

to the Merger Effective Time, any information pertaining to EchoStar or any Subsidiary of EchoStar contained in or omitted from the GM Proxy/Consent Solicitation Statement makes the statements contained therein false or misleading, EchoStar shall promptly inform GM and promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the Merger Effective Time, any information pertaining to Hughes or any Subsidiary of Hughes (other than PanAmSat or HSSL) contained in or omitted from the GM Proxy/Consent Solicitation Statement makes the statements contained therein false or misleading, Hughes shall promptly inform GM and EchoStar and promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the Merger Effective Time, any information pertaining to PanAmSat or HSSL contained in or omitted from the GM Proxy/Consent Solicitation Statement, to the knowledge of GM or Hughes, makes the statements contained therein false or misleading, GM or Hughes shall promptly inform the other and EchoStar and use commercially reasonable efforts to promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the Merger Effective Time, any information pertaining to GM contained in or omitted from the GM Proxy/Consent Solicitation Statement makes the statements contained therein false or misleading, GM shall promptly inform EchoStar and promptly provide the information necessary to make the statements contained therein not false and misleading.

(iv) GM and Hughes shall promptly furnish EchoStar with all information concerning GM, Hughes, any Subsidiary of Hughes (other than PanAmSat and HSSL) and, to the extent obtainable by GM or Hughes using commercially reasonable efforts, PanAmSat and HSSL, as may be necessary or reasonably requested by EchoStar for inclusion in the EchoStar Information Statement. If at any time prior to the Merger Effective Time, any information pertaining to GM, Hughes or any Subsidiary of Hughes (other than PanAmSat or HSSL) contained in or omitted from the EchoStar Information Statement makes the statements contained therein false or misleading, Hughes and GM shall promptly inform EchoStar and promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the Merger Effective Time, any information pertaining to PanAmSat or HSSL contained in or omitted from the EchoStar Information Statement, to the knowledge of GM or Hughes, makes the statements contained therein false or misleading, GM or Hughes shall promptly inform the other and EchoStar and shall use commercially reasonable efforts to promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the Merger Effective Time, any information pertaining to EchoStar contained in or omitted from the EchoStar Information Statement makes the statements contained therein false or misleading, EchoStar shall promptly inform GM and Hughes and promptly provide the information necessary to make the statements contained therein not false and misleading.

(h) GM Debt/Equity Exchange.

(i) The parties acknowledge and agree that GM currently intends to issue or distribute up to one hundred million (100,000,000) shares (subject to appropriate antidilution adjustments

and subject to reduction pursuant to the provisions of Section 1.3 of the GM/Hughes Separation Agreement and subject to increase by up to an additional fifty million (50,000,000) shares (but in no event shall such Exchange Shares exceed One Billion Dollars (\$1,000,000,000.00) in accordance with the terms set forth on Exhibit L) of GM Class H Common Stock or Hughes Class C Common Stock, as applicable, in one or more transactions (each referred to individually as a "GM Debt/Equity Exchange" and referred to collectively as the "GM Debt/Equity Exchange" or "GM Debt/Equity Exchanges," as the context requires), between the date hereof and the date that is six (6) months following the Spin-Off Effective Time, to holders of Exchange Debt in exchange for such Exchange Debt. The parties acknowledge that any issuance of shares of GM Class H Common Stock pursuant to any GM Debt/Equity Exchange shall increase the Numerator (but not the Denominator) of the Class H Fraction (as defined below) by the number of shares of GM Class H Common Stock so issued, in accordance with the terms and provisions of the GM Certificate of Incorporation. The parties shall cooperate with each other in all respects in connection with any GM Debt/Equity Exchange and, without limiting the foregoing, EchoStar and Hughes shall use commercially reasonable efforts to take any actions reasonably requested by GM in connection with the consummation of any GM Debt/Equity Exchange, including, after the Merger Effective Time, the registration of offers and sales of shares of Hughes Class C Common Stock in accordance with the terms set forth on Exhibit L attached hereto. For the purposes of this Agreement, "Class H Fraction" means, as of any particular time, the fraction described in Article Fourth, Division I, Section (a)(4) of the GM Certificate of Incorporation as of such time.

(ii) The parties further acknowledge that GM currently intends to register (or cause to be registered) the issuance of shares of GM Class H Common Stock to be issued or the distribution of shares of Hughes Class C Common Stock to be distributed, as applicable, in connection with any GM Debt/Equity Exchange for purposes of resale pursuant to a GM Debt/Equity Exchange Registration Statement. EchoStar and Hughes shall promptly furnish GM with all information concerning EchoStar, any Subsidiary of EchoStar, Hughes or any Subsidiary of Hughes (other than PanAmSat and HSSL) and, to the extent obtainable by Hughes using commercially reasonable efforts, PanAmSat and HSSL, as may be requested for inclusion in any GM Debt/Equity Exchange Registration Statement. GM shall promptly furnish EchoStar and Hughes with all information concerning GM or any Subsidiary of GM as may be requested for inclusion in any GM Debt/Equity Exchange Registration Statement. If at any time prior to the consummation of any GM Debt/Equity Exchange, any information pertaining to EchoStar, any Subsidiary of EchoStar, Hughes or any Subsidiary of Hughes (other than PanAmSat or HSSL), contained in or omitted from any GM Debt/Equity Exchange Registration Statement makes the statements contained therein false or misleading, EchoStar and Hughes shall promptly inform GM and promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time prior to the consummation of any GM Debt/Equity Exchange, any information pertaining to PanAmSat or HSSL contained in or omitted from any GM Debt/Equity Exchange Registration Statement, to the knowledge of Hughes, makes the statements contained therein false or misleading, Hughes shall promptly inform GM and use commercially reasonable efforts to promptly provide the information necessary to make the statements contained therein not false and misleading. If at any time after the Spin-Off Effective Time

and prior to the consummation of any GM Debt/Equity Exchange, any information pertaining to GM or any Subsidiary of GM contained in or omitted from any GM Debt/Equity Exchange Registration Statement makes the statements contained therein false or misleading, GM shall promptly inform EchoStar and Hughes and promptly provide the information necessary to make the statements contained therein not false and misleading.

(i) Certain Transaction Costs. Except as otherwise provided in the Transaction Agreements or any other agreement between or among the parties relating to the GM Transactions and/or the Merger, and any of the other transactions contemplated in connection therewith, but only if such other agreement has been disclosed by Hughes and GM to EchoStar, all costs and expenses incurred by GM, Hughes, EchoStar or their respective Affiliates in connection with the GM Transactions and/or the Merger, and any of the other transactions contemplated in connection therewith, shall be paid by the party that actually incurs such costs and expenses. Notwithstanding the foregoing, the responsibility for certain transaction costs relating to the GM Transactions and the Merger shall be allocated in accordance with the provisions of this Section 5.1(i).

(i) The following costs and expenses incurred by GM, Hughes, EchoStar or any of their respective affiliates shall be paid (or promptly reimbursed upon invoice) fifty percent (50%) by GM and fifty percent (50%) by EchoStar: (i) all reasonable out-of-pocket costs and expenses of printing and distributing to stockholders the GM Proxy/Consent Solicitation Statement, the EchoStar Information Statement, any prospectus contained in the Spin-Off/Merger Registration Statement and any related soliciting or other materials, (ii) all filing fees associated with filing of the Spin-Off/Merger Registration Statement and the EchoStar Information Statement with the SEC and any other state and foreign securities law regulators, and (iii) all listing fees associated with listing the shares of stock subject to the Spin-Off/Merger Registration Statement, the EchoStar Information Statement, and any GM Debt/Equity Exchange Registration Statement on the NYSE or for quotation on the Nasdaq.

(ii) Hughes shall pay (or promptly reimburse upon invoice) the following:

(A) all costs and expenses of Hughes, GM or any of their respective affiliates relating primarily to the Merger, including all fees associated with making any governmental or regulatory filings primarily in connection with the Merger and the fees and expenses of the Hughes transfer agent (or any successor transfer agent) but excluding any fees and expenses described in Section 5.1(i)(iii)(B); and

(B) the fees and expenses of Goldman, Sachs & Co. and Credit Suisse First Boston Corporation, financial advisors to Hughes in connection with the Merger, and the fees and expenses of Weil, Gotshal & Manges LLP and Latham & Watkins, legal advisors to Hughes, and any other legal advisors to Hughes (in each case for legal services rendered to Hughes), in connection with the Merger.

