**Request for Arbitration**

**KCAB/IA Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Premier Restaurants Co., Ltd.** (Claimant)

(Republic of Korea)

v.

 **Aztecs Co., Ltd. (**Respondent)

(Mexico)

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1. INTRODUCTION
2. By this Request for Arbitration, Premier Restaurants Co., Ltd. (“Premier Restaurants”) commences arbitration against Aztecs Co., Ltd. (“Aztecs”) under the International Arbitration Rules of the Korean Commercial Arbitration Board (“KCAB International Rules”) in force as from 1 June 2016.
3. The dispute arises under a franchise agreement dated 22 March 2015 entered into between Premier Restaurants and Aztecs to grant Aztecs a license under the brand name “Koxico” to open and operate a branch restaurant in Mexico under a system which Premier Restaurants developed (the “Franchise Agreement”).
4. As a Premier Restaurants franchisee, Aztecs expressly promised to not compete with the business of Premier Restaurants in accordance with the non-competition clause in the Franchise Agreement. However, Aztecs broke its promise and opened other competing Korean-Mexican fusion restaurants in Mexico, breaching the non-competition clause.
5. Premier Restaurants has therefore terminated the Franchise Agreement and brings this arbitration to compel Aztecs to pay damages and to perform its post-termination obligations.
6. THE PARTIES
7. The Claimant
8. The Claimant is a company incorporated under the laws of Korea. Its main business is centered on food & beverage industry by running restaurant chains under various brands in Korea as well as Mexico for more than 20 years. “Koxico” is a brand name of its Korean-Mexican fusion restaurant opened in 2002.
9. The Claimant’s contact information is as follows:

Address: Premier Restaurants Co., Ltd.

Suite 1401, 150 Orange Road,

Gangnam-gu, Seoul 96205,

Republic of Korea

Representative: Mr. Tony Park, Representative Director

Telephone: +82-2-1234-5678

Facsimile: +82-2-4321-8765

1. Mr. James Atkatz, In-house Counsel of the Claimant, represents the Claimant in this arbitration. Communications to the Claimant should be directed to him at the following address:

Address: Premier Restaurants Co., Ltd.

Suite 1401, 150 Orange Road,

Gangnam-gu, Seoul 96205,

Republic of Korea

Attention: Mr. James Atkatz, In-house Counsel

Telephone: +82-2-0987-9876

Facsimile: +82-2-7890-6754

Email: [jatkatz@prestaurants.co.kr](file:///C%3A%5CUsers%5Cadmin%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CHBOKJWAX%5Cjatkatz%40prestaurants.co.kr)

1. The Respondent
2. The Respondent is a food & beverage company incorporated under the laws of Mexico. It has been operating a branch restaurant of the Claimant’s Korean-Mexican fusion restaurant “Koxico” in Mexico since 2014.
3. The Respondent’s contact details are as follows:

Address: Aztecs Co., Ltd.

49th floor Watermelon Building

Mexico City, Mexico

Representative: Mr. Cesar Montoya, CEO

Telephone: +902-899-9988

Email: cesarmontoya@aztecs.com

1. Collectively, the Claimant and the Respondent shall be referred to as the “Parties”.
2. PROCEDURAL MATTERS
3. Agreement to Resolve Disputes by KCAB Arbitration
4. The Franchise Agreement includes an arbitration agreement in Article 20 of the Franchise Agreement, which provides:

All Disputes shall be finally settled by arbitration in Seoul in accordance with the International Arbitration Rules of the Korean Commercial Arbitration Board. The number of arbitrators shall be one. The seat, or legal place of arbitral proceedings shall be Seoul, Korea. The language to be used in the arbitral proceedings shall be English.

1. Governing Law, Place of Arbitration and Language
2. Article 19 of the Franchise Agreement provides for the substantive governing law as below:

This Agreement shall be governed by and construed in accordance with the laws of Korea.

1. Article 20 of the Franchise Agreement provides that the place of arbitration shall be Seoul, Korea and the language shall be English.
2. NATURE AND CIRCUMSTANCES OF THE DISPUTE
3. Background of the Franchise Agreement
4. In 2015, Premier Restaurants decided to enter the Mexican market and searched for a local company to operate branch restaurants under the brand “Koxico”. Mr. Cesar Montoya, the CEO of Aztecs, contacted The Premier Restaurants and after several months of negotiations, Premier Restaurants and Aztecs entered into the Franchise Agreement on 22 March 2015.
5. Aztecs has been operating a branch restaurant，“Koxico Restaurant, Mexico City” (the “Restaurant”) since it opened on 4 January 2016. Due to the similarities between Korean food and Mexican food, and the favorable location, the Restaurant has become popular among Mexicans.
6. The Respondent’s non-competition obligation under the Franchise Agreement
7. The term of the Franchise Agreement was 3 years. Article 5 of the Franchise Agreement provides for a non-competition clause binding on Aztecs both during and after the term of the Franchise Agreement, as set forth below (emphasis added):

ARTICLE 5. NON-COMPETITION BY FRANCHISEE

**During the term of this Agreement, Franchisee shall not be involved in any way with any other business activity which will in any way compete with the business activities of Franchisor**.

