

# EXHIBIT 5

LICENSE AGREEMENT  
BETWEEN KINETECH, INC. AND DIGITAL ISLAND, INC.

## LICENSE AGREEMENT

### BETWEEN KINETECH, INC. AND DIGITAL ISLAND, INC.

IN THIS AGREEMENT (the "AGREEMENT"), entered into as of this 1<sup>st</sup> day of September 2000 (the "EFFECTIVE DATE") by and between Kinetech Inc. ("KINETECH"), a Delaware corporation having its principal place of business at 3140 Whisperwoods Court, Northbrook, Illinois 60062, and Digital Island, Inc. ("DI"), a California corporation having its principal place of business at 45 Fremont Street, 12th Floor, San Francisco California 94105, the parties agree:

#### ARTICLE 1 DEFINITIONS

1.1 **THE PATENTS** means United States Patent No. 5,978,791 ("*The '791 Patent*") and all counterpart applications, including continuation applications, divisional applications, reexamination or reissue applications or extensions thereof; and any counterpart foreign patent applications filed by or counterpart foreign patents issued to **KINETECH** before or during the term of this License Agreement.

1.2 **DI FIELD OF USE** means, and is limited to, the practice of The Patents in the field of use set forth in **SCHEDULE 1.2** hereto.

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ARTICLE 2 **WITNESSETH**

2.1 WHEREAS, **KINETECH** represents and warrants and **DI** acknowledges and agrees that **KINETECH** is the owner, by assignment, of the entire right, title and interest in and to The Patents; and

2.2 WHEREAS, **KINETECH** represents and warrants and **DI** acknowledges and agrees that **KINETECH** has unique and valuable expertise, understanding and know-how in the DI Field Of Use and in the field of The Patents; and

2.3 WHEREAS, **DI** is desirous of acquiring an ownership interest in The Patents;

NOW, THEREFORE, intending to be legally bound and in consideration of the following covenants and agreements, **KINETECH** and **DI** agree as follows:

ARTICLE 3 **ASSIGNMENT FROM KINETECH TO DI**

3.1 **KINETECH** hereby transfers, grants, conveys, assigns, and relinquishes exclusively to **DI** a fifty percent (50%) undivided interest in and to The Patents, the inventions claimed therein, and all accrued causes of action for damages for infringement thereof.

3.2 *Consideration*. On the Effective Date, **DI** shall transfer to **KINETECH** a number (*N*) of registered, saleable shares of **DI**'s publicly traded stock ("*Consideration*"), where the number of shares (*N*) is determined as the greater of either:

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3.2.1  $N = \$2,000,000$  divided by the average closing price of **DI**'s shares for the twenty (20) trading days preceding the Effective Date of this Agreement, rounded up to the next integer value; and

3.2.2  $N = 50,000$  shares.

3.3 **KINETECH** shall execute and deliver to **DI** the Assignment attached as **Attachment A** hereto within ten (10) days of receipt of the Consideration, and, from time to time after the date hereof upon the request of **DI**, such further conveyance instruments as may be necessary or desirable to evidence more fully the transfer of the ownership interest of fifty percentage (50%) of The Patents to **DI**, or the original ownership of The Patents on the part of **KINETECH**, to the fullest extent possible.

3.4 **KINETECH** further agrees to provide testimony in connection with any proceeding affecting the right, title, interest, or benefit of **DI** in and to The Patents and to perform any other acts deemed necessary to carry out the intent of this Agreement. **DI** shall reimburse **KINETECH** for any and all costs reasonably incurred by **KINETECH** in performance under this paragraph.

3.5 In furtherance of this Agreement, **KINETECH** hereby acknowledges that, from the Effective Date forward, **DI** has succeeded to an fifty percentage (50%) undivided interest of **KINETECH**'s right, title, and standing to receive all rights and benefits pertaining to The Patents, institute and prosecute all suits and proceedings, and take all actions that **DI**, in its sole discretion, may deem necessary or proper to collect, assert, or enforce any claim, right, or title of any kind under any and all of The Patents, whether arising before or after the Effective Date, defend and compromise any and all such actions, suits, or proceedings

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relating to such transferred and assigned rights, title, interest, and benefits, and do all other such acts and things in relation thereto as **DI**, in its sole discretion, deems advisable.

3.6 **KINETECH** represents and warrants that no consents of any other parties are necessary under any agreements concerning any of The Patents in order for the transfer and assignment of any of The Patents under this Agreement to be legally effective.

3.7 **KINETECH** represents and warrants that upon consummation of this Agreement, **DI** shall have good and marketable title to a fifty percentage (50%) interest in and to The Patents, free and clear of any and all liens, mortgages, encumbrances, pledges, security interests, or charges of any nature whatsoever.

#### ARTICLE 4 FUTURE USE

4.1 **DI** will refrain from using, practicing, licensing or sublicensing The Patent or the inventions disclosed therein other than in the Field of Use.

4.2 **KINETECH** will refrain from using, practicing, licensing or sublicensing The Patents or the inventions disclosed therein in the **DI** Field of Use.

4.3 **KINETECH** will refrain from licensing or sublicensing The Patents or the inventions disclosed therein for any Web-caching products to the extent such products are being used to compete with **DI** in the Field of Use ("*Competing Web-Caching Products*") upon receipt of notice from **DI** (pursuant to **Section 6.1**) of known or suspected infringement by such Competing Web-Caching Products or of notice from **DI** (pursuant to **Section 6.3**) of **DI**'s intent to file suit for infringement by such Competing Web-Caching Products.

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