AFFIRMATIVE SEXUAL CONSENT, CAPACITY, CONDITIONS, CONTINUATION AND PERIODIC RE-AUTHORISATION DECLARATION

England and Wales

IMPORTANT: This is a fictional satirical form. Completion does not itself establish consent, freedom, capacity, reasonable belief, continuing consent, or that either party has remembered where the form was put.

THIS IS NOT A SOURCE OF LAW. There may be inaccuracies

Between the parties:

PARTY A – THE CONSENTING PARTY: [INSERT FULL LEGAL NAMES]

PARTY B – THE OTHER PERSON: [INSERT FULL LEGAL NAMES

BOTH PARTIES UNDERSTAND AND ACCEPT THAT:

This affirmation is the first such affirmation, OR

This affirmation supersedes any previously dated affirmation. Date of previous affirmation: _____

Subject to Part 10, only amendments on one date are permissible.

CAUTIONS:

This form is not for use in group sex situations. **Obtain Form 1(G)A** if you need that sort of thing.

False or erroneous declarations automatically void this affirmation.

If you become confused stop and seek professional legal advice from a barrister at your own costs before completion of this form.

PARTY A (THE CONSENTING PARTY)

PARTY B – this is also your business.

Part 1: Choice

☐ I PARTY A confirm that I am agreeing by choice, rather than merely failing to object. *[Sexual Offences Act s74, 2003]*

☐ I PARTY A confirm that I possess the freedom to make the choice which I am presently making. *[Sexual Offences Act s74, 2003]*

☐ I PARTY A confirm that I possess the capacity to make that choice. *[Sexual Offences Act s74, 2003]*

☐ I PARTY A understand that agreement without freedom is not rescued merely by my having ticked this box. *[Sexual Offences Act s74, 2003]*

☐ I PARTY A further understand that ticking the box stating that I have capacity cannot logically create capacity if I lack capacity to understand the box. *[A Local Authority v JB, 2021]*

Part 2: Freedom from certain inconvenient circumstances

☐ PARTY A: No person is using or threatening immediate violence against me. *[Sexual Offences Act s75, 2003]*

☐ PARTY A: I am not being unlawfully detained. *[Sexual Offences Act s75, 2003]*

☐ PARTY A: I confirm that I am conscious and, having considered the matter carefully, presently awake. *[Sexual Offences Act s75, 2003]*

☐ PARTY A: No physical disability presently renders me unable to communicate whether I consent. *[Sexual Offences Act s75, 2003]*

Part 3: Intoxicating substances

☐ I PARTY A have consumed no alcohol. *[R v Bree, 2007]* - if not then,

☐ I PARTY A have consumed alcohol but nevertheless declare that I retain capacity to choose. *[R v Bree, 2007]* and

☐ I PARTY A understand that drinking does not automatically mean that I lack capacity, but intoxication may reach a point at which capacity to choose is lost. *[R v Bree, 2007]* therefore,

☐ I PARTY A certify that I am sufficiently sober to determine whether I am sufficiently sober to certify that I am sufficiently sober. *[R v Bree, 2007]*

Approximate quantity _____

Time of last consumption _____

AFFIRMATION OF CONSENT TO SEXUAL ACTIVITY FORM 1A.

TICK ALL THAT APPLY

☐ I PARTY A have not knowingly consumed any substance capable of substantially impairing my ability to consent. *[Sexual Offences Act s75, 2003]*

☐ I PARTY A have no reason to believe that such a substance has been administered to me without my consent. *[Sexual Offences Act s75, 2003]*

☐ If I PARTY A have deliberately consumed a mind-altering substance, I nevertheless affirm that I presently retain sufficient capacity to choose to engage in sexual activity. *[Sexual Offences Act s74, 2003]*

☐ PARTY B has independently considered whether reliance upon the preceding declaration is reasonable. *[Sexual Offences Act s1, 2003]*

PARTY B's reasons for concluding PARTY A possesses capacity

_____

_____

_____

Insert any supplemental information in the space below as necessary. Save the document if electronically completed and print.

Part 4: Scope of affirmative consent

PARTY A consents to (tick as required and score out what is not):

☐ Kissing. *[Sexual Offences Act s74, 2003]*

☐ Touching above clothing. *[Sexual Offences Act ss3 & 74, 2003]*

☐ Touching beneath clothing. *[Sexual Offences Act ss3 & 74, 2003]*

☐ Oral sexual activity. *[Sexual Offences Act s74, 2003]*

☐ Vaginal penetration. *[Sexual Offences Act s1, 2003]*

☐ Anal penetration. *[Sexual Offences Act s1, 2003]*

☐ Penetration using another part of the body or use of an object. *[Sexual Offences Act s2, 2003]*

Conditions

☐ The word stop said or written in English means ‘STOP NOW’ immediately.

☐ Any non-verbal gesture of discomfort or indication to stop means ‘STOP NOW’.

☐ An unbroken not previously used condom must always be used. *[Assange v Swedish Prosecutor, 2011]* or,

☐ No condom or other protective device is required.

☐ Consent to one activity shall not be construed as consent to another merely because the activities are geographically adjacent. *[Sexual Offences Act s74, 2003]*

☐ Previous sexual activity does not constitute a standing subscription to future sexual activity. *[Sexual Offences Act s74, 2003]*

Part 5: Deception audit

☐ PARTY A: I understand the nature and purpose of the relevant act. *[Sexual Offences Act s76, 2003]*

☐ PARTY A: I am not consenting because I have been intentionally deceived as to the nature or purpose of the relevant act. *[Sexual Offences Act s76, 2003]*

AFFIRMATION OF CONSENT TO SEXUAL ACTIVITY FORM 1A.

