIONS

- 14.1. Tierney's may, upon three months prior written notice to the Client, modify the terms and conditions of this Agreement (excluding any agreed Charges).
- 14.2. Any modifications made by Tierney's will be made with due consideration and consultation with the Client.
- 14.3. Any modification made by Tierney's will apply unless the Client exercises the option to terminate this Agreement or to withdraw the Equipment effected by such modification.
- 14.4. This Agreement can only be modified by the Client by way of a written addendum to this agreement duly signed by persons by a representative of the Client and of Tierney's. Tierney's are not obliged to enter into such an addendum, and they will do so at its discretion. Any other variance from the terms or conditions of this Agreement by the Client in any Client order or other written modification will have no effect.

15. GENERAL

- 15.1. This Agreement may not be assigned; its rights, duties and obligations may not be assigned or transferred by the Client without the prior written consent of Tierney's. Any attempt to assign or transfer any of the rights, duties or obligations of this Agreement without such consent is void.
- 15.2. If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Cover Page, the provisions of this Agreement shall prevail.
- 15.3. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 15.4. The Cover Page and this SLA constitutes the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.5. This Agreement (which must be signed by the Client) may be executed electronically and in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 15.6. In performing their obligations under this Agreement, the parties shall comply with Applicable Laws.
- 15.7.
 - i. Where the Client is based in the United Kingdom: The Agreement will be governed by the laws of the United Kingdom, and the parties agree that the courts of the United Kingdom shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement; and
 - ii. For all other Clients (including Clients based in the European Union): The Agreement will be governed by the laws of the Republic of Ireland, and the parties agree that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement.

United Kingdom: Tierney's Office Automation Limited, 23 & 24 NNFU Mutual Offices Camel Gate, Spalding, PE12 6ET
Tel: +44 333 121 0122 Email: help@tierneysit.com Website: www.tierneys.co.uk

Schedule 1
Personal Data processing, purposes and details

Scope of Processing:	Tierney's and/or its personnel will provide IT support services to the Client, and in doing so, will have access to Personal Data controlled by the Client.
Duration of Processing:	For the duration of this Agreement, and as set out in the Cover Page.
Nature of Processing:	The provision of IT support services, cloud services, and IT consultancy services.
Personal Data Categories:	Identity Data: Names, addresses, email addresses, account information. Technical Data: Technical information, including internet protocol (IP) addresses, login information, browser type and version, time zone setting, browser plug-in types and versions, operating system and platform, and other performance data.
Data Subjects:	The Client's personnel.
Approved Sub-processors:	None.