



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.  
Washington, D.C. 20591

AUG 13 2014

Rebecca B. MacPherson  
Jones Day  
51 Louisiana Avenue, NW  
Washington, DC 20001-2113

Dear Ms. MacPherson:

This letter responds to your request for legal interpretation sent to my office on May 19, 2014, on behalf of your client, AirPooler, Inc. As set forth in the request for legal interpretation, you have described AirPooler as “a peer-to-peer general aviation flight sharing company that has developed an internet-based discovery platform that allows private pilots to offer available space on flights that they are intending to take[.]”

You have asked for: (1) confirmation that a pilot participating in the AirPooler service is not receiving compensation in violation of 14 C.F.R. § 61.113; and (2) a legal analysis of whether pilots participating in the AirPooler website are commercial operators who would be required to hold a certificate under 14 C.F.R. part 119.

Your request involves two separate but related issues. First, there is the issue of privileges and limitations related to acting as pilot in command of an aircraft for compensation or hire based on the level of certificate a pilot holds. The second issue relates to whether an operation constitutes a commercial operation requiring a person to obtain a part 119 air carrier or operating certificate before the operation may be conducted. The FAA has consistently noted that the privileges and limitations conferred upon pilots are a separate and distinct issue from whether a particular flight would be considered a commercial operation for which a part 119 air carrier or commercial operator certificate is required. See Legal Interpretation to Andy Dobis (May 21, 2014).

### **Pilot Privileges**

A person who holds an airline transport pilot certificate or a commercial pilot certificate may act as pilot in command of an aircraft for compensation or hire and may carry persons or property for compensation or hire provided the pilot is qualified in accordance with part 61 and with the applicable parts of the 14 C.F.R. that apply to the operation. 14 C.F.R. §§ 61.133(a); 61.167(a).

Conversely, private pilots as a general rule may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire nor, for compensation or hire, may they act as pilot in command of an aircraft. 14 C.F.R. § 61.113(a). Section 61.113

hire, may they act as pilot in command of an aircraft. 14 C.F.R. § 61.113(a). Section 61.113 contains exceptions to this general prohibition. Among the listed exceptions, § 61.113(c) states that “[a] pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.” Based on this provision, a pilot may accept compensation in the form of a pro rata share of operating expenses for a flight from his or her passengers as an exception to the compensation or hire prohibition. If a private pilot accepts more than a pro rata share, that pilot has violated the limits of the expense-sharing exception.

### **Commercial Operations**

A part 119 certificate is required for each person operating or intending to operate civil aircraft as an air carrier, commercial operator, or both, in air commerce;<sup>1</sup> or, when common carriage is not involved, in operations of U.S.-registered aircraft with a seat configuration of 20 passengers or more or a maximum payload capacity of 6,000 pounds or more.<sup>2</sup> 14 C.F.R. § 119.1(a). Depending on the operation, the holder of a part 119 certificate must comply with more stringent operating rules than those in part 91, for example, the requirements in parts 121, 125, or 135.<sup>3</sup>

Both the regulatory definition of a commercial operator and the common law definition of common carriage include a compensation element. The regulations define a commercial operator as a “person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375” of Title 14, Code of Federal Regulations. 14 C.F.R. § 1.1. The definition further states that “[w]here it is doubtful that an operation is ‘for compensation or hire,’ the test applied is whether the carriage by air is merely incidental to the person’s other business or is, in itself, a major enterprise for profit.” Although common carriage is not defined by regulation, Advisory Circular No. 120-12A (Private Carriage Versus Common Carriage of Persons or Property) describes common carriage as “(1) a holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation or hire.”<sup>4</sup>

<sup>1</sup> “Air commerce” is defined as “interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.”

<sup>2</sup> In the request for legal interpretation, AirPooler has indicated that it would not permit aircraft meeting the seating capacity and payload capacity in § 119.1 to be used by pilots participating in the AirPooler website.