During the term of this Agreement, **Franchisee or its subsidiaries, parent, affiliates, employees or agents shall not, either directly or indirectly, own, maintain，operate, engage in, be employed by, or have any interest in any other business as same as or similar to the Restaurant or the Business in Franchisee's local country.**

1. As set forth in Article *5,* Aztecs promised “not to be involved in any way” with any other business activity competing against the “Koxico Restaurant, Mexico City”, Aztecs promised not to “own，maintain, operate, engage in, be employed by, or have any interest in any other’ restaurant similar to “Koxico Restaurant, Mexico City”.
2. The Respondent’s breach of the non-competition clause
3. Notwithstanding these explicit covenants, Mr. Cesar Montoya of Aztecs has opened and operated at least two other Korean-Mexican fusion restaurants, under the brand “Hangook Tacos Restaurants” in Mexico City, Mexico since January 2016, Mr. Montoya is registered as a legal representative of Hangook Tacos and he is the official director of the company.
4. Hangook Tacos Restaurants are located in the Mexico City Mall and the International Financial Plaza in Mexico City, which is in the franchisee’s territory. Hangook Tacos Restaurants serve Korean-Mexican fusion cuisine, just like the Restaurant.
5. Aztec’s actions clearly constitute a breach, of contract under Article 390 of the Korean Civil Act and Article 5 of the Franchise Agreement. After Premier Restaurants became aware of Aztec’s unlawful conduct, Premier Restaurants made several demands that Aztecs cure its breach of contract, and granted Aztecs a period of two months. However, Aztecs has obstinately refused to cure the breach and comply with the non-competition covenant.
6. Termination of the Franchise Agreement
7. Article 15 of the Franchise Agreement provides as follows :

Events of Default by Franchisee. Franchisor, at its option and without prejudice to

any and all remedies which it may otherwise have, either at law or equity, or under the terms of this Agreement, may forthwith terminate this Agreement, without regard to any notice and cure provisions hereof, upon the occurrence of any of the following events of default by Franchisee:

(ii) If **Franchisee fails to comply with any covenants** provided herein

1. Therefore, Premier Restaurants hereby terminates the Franchise Agreement and requests that Aztecs perform its post-termination, obligations under Article 10 of the Franchise Agreement. As Premier Restaurants hereby terminates the Franchise Agreement based on Aztec’s breach of the Franchise Agreement, Aztec shall be liable for all and any losses, damages, expenses and fees as a result of such default under Article 10 of the Franchise Agreement.
2. REQUESTED RELIEF
3. For the foregoing reasons, the Claimant respectfully requests that the Arbitral Tribunal issue an award:
4. Declaring that the Respondent breached its obligations under the Franchise Agreement and that the Franchise Agreement is terminated;
5. Ordering the Respondent to pay USD 110,000 to the Claimant.
6. Ordering the Respondent to pay the Claimant interest on any amounts awarded to Claimant at the rate of 15% per annum, from the day following the service of this Request for Arbitration until final payment of any awarded amount;
7. Ordering the Respondent to reimburse the Claimant for all costs the Claimant incurs in this arbitration including the fees and expenses of the arbitrators, the KCAB administrative expenses,
8. Ordering further relief as the Arbitral Tribunal deems appropriate.

Date: 4 July 2016

Respectfully submitted，

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tony Park

Representative Director

Premier Restaurants Co., Ltd.

Suite 1401, 150 Orange Road,

Gangnam-gu, Seoul 96205

Republic of Korea

**APPENDIX: EXHIBITS LIST**

Exhibit C-1 A Franchise Agreement of 22 March 2015

Exhibit C-2-1 Pro Forma Invoice of 24 October 2015

Exhibit C-2-2 Pro Forma Invoice of 4 November 2015

Exhibit C-3 Confirmation of Receipt of Goods of 3 January 2016

Exhibit CL-1 Article 161 of Korean Civil Act

Exhibit CL-2 Judgment of Korean Supreme Court

**Power of Attorney**

Know by all men/women by these presents: That *Company Name* , duly organized and existing under the laws of *Company Country* , having its principal office at *Company Address* (hereinafter, the "Company") here by appoints *Attorney Name* whose offices are located at *Attorney Address*, as its true and lawful attorneys with full power and authority to do the following:

1. To commence, prosecute, dismiss, and discontinue arbitrations and/or court actions against *Counter Party Name* including pre-judgement attachment or injunction, application for auction sale and also for and in the Company's name and stead to appear, answer, and defend such actions;

2. To make settlement regarding the claims against *Counter Party Name* ;

3. To receive any draft or warrant or other evidence of indebtedness that may be issued in settlement of such action, or any part thereof;

4. To pay and to be paid from the court any deposit money with interest;

5. To apply for the cancellation of security and to demand the exercise of rights against the deposit;

6. To do and perform all and every act and thing whatsoever requisite and necessary to be done in and about such action as fully to all intents and purposes as the Company might or could do, and;

7. To constitute and appoint, in its place and stead, and its substitute, one attorney or more for the Company, with power of revocation.

The Company hereby ratifies and confirms as its own act and deed all that such attorneys may do or cause to be done by virtue of this instrument.

In witness whereof, *Company Name* has executed this power of attorney in its corporate name by its *Representative Name* , this *Date .*

Name: *Signature*

 *Representative Name*

 *Company Name*