

EXHIBIT 46

WRITERS AND ARTISTS AGREEMENT

AGREEMENT dated March 24, 1975 between, MARVEL COMICS GROUP (hereinafter called "Marvel"), and Jack Kirby (hereinafter called the "Writer"/"Artist").

WHEREAS the Writer/Artist is prominent in the field and both writes the text of comic book stories and draws complete through the pencil stage the art work for comic books Marvel is desirous of retaining Writer/Artist as a writer and artist for its magazines and writer/artist is willing to render such services on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and undertakings herein contained, and for other good and valuable considerations, the parties agree as follows:

1. ENGAGEMENT. Marvel hereby employs WRITER/ARTIST and WRITER/ARTIST hereby agrees to render services to Marvel, as a writer/artist for magazines heretofore and hereinafter published by Marvel.

2. TERM.

(a) Initial Term. The term of the Agreement shall be for three years commencing May 1, 1975 and ending April 30, 1978 (sometimes referred to as the engagement year). SJK

(b) Renewal Terms. In the absence of notice to the contrary given by either party to the other not less than sixty (60) days prior to the expiration of the Initial Term hereof, this Agreement shall be automatically renewed for another three years on the same terms and conditions as those herein set forth.

3. COMPENSATION.

(a) Basic Compensation. For all services to be performed for and provided to Marvel hereunder, Marvel shall pay WRITER/ARTIST on a biweekly basis, a weekly salary of \$1,100. For purposes of this Agreement, WRITER/ARTIST shall deliver to Marvel during the term of this Agreement thirteen (13) pages per week consisting of the written text and the finished penciled drawings.

In this respect WRITER/ARTIST will make all changes and *JK* rewrite/~~rework~~ all Material as reasonably required by the Publisher of Marvel without charge (that is, rewrites/redrawings and changes shall not constitute pages for purposes of computing re fee payable hereunder.

(b) Additional Compensation. In the event that it is mutually agreed to do additional pages beyond those stipulated in the proceeding paragraph the text and finished penciled drawings shall be paid for at the rate of \$85.00 per page. Additional compensation shall be paid to WRITER/ARTIST forty-five (45) days after submission and acceptance of such material by Marvel.

(c) Benefits. WRITER/ARTIST shall be eligible for all coverage or benefits under any plan or plans of health, hospitalization, life or other insurance available to other ^{Contracting} ~~employees~~ of Marvel who are paid on a similar basis and who have a similar position. Furthermore, writer/artist shall be entitled to two (2) weeks paid vacation per annum.

4. (a) Conflict. During the period of this Agreement, WRITER/ARTIST will not engage directly or indirectly in any capacity in any business or activity which is competitive with Marvel, which could be

detrimental to Marvel, or which may conflict with WRITER/ARTIST duties hereunder.

(b) Editorial Stipulations. Selection as to the magazines or features written/drawn WRITER/ARTIST for Marvel, shall be determined by Marvel.

(c) Extent of Service. WRITER/ARTIST agrees not to write and/or edit/draw any comic book or magazine material for anyone other than Marvel during the term of this Agreement without the prior written approval of Marvel.

(d) Credits. WRITER/ARTIST shall be given credit, where appropriate, comics in which he is the sole writer/artist.

4. JK
5. Publisher. In performing all services required hereunder, WRITER/ARTIST shall act under the direction of the Publisher of Marvel. WRITER/ARTIST shall consult with him on all matters touching upon editorial policies, in order to assure the efficiency and harmonious operation of Marvel and to meet with the Publisher of Marvel at regular intervals at Publisher's request at Marvel's offices in New York, New York. WRITER/ARTIST shall accept assignments from the Publisher of Marvel to write, edit, and/or draw all magazines presently published or hereafter published by Marvel and further agrees that he will make no commitments whatsoever (whether financial or otherwise) on behalf of Marvel without the prior written consent of the Publisher of Marvel. It is understood

the writer/artist lives in California and, therefore, one trip per year will be at the writer/artist's expense and all other trips when requested by Marvel shall be at its expense.