(iii) GM or a GM Affiliate shall pay (or promptly reimburse upon invoice) the following:

(A) all costs and expenses of GM, Hughes or any of their respective affiliates relating primarily to the GM Transactions, including the fees and expenses of the GM transfer agent and any proxy or consent solicitation agents, information agents or similar consultants or agents engaged by GM in connection with effecting the GM Transactions but excluding any fees and expenses described in Section 5.1(i)(ii)(B);

(B) the fees and expenses of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Bear, Stearns & Co. Inc., financial advisors to GM in connection with the GM Transactions, and Kirkland & Ellis and Richards, Layton & Finger, legal advisors to GM, and any other legal advisors to GM (in each case for legal services rendered to GM), in connection with the GM Transactions;

(C) the fees and expenses incurred by Hughes and GM in connection with the negotiation and documentation of any Demand Note; and

(D) the fees, costs, and expenses incurred by Hughes or GM in connection with the Pre-Merger Finance (as defined in the Commitment Letter).

(j) No Solicitation.

(i) GM agrees that, during the term of this Agreement, it shall not, nor shall it permit any of its Subsidiaries to, nor shall it authorize or knowingly permit any of its or its Subsidiaries' officers, directors, employees, investment bankers, attorneys, accountants, agents or other advisors or representatives (collectively, "Representatives"), directly or indirectly, to:

(A) solicit, initiate or knowingly facilitate or encourage the making by any Person (other than the other parties hereto) of any proposal, offer or inquiry that constitutes, or could be expected to lead to, a proposal for any merger, consolidation or other business combination involving Hughes, or any acquisition of any capital stock or any material portion of the assets (except for (I) acquisitions of assets in the ordinary course of business consistent with past practice and permitted by Section 5.3(a)(v) of the Merger Agreement and (II) consummation of the transactions contemplated by the EchoStar Transaction Agreements, the GM Transaction Agreements and the Hughes Transaction Agreements) of Hughes or any of its Subsidiaries, any GM Class H Common Stock or any combination of the foregoing (in each case, a "Competing Transaction");

(B) participate in any discussions or negotiations regarding, or furnish or disclose to any Person any information with respect to or in furtherance of, or take any other action knowingly to facilitate any inquiries with respect to any Competing Transaction;

(C) grant any waiver or release under any standstill or similar agreement with respect to Hughes or any of its Subsidiaries or GM Class H Common Stock; or

(D) execute or enter into any agreement, understanding or arrangement (other than a confidentiality agreement) with respect to any Competing Transaction or approve or recommend or propose to approve or recommend, any Competing Transaction or any agreement, understanding or arrangement relating to any Competing Transaction (or resolve or authorize or propose to agree to do any of the foregoing actions);

provided, however, that:

(I) at any time prior to such time, if any, that the Requisite Stockholder Approval shall have been received with respect to the GM Transactions, GM may take any action described in the foregoing clauses (B) or (C) (in the case of clause (C), only to the extent necessary to permit the discussions or negotiations contemplated by clause (B)) in respect of any Person, but only if (1) such Person has delivered a proposal for a Competing Transaction that, in the good faith judgment of the GM Board of Directors is a Superior Proposal or is reasonably likely to lead to the delivery of a Superior Proposal (as defined below) and (2) the Board of Directors of GM, after consultation with counsel, determines in good faith that it is required to do so in order to comply with its fiduciary duties; provided, further, that (x) prior to GM furnishing any confidential information to such Person, such Person shall have entered into a confidentiality agreement with GM and/or Hughes, provided that if such confidentiality agreement contains provisions that are less restrictive than the comparable provisions, or omits restrictive provisions, contained in the Confidentiality Agreement (as defined in the Merger Agreement), then the Confidentiality Agreement will be deemed to be amended to contain, in substitution for such comparable provisions, such less restrictive provisions, or to omit such restrictive provisions, as the case may be, (y) GM shall promptly notify EchoStar of any such inquiries, proposals or offers received by, any such information requested from, or any such discussions or negotiations sought to be initiated or continued with, any of its Representatives indicating, in connection with such notice, the name of such Person and the material terms and conditions of any inquiries, proposals or offers, and shall keep EchoStar reasonably informed as to the status thereof,

(II) GM may enter into any agreement or arrangement (other than a confidentiality agreement, which may be entered into as contemplated in clause (I) above)

regarding any such Competing Transaction, or approve or recommend to its stockholders (or resolve to do so), or publicly propose to approve or recommend to its stockholders, any such Competing Transaction, but only if it has first (1) given EchoStar at least seventy-two (72) hours to respond to such Competing Transaction after GM has notified EchoStar that, in the absence of any further action by EchoStar, it would consider such Competing Transaction to be a Superior Proposal and would be required to withdraw, revoke or modify its recommendation of the GM Transactions, and given due consideration to any amendments or modifications to the GM Transaction Agreements, the Hughes Transaction Agreements and/or the EchoStar Transaction Agreements proposed by EchoStar during such period and (2) thereafter caused Hughes to terminate the Merger Agreement in accordance with Section 7.1 thereof and simultaneously pay the Termination Fee pursuant to Section 7.2 thereof; and

(III) nothing herein shall limit GM's ability to comply in good faith, to the extent applicable, with Rules 14d-9 and 14e-2 of the Exchange Act with regard to a tender or exchange offer or to make any disclosure required by Applicable Law.

(ii) For the purposes of this Agreement, the following terms shall have the following meanings:

(A) "Superior Proposal" shall mean a bona fide, written proposal by a third-party for a Competing Transaction that is on terms that the GM Board of Directors determines in good faith, after consultation with its financial advisors and counsel, would, if consummated, result in a transaction that would be more favorable to GM and its stockholders (taking into account such factors as the GM Board of Directors in good faith deems relevant, including the identity of the offeror and all legal, financial, regulatory and other aspects of the proposal, including the terms of any financing and the likelihood that the transaction will be consummated) than the transactions contemplated by the GM Transactions and the Merger; and

(B) "Applicable Law" shall mean all applicable laws, statutes, orders, rules, regulations, policies or guidelines promulgated, or judgments, decisions or orders entered, by any Governmental Authority.

(iii) GM agrees that it will, and will cause its Subsidiaries and its and their respective Representatives to, cease and cause to be terminated immediately all existing discussions or negotiations with any Persons conducted on or before the date hereof with respect to any Competing Transaction. EchoStar acknowledges that, prior to the date of this Agreement, GM and Hughes solicited or caused to be solicited by their respective financial advisors indications of interest and proposals for a Competing Transaction.

(k) Public Announcements.

(i) Unless otherwise required by Applicable Law or requirements of the NYSE or Nasdaq or any other applicable securities exchange (and in that event only if time does not permit), at all times prior to the earlier of (A) the Merger Effective Time, (B) the termination of this Agreement pursuant to Section 8.1, and (C) any delivery by GM to EchoStar of a Notice of Non-Recommendation (unless GM has subsequently delivered a Notice of Proposed Mailing or a Withdrawal Notice prior to the termination of this Agreement pursuant to Section 8.1), the parties hereto shall consult with each other before issuing any press release or other public announcement or public communication (including such communications as would require a filing under Rule 425, Rule 165 and Rule 166 of the Securities Act or Rule 14a-12 of the Exchange Act) with respect to the transactions and matters contemplated by the GM Transaction Agreements, the Hughes Transaction Agreements or the EchoStar Transaction Agreements and shall not issue any such press release, public announcement or public communication prior to such consultation; provided, that the initial press release relating to the Merger, the GM Transactions and the other transactions contemplated by the GM Transaction Agreements, the Hughes Transaction Agreements and the EchoStar Transaction Agreements will be a joint press release. Without limiting the foregoing, at all times prior to the earlier of (A) the Merger Effective Time or (B) the termination of this Agreement pursuant to Section 8.1, each of the parties hereto shall use commercially reasonable efforts to comply in all material respects with the requirements of Rule 425, Rule 165 and Rule 166 of the Securities Act and Rule 14a-12 of the Exchange Act.