☐ PARTY A believes that PARTY B is the person PARTY B has represented themselves to be. *[Sexual Offences Act s76, 2003]*

☐ PARTY A confirms that PARTY B is not intentionally impersonating a person known personally to PARTY A. *[Sexual Offences Act s76, 2003]*

☐ The parties have considered whether any other deception is relevant to the freedom of PARTY A's choice. *[R v Jheeta, 2007]*

Additional notes:

Part 6: Temporal matters

☐ PARTY A: My consent must exist when the relevant activity occurs. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A: I may cease consenting after commencement. *[A Local Authority v JB, 2021]*

☐ PARTY A: My capacity may conceivably change after commencement. *[A Local Authority v JB, 2021]*

☐ PARTY B: I understand that consent given at commencement is not logically capable of proving consent indefinitely thereafter. *[A Local Authority v JB, 2021]*

Part 7: Periodic Consent Revalidation Protocol

PARTY A requires PARTY B to stop at intervals of no greater than:

☐ 15 seconds ☐ 30 seconds ☐ 60 seconds ☐ 2 minutes ☐ Other: _____ seconds

That:

☐ PARTY A remains conscious. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A retains capacity. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A retains freedom to choose. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A continues to consent. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A continues to consent to the activity then occurring. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A continues to consent subject to every condition specified in this document. *[Sexual Offences Act ss1 & 74, 2003]*

☐ PARTY A has not become so exasperated by this procedure as to withdraw consent altogether. *[Sexual Offences Act ss1 & 74, 2003]*

At each interval PARTY B shall ask:

> *"Do you continue to consent to the activity currently being undertaken, and do you confirm that you retain the freedom and capacity to make that choice?"*

PARTY A shall respond: ☐ YES ☐ NO ☐ PLEASE REFER TO PART 4 ☐ I WAS RATHER HOPING WE MIGHT GET ON WITH IT

AFFIRMATION OF CONSENT TO SEXUAL ACTIVITY FORM 1A.

Part 8: Consent Revalidation Log

Check	Time	Conscious	Capacity	Consent	Initials PARTY A / PARTY B
1	____	☐	☐	☐	____ / ____
2	____	☐	☐	☐	____ / ____
3	____	☐	☐	☐	____ / ____
4	____	☐	☐	☐	____ / ____
5	____	☐	☐	☐	____ / ____
6	____	☐	☐	☐	____ / ____

Optional supplementary information:

Part 9: Withdrawal

☐ PARTY A: I understand that my earlier affirmative consent does not require me to continue consenting. *[A Local Authority v JB, 2021]*

☐ If PARTY A withdraws consent, this document does not override that withdrawal. *[Sexual Offences Act s74, 2003]*

☐ If PARTY A loses consciousness, PARTY B shall not treat my subsequent failure to object as encouragingly consistent with my earlier declaration. *[Sexual Offences Act s75, 2003]*

☐ If circumstances give PARTY B reason to doubt PARTY A's continuing capacity, PARTY B shall not rely merely upon the existence of this paperwork. *[Sexual Offences Act s1, 2003]*

Part 10: Variation of authorised activity

☐ Existing activity shall pause. *[Choice, freedom, capacity, s74, 2003]*

☐ Part 4 shall be retrieved. *[Choice, freedom, capacity, s74, 2003]*

☐ The proposed additional activity shall be identified. *[Choice, freedom, capacity, s74, 2003]*

☐ PARTY A shall decide whether PARTY A agrees by choice. *[Choice, freedom, capacity, s74, 2003]*

☐ PARTY B shall ask PARTY A to reconfirm PARTY A's freedom and capacity. *[Choice, freedom, capacity, s74, 2003]*

☐ PARTY B shall consider whether reliance upon the newly expressed consent by PARTY A is reasonable. *[Choice, freedom, capacity, s74, 2003]*

☐ Both parties shall initial and date any amendment. Only amendments on one date are permissible. If several amendments are to be made on different dates, fill out a new form completely. *[Choice, freedom, capacity, s74, 2003]*

Additional activity proposed _____

PARTY A consents: ☐ YES ☐ NO.

PARTY B initials: _____ Time and date: _____

PARTY A initials: _____ Time and date: _____

Where the parties cannot agree whether the proposed activity falls within an existing category, activity should cease pending determination by the Court of Appeal.

AFFIRMATION OF CONSENT TO SEXUAL ACTIVITY FORM 1A.

Part 11: Final declarations

☐ PARTY A: I have read all pages of this document, understood them, and still remember sufficiently much of them to understand what I am now signing. *[Sexual Offences Act s74, 2003]*

☐ PARTY A: I agree by choice and have the freedom and capacity to make that choice. *[Sexual Offences Act s74, 2003]*

☐ PARTY B: I have taken steps to ascertain whether PARTY A consents and considered whether my belief is reasonable in all the circumstances. *[Sexual Offences Act s1, 2003]*

☐ PARTY B: I understand that possession of this signed document does not make my belief reasonable if circumstances subsequently make that belief unreasonable. *[Sexual Offences Act s1, 2003]*

Signed PARTY A: _____ Date: _____ Time (including seconds): _____

Signed PARTY B: _____ Date: _____ Time (including seconds): _____

OFFICIAL WARNING

THIS FORM DOES NOT CREATE CONSENT.

After eleven Parts, numerous declarations, a schedule of authorised activities, an intoxication assessment, a deception audit, periodic revalidations and two signatures, the ultimate questions may remain: Did PARTY A actually consent? Did PARTY B reasonably believe PARTY A consented?

Please retain for the duration of the encounter and for an unspecified period thereafter. Do not laminate until all amendments have been completed.