

## **INFORMED CONSENT, RELEASE AND WAIVER OF LIABILITY**

IN ORDER TO EXPERIENCE THE SERVICES PROVIDED BY QC TERME NY LLC ("QCNY") YOU MUST ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

### **1. Assumption of the Risks**

#### **1.1 Massages**

Therapeutic massage is not a substitute for medical treatment or medications. The massage therapist does not diagnose illnesses and injuries or prescribe medications. By signing this document and requesting to have a massage therapy at our spa, you certify that you have clearance from your physician to receive massage therapy and give your permission to receive it. You will inform your massage therapist in advance of any known risks, based on your physical or mental condition, and will update her or him if there are any changes.

You understand there may be additional inherent risks associated with the specific massage therapy (you may choose from our menu that include, but are not limited to, superficial bruising, short-term muscle soreness, burns, and exacerbation of a known or undiscovered injury). There may be other risks not known to us or that are not reasonably foreseeable at this time. You understand that, because massage therapy work involves maintained touch and close physical proximity over an extended period of time, there may be an elevated risk of disease transmission, including COVID-19.

It is your responsibility to inform the massage therapist of any discomfort in advance or that you may feel during the massage session, so that she or he may adjust accordingly. At any time, you or the massage therapist may terminate the session. You will not hold the therapist or QCNY responsible for any pain or discomfort you experience during or after the session.

#### **1.2 Spa Activity and Facilities**

QCNY uses its reasonable efforts in order to provide a safe environment for all of our guests. However we are aware that each guest has a personal health history that may affect the full enjoyment of some spa activities. For example, it is not advisable to use the available spa facilities at QCNY, such as saunas and steam rooms, vichy showers, hydro-jets, outdoor spa pools, under certain medical conditions including pregnancy. Therefore, notwithstanding we provide general indications for each spa facility, we invite you to consult and to comply with the recommendations of your physician before visiting us. By signing this document and using the spa facilities, you acknowledge and accept the risks inherent in your use. You further certify that you have consulted with and have clearance from your physician to use the facilities. It is solely your responsibility to monitor your body/reactions. You alone are responsible for your health, safety and well-being.

#### **1.3 Use of the Lockers**

By using or storing any belongings in the lockers, you acknowledge and agree to the following:

- The key or the code to use and access the locker is unique to you and you are not permitted to share it with others, unless in case of emergency and with the express permission of QCNY. You are also required to keep the key safely in accordance with our indications and not to disclose the code.
- Despite QCNY's reasonable efforts, there always exists a risk of theft or damage to the items stored in the locker.
- QCNY is not responsible for the theft, damage or destruction of any of the items stored in the locker or left anywhere else in the locker room. By using the lockers and the locker room, you do so at your own risk.
- You agree to immediately notify QCNY of any theft, damage, destruction or other impairment of the items stored in the locker.
- The locker room is a public space. QCNY does not guarantee that all users or visitors of the locker room are guests of the spa.
- QCNY reserves the right to open the locker at any time and for any reason, including but not limited to, an emergency, an abandoned locker, or to assist a guest that has forgotten the code.

### **2. Acknowledgement of the Rules Applicable to Massage**

Throughout the service, the massage therapist will always use a drape, meaning a blanket and sheet, for your security and modesty. Genital massage or perineal massage is strictly prohibited. Any illicit or sexual innuendos or advances will result in termination of the session and you will be liable for full payment of the session. To keep professional boundaries set by the law, the massage therapist does not fraternize with or date clients.

### 3. Limitations of Liability

YOU AGREE THAT QCNY'S TOTAL LIABILITY ON ANY AND ALL CAUSES OF ACTION OR CLAIMS FOR LOSSES OR DAMAGES UNDER ANY THEORY OF LIABILITY, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY PURCHASE MADE BY YOU, OR FROM THE PERFORMANCE OR BREACH OF THE AGREEMENT OR FROM THE PROVISION OR SALE OF ANY SERVICES OR GOODS PROVIDED TO YOU WILL BE LIMITED TO THE AMOUNTS PAID BY YOU TO QCNY FOR THE GOODS OR SERVICES AT ISSUE DURING THE PRIOR TWELVE (12) MONTH PERIOD PRECEDING THE DATE THAT YOUR CLAIM FOR LIABILITY ARISES HEREUNDER.

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL QCNY, ITS OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, HEIRS, ASSIGNS, SUPPLIERS, LICENSORS, AGENTS OR SUBCONTRACTORS OR OTHERS INVOLVED IN PROVIDING THE SPA SERVICES OR PRODUCTS (COLLECTIVELY, THE "COVERED PARTIES") BE LIABLE FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, COMPENSATORY OR CONSEQUENTIAL DAMAGES WHATSOEVER; (2) ANY DAMAGES, INJURY OR LOSS ARISING FROM OR IN ANY WAY RELATED TO THE USE, ACCESS, AND ENJOYMENT OF THE QCNY SPA OR PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, ACTIONS BY THIRD PARTIES INCLUDING OTHER CUSTOMERS, GUESTS OR CONTRACTORS, OR OTHERWISE, AND WHETHER OR NOT THE COVERED PARTIES HAVE BEEN WARNED OF THE POSSIBILITY OF SUCH LOSS, INJURY OR DAMAGE. FOR THE AVOIDANCE OF DOUBT, YOU HEREBY EXPRESSLY AGREE THAT THE CATEGORIES OF DAMAGES DESCRIBED HEREIN CONSTITUTE SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES WOULD BE CONSIDERED DIRECT DAMAGES UNDER ANY APPLICABLE LAW GOVERNING THE AGREEMENT. YOU AGREE THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

Nothing in the Agreement removes or limits QCNY's liability for intentional wrongdoing or gross negligence.