(ii) In addition, at all times prior to the Merger Effective Time, the parties hereto shall consult with each other before filing any report with respect to any period entirely or partially prior to the Merger Effective Time required by or filed under the Securities Act or Exchange Act containing any statement relating to the transactions and matters contemplated by the GM Transaction Agreements, the Hughes Transaction Agreements or the EchoStar Transaction Agreements and shall not file any such report prior to such consultation.

(l) Hughes Reorganization.

(i) The parties acknowledge and agree that GM and Hughes may, prior to the Spin-Off Effective Time, on terms reasonably acceptable to EchoStar (whose agreement will not be unreasonably withheld or delayed) implement a corporate reorganization in connection with any GM Debt/Equity Exchange (the "Hughes Reorganization"), which would result in the creation of a holding company (organized as a Delaware corporation) that would exist above Hughes as a parent company and below GM as a wholly owned subsidiary ("Hughes Holdings"). As a result of the Hughes Reorganization, the holder of Common Stock, par value \$0.01 per share, of Hughes would become the holder of Common Stock, par value \$0.01 per share, of Hughes Holdings and the holder of Hughes Series A Preferred Stock would become the holder of Series A Preferred Stock, par value \$0.10 per share, of Hughes Holdings.

(ii) Upon the reasonable request of any party hereto, subject to the agreement of each of the parties (whose agreement will not be unreasonably withheld or delayed), the parties shall promptly amend and restate any or all of the GM Transaction Agreements, the Hughes Transaction Agreements and the EchoStar Transactions Agreements, and each and all of the other agreements contemplated thereby (including, in each case, all exhibits, schedules and other attachments thereto), to the extent appropriate in order to reflect the implementation of the Hughes Reorganization and the matters addressed in this Section 5.1(l), and the parties hereby agree to execute and deliver any such amendment and restatement of any or all of such agreements prior to the implementation of the Hughes Reorganization.

(m) EchoStar Securities Issuances.

(i) The parties acknowledge and agree that EchoStar, in accordance with Section 5.2(a)(i) of the Merger Agreement, currently intends to issue shares of EchoStar Class A Common Stock, debt securities or securities convertible into or exchangeable therefor, in one or more transactions (each referred to individually as a "EchoStar Securities Issuance" and referred to collectively as the "EchoStar Securities Issuances" as the context requires), between the date hereof and the Merger Effective Time. From the date hereof until the earlier of (x) the Merger Effective Time and (y) the termination of this Agreement, the parties shall cooperate with each other in all respects in connection with any EchoStar Securities Issuance and, without limiting the foregoing, GM and Hughes shall use commercially reasonable efforts to take any actions reasonably requested by EchoStar in connection with the consummation of any EchoStar Securities Issuance.

(ii) The parties acknowledge that EchoStar may register the issuance of the securities of EchoStar to be issued in connection with any EchoStar Securities Issuance or may issue such securities in one or more transactions that are exempt from the registration requirements of the Securities Act. Any registration statement, offering memorandum or offering circular relating to an EchoStar Securities Issuance is referred to herein as a "EchoStar Securities Disclosure Document". GM and Hughes shall promptly furnish EchoStar with all information concerning GM, Hughes, any Subsidiary of Hughes (other than PanAmSat and HSSL) and, to the extent obtainable by GM or Hughes using commercially reasonable efforts, PanAmSat and HSSL, as may be reasonably requested by EchoStar for inclusion in any EchoStar Securities Disclosure Document. If at any time after the date hereof until the earlier of the (x) Merger Effective Time and (y) the termination of this Agreement, any information pertaining to GM, Hughes or any Subsidiary of Hughes (other than PanAmSat or HSSL) contained in or omitted from the EchoStar Securities Disclosure Document makes such statements contained therein false or misleading, Hughes and GM shall promptly inform EchoStar and promptly provide the information necessary to make the statements contained therein not false and misleading. If, at any time after the date hereof until the earlier of the (x) Merger Effective Time and (y) the termination of this Agreement, any information pertaining to PanAmSat or HSSL contained in or omitted from the EchoStar Securities Disclosure Document, to the knowledge of GM or Hughes, makes such statements contained therein false or

misleading, GM or Hughes shall promptly inform the other and EchoStar and shall use commercially reasonable efforts to promptly provide the information necessary to make the statements contained therein not false and misleading.

(iii) EchoStar shall cause the entire net proceeds of any and all EchoStar Securities Issuances to be held directly by EchoStar (rather than any Subsidiary of EchoStar) at the Merger Effective Time.

(n) Recapitalization Debt Repayment. For a period of two (2) years after the Merger Effective Time, Hughes and EchoStar shall cause the portion of the Merger Financing that will be incurred by Hughes prior to the Spin-Off Effective Time for the purpose of financing a portion of the Recapitalization Amount (the "Recapitalization Debt") either to remain outstanding as debt of Hughes, or to be refinanced by new indebtedness of equal principal amount incurred by Hughes or DTV Enterprises LLC ("Refinancing Debt"), except to the extent that the Recapitalization Debt or any Refinancing Debt is repaid during such two (2)-year period from operating cash flow of Hughes and its Subsidiaries or from the proceeds of sale of one or more assets that were held by Hughes and its Subsidiaries prior to the Merger Effective Time.

(o) No Further Holding Company. Until the earlier of (i) six months after the Merger Effective Time and (ii) the date on which GM has completed Debt/Equity Exchanges for the full amount of Exchange Shares permitted hereunder, Hughes (or if Hughes Holdings is formed prior to the Spin-Off Effective Time in accordance with Section 5.1(l), Hughes Holdings) shall not engage in any transaction that would cause Hughes (or, if Hughes Holdings is so formed, Hughes Holdings) to cease to be the ultimate parent corporation of the group.

(p) Hughes Stockholder Rights Plan. Hughes shall adopt a stockholder rights plan, effective as of the Spin-Off Effective Time, in a form to be mutually agreed among the parties hereto.

## Section 5.2. Covenants of GM and Hughes.

(a) Amendments to and Termination of the GM Transaction Agreements and Certain Other Agreements. Each of GM and Hughes agrees that, prior to the Merger Effective Time, it will, subject to the provisions of the immediately following sentence, consult with EchoStar regarding any change, amendment or waiver that is proposed to be made to any of the GM Transaction Agreements, the Hughes Transaction Agreements or any of the other agreements contemplated thereby. During such period, no changes or amendments will be made to such agreements, or waivers of rights under such agreements, without the written consent of EchoStar, unless such changes or amendments, taken together with all other changes and amendments (i) could not reasonably be foreseen to have an adverse effect on the business, assets, liabilities or financial condition of Hughes and (ii) do not shift responsibility for any liabilities between GM and any GM Affiliate, on the one hand, and Hughes and any Hughes Affiliate, on the other hand, change in any substantive or non-immaterial respect any conditions or termination provisions, change any

terms or provisions in which a change thereof would be prohibited after receipt of the Requisite Stockholder Approval, or impair or delay the consummation of the GM Transactions or the Merger. Each of GM and Hughes agrees that it shall not, and shall not permit any of its affiliates to, terminate any of the GM Transaction Agreements, the Hughes Transaction Agreements or any of the other agreements contemplated thereby, other than in connection with the termination of this Agreement, the GM/Hughes Separation Agreement or the Merger Agreement (each of which may be terminated in accordance with its terms), without the written consent of EchoStar. Each of GM and Hughes shall promptly provide to EchoStar a copy of any amendment to any of the GM Transaction Agreements or Hughes Transaction Agreements.

(b) Director and Officer Insurance.

