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CLASS II GAME CLASSIFICATION AND TECHNICAL STANDARDS

(Third Preliminary Working Draft)

EXHIBIT

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PREFACE

The National Indian Gaming Commission (NIGC) is currently in the process of developing a Commission regulation that will establish technical standards and procedures for the classification and approval of electronic, computer and other technologic Class II gaming machines and aids utilized in Indian gaming operations. Attached is the most recent preliminary working draft of this proposed regulation for review and comment by Tribes and other interested parties. A copy of the draft regulation is also posted on the NIGC's website at www.nigc.gov, along with the Commission's published Process Time-Line for completing the regulation. Please note that the attached draft technical standards for Class II technologic aids (Section 7) has not yet been merged into the same document as the other sections of the draft regulation(Sections 1-6 and 8-10). Nevertheless, the two attached draft documents should be reviewed and analyzed together, since they will be eventually merged in the fourth working draft, after all pre-rulemaking comments from Tribes and other interested persons to the attached draft documents have been received and considered by the Commission and its Tribal Advisory Committee. Under the current Process Time-Line, the comment period for the attached draft standards is open through November 12, 2004.

Regulatory Need and Purpose

A recurring question regarding the lawful scope of Class II gaming under the Indian Gaming Regulatory Act (IGRA) involves the use of electronics, computers, or other technology used in connection with the operation and play of bingo and other Class II games. The prior Commission attempted to clarify the answer to these questions by amending Commission regulations that defined certain key terms in the IGRA, namely, "electronic, computer or other technologic aid", "electronic or electromechanical facsimile", and "game similar to bingo". Experience has shown, however, that significant ambiguity, uncertainty, and confusion still exists in the industry regarding this issue, particularly with respect to the legal and technical distinction between permissible Class II technologic gaming aids and Class III technologic facsimiles of games of chance under IGRA.

The purpose of the following proposed standards is to clarify the legal and technical distinction between permissible Class II technologic gaming aids and Class III technologic game facsimiles and slot machines under IGRA. Since IGRA was enacted in 1988, there have been dramatic changes in gaming technology and methods. With these advances in gaming technology and changes in gaming methods, the statutory line between permissible Class II technologic aids and Class III gaming devices has become increasingly blurred. When Congress generally defined "the game of chance commonly known as bingo," and specified the various other Class II games in IGRA, 25 U.S.C. §27003(7)(A), it could not have foreseen these dramatic changes in gaming technology and methods that potentially affect the operation and play of Class II and Class III games of chance. Likewise, by expressly recognizing in IGRA the right of

Tribes to utilize "electronic, computer, or other technologic aids" in connection with the operation and play of bingo and other specified Class II games, Congress also could not have foreseen the legal and technical difficulty that Tribal operators and regulators and gaming manufacturers and vendors would have in distinguishing between a Class II technologically-aided game and a Class III technologic game facsimile or slot machine. This distinction, however, is fundamental and critically important to proper implementation of the regulatory framework that Congress created in IGRA for gaming on Indian lands. Because of the differing regulatory requirements for each class of gaming activity under IGRA, the proper classification of games and the related technologic equipment used in connection therewith is essential to compliance with the Act and its enforcement. In particular, Tribes may conduct Class III gaming under IGRA only if they have a compact with the state in which their Class III gaming operation is located. Class II gaming on the other hand, may be conducted by Tribes without a Tribal-State compact or other state regulatory involvement.

The Commission is concerned that accelerating changes in gaming technology and methods threaten to obscure the essential statutory distinction between Class II and III gaming under IGRA. To address this concern, the Commission believes that clear, precise, objective and verifiable uniform technical standards, distinguishing permissible Class II technologic gaming aids from Class III technologic game facsimiles and slot machines, must be developed and implemented as a Commission regulation. Such standards must be amenable to impartial, objective and definitive laboratory testing, measurement, and findings, sufficient to provide Tribes, States, the NIGC, and gaming manufacturers and vendors with clear guidance regarding the required technical and operational characteristics of gaming technology that is utilized in connection with the operation and play of a Class II game of chance under IGRA and NIGC regulations.

IGRA generally defines Class II bingo with three statutory criteria and also generally specifies certain other games as Class II games of chance. The Act also clearly contemplates and allows advances in technology to aid the way bingo and other Class II games are conducted and played. Speaking on another aspect of the game of bingo, the U.S. Court of Appeals for the Ninth Circuit observed that, bingo is not necessarily the "traditional" game that "was played in our childhoods or home towns." 223 F.3d 1091, 1096 (9th Cir. 2000). At the same time, however, the game classification and related regulatory provisions of IGRA have not changed. In IGRA, Congress mandated that the NIGC promulgate necessary Federal standards and regulations to implement these and other provisions of the Act. It is pursuant to this mandate that the NIGC has undertaken this project to develop technical standards and procedures for the classification and approval of Class II technologic aids. In developing these technical classification standards, the NIGC seeks to strike a sound and reasonable balance between capitalizing on the dynamic advances in gaming technology, while continuing to give meaning and effect to the game classification and related regulatory provisions of IGRA, as Congress intended.