<sup>3</sup> Certain commercial operations, such as aerial work operations, crop dusting, banner towing, and ferry or training flights, are excluded from the certification requirements of part 119. See § 119.1(e)(4)(iii). These operations are permitted within the United States under the less stringent operating rules of part 91. Although a private pilot would not be permitted under § 61.113 to engage in these activities for compensation, a commercial pilot or airline transport pilot would have no such limitation provided the pilot is qualified in accordance with part 61 and with the applicable requirements that apply to the specific operation.

<sup>4</sup> In Woolsey v. National Transportation Safety Board, 993 F.2d 516 (5th Cir. 1993), the Fifth Circuit noted that the Advisory Circular's guidelines are not only consistent with the common law definition, but entirely appropriate within the aviation context.

## Compensation

In your request for legal interpretation, you maintain that the AirPooler service is not a commercial operation and does not involve common carriage because there is no compensation of the pilots. We disagree. In 1963, the FAA issued a notice of proposed rulemaking (NPRM) entitled “Clarification of Private Pilot Privileges.” 28 FR 8157 (Aug. 8, 1963). In the preamble to that NPRM, the FAA stated:

The ordinary meaning of “compensation” includes the act of making up for whatever has been suffered or lost through another, and the act of remuneration. Sharing expenses would appear to be prohibited when “for hire or compensation” is prohibited, so that an exception to the rule is necessary to preserve the traditional right to share expenses, and which right has not been found objectionable.

This view was set forth in the language of the final rule which established a general prohibition against compensation and hire and listed five exceptions to that general prohibition, which included expense-sharing with passengers. The plain language of current § 61.113(a) continues to reflect that share-the-expense flights are compensation for which there is an exception to the general prohibition against private pilots acting as pilot in command for compensation or hire.

As such, although § 61.113(c) contains an expense-sharing exception to the general prohibition against private pilots acting as pilot in command for compensation or hire, a private pilot may not rely on that narrow exception to avoid the compensation component of common carriage. For this reason, the FAA has required a private pilot to have a common purpose with his or her passengers and must have his or her own reason for travelling to the destination.<sup>5</sup>

Likewise, although airline transport pilots and commercial pilots may act as pilot in command on an aircraft carrying passengers for compensation or hire, they may not conduct a commercial operation involving common carriage without obtaining a part 119 certificate. You have urged that the test for compensation in commercial operations is “the major enterprise for profit” test set forth in the definition of commercial operator. Specifically, you state that a pilot would not be engaged in a major enterprise for profit “if accepting only the cost reimbursements allowed under § 61.113.”

Based on the fact that the FAA views expense-sharing as compensation for which an exception is necessary for private pilots, the issue of compensation is not in doubt.

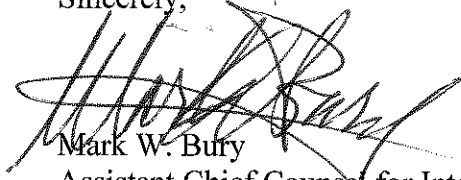
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<sup>5</sup> The FAA has consistently stated that “the only allowable share-the-costs operations are those which are bona fide, i.e., joint ventures for a common purpose with expenses being defrayed by all passengers and the pilot.” See Legal Interpretation from Kenneth Geier (Regional Counsel) to Paul Ware (Feb. 13, 1976); Legal Interpretation to Thomas Chero, (Dec. 26, 1985); Legal Interpretation to Peter Bunce (Nov. 19, 2008); Legal Interpretation to Guy Mangiamele (March 1, 2009); Legal Interpretation to Don Bobertz (May 18, 2009); Legal Interpretation to Mark Haberkorn (Oct. 3, 2011).

Therefore, the “major enterprise for profit” test in § 1.1 is wholly inapplicable. Accordingly, we conclude that, with regard to pilots using the AirPooler website, all four elements of common carriage are present. By posting specific flights to the AirPooler website, a pilot participating in the AirPooler service would be holding out to transport persons or property from place to place for compensation or hire. Although the pilots participating in the AirPooler website have chosen the destination, they are holding out to the public to transport passengers for compensation in the form of a reduction of the operating expenses they would have paid for the flight. This position is fully consistent with prior legal interpretations related to other nationwide initiatives involving expense-sharing flights. See Legal Interpretation from DeWitte Lawson (acting Regional Counsel) to D. David Brown (Apr. 16, 1976); Legal Interpretation to Hal Klee (Dec. 12, 1985); Legal Interpretation to Thomas Chero, (Dec. 26, 1985).