(i) Claims-Made Coverage. Until the six (6) year anniversary of the Spin-Off Effective Time, or until such earlier time as Hughes requests, GM shall provide directors' and officers' liability insurance ("D&O Insurance") covering each Hughes Covered Person for all applicable incidents, acts or omissions occurring prior to the Spin-Off Effective Time, regardless of when, prior to the six (6) year anniversary of the Spin-Off Effective Time (or Hughes' earlier termination of coverage), any claims relating to such incidents, acts or omissions are presented. Except as set forth in 5.2(b)(iv), GM shall provide such coverage at no cost to Hughes. Such insurance coverage shall be no less favorable to any Hughes Covered Person in coverage or amount than the lesser of (A) the coverage in effect at the Spin-Off Effective Time or (B) any applicable insurance coverage in effect for GM at the time of the claim; provided, however, that with respect to clause (B) above, if GM determines that (x) the amount or scope of such coverage will be reduced to a level materially inferior to the level of coverage in existence immediately prior to the Spin-Off Effective Time or (y) the retention or deductible levels applicable to such coverage, if any, will be increased to a level materially greater than the levels in existence immediately prior to the Spin-Off Effective Time, GM shall give Hughes notice of such determination as promptly as practicable, but in no event less than thirty (30) days prior to the effectiveness of such reduction in coverage or increase in retention or deductible levels. Upon notice of such determination, Hughes shall be entitled to no less than ninety (90) days to evaluate its options regarding continuance of coverage hereunder and may cancel all or any portion of such coverage as of any day within such ninety (90) day period, regardless of whether such date coincides with any anniversary of the Spin-Off Effective Time. At any time during the period that GM is obligated to provide coverage pursuant to this Section 5.2(b)(i), upon at least thirty (30) days prior written notice, Hughes may request GM to cancel all or any portion of such coverage as of the next anniversary of the Spin-Off Effective Time. In the event of any cancellation of coverage by Hughes pursuant to this Section 5.2(b)(i), GM shall have no obligation to provide such canceled coverage with respect to any period from and after the effective date of such termination. The term "coverage" as used in this Section 5.2(b) shall be deemed to include all applicable excess coverage. For the purposes of this Agreement, (I) "Hughes Covered Person" means each individual who served at any time within the six (6) year period prior to the Spin-Off Effective Time as a director, director nominee or officer of Hughes, any Hughes Affiliate or any corporation to which Hughes is a successor, in each case to the extent covered by

a particular GM Insurance Policy (as defined below) providing D&O Insurance coverage; and (II) "GM Insurance Policy" means any policy of insurance maintained by GM or any GM Affiliate prior to the Spin-Off Effective Time.

(ii) Occurrence Coverage for Prior Acts. GM shall take no action to remove any Hughes Covered Person from D&O Insurance coverage under any GM Insurance Policy effective at, or at any time prior to, the Spin-Off Effective Time that is written on an occurrence basis.

(iii) Claims. With respect to any claims for incidents, acts or omissions occurring prior to or at the Spin-Off Effective Time, for which any Hughes Covered Person may be entitled to assert a claim for recovery under any GM Insurance Policy providing D&O Insurance coverage in accordance with the terms thereof, GM, at the request of Hughes, shall use commercially reasonable efforts in asserting, or assisting Hughes in asserting, such claims under any such GM Insurance Policy providing D&O Insurance coverage; provided, that in all cases (A) Hughes shall promptly pay or reimburse GM for all costs and expenses incurred by GM in connection with such claims (whether such claims were made before or are made after the Spin-Off Effective Time), including retrospective premium adjustments to the extent attributable to such claims, (B) to the full extent permitted by contract and law, the control and administration of such GM Insurance Policies providing D&O Insurance coverage, including with respect to any proposed buyouts of such GM Insurance Policies, shall remain with GM, (C) such claims shall be subject to (and recovery thereon shall be reduced by the amount of) any applicable deductibles, retentions, self-insurance provisions or any payment or reimbursement obligations of GM or any GM Affiliate in respect thereof, (D) with respect to claims-made GM Insurance Policies, such claims must have been incurred and reported prior to the Spin-Off Effective Time to the extent required by such policies and (E) Hughes shall promptly report to GM any such claims. GM (or, in the event that the primary economic burden is to be borne by Hughes by virtue of deductibles, retentions and retrospective premium adjustments, GM and Hughes) and GM's insurers shall have the right to control the investigation, defense and settlement of claims, but no such settlement may be effected without the consent of Hughes, which consent shall not be unreasonably withheld or delayed, unless such settlement includes as an unconditional term thereof the delivery of a written release of Hughes and any other insured parties from all liability in respect of such claim.

(iv) Treatment of Certain Retentions and Deductibles. Responsibility for deductible and self-insured amounts with respect to any GM Insurance Policy providing D&O Insurance coverage provided or maintained after the Spin-Off Effective Time pursuant to Section 5.2(b)(i) or 5.2(b)(ii) as it relates to coverage for any Hughes Covered Person shall be borne one hundred percent (100%) by Hughes. Notwithstanding the foregoing, if GM and Hughes are involved in the same claim, GM and Hughes shall negotiate in good faith the fair allocation of any self-insurance retention or other deductible payable under the GM Insurance Policies providing D&O Insurance coverage. Such allocation shall be based upon all relevant factors, including, without limitation and as appropriate, the relative number of

Persons affiliated with Hughes or GM that are involved in such claim and the nature of the allegations with respect to each such Person.

(v) Adjustment of Premiums Applicable to Period Prior to the Spin-Off Merger Effective Time. Any premiums that have been paid or are payable by Hughes to GM with respect to D&O Insurance coverage under any of the GM Insurance Policies maintained or provided prior to the Spin-Off Effective Time shall be pro-rated, and as soon as practicable after the Spin-Off Effective Time shall be either refunded by GM to Hughes or paid by Hughes to GM, as appropriate, so that Hughes is responsible for only those premiums relating to (A) any full policy year ending prior to the Spin-Off Effective Time and (B) the partial policy year ending at the Spin-Off Effective Time.

(c) Letters of Accountants.

(i) To the extent applicable as a result of any requirement to include their respective financial statements in the Spin-Off/Merger Registration Statement, GM and Hughes shall use commercially reasonable efforts to cause to be delivered to EchoStar to the extent permitted by applicable accounting standards letters from the independent accountants of each of GM and Hughes, dated a date within two (2) Business Days before the date on which the Spin-Off/Merger Registration Statement shall become effective, addressed to EchoStar and its Board of Directors, customary in form and scope for comfort letters delivered by independent public accountants in connection with registration statements similar to the Spin-Off/Merger Registration Statement.

(ii) To the extent applicable as a result of any requirement to include their respective financial statements in the EchoStar Information Statement, GM and Hughes shall use commercially reasonable efforts to cause to be delivered to EchoStar to the extent permitted by applicable accounting standards in connection with the EchoStar Information Statement two (2) letters from the independent accountants of each of GM and Hughes, one dated a date within two (2) Business Days before the date on which the registration statement(s) containing the EchoStar Information Statement shall become effective and one dated a date within two (2) Business Days before the date on which the EchoStar Information Statement is mailed to EchoStar's stockholders, in each case addressed to EchoStar and its Board of Directors, customary in form and scope for comfort letters delivered by independent public accountants in connection with registration statements and information statements similar to the EchoStar Information Statement.

(d) Pre-Closing Cooperation. GM and Hughes promptly shall furnish EchoStar with all information concerning each of them as may reasonably be requested by EchoStar for use by Sullivan & Cromwell, special counsel to EchoStar, in preparing its tax opinion to the effect that the Merger qualifies as a reorganization pursuant to Section 368(a) of the Code (the "EchoStar Section 368 Opinion"). GM and Hughes shall provide EchoStar with such representations and warranties as may reasonably be requested by EchoStar with respect to the EchoStar Section 368 Opinion.

(e) GM Sale Process Claims.

(i) **EACH OF GM AND HUGHES, ON BEHALF OF ITSELF AND THE GM AFFILIATES AND THE HUGHES AFFILIATES, RESPECTIVELY, ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF ECHOSTAR SET FORTH IN THIS AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS), ECHOSTAR MAKES NO REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS).** Each of GM and Hughes, on behalf of itself and the GM Affiliates and the Hughes Affiliates, respectively, represents and warrants to EchoStar that in making its determination to enter into, and to proceed with the transactions contemplated by this Agreement, the Merger Agreement or any of the agreements or transactions contemplated hereby or thereby (including the Transaction Agreements), it has not relied on and will not rely on any representation, warranty or covenant of EchoStar or any EchoStar Affiliate, or of any of their respective Representatives, other than the express representations, warranties and covenants of EchoStar set forth in this Agreement or any of the agreements contemplated hereby to which each of EchoStar, on the one hand, and GM or Hughes on the other hand, is a party (including the other Transaction Agreements).