### 4. GOVERNING LAW AND ARBITRATION

#### 4.1 Governing law.

This Informed Consent, Release and Waiver of Liability, as well as the provisions of services and products by our spa, will be governed and interpreted pursuant to the laws of the State of New York, without reference to New York conflict of law rules. If for any reason a Claim proceeds in court rather than through arbitration, you and we each waive any right to a jury trial.

#### 4.2 Arbitration

This provision is intended to be given the broadest interpretation and application to encompass all disputes or Claims arising out of or relating to your relationship with us, our products, our services, and any other interactions with us. If we are unsuccessful in resolving your Claim following 60 days after our receipt of your written notice to QC Terme NY LLC, 14 Penn Plaza, Ste 1800 New York, NY 10122 with the subject "**Dispute Notice**", any dispute or Claim arising out of or relating to your relationship with us or any subsidiary, parent or affiliate company or companies (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration, except that either of us may take Claims to small claims court if they qualify for hearing by such a court.

Notwithstanding the above, you may opt out of this binding arbitration provision within 30 days. The process for opting out of this provision is available on our website at <https://www.qcny.com/en>.

The arbitration of any dispute or Claim will be conducted in accordance with the rules of the American Arbitration Association ("AAA"), including the AAA's [Consumer Arbitration Rules](#) (as applicable), as modified by this Section. The AAA Rules and information about arbitration and fees are available online at [www.adr.org](http://www.adr.org). To the extent of any inconsistency, this Section will supersede and govern over the AAA Rules.

You and we agree that this arbitration provision will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act and federal arbitration law, and not governed by state law. The place of arbitration shall be New York, New York and any in-person arbitration hearing will be held there. The arbitration will be conducted in the English language. An arbitrator may award any relief to either party that would be available in a court, including injunctive or declaratory relief.

Any arbitration will be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

We agree that we will pay all filing, administration and arbitrator fees other than the initial filing fee that you must pay to file the initial arbitration demand, and if your Claim is for less than \$1,000 we will reimburse you for the filing fee if you provide a written request for reimbursement with evidence of insufficient funds to pay the fee yourself. Otherwise, we will each bear the fees and expense of our respective attorneys, experts, witnesses and preparation and presentation of evidence at the arbitration.

In addition to the above, you and we each agree that any proceeding, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action, except for actions for injunctive relief as described below. If a court or arbitrator determines in an action between you and us that this class action waiver is unenforceable, this arbitration section will be void as to you. If you opt out of the arbitration provision as specified above, this class action waiver provision will not apply to you. Neither you, nor any other customer, can be a class representative, class member, or otherwise participate in a class, consolidated or representative proceeding without having complied with the opt-out procedure set forth above.

**In agreement with the provisions above:**

1. I \_\_\_\_\_ [print name] fully understand and acknowledge that: (a) there are risks and dangers associated with certain spa facilities and massage services that could result in discomfort, pain or bodily injury; (b) there may be social and economic losses and/or damages that could result from these risks and the dangers described above; (c) the risks and dangers may be caused by the action, inaction or negligence of the participant or the action, inaction or negligence of others, including, but not limited to, the Releasees named below; and (d) there may be other risks not known to the Releasees that are not reasonably foreseeable at this time.
2. I accept and assume the risks and responsibility for the losses and/or damages relating to the services provided by QCNY, including but not limited to massage services, use of lockers, and other spa services and facilities, however caused and whether caused in whole or in part by the negligence of Releasees.
3. I accept and will abide the rules governing the massage and use of the spa facilities as set forth above, including maintaining proper boundaries and refraining from any unlawful, improper and immoral conduct.
4. I accept and agree to the provisions requiring individual arbitration and the related terms of the agreement to arbitrate above.
5. I HEREBY RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE QCNY, ITS OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS, DIRECTORS, SUBSIDIARIES, AFFILIATES, SUCCESSORS, HEIRS, ASSIGNS, SUPPLIERS, LICENSORS, AGENTS, SUBCONTRACTORS OR OTHERS INVOLVED IN PROVIDING ME SERVICES OR PRODUCTS (COLLECTIVELY, THE "RELEASEES") FROM ANY ALL LIABILITY TO THE UNDERSIGNED, INCLUDING MY PERSONAL REPRESENTATIVES, HEIRS, ASSIGNS, EXECUTORS AND NEXT OF KIN FOR ANY AND ALL CLAIMS, DEMANDS, LOSSES OR DAMAGES AND ANY CLAIMS OR DEMANDS THEREFORE ON ACCOUNT OF ANY INJURY, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, PROPERTY DAMAGE/LOSS, INCLUDING, WITHOUT LIMITATION, THE USE OF THE LOCKERS OR ANY THEFT, DAMAGE OR DESTRUCTION OF ANY ITEMS LOCATED OR STORED THEREIN, OR WRONGFUL DEATH ARISING OUT OF OR RELATING TO THE EVENT(S) CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE RELEASEES OR OTHERWISE.
6. I acknowledge and agree that the foregoing release and waiver is intended to be as broad and inclusive as is permitted by the law of the State of New York, which laws shall govern this release and waiver, and that if any portion is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.
7. I agree that if, despite this release, I make a Claim against any of the Releasees in violation of this release and waiver, I will reimburse the Releasee for any money which she, he or it has paid to defend or resolve the claim, including attorneys' fees and costs, and hold she, he or it harmless.

I HAVE READ THIS INFORMED CONSENT, RELEASE AND WAIVER OF LIABILITY FULLY, UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

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Signature

Date