This response was prepared by Anne Moore, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and has been coordinated with the Airman Certification and Training Branch of Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,



Mark W. Bury  
Assistant Chief Counsel for International Law,  
Legislation, and Regulations

Department of Transportation (D.O.T.)  
Federal Aviation Administration

\*1 Legal Interpretation  
Interpretation 1985-26

December 26, 1985

Thomas H. Chero

Thank you for your letters to this office, dated September 9, 1985, and October 23, 1985, respectively, concerning the actions of the Pilots & Passengers Association (PPA).

You are correct in stating that Section 61.118 of the Federal Aviation Regulations (FAR) prohibits private pilots from participating in PPA's operations. Section 61.118 provides that a private pilot cannot act as pilot-in-command of an aircraft that is carrying passengers for compensation or hire unless the flight falls within one of the four listed exceptions in 61.118(a)—(d).

Section 61.118(b) allows a private pilot to share the operating expenses of a flight with his or her passengers. Additionally, the FAA has interpreted 61.118(b) so that the only allowable share-the-costs operations are those which are *bona fide*, i.e., joint ventures for a common purpose with expenses being defrayed by all passengers and the pilot. Nor does Section 61.118 permit pilots who want to build up time toward their commercial pilot certificates to carry expense-sharing passengers to a destination at which they have no particular business.

PPA pilots apparently would not share in the expenses of the flights they would undertake. It also appears that PPA pilots could be flying to destinations at which they had no particular business. The PPA system is not a casual one of an individual pilot wishing to take some friends or acquaintances with him on a trip. The PPA system would violate the letter, as well as the spirit, of Section 61.118.

Even if the pilot bears an equal share of the expenses with his or her passengers and indeed has his or her own need to fly to a particular destination, yet another problem arises. Since PPA's passengers would be solicited for flights by PPA from a broad segment of the general public, we conclude that each pilot carrying paying passengers from PPA would probably be engaged in common carriage. This means that each pilot would become an air carrier subject to the certification and operating rules of Part 135 of the FAR.

We appreciate your calling our attention to this matter.

John H. Cassady  
Assistant Chief Counsel  
Regulations & Enforcement Division

1985 WL 1078274 (D.O.T.)

END OF DOCUMENT

Department of Transportation (D.O.T.)  
Federal Aviation Administration

\*1 Legal Interpretation

Interpretation 1985-24

**December**

**12**

**1985**

Hal Klee

We have reviewed several brochures advertising the services of Pilots & Passengers Association (PPA). These brochures offer to match prospective passengers wanting to fly to a certain destination with a pilot willing to provide the flight in return for expenses. The brochures offer pilots the opportunity to reduce or eliminate the cost of flying by carrying these passengers who are willing to contribute to the expenses of a flight.

In general, any payment for a flight, even a partial payment, means that the flight is for compensation or hire. This is true even if the payment is made under the "expense sharing" provisions of Section 61.118(b) of the Federal Aviation Regulations (FAR) which allows private pilots to share the expenses of a particular flight with passengers. Thus, each pilot who accepts payment from passengers for a flight arranged by PPA is engaged in flying for compensation or hire.

In addition, because these passengers are solicited for the flight by PPA from a broad segment of the general public, we have concluded that each pilot carrying paying passengers from PPA is probably engaged in common carriage. This means that each pilot becomes an air carrier subject to the certification and operating rules of Part 135 of the FAR.

We realize that our conclusion regarding common carriage may have considerable consequences for PPA's operation. We would be willing to meet with you to explain our position more fully or to explore any alternatives available to PPA. If you want to arrange a meeting, please call Craig Weller of my staff at (202) 426-3080.

I should also mention that we have received inquiries from aviation insurers concerning PPA. We have responded with the conclusion that PPA's pilots are engaged in common carriage.