(ii) Other than with respect to any claim based on a breach by EchoStar of any of the Transaction Agreements to which EchoStar is a party, each of GM and Hughes, on behalf of itself and the GM Affiliates and the Hughes Affiliates, respectively, hereby waives, releases and forever discharges any and all claims (including any and all claims, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys' fees, or liabilities of any nature whatsoever in law or in equity, whether related to, arising out of or due to occurrences or conditions prior to, on or after the Merger Effective Time, and whether known or unknown, suspected, or claimed) against EchoStar or any EchoStar Affiliate or any of their respective Representatives which any of GM, any GM Affiliate, Hughes or any Hughes Affiliate may have to the extent related to, arising out of or due to, directly or indirectly, the investigation, consideration or pursuit (including the adequacy of disclosures to and due diligence of GM, Hughes or any unaffiliated Persons and including any allegations of breach of fiduciary duty with respect to the transactions contemplated by this Agreement and the Merger Agreement) of one or more strategic business combination transactions involving EchoStar or any EchoStar Affiliate, and one or more unaffiliated Persons (any such claim, a "GM Sale Process Claim"), except to the extent that any of GM or Hughes hereafter incurs any Losses (as defined below) in respect thereof arising out of a Third-Party Claim (as defined below). For the purposes of this Agreement, "Losses" means any losses, liabilities,

claims, obligations, Taxes (as defined below), demands, judgments, damages, dues, penalties, assessments, fines (civil or criminal), costs, liens, expenses, forfeitures, settlements or fees, attorneys' fees and court costs or other expenses, of any nature or kind, whether or not the same would properly be reflected on a balance sheet.

(iii) Other than with respect to any claim based on a breach by EchoStar of any of the Transaction Agreements to which EchoStar is a party, each of GM and Hughes agrees that it shall not, and shall cause the GM Affiliates and the Hughes Affiliates, respectively, not to, seek to recover from EchoStar or any EchoStar Affiliate or any of their respective Representatives any Losses to the extent that such Losses relate to, arise out of or are due to a GM Sale Process Claim unless and until such time, and only to the extent that, any of GM or Hughes incurs any Losses in respect thereof arising out of a Third-Party Claim.

(f) Hughes Sale Process Claims.

(i) **HUGHES, ON BEHALF OF ITSELF AND EACH HUGHES AFFILIATE, RESPECTIVELY, ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF GM SET FORTH IN THIS AGREEMENT, THE GM/HUGHES SEPARATION AGREEMENT OR ANY OF THE AGREEMENTS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS), GM MAKES NO REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE GM/HUGHES SEPARATION AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS).** Hughes, on behalf of itself and each Hughes Affiliate, respectively, represents and warrants to GM that in making its determination to enter into, and to proceed with the transactions contemplated by, this Agreement, the GM/Hughes Separation Agreement, the Merger Agreement and each of the agreements contemplated hereby and thereby (including the Transaction Agreements), it has not relied on and will not rely on any representation, warranty or covenant of GM, any GM Affiliate, or any Representative of GM or any GM Affiliate, other than the express representations, warranties and covenants of GM set forth in this Agreement, the GM/Hughes Separation Agreement or any of the agreements contemplated hereby or thereby to which Hughes and GM are each a party (including the Transaction Agreements).

(ii) Other than with respect to any claim based on a breach by GM of any of the Transaction Agreements to which GM is a party, Hughes, on behalf of itself and each Hughes Affiliate, hereby waives, releases and forever discharges any and all claims (including any and all claims, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys' fees, or liabilities of any nature whatsoever in law and in equity, whether related to, arising out

of, or due to occurrences or conditions prior to, on or after the Spin-Off Effective Time, and whether known or unknown, suspected, or claimed) against GM, any GM Affiliate or any of their respective Representatives which Hughes or any Hughes Affiliate may have to the extent related to, arising out of or due to, directly or indirectly, the investigation, consideration or pursuit (including the adequacy of disclosure by and due diligence of GM, Hughes or any unaffiliated Persons and including any allegations of breach of fiduciary duty with respect to the transactions contemplated by this Agreement and the Merger Agreement) of one or more strategic business combination transactions involving Hughes or any Hughes Affiliate and one or more unaffiliated Persons (any such claim, a "Hughes Sale Process Claim"), except to the extent that Hughes hereafter incurs any Losses in respect thereof arising out of a Third-Party Claim.

(iii) Other than with respect to any claim based on a breach by GM of the Transaction Agreements to which GM is a party, Hughes agrees that it shall not, and shall cause each Hughes Affiliate not to, seek to recover from GM, any GM Affiliate or any of their respective Representatives any Losses, to the extent that such Losses relate to, arise out of or are due to, directly or indirectly, any Hughes Sale Process Claim unless and until such time, and only to the extent that, Hughes incurs any Losses in respect thereof arising out of a Third-Party Claim.

(g) GM-Hughes Sale Process Claims.

(i) **GM, ON BEHALF OF ITSELF AND EACH GM AFFILIATE, RESPECTIVELY, ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF HUGHES SET FORTH IN THIS AGREEMENT, THE GM/HUGHES SEPARATION AGREEMENT OR ANY OF THE AGREEMENTS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS), HUGHES MAKES NO REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE GM/HUGHES SEPARATION AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS).** GM, on behalf of itself and each GM Affiliate, respectively, represents and warrants to Hughes that in making its determination to enter into, and to proceed with the transactions contemplated by, this Agreement, the GM/Hughes Separation Agreement, the Merger Agreement and each of the agreements contemplated hereby and thereby (including the Transaction Agreements), it has not relied on and will not rely on any representation, warranty or covenant of Hughes, any Hughes Affiliate, or any Representative of Hughes or any Hughes Affiliate, other than the express representations, warranties and covenants of Hughes set forth in this Agreement, the GM/Hughes Separation Agreement or any of the agreements contemplated hereby or thereby to which GM and Hughes are each a party (including the Transaction Agreements).

(ii) Other than with respect to any claim based on a breach by Hughes of the Transaction Agreements to which Hughes is a party, GM, on behalf of itself and each GM Affiliate, hereby waives, releases and forever discharges any and all claims (including any and all claims, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys' fees, or liabilities of any nature whatsoever in law and in equity, whether related to, arising out of, or due to occurrences or conditions prior to, on or after the Spin-Off Effective Time, and whether known or unknown, suspected, or claimed) against Hughes, any Hughes Affiliate or any of their respective Representatives which GM or any GM Affiliate may have to the extent related to, arising out of or due to, directly or indirectly, the investigation, consideration or pursuit (including the adequacy of disclosure by and due diligence of Hughes, GM or any unaffiliated Persons and including any allegations of breach of fiduciary duty with respect to the transactions contemplated by this Agreement and the Merger Agreement) of one or more strategic business combination transactions involving Hughes or any Hughes Affiliate and one or more unaffiliated Persons (any such claim, a "GM-Hughes Sale Process Claim"), except to the extent that GM hereafter incurs any Losses in respect thereof arising out of a Third-Party Claim.

(iii) Other than with respect to any claim based on a breach by Hughes of the Transaction Agreements to which Hughes is a party, GM agrees that it shall not, and shall cause each GM Affiliate not to, seek to recover from Hughes, any Hughes Affiliate or any of their respective Representatives any Losses, to the extent that such Losses relate to, arise out of or are due to, directly or indirectly, any GM-Hughes Sale Process Claim unless and until such time, and only to the extent that, GM incurs any Losses in respect thereof arising out of a Third-Party Claim.

(h) Remaining Shares. In the event that either (i) the IRS requires, as a condition to the issuance of the Ruling, that GM distribute all or any of the Remaining Shares (as defined below) in the Spin-Off to the holders of the GM \$1-2/3 Common Stock or (ii) in connection with the Ruling Request, the IRS does not issue a ruling to the effect that GM may retain and subsequently dispose of the Remaining Shares, under conditions acceptable to GM in its sole and absolute discretion, in a manner that will not cause the retention and disposition of the Remaining Shares to be treated as part of a Section 355(e) Plan (as defined below) that includes the GM Transactions and the Merger (a "Remaining Shares Section 355(e) Ruling"), then GM shall distribute in the Spin-Off to the holders of the GM \$1-2/3 Common Stock (the "Remaining Shares Distribution") (A) in the case of clause (i) above, all or the specified portion of the Remaining Shares and (B) in the case of clause (ii) above, such number of the Remaining Shares (up to the number of Remaining Shares then held by GM) as is necessary to allow the condition contained in Section 6.1(h) of the Merger Agreement to be satisfied. If the IRS issues a Remaining Shares Section 355(e) Ruling, then GM may, in its sole and absolute discretion, retain, distribute or otherwise dispose of or deal with the Remaining Shares; provided that GM shall comply with any condition imposed by the IRS, in connection with the Ruling or the Remaining Shares Section 355(e) Ruling, that relates to the Remaining Shares. For the purposes of this Agreement, "Remaining Shares" means those shares of Hughes Class C Common Stock, if any, held by GM immediately prior to the Spin-Off Effective Time that (I) will not be

distributed by GM to the holders of the GM Class H Common Stock in the Spin-Off and (II) will not be transferred in any GM Debt/Equity Exchange.