It is hoped that by providing clear, uniform, and verifiable technical standards for the classification and approval of Class II technologic gaming aids, the NIGC will assist tribal regulators in their responsibility as primary regulator to properly evaluate, classify, approve, and monitor gaming machines and aids utilized in Tribal gaming operations, in compliance with IGRA. Such standards will also provide guidance to Tribal gaming operators and game manufacturers and vendors regarding the technical design and operational requirements of Class II technologic gaming aids under IGRA. In so doing, the standards will also help ensure the continued integrity, safety and compliance of such gaming aids after they are approved for use by Tribal regulators.

Rule Development and Consultative Process

To assist in this endeavor, the Commission has formed a Tribal Advisory Committee made up of experienced Tribal gaming operators and regulators, who were nominated by Tribal leaders. With the assistance of this committee and thoughtful input from gaming Tribes, gaming machine manufacturers and suppliers, and other interested persons, the NIGC hopes to formulate a workable and definitive set of effective technical classification standards for Class II technologic gaming aids.

The draft as it now exists is a work in progress. It is preliminary to issuance of a proposed rule. Even though the standards are at an early stage in their formulation, the Commission invites and encourages comment by all interested parties at this time, including Tribal leaders, gaming operators and regulators, States, and gaming vendors and manufacturers, in order to help the NIGC formulate the most practical and effective standards possible to implement IGRA's provisions regarding Class II and Class III gaming. The Commission is committed to a consultation process that will provide early and meaningful opportunity for all Tribes and other interested persons to review and comment on this and other preliminary working drafts of the proposed standards and contribute in a meaningful way to their final formulation and implementation. Pursuant to that commitment, the NIGC has devised a tentative Process and Time-Line for development and completion of the proposed Class II technical standards and procedures. A copy of the Commission's project Process and Time-line is attached for your reference.

The attached Process and Time-Line is intended to be a flexible guide for the NIGC, the Tribal Advisory Committee, the individual Tribes, and the Indian gaming industry, adaptable to changing circumstances. Accordingly, it may be revised from time-to-time by the NIGC to ensure meaningful consultation throughout the process, thoughtful deliberation on preliminary working drafts, and cogent formulation and implementation of the final NIGC rule.

All comments to the current posted preliminary working draft should be submitted in writing to:

Philip Hogen, Chairman

National Indian Gaming Commission

1441 L Street N.W., Suite 9100

Washington, D.C., 20005

All received comments will be shared and discussed with the Class II Technical Standards Tribal Advisory Committee and NIGC staff, for their consideration in developing subsequent preliminary drafts and formulating the Class II technical classification standards and procedures for publication in the Federal Register as a proposed NIGC rule. After the proposed rule is published in the Federal Register, there will be a 60-day review and comment period for all Tribes and their leaders and representatives, as well as gaming manufacturers, and suppliers, and other interested persons. The final NIGC rule will be formulated and published in the Federal Register and take effect only after all received Tribal and public comment on the proposed rule is considered by the NIGC and its Tribal Advisory Committee.

During the 60-day comment period on the proposed rule published in the Federal Register, the NIGC intends to conduct one or more public hearings to receive public

comments from Tribal leaders and representatives and other interested persons regarding the merits of the proposed Class II technical standards and procedures set forth in the proposed rule. Early notification of all scheduled public hearings will be provided to all Tribes and the general public on the NIGC's website and by means of other public communication media.

The time period for Tribal, industry and public comment on this, the third preliminary working draft, will be open through November 12, 2004. Based on thoughtful consideration of all received comments, a draft of the proposed rule will be prepared and published in the Federal Register on or about January 26, 2005. After completion of the ensuing 60-day comment period and related public hearing(s) on the proposed rule, the NIGC plans to consult further with the Tribal Advisory Committee and other Tribal leaders to complete formulation of the final rule. Under the current Time-Line, the NIGC expects the final rule to be published in the Federal Register and take effect in late June 2005.

Dated: September 30, 2004

Philip N. Hogen, Chairman

Nelson Westrin, Vice Chairman

Cloyce V. Choney, Associate Commissioner

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- [NIGC selects Class II Game Classification Standards Tribal Advisory Committee Members, March 31, 2004](#)
 - [Class II Game Classification Standards Tribal Advisory Committee Process and Time-Line](#)
 - [Third Preliminary Working Draft of Class II Technical Standards and Procedures](#)

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