John H. Cassady  
Assistant Chief Counsel  
Regulations and Enforcement Division

1985 WL 1078272 (D.O.T.)

END OF DOCUMENT



61-118  
AGC-20

AGC 20  
AP  
R  
CONCUR. [initials]

NONCONCUR. [initials]  
DATE 8/21/78  
FILE 135.1

121  
123.1  
61.118

April 16, 1976

Mr. D. David Brown  
President  
Trans-Share Corporation  
Box 1364  
Los Altos, California 94022

Dear Mr. Brown:

This letter is in reply to your letter dated April 7, 1976, with copies of the Share-A-Flite membership card, membership agreement, and a form letter sent to new members of the association.

While it is the expressed intent of the Trans-Share Corporation, the managing member of the association, to provide a nationwide referral service to both pilots and passengers, to enable both to secure the cost benefits of shared costs within the terms of FAR 61.118(b), the size and scope of this undertaking, combined with the "extensive advertising and magazine coverage" used by the TSC strongly suggests, if not compels the conclusion that pilot/operators are holding out to the public that their services are available for compensation or hire. Flight operations conducted in this context could well be contrary not only to FAR 61.118, but FAR 135.1. As the referral service is not limited to costs of operating small aircraft, it would patently involve violations of FAR Part 123 where a large aircraft is used, and depending on the circumstances, Part 121 of the Federal Aviation Regulations.

Initially, we note that a new member is not limited to a human person, but may be another association, corporation. The member, from the standpoint of the potential flight crewmember, may be the holder of a commercial pilot or airline transport pilot certificate. The referral service is not limited to the use of small aircraft. It encourages frequent flights by the pilot/operators with any segment of the public which happens to need transportation from Point A to Point B. The more non-specific the referral request, the better the chance for a match-up.

The Civil Aeronautics Board, pursuant to Title IV of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1371 et seq., exercises statutory economic authority over "persons" engaged in air transportation. The identification of a common carrier is premised upon the "holding out" to

the public by the person or persons engaged in the service. The "holding out" is the "means which communicates to the public that a transportation service is indiscriminately available" to the members of the segment of the public it is designed to attract. Transocean A. L., Enforcement Proceeding, 11 C.A.B. at 353. It might be difficult for the pilot/operator of the aircraft to contend successfully that he (she) did not have common carrier responsibility to the passengers in the event of accident or other situations normally involving liability. Notwithstanding the disclaimer in the membership agreement, it is also possible that the CAB could place "indirect carrier" status on your corporation, insofar as some substantial amount of property may be shipped as part of the service offered. (See: 14 CFR 296) The "service" offered by the Association, as defined in paragraph 1.d. of the membership agreement, would involve, as to some number of the flights, the air shipment of property for business purposes.

The term "compensation or hire" is not defined in the Act or the regulations. A test is set forth in the definition of a "commercial operator" at FAR 1.1. A commercial operator is, with reference to interstate operations, limited to private carriage. FAR 1.1 provides, in part, "Where it is doubtful that the operation is for 'compensation or hire,' the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit." The profit motive is obviously an integral element in private carriage operations.

In summary, even if the TSC or the association are not themselves the owners or lessors of any aircraft, nor the employers of any pilots, it is conceivable that the legal responsibilities arising out of the holding out to the public will result in FAR compliance problems, and considerations of economic significance for review by the CAB.

Sincerely,  
 Original Signed by  
 DeWitte T. Lawson, Jr.

DeWITTE T. LAWSON, JR.  
 Acting Regional Counsel

cc:  
 AGC-20 (w/encl)  
 AWE-260 "  
 CAB-(Fred Phillips) (w/encl)

601118

# TRANS-SHARE CORPORATION

Box 1364 Los Altos, California 415 941-5120

April 7, 1976

Richard Wittry  
Regional Counsel  
Federal Aviation Administration  
15000 Aviation Blvd  
Lawndale, CA 90261

Dear Mr. Wittry:

Back in November we spoke on the phone about the SHARE-A-FLITE energy savings concept. At that time we agreed to send you some of our promotional literature and our membership agreement. Those materials are all enclosed in this letter for your evaluation.

It is our intent that members of the organization riding together share operating costs as provided by Part 61.118(b).

I'm sorry it took us so long to get the information to you, but for a while it looked as though the response wasn't going to be great enough to justify starting up. That turned around, however, and now we're getting some really great response.