(i) Solvency Opinion. Prior to the Hughes Recapitalization, Hughes shall use commercially reasonable efforts to seek an opinion of Houlihan Lokey Howard & Zukin (the "Solvency Opinion"), a copy of which shall be provided to EchoStar, if requested, regarding Hughes' ability to declare the dividend contemplated by the Hughes Recapitalization.

(j) Certain Merger Agreement Covenants. GM shall use commercially reasonable efforts to take all actions in its capacity as the sole stockholder of Hughes to allow Hughes to comply with Hughes' covenant in Section 5.3(a)(iv) of the Merger Agreement. Except as expressly contemplated by any of the GM Transaction Agreements, Hughes Transaction Agreements or EchoStar Transaction Agreements, GM shall not take any action in respect of Hughes that, if taken by Hughes, would cause Hughes to violate the covenants set forth in Sections 5.3(a)(iii), (v), (vi), (vii), (ix), (x), (xi) or (xiii) of the Merger Agreement.

(k) GM Class H Common Stock. From and after the date hereof until immediately prior to the Spin-Off Effective Time, except for (i) following the effectiveness of the GM Charter Amendment, reducing the Denominator of the Class H Fraction as contemplated by Section 1.1(b) of the GM/Hughes Separation Agreement, (ii) increasing the Numerator and the Denominator of the Class H Fraction to include such number of shares of GM Class H Common Stock issued in the event that shares are issued as a result of the conversion of the GM Series H Preference Stock into GM Class H Common Stock, (iii) increasing the Numerator and the Denominator of the Class H Fraction as a result of the grant and/or exercise of employee stock options as provided in the GM Certificate of Incorporation, (iv) adjusting the Numerator and the Denominator of the Class H Fraction to reflect changes during the applicable quarterly accounting period due to the passage of time and (v) increasing the Numerator of the Class H Fraction to include the number of shares of GM Class H Common Stock issued as a result of any GM Debt/Equity Exchange, and except as contemplated by the Transaction Agreements and the transactions contemplated thereby, (A) GM shall not adjust the Numerator or the Denominator of the Class H Fraction or take any actions that would require it to do so and (B) GM shall not do or effect any of the following actions with respect to the GM Class H Common Stock: (I) adjust, split, combine, recapitalize or reclassify the GM Class H Common Stock, (II) make, declare or pay any dividend or distribution on, or directly or indirectly redeem, purchase or otherwise acquire, any shares of GM Class H Common Stock or any securities or obligations convertible into or exchangeable for shares of GM Class H Common Stock, (III) grant any Person any right or option to acquire any shares of GM Class H Common Stock other than grants in accordance with, and to the extent permitted by Hughes pursuant to, Section 5.1(j) of the Merger Agreement, (IV) issue, deliver or sell or agree to issue, deliver or sell any additional shares of GM Class H Common Stock or any securities or obligations convertible into or exchangeable for any shares of GM Class H Common Stock (except pursuant to the exercise of outstanding options and options issued after the date hereof in accordance with, and to the extent permitted by Hughes pursuant to, Section 5.1(j) of

the Merger Agreement) or (V) enter into any agreement, understanding or arrangement with respect to the sale or voting of GM Class H Common Stock.

(l) GM Cooperation with Regulatory Matters.

(i) In furtherance of the covenants of Hughes set forth in Section 5.1(b) of the Merger Agreement, as soon as practicable, and in any event within twenty (20) Business Days after the date hereof, GM shall file any Notification and Report Forms and related material required to be filed by it with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the HSR Act and any similar required notifications under the laws of any foreign jurisdiction with respect to the Merger and the transactions contemplated by the Merger Agreement and shall promptly make any further filings pursuant thereto that may be necessary, proper or advisable. GM shall, subject to Section 5.1(b)(v) of the Merger Agreement: (A) use best efforts to obtain prompt termination of any waiting period under the HSR Act (including any extension of the initial thirty (30) day waiting period) with respect to the Merger, and shall not, without the prior consent of EchoStar, agree with any Governmental Authority to cause Hughes not to consummate the Merger for a period of time beyond the expiration of the waiting period applicable to the consummation of the Merger under the HSR Act or to extend the Closing Date (as defined in the Merger Agreement) to a date within the ninety (90) day period prior to the Outside Date (as defined in the Merger Agreement); (B) furnish to Hughes and EchoStar such information and assistance as EchoStar may reasonably request in connection with the preparation of any submissions to, or agency proceeding by, any Governmental Authority under any Antitrust Law (as defined in the Merger Agreement); (C) keep Hughes and EchoStar promptly apprised of any communications with, and inquiries or requests for information from, such Governmental Authority; (D) permit Hughes and EchoStar to review any material communication given by it to, and consult with Hughes and EchoStar in advance of any meetings or conferences with, any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, give Hughes and EchoStar the opportunity to attend and participate in such meetings and conferences; and (v) use best efforts to cooperate with Hughes and EchoStar to cause the conditions set forth in Section 6.1(b) of the Merger Agreement to be satisfied; provided that GM shall not take any action that would be reasonably likely to (1) prevent the delivery of the Tax Opinions or the Ruling, or (2) cause the representations and assumptions underlying the Tax Opinions or the Ruling not to be true and correct in all material respects.

(ii) In furtherance and not in limitation of the covenants of GM contained in this Section 5.2(l), GM shall use best efforts in cooperating with Hughes to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by the Merger Agreement under any rules and regulations of any Antitrust Law (as defined in the Merger Agreement). In connection with the foregoing, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by the Merger Agreement as violative of any Antitrust Law, GM shall, subject to Section 5.1(b)(v) of the Merger Agreement, use best efforts in cooperating with Hughes to avoid the institution of any such action or

proceeding and to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by the Merger Agreement.

(iii) If any objections are asserted with respect to the transactions contemplated by the Merger Agreement under any Antitrust Law or if any suit is instituted by any Governmental Authority or any private party challenging any of the transactions contemplated by the Merger Agreement as violative of any Antitrust Law, GM shall, subject to Section 5.1(b)(v) of the Merger Agreement, use its best efforts in cooperating with Hughes to resolve any such objections or challenge as such Governmental Authority or private party may have to such transactions under such law so as to permit consummation of the transactions contemplated by the Merger Agreement. In furtherance and not in limitation of the foregoing, GM (and, to the extent required by any Governmental Authority, their Subsidiaries and affiliates (other than Hughes and any Hughes Affiliates) over which they exercise control) shall be required, subject to Section 5.1(b)(v) of the Merger Agreement, to enter into a settlement, undertaking, consent decree, stipulation or other agreement (each, a "Settlement") with a Governmental Authority regarding antitrust matters in connection with the transactions contemplated by the Merger Agreement, including any Settlement that requires Hughes to hold separate (including by establishing a trust or otherwise) or to sell or otherwise dispose of any of its assets or its subsidiaries' efforts.