6. Termination. Nothing in this Agreement shall be construed to prevent Marvel from terminating WRITER'S/ARTISTS'S engagement hereunder at any time (a) because of his fraud, misappropriation, embezzlement, or the like, or (b) if he has become so disabled as to preclude him from rendering satisfactory services, or (c) if he shall have violated any provision of this Agreement, or (d) if WRITER/ARTIST is unavailable, for whatever cause, for a continuous period of more than two months, or (e) if his work has not met the performance standards required by Marvel from other persons performing similar services for Marvel. In such event(s), except as provided in (b) above, all obligations of Marvel hereunder shall cease and WRITER/ARTIST shall be liable to Marvel for breach of this Agreement.

7. Rights to Material. WRITER/ARTIST grants to Marvel the sole and exclusive right to all Material delivered to Marvel hereunder including, but not limited to, (a) the exclusive right to secure copyright(s) in the Material in the United States, Canada, and throughout the world, (b) the magazine rights therein of every kind, (c) all film and dramatic rights of every kind, (d) all anthology, advertising and promotion rights therein, and (e) all reprint rights. The exclusive rights herein granted shall be Marvel's property for the period of the copyright and any renewals thereof.

8. Originality of Material. WRITER/ARTIST represents that the Material written/drawn by him will be original and not heretofore published and that it will not infringe upon any statutory copyright, common law copyright or any other proprietary right.

9. Use of Name. Marvel shall at all times have the right to use WRITERS/ARTISTS name and likeness in connection with the sale, promotion and distribution of any magazines which include Material delivered to Marvel.

10. Series and Ideas. If any Material delivered hereunder is part of a series, the idea and the character or characters used therein shall constitute Marvel's exclusive property for all times.

11. Additional Documents. WRITERS/ARTISTS shall, at Marvel's expense, take such steps and execute and deliver such further documents from time to time as Marvel may request for the purpose of confirming the rights herein granted to Marvel.

12. Notices. Any notices required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by registered mail to his residence in the case of WRITER/ARTIST, or to Publisher, Marvel Comics Group at its principal office in the case of Marvel (with a copy to Secretary and Counsel, Cadence Industries Corporation, 21 Henderson Drive, West Caldwell, New Jersey 07006).

13. Waiver of Breach. The waiver by Marvel of a breach of any provision of this Agreement by the WRITER/ARTIST shall not operate or be construed as a waiver of any subsequent breach by the WRITER/ARTIST. The waiver by the WRITER/ARTIST of a breach of any provisions of this Agreement by Marvel shall not operate or be construed as a waiver of any subsequent breach by Marvel.

14. Covenants. WRITER/ARTIST agrees that he shall not make and/or sign any other contract or agreement, written or oral, which shall be in conflict with the terms of this Agreement or prevent or hinder his performance hereunder for the length of this Agreement or any extension or renewal thereof, and further agrees that he has the full and unrestricted right to enter into this Agreement and deliver the Material hereunder,

15. Assignment. The rights and obligations of Marvel under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Marvel.

16. Entire Agreement. This instrument contains the entire Agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

17. Arbitration. Any claim, dispute or controversy arising out of or in connection with this Agreement or the breach thereof will be submitted by either party to arbitration in New York City before three arbitrators appointed by the American Arbitration Association. The arbitration will proceed under the rules of the Association then obtaining. The award of the arbitrators will be binding and conclusive on both parties, and will be rendered in such form that a judgement may be entered thereon in the highest court of any forum having jurisdiction.

18. Taxes. All taxes will be taken out of the writer/artist's salary check by Marvel and paid to the government.

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IN WITNESS WHEREOF the parties have executed this Agreement on

ATTEST

MARVEL COMICS GROUP

[Signature]

By [Signature]

Stan Lee, Publisher

WITNESS

[Signature]

[Signature]
WRITER/ARTIST