I'd look forward to discussing any ideas you might have and would appreciate a call at 415 941-5120 after you've looked the enclosed materials over.

Sincerely,

*D. David Brown*

D. David Brown  
President

DDE/raf

RECEIVED  
REGIONAL COUNSEL

APR 09 1976

A.M. P.M.  
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61-118

HERE IS YOUR MEMBERSHIP CARD!

Unless otherwise indicated this card is valid immediately for use in locating fellow travellers on the SHARE-A-FLITE nationwide ride referral system, subject to the terms and conditions of the attached membership agreement. Please take a moment to read the instructions before using the card — it'll save you time. WELCOME ABOARD!

CUT HERE

**SHARE-A-FLITE**

NATIONWIDE  
REFERRAL  
LINE  
\*800 547-0933

John Q Member  
1234 Anystreet  
Anytown, US 99999

EXPIRES  
99/99/99  
ID NUMBER  
00000

MEMBERSHIP CARD  
\*In Oregon, call 503 227-2149  
Box 1364 Los Altos, California 94022 415 941-5120

TRIP PLAN

1 ID #	2 REQUEST <input type="checkbox"/> Rider(s) <input type="checkbox"/> Seat(s)		3 Departure Point	4 Destination	
5 Departure Time & Date Earliest			6 Time Enroute	7 SEATS	8 TOTAL WT
9 ESTIMATED COST SHARE			10. PHONE CONTACT		11 OPTIONS (over)
12 REMARKS (Scheduled Stops, etc.)					

CUT HERE

# TRANS-SHARE CORPORATION

61-118

Box 1264 Los Altos, California 415 941-5170

\*800 547-0933 TOLL-FREE

\*In Oregon, call 503 227-2149

Dear New Member:

Welcome aboard! We want to thank you for joining the SHARE-A-FLITE ride referral system and for your support of our goals to help you save your money and the nation's energy resources.

At the present time there are well over 22,000 people participating in personal transportation resource sharing, and we are currently servicing in excess of 500 referral requests per day nationwide. Extensive advertising and magazine coverage will help spread the word around to as many people as possible to help out in handling the anticipated record breaking travel requirements coming up this summer. SHARE-A-FLITE will be a real boon to the Bicentennial travel requirements of the USA.

As you know, the major factor in satisfaction of your travel requirements and those of your fellow members is the number of total SHARE-A-FLITE participants. We're projecting well over 50,000 members by the end of 1976, but we'd like to make it grow even faster than that. Your enthusiasm for SHARE-A-FLITE is the most effective tool for growth. Tell your friends about SHARE-A-FLITE so they can cash in on the savings, too. We have provided an extra membership application for you to pass on to an interested friend -- if you need more than one, drop us a line or call and we'll send more. Or for really fast service, we can now activate a membership instantly on the toll-free telephone line if it's charged to a credit card.

Here are a few tips that will make SHARE-A-FLITE work better for you:

- 1 - The more advance notice you give and the more non-specific your referral request, the better your chances for a matchup.
- 2 - Wide leeway in earliest & latest departure times helps, too.
- 3 - Organizing your request before calling using the Trip Plan form on your membership card cuts the time we both spend on the phone. The telephone bill is really paid by you, and brevity is the largest money-saver to keep membership costs low.

Any other comments or ideas you have to help make SHARE-A-FLITE work better are most welcome. We sincerely hope that you will derive great satisfaction from your SHARE-A-FLITE membership.

Pleasant travelling!

Sincerely,

*D. David Brown*

D. David Brown  
President

DDB/raf

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Col-118

## TRANS-SHARE CORPORATION

Box 1324 Los Altos, California 415 941-5120

Dear fellow economizer:

Thank you for your inquiry. We welcome your interest in a truly unique air travel innovation developed to bring added economy to transportation. It is called SHARE-A-FLITE and it can save you money every time you go on a trip. In fact, if you only use the service once in the coming year, you will probably save more than an entire year's dues.

These savings stem from the inherent efficiencies of transportation provided by the 200,000 plus privately owned light aircraft registered in the United States.