### Section 5.3. Covenants and Agreements of EchoStar.

(a) Amendments to and Termination of the EchoStar Transaction Agreements. EchoStar agrees that, prior to the Merger Effective Time, it will, subject to the provisions of the immediately following sentence, consult with GM and Hughes regarding any change, amendment or waiver that is proposed to be made to any of the EchoStar Transaction Agreements or any of the other agreements contemplated thereby. During such period, no changes or amendments will be made to any such agreements, or waivers of rights under such agreements, without the written consent of GM and Hughes, unless such changes or amendments, taken together with all other changes and amendments, (i) could not reasonably be foreseen to have an adverse effect on the business, assets, liabilities or financial condition of EchoStar or, following the Merger Effective Time, Hughes, and (ii) do not change in any substantive or non-immaterial respect any conditions or termination provisions, change any terms or provisions in which a change thereof would be prohibited after a stockholder vote, or impair or delay the consummation of the Merger, any GM Debt/Equity Exchange or the GM Transactions. EchoStar shall not, and shall not permit any of its affiliates to, terminate any of the EchoStar Transaction Agreements or any of the other agreements contemplated thereby, other than in connection with a termination of this Agreement or the Merger Agreement (each of which may be terminated in accordance with its terms), without the written consent of GM and Hughes. EchoStar shall promptly provide GM and Hughes a copy of any amendment to any of the EchoStar Transaction Agreements. Notwithstanding the foregoing, the parties agree that EchoStar may take any of the foregoing actions with respect to the Merger Financing Agreement and the PanAmSat

Financing Agreement, subject to compliance with the relevant terms of the Merger Agreement and the PanAmSat Stock Purchase Agreement, respectively.

(b) Letter of Accountants.

(i) To the extent applicable as a result of any requirement to include its financial statements in the Spin-Off/Merger Registration Statement, EchoStar shall use commercially reasonable efforts to cause to be delivered to GM and Hughes to the extent permitted by applicable accounting standards, if and to the extent applicable in view of the status of Hughes as a registrant under the Securities Act in connection with Spin-Off/Merger Registration Statement, letters from the independent accountants of EchoStar, dated a date within two (2) Business Days before the date on which the Spin-Off/Merger Registration Statement shall become effective, addressed to Hughes and GM and their respective Boards of Directors, customary in form and scope for comfort letters delivered by independent public accountants in connection with registration statements similar to the Spin-Off/Merger Registration Statement.

(ii) To the extent applicable as a result of any requirement to include its financial statements in any GM Debt/Equity Exchange Registration Statement, each of EchoStar and Hughes shall use commercially reasonable efforts to cause to be delivered to GM to the extent permitted by applicable accounting standards, if and to the extent applicable in view of the status of GM as a registrant under the Securities Act in connection with any GM Debt/Equity Exchange Registration Statement, letters from the respective independent accountants of EchoStar and Hughes, dated as of a date within two (2) Business Days before the date on which any GM Debt/Equity Exchange Registration Statement shall become effective, addressed to GM and the GM respective Boards of Directors, customary in form and scope for comfort letters delivered by independent public accountants in connection with registration statements similar to such GM Debt/Equity Exchange Registration Statement.

(iii) To the extent applicable as a result of any requirement to include its financial statements in any GM Proxy/Consent Solicitation Statement, EchoStar and Hughes shall use commercially reasonable efforts to cause to be delivered to GM to the extent permitted by applicable accounting standards in connection with any GM Proxy/Consent Solicitation Statement two (2) letters from the independent accountants of EchoStar, one dated a date within two (2) Business Days before the date on which the registration statement(s) containing such GM Proxy/Consent Solicitation Statement shall become effective and one dated a date within two (2) Business Days before the date on which such GM Proxy/Consent Solicitation Statement is mailed to GM's stockholders, in each case addressed to GM and the GM Board of Directors, customary in form and scope for comfort letters delivered by independent public accountants in connection with proxy or consent solicitation statements similar to such GM Proxy/Consent Solicitation Statement.

(c) Merger Agreement Covenants. EchoStar hereby covenants to GM as to each of the matters set forth in the covenants made by EchoStar in the Merger Agreement to the full extent set forth therein as though such covenants were made by EchoStar to GM in this Agreement.

(d) Pre-Closing Cooperation. EchoStar promptly shall furnish GM with all information concerning it and its affiliates as may reasonably be requested by GM (i) for inclusion in the Ruling Request or any other IRS Submission and (ii) for use by (A) Weil, Gotshal & Manges LLP, counsel to Hughes and GM, in preparing its opinion to the effect that the Merger qualifies as a reorganization pursuant to Section 368 of the Code (the "Section 368 Opinion") and (B) Kirkland & Ellis, special counsel to GM (together with Weil, Gotshal & Manges LLP, "Tax Counsel"), in preparing its opinions to the effect that the recapitalization of the GM \$1-2/3 Common Stock and the GM Class H Common Stock arising from the adoption of the GM Charter Amendment will be tax free to GM, the holders of the GM \$1-2/3 Common Stock and the holders of the GM Class H Common Stock, and the GM Class H Common Stock is stock of GM for United States federal income tax purposes (the "Ancillary Tax Opinions" and, together with the Section 368 Opinion, the "Tax Opinions").

(e) EchoStar Sale Process Claims.

(i) **ECHOSTAR, ON BEHALF OF ITSELF AND EACH ECHOSTAR AFFILIATE, RESPECTIVELY, ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF GM AND HUGHES SET FORTH IN THIS AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS), GM AND HUGHES MAKE NO REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESSED OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE MERGER AGREEMENT OR ANY OF THE AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING THE TRANSACTION AGREEMENTS).** EchoStar, on behalf of itself and each EchoStar Affiliate, respectively, represents and warrants to GM and Hughes that in making its determination to enter into, and to proceed with the transactions contemplated by, this Agreement, the Merger Agreement or any of the agreements contemplated hereby and thereby (including the Transaction Agreements), it has not relied on and will not rely on any representation, warranty or covenant of GM, Hughes, any GM Affiliate or any Hughes Affiliate, or any Representative of GM, Hughes, any GM Affiliate or any Hughes Affiliate, other than (A) the express representations, warranties and covenants of GM set forth in this Agreement or any of the agreements contemplated hereby to which each of GM, on the one hand, and EchoStar, on the other hand, is a party and (B) the express representations, warranties and covenants of Hughes (with respect to which, in each case, GM makes no representation, warranty or covenant except as expressly provided therein) set forth in the Merger Agreement (including the Hughes Disclosure Schedule (as defined below)), this Agreement or any of the agreements contemplated hereby

or thereby to which Hughes, on the one hand, and EchoStar, on the other hand, is a party (including the Transaction Agreements).

(ii) Other than with respect to any claim based on a breach by GM or Hughes of any of the EchoStar Transaction Agreements to which GM or Hughes, as applicable, is a party, EchoStar, on behalf of itself and the EchoStar Affiliates, hereby waives, releases and forever discharges any and all claims (including any and all claims, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys' fees, or liabilities of any nature whatsoever in law and in equity, whether related to, arising out of or due to occurrences or conditions prior to, on or after the Merger Effective Time, and whether known or unknown, suspected, or claimed) against GM, any GM Affiliate, Hughes, any Hughes Affiliate or any of their respective Representatives which any of EchoStar or any EchoStar Affiliate may have to the extent related to, arising out of or due to, directly or indirectly, the investigation, consideration or pursuit (including the adequacy of disclosures to and due diligence of EchoStar, any EchoStar Affiliate, GM, Hughes, any Hughes Affiliate or any unaffiliated Persons and including any allegations of breach of fiduciary duty with respect to the transactions contemplated by this Agreement and the Merger Agreement) of one or more strategic business combination transactions involving Hughes or any Hughes Affiliate, and one or more unaffiliated Persons (any such claim, a "EchoStar Sale Process Claim"), except to the extent that EchoStar hereafter incurs any Losses in respect thereof arising out of a Third-Party Claim.

(iii) Other than with respect to any claim based on a breach by GM or Hughes of any Transaction Agreements to which GM or Hughes, as applicable, is a party, EchoStar agrees that it shall not, and shall cause the EchoStar Affiliates not to, seek to recover from GM, any GM Affiliate, Hughes, any Hughes Affiliate or any of their respective Representatives any Losses to the extent that such Losses relate to, arise out of or are due to an EchoStar Sale Process Claim unless and until such time, and only to the extent that EchoStar incurs any Losses in respect thereof arising out of a Third-Party Claim.

(f) Payment of Demand Note. EchoStar shall use commercially reasonable efforts to cooperate with Hughes to ensure that the Demand Note, if any, shall, subject to the consummation of the Merger, be paid in full immediately upon the occurrence of the Merger Effective Time as set forth in Section 1.1(a)(ii) of the GM/Hughes Separation Agreement.

(g) Mailing of the EchoStar Information Statement. EchoStar shall mail the EchoStar Information Statement to its stockholders on a date reasonably proximate to the Mailing Date in compliance with Applicable Law, including Regulation 14(c) of the Exchange Act.

