

END USER LICENCE AGREEMENT

Effective Date: 20/08/2014

PLEASE READ CAREFULLY BEFORE DOWNLOADING OR STREAMING THE APP “Pop Card Checker”.

This end-user licence agreement (**EULA**) is a legal agreement between you (**End-user** or **you**) and Tyne & Wear Passenger Transport Executive trading as Nexus of Nexus House, St James’ Boulevard, Newcastle upon Tyne NE1 4AX (**Licensor, us** or **we**) for Pop Card Checker mobile application software, the data supplied with the software, and the associated media (**App**).

We licence use of the App, and the documentation accompanying the App, to you on the basis of this EULA and subject to any rules or policies applied by any Appstore provider or operator from whose site, located at <https://play.google.com/store> (**Appstore**), the End-user downloaded the App (**Appstore Rules**). We do not sell the App to you. We remain the owners of the App at all times.

Operating system requirements This App requires an Android-enabled device running Ice Cream Sandwich (version 4.0.x) or later, capable of using Near Field Communication (NFC).

Important notice:

- By downloading the App you agree to the terms of the licence which will bind you. The terms of the licence include, in particular, the limitations on liability in condition 7.
- If you do not agree to the terms of this licence, we will not license the App to you and you must stop the downloading process now. In this case the downloading process will terminate.
- As a consumer, you have the right to withdraw from your transaction without charge and without any reason before downloading the App.
- However, you will lose the right to cancel the transaction once you begin to download the App.
- This does not affect your consumer rights for an app that is defective.
- This App is not a ticket. It does not give you the right to travel. A valid ticket must be carried at all times in accordance with appropriate Conditions of Carriage and byelaws.

You should print a copy of this EULA for future reference.

AGREED TERMS

1. ACKNOWLEDGEMENTS

- 1.1 The terms of this EULA apply to the App or any of the services accessible through the App (**Services**), including any updates or supplements to the App, unless they come with separate terms, in which case those terms apply. If any open-source software is included in the App or any Service, the terms of an open-source licence may override some of the terms of this EULA.
- 1.2 We may change these terms at any time and the current terms will be those that are displayed on the Nexus website at <http://www.nexus.org.uk/popcardchecker>.
- 1.3 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.
- 1.4 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you and described in condition 2.2 (**Devices**) and to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.
- 1.5 By using the App or any Service, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the App or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 1.6 The following Services will be governed by the following terms of use incorporated into this EULA by reference and set out at the following web addresses respectively:

Service	Web address of terms of use
The App will enable you to: <ul style="list-style-type: none">• Check the expiry dates of Metro season tickets;• Check the zones that season tickets are valid in;	http://www.nexus.org.uk/popcardchecker

<ul style="list-style-type: none"> • Check full Metro season ticket information; • Check functionality of Metro season tickets including products, entitlements and the last successful 'touch' on the Metro. <p>On your Pop card.</p>	
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1.7 By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you.

1.8 The App or any Service may contain links to other independent third-party websites (**Third-party Sites**). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.

1.9 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2. GRANT AND SCOPE OF LICENCE

2.1 In consideration of you agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive licence to use the App on the Devices, subject to these terms and the Appstore Rules, incorporated into this EULA by reference. We reserve all other rights.

2.2 You may download or stream a copy of the App and view, use and display the App on the Device for your personal purposes only.

3. LICENCE RESTRICTIONS

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- (a) not to copy the App, or accompanying documentation, except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App;

- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the App with another software program;
 - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - (iii) is not used to create any software that is substantially similar to the App;
- (e) to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
- (f) to include our copyright notice on all entire and partial copies you make of the App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or any Service (**Technology**), together **Licence Restrictions**.

4. ACCEPTABLE USE RESTRICTIONS

You must:

- (a) not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service or any operating system;
- (b) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service;
- (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;

- (d) not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (e) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 You acknowledge that all intellectual property rights in the App, the accompanying documentation, and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App, the accompanying documentation, or the Technology other than the right to use each of them in accordance with the terms of this EULA.
- 5.2 You acknowledge that you have no right to have access to the App in source-code form.

6. LIMITED WARRANTY

- 6.1 If you are a customer who is a consumer (someone who uses the App outside of your trade, business or profession), you may have legal rights in your country of residence which would prohibit the following limitations from applying to you, and where prohibited they will not apply to you.
- 6.2 You expressly acknowledge and agree that, to the extent permitted by applicable law, use of the App is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you.
- 6.3 To the maximum extent permitted by applicable law, the App is provided “as is” and “as available”, with all faults and without warranty of any kind, and Nexus and Nexus’s licensors (collectively referred to as ‘Nexus’ for the purposes of conditions 6 and 7) hereby disclaim all warranties and conditions with respect to the App, either express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment, and non-infringement of third party rights.
- 6.4 Nexus does not warrant against interference with your enjoyment of the App, that the functions contained within the App will meet your requirements, that the operation of the App will be error-free, that defects in the App will be corrected, or that the App will be compatible or work with any third party software, application or third party services. Installation of the App may affect the usability of third party software, applications or third party services.

- 6.5 You further acknowledge that the App is not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in, the content, data or information provided by the App could lead to death, personal injury, or severe physical or environmental damage, including but not limited to the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support or weapons systems.
- 6.6 No oral or written information or advice given by Nexus shall create a warranty. Should the App prove defective, you assume the entire cost of all necessary servicing, repair or correction.
- 6.7 Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

7. LIMITATION OF LIABILITY

- 7.1 To the extent not prohibited by law, in no event shall Nexus be liable for personal injury, or any indirect, incidental, special, or consequential losses or damages whatsoever, including, but not limited to, damages for loss of profits, corruption or loss of data, business interruption or any other commercial damages or losses, arising out of or related to your use or inability to use the App, however caused, regardless of the basis of liability (contract, tort or otherwise) and even if Nexus has been advised of the possibility of such damages. In no event shall Nexus's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of the value paid for the App through the Appstore.
- 7.2 You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App meet your requirements.
- 7.3 We only supply the App for domestic and private use. You agree not to use the App for any commercial, business or resale purposes, and as set out in condition 7.1 we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 7.4 Nothing in this EULA shall limit or exclude our liability for:
- (a) death or personal injury resulting from our negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability that cannot be excluded or limited by English law.

8. TERMINATION

- 8.1 This EULA is effective until terminated. Your rights under this EULA will terminate automatically without notice from Nexus if you fail to comply with any term(s) of this EULA. Upon the termination of this EULA, you shall cease all use of the App and destroy all copies, full or partial, of the App. Conditions 6, 7 and 11 of this EULA shall survive any such termination.

9. COMMUNICATION BETWEEN US

- 9.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail to popchecker@nexus.org.uk or by prepaid post to Nexus at Nexus House, St James' Boulevard, Newcastle upon Tyne, NE1 4AX. We will confirm receipt of this by contacting you in writing, normally by e-mail.
- 9.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your request for the App.

10. EVENTS OUTSIDE OUR CONTROL

- 10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (**Event Outside Our Control**).
- 10.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:
- (a) our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
 - (b) we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

11. OTHER IMPORTANT TERMS

- 11.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.
- 11.2 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.

- 11.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 11.4 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 11.5 Please note that this EULA, its subject matter and its formation, are governed by English law. You and we both agree that the courts of England and Wales will have non-exclusive jurisdiction.

This agreement has been entered into on the date stated at the beginning of it.