During the year June 1974 through June 1975, 39.8 million empty private aircraft seats flew the skies of the United States on intercity trips. A large number of these flights provided direct transportation to and from the 12,400 General Aviation airports in the country not presently served by scheduled airlines. (Only 505 are served by airlines.)

Through SHARE-A-FLITE, increasingly large numbers of these empty seats are being filled by passengers who participate in flight expenses with the aircraft operator. Both the pilot and the rider save money and time:

Shared operating cost per seat is usually less than  $\frac{1}{2}$  the cost of comparable commercial transportation.

Direct flights to more cities result in further savings in time and money.

Light aircraft use less than  $\frac{1}{2}$  the fuel per passenger as airlines and save energy.

Interested? You'll find more complete details on the other side. Take a minute to read about it now.

Happy flying!

Sincerely,



Trans-Share Corporation  
Bob Carter, Membership Chairman

# SHARE-A-FLITE MEMBERSHIP AGREEMENT

601-118

In consideration of the mutual promises and conditions herein contained, Member and SHARE-A-FLIGHT agree:

- Definitions.** As used in this Membership Agreement, the following definitions shall apply:
  - "Association" shall mean SHARE-A-FLIGHT, an unincorporated non-profit association operating pursuant to the laws of the State of California. The membership of the Association shall consist of the "Members," as hereinafter defined, without number or limitation.
  - "Member" shall mean Trans-Share Corporation, as hereinafter defined, and those persons who purchase and maintain valid memberships in the Association as herein provided.
  - "Trans-Share Corporation" or "TSC" shall mean Trans-Share Corporation, a Utah corporation. A membership in the Association shall not constitute, for federal or state purposes, any ownership interest in Trans-Share Corporation by a Member.
  - "Service" shall mean the service to be provided to a Member by the Association which shall be limited to the introduction of Members who desire to provide or obtain transportation between points mutually accessible and agreeable to the individual Members, excluding TSC.
  - "Match Credit" shall mean one (1) or more credits as shown on the books and records of the Association to be applied as the cost of matching Members when an actual match-up is made. With the purchase of a membership or the renewal of a membership on an annual basis, a Member is entitled to three (3) free Match Credits which are non-refundable and do not carry over from year to year. A Member may purchase additional Match Credits at a current cost of two Dollars (\$2.00) each at any time by deposit of an amount equal to the Match Credit cost multiplied by the number of Match Credits purchased with the Association.
  - "Match Debt" shall mean a charge to a Member for a match-up service extended by the Association when no Match Credits exist in the account of a Member. A Member (30) days from date of creation shall result in termination of the membership as otherwise provided herein.
- Membership.** A Member becomes a Member in the Association by the purchase of a membership which will be evidenced by a membership card which will be delivered to the Member upon payment of the membership fee. The membership card shall be the personal property of the Member, as not transferable or assignable, and shall contain no voting privileges in the Association or other rights in any proprietary data or other tangible or intangible assets of the Association or of TSC. A Member shall not be liable on the Association for any dues or assessments (general or special) except the annual membership fee and Match Credit fees as herein specifically stated. Members shall not be liable to any third party for As above stated, TSC as a Member of the Association; provided, however, that it is not obligated to purchase an initial membership or renew its membership for regular Members. Further, TSC shall not have the right to utilize or purchase management agreements, directly or indirectly, pursuant to a separate management agreement between TSC and the Association. TSC has agreed to manage the affairs of the Association and to provide the facilities, proprietary data, equipment and other tangible and intangible assets required for the achievement of the business purposes of the Association.
- Match-up Procedure.** When a Member desires a match-up for a ride or a passenger for a ride available, the Member should do the following:
  - Call the Association on the toll-free number printed on the membership card and identify the caller by the membership number of the Member appearing on the membership card.
  - Specify the match-up desired or available.
  - Once notified by the Association of a match-up, it is the responsibility of the individual Member to make contact with the other Member(s) in the match-up to finalize travel arrangements.