## ARTICLE 6

### TAX-FREE STATUS OF THE SPIN-OFF

#### Section 6.1. Representations and Warranties.

(a) Hughes. Hughes hereby represents and warrants that (i) it has examined or, prior to the Spin-Off Effective Time, will examine the Ruling and any other rulings issued by the IRS in connection with the Spin-Off, the Tax Opinions, each IRS Submission, the representation letters relating to the Tax Opinions and any other materials delivered or deliverable by GM and others in connection with the rendering by Tax Counsel of the Tax Opinions and the issuance by the IRS of the Ruling and such other rulings (all of the foregoing, collectively, the "Tax Materials"), which to the extent related to Hughes shall be in form and substance reasonably satisfactory to Hughes, and (ii) the facts presented and the representations made therein, to the extent descriptive of Hughes (including the business purposes for the Spin-Off, the representations in the Tax Materials to the extent that they relate to Hughes, the timing and amount of, and other circumstances relating to, any issuance of GM Class H Common Stock occurring prior to the completion of the Spin-Off and the plans, proposals, intentions and policies of Hughes), are true, correct and complete in all material respects; provided that Hughes makes no representation or warranty with respect to such facts presented and representations made regarding those issuances that are specifically described in Section 6.1(b) below. The representations and warranties set forth in this Section 6.1(a) shall be true and correct as of the date hereof and at all times through and including the Spin-Off Effective Time.

(b) GM. GM hereby represents and warrants that (i) it has examined or, prior to the Spin-Off Effective Time, will examine the Tax Materials and (ii) the facts presented and the representations made therein, to the extent descriptive of GM (including the business purposes for the Spin-Off, the representations in the Tax Materials to the extent that they relate to GM, the timing and amount of, and other circumstances relating to, the contribution by GM of shares of GM Class H Common Stock to certain employee benefit plans of GM in June 2000, the offering of newly issued shares of GM Class H Common Stock in exchange for outstanding shares of GM \$1-2/3 Common Stock in May 2000 and any issuance of GM Class H Common Stock GM in any GM Debt/Equity Exchange, and the plans, proposals, intentions and policies of GM), are true, correct and complete in all material respects. The representations and warranties set forth in this Section 6.1(b) shall be true and correct as of the date hereof and at all times through and including the Spin-Off Effective Time.

#### Section 6.2. Restrictions Relating to the Spin-Off.

(a) In General. The parties intend the Spin-Off to qualify as a distribution of Hughes stock to GM stockholders with respect to which no gain or loss is recognized by GM or any GM Affiliate, Hughes or their respective stockholders pursuant to Section 355 and related provisions of the Code (such nonrecognition, the "Tax-Free Status of the Spin-Off"). Neither Hughes nor EchoStar shall, nor shall Hughes or EchoStar permit any of their respective Subsidiaries to, take any action (including entering into any agreement, understanding or arrangement or any substantial negotiations with respect to any transaction or series of transactions) that, or fail to take any action within its control the failure of which, would cause the Spin-Off to fail so to qualify in any respect or to any extent (any such action or failure to act, a "Disqualifying Action"). Further, neither Hughes nor EchoStar shall, nor shall Hughes or EchoStar permit any of their respective Subsidiaries to, take any action (including entering into any agreement, understanding or arrangement or any substantial negotiations with respect to any transaction or series of transactions) that, or fail to take any action the failure of which, would result in a more than immaterial possibility that the Tax-Free Status of the Spin-Off would be jeopardized (any such action or failure to act, a "Potential Disqualifying Action"), including any action or failure to act that would be reasonably likely to be inconsistent with any representation made in the Tax Materials, unless, prior to the taking of the Potential Disqualifying Action, GM has determined, in its reasonable discretion, which discretion shall be exercised in good faith solely to preserve the Tax-Free Status of the Spin-Off, that the Potential Disqualifying Action would not jeopardize the Tax-Free Status of the Spin-Off. Notwithstanding the foregoing, if and to the extent that any Potential Disqualifying Action is described in and specifically permitted pursuant to Sections 6.2(d), (e) or (f), such Potential Disqualifying Action shall not be subject to the prior consent of GM pursuant to this Section 6.2(a).

(b) [Intentionally omitted]

(c) Proposed Acquisition Transactions. Until the first day after the second anniversary of the Spin-Off Effective Time, neither Hughes nor EchoStar shall, nor shall Hughes or EchoStar permit any of their respective Subsidiaries to:

(i) enter into any agreement, understanding or arrangement or any substantial negotiations with respect to any transaction or series of transactions (any such transaction, including any issuance or transfer of an option (as defined for purposes of Section 355(e) of the Code), but excluding the GM Transactions and the Merger, a "Proposed Acquisition Transaction") that is, or that is presumed to be, for purposes of Section 355(e) of the Code and applicable proposed, temporary or final Treasury Regulations promulgated thereunder, part of a plan or series of related transactions (any such plan or series of related transactions, as defined for purposes of Section 355(e) of the Code, a "Section 355(e) Plan") pursuant to which, either individually or taken together with the GM Transactions, the Merger, the Assumed AOL Sale (as defined below), if any, the Conversion Issuances (as defined below) and the Debt/Equity Issuances (as defined below), one or more Persons acquire directly or indirectly stock or other interests (in any entity or combination of entities) that represent a fifty percent (50%) or greater interest in (A) the total combined voting power of all outstanding shares of Voting Stock (as defined below) of Hughes or any

successor corporation or (B) the total value of all outstanding shares of Hughes Capital Stock (as defined below); or

(ii) to the extent that Hughes or EchoStar has the right and power to prohibit any agreement, understanding or arrangement or any substantial negotiations with respect to a Proposed Acquisition Transaction, permit any agreement, understanding or arrangement or any substantial negotiations with respect to a Proposed Acquisition Transaction to occur;

unless, in each case, prior to entering into such agreement, understanding or arrangement or commencing substantial negotiations with respect to such Proposed Acquisition Transaction, GM has determined, in its reasonable discretion, which discretion shall be exercised in good faith solely to preserve the Tax-Free Status of the Spin-Off, that the consummation of such Proposed Acquisition Transaction would not jeopardize the Tax-Free Status of the Spin-Off. For the purposes of the preceding sentence, subject to Section 6.2(g), any acquisition of GM Class H Common Stock prior to the completion of the Spin-Off shall be treated as an acquisition of Voting Stock of Hughes.

(d) Continuation of the DTV Business. Until the first day after the second anniversary of the Spin-Off Effective Time:

(i) Hughes shall continue the active conduct of its DTV Business (as defined below) as conducted by Hughes immediately prior to the Spin-Off. Hughes shall conduct the DTV Business directly (including through one or more entities that are treated as disregarded entities for United States federal income tax purposes), to the extent that the DTV Business was so conducted immediately prior to the Spin-Off Effective Time. Hughes shall continue the active conduct of the DTV Business primarily through officers and employees of Hughes or any of Hughes' Subsidiaries (and not primarily through independent contractors) who are not also officers or employees of GM or of any GM Affiliate; provided, however, that, for the purposes of this Article 6, neither Hughes nor any of the Subsidiaries of Hughes shall be deemed to be Subsidiaries of GM or of any of the Subsidiaries of GM. For the purposes of this Agreement, "DTV Business" means the business currently conducted by DIRECTV Enterprises, Inc., a Delaware corporation and a direct wholly owned Subsidiary of Hughes, and DIRECTV Operations, Inc., a California corporation and a direct wholly owned Subsidiary of DIRECTV Enterprises, Inc.

(ii) Subject always to Section 6.2(e), Hughes shall not (A) dispose of or otherwise discontinue the conduct of Substantially All of the DTV Business (as defined below) (but Hughes shall not be prohibited under this Section 6.2(d)(ii) from disposing of or discontinuing one or more trades or businesses that constitute part of the DTV Business so long as Hughes does not dispose of or discontinue the conduct of Substantially All of the DTV Business) or (B) dispose of any business or assets that would cause the DTV Business to be operated in a manner that is inconsistent in any material respect with the business purposes for the Spin-Off as set forth in the Tax Materials, in each case unless GM has determined, in its reasonable discretion, which discretion shall be exercised in good faith solely to preserve