- Travel Arrangements.** Other than notifying the Member(s) of a match-up, all other responsibilities including notification, cost sharing, departure times, return times and all other aspects related to a travel arrangement between or among Members, the Association has no right or duty. Each Member specifically agrees and understands that the sole purpose and service of the Association is to provide the match-up based on information received and does not in any way represent itself as being capable or authorized to arrange specific travel arrangements for any Member, including TSC. Each Member further specifically represents and agrees that the responsibility for all travel arrangements related to a match-up between Members is the sole responsibility of the Members including notification of departure time, notification of cancellation or change of trip plans, cost sharing, insurance coverage or any other arrangement related to the trip arrangements.
- Membership Use Restrictions.** Use of the membership is subject to the following terms and conditions:
  - A Member is in good standing with the Association.
  - The Member has Match Credits existing in his or her account or no unpaid Match Debt. (To avoid the possibility of cancellation of a membership by the Association if frequent use of the services of the Association to purchase one (1) or more Match Credits in addition to those initially credited to the account of the Member. The purchase price of a Match Credit shall be specified from time to time by the Association.)
  - In the event that a membership has been terminated by the Association for whatever reason, a Member will no longer be entitled to a Match Debt as specified in subparagraphs above.
  - None of the foregoing use restrictions are intended to limit the number of match-up requests that a Member may make. If a match-up is not immediately available and the Association cannot so notify a Member, the match-up request will be maintained until the date specified by the Member or until the match-up service is provided, whichever date first occurs.
- Termination.** A membership in the Association can or will terminate upon the occurrence of any one or more of the following:
  - Death of a member.
  - The expiration of one (1) year from the date of validation of a membership.
  - Cancellation by the Association in the event of non-payment of a Match Debt within thirty (30) days from date of creating a match-up where no Match Credits exist to the account of the Member.
  - For any other cause in the reasonable determination of TSC that a Member has longer beneficial to the interests of other Members of the Association. Specifically included in the foregoing category of causes of termination, the Association, if it determines that a Member is abusing the toll-free telephone use privileges provided by the Association, may cancel the membership. The toll-free telephone call line is normally available only for the purpose of requesting or the purchase of memberships in the Association.
  - Any Member may voluntarily terminate his or her membership in the Association upon written request to the Association. In the event that a request of cancellation (15) days from the date of original mailing of all membership materials within and including the membership card to the Member, all membership fees will be refunded to the Member provided that the membership has not been used in any manner whatsoever. In the event that a request for termination of the membership occurs after the said fifteen-day period or after utilization of the membership in any manner or prepares Match Credits will be refunded to the Member, but no membership fees in addition to rights of termination specified in paragraph e. above, the Association reserves the right to terminate a membership without cause. In the event of such termination, the Association shall notify the Member in writing and based on a two dollar (\$2.00) allowance for each unused Match Credit (either free or prepaid) plus the membership fee less five Dollars and Fifty Cents (\$5.50) divided by 165 and multiplied by the number of days remaining on the membership.
- Applicable Law.** This Agreement shall be interpreted in accordance with the law of the State of California.
- Exclusive Agreement.** There shall be no other agreement or arrangement, expressed or implied between a member and the Association not specified hereon.
- Miscellaneous.**
  - Binding Effect.** This Agreement is binding upon the Member and the Association and is not assignable by death or otherwise; its benefits and obligations are not intended to accrue to or inure to the benefit of any assignee, whether by assignment or devise.
  - Capacity to Contract.** Notwithstanding any other provision in this Agreement to the contrary, if a Member does not have the legal capacity to contract, this Agreement and the membership will be void, effective as of the date of issuance of such termination of the Association to the Member or others. However, if any obligation for payment of Match Debt or otherwise, or performance by the Member accrued prior to the date of termination of the Association, the Association agrees to not necessary in order that it become binding upon the Member to this Agreement to the Association, the payment of the membership fee and/or the subsequent use of the retention of the membership for a period of more than fifteen (15) days from date of mailing of the membership to the Member by the Association shall constitute acts sufficient on behalf of the Member to have accepted the membership pursuant to the terms and conditions contained herein.
  - Effective Date of Agreement.** The signature of the Association and Member to this Agreement shall constitute the date of agreement between the Member and the Association. All membership dues and other fees specified in this Agreement are subject to change at any time by the Association without notice.