NEW: STW introduces two amendments to its IP policy as from 1 March 2014:

The first amendment concerns the situation where a company provides more than 30% of the project funding. That company then receives a right of option to a royalty-free non-exclusive licence to use the invention or the subject of the patent or patent application in or for its own products and processes or to exploit it in some other way. In addition, the company retains the possibility of acquiring an exclusive licence to use the invention or the subject of the patent or patent application at a price in line with prevailing market value.

The second amendment concerns the situation where a consortium of companies combines their individual contributions so that the aggregated total represents a more favourable percentage (>30%) and the consortium becomes eligible for the IP rights described in the first amendment.

STW facilitates the transfer of knowledge between the technical sciences and users. In this process it is important that a responsible approach is taken with regard to research results in general, and patentable inventions and discoveries in particular. STW’s aim is firstly to exploit and publish the results of research as widely as possible, whilst retaining the possibility to establish IP rights and to subsequently transfer these rights to user(s) or grant a licence to user(s) for these and, secondly, to stimulate collaboration between researchers and various external companies. STW adheres to a set of rules concerning Intellectual Property (IP) that support this policy, and the policy is in line with the IP policy adopted by the Netherlands Organisation for Scientific Research [Nederlandse Organisatie voor Wetenschappelijk Onderzoek, NWO] and with the ‘Rules of Play for public-private collaboration’ as presented to the Lower House of the Dutch Parliament on 25 June 2013.

The main principles of STW’s IP policy are as follows:

- **Ownership of the results of research**
  - The results of research carried out by the research institute(s) in the context of an STW project are owned jointly by the participating institute(s) and by STW.
  - Ownership of the results of research that are generated exclusively by user(s) in the context of an STW project is vested in the user(s) in question. The user(s) will allow STW and the research institute ‘freedom to operate’.
  - The results of research that are generated jointly by the research institute(s) and the user(s) in the context of an STW project are owned jointly by the participating institute(s) and by STW. If the co-inventing user has itself provided more than 10% of the project funding in the form of personnel, that user will be granted a non-exclusive, royalty-free and non-transferable licence for the use of the invention, patent or patent application.
  - Existing IP rights continue to be vested in the holder(s) of such right who contribute these rights to the project. Insofar as it is possible under the law, and insofar as it is not detrimental to the reasonable commercial interests of the right holder, this/these right holder(s) will facilitate, at their own discretion and in all reasonableness, a freedom to operate.
  - ‘Freedom to operate’ means that the holder of the intellectual property right grants licences to others within the project:
    - insofar as legally possible;
    - insofar as necessary for the project (without charge);
• insofar as necessary for the exploitation of the results of the research and possible concomitant results (at a fair market price);
• insofar as such freedom to operate is not detrimental to the reasonable commercial interests of the right holder.

• **Protection of research results, confidentiality and publications**
  STW attaches considerable importance to the protection of knowledge in the process of knowledge transfer. Users admitted to the user committee, undertake to maintain confidentiality with regard to the research results. Research results that are not susceptible to IP protection, and not subject to a written know-how licence, can be used freely by all parties. The researcher is obliged to report any invention to STW immediately. Draft publications are submitted to the user committee by STW; the committee is asked whether, in their opinion, the publication contains a patentable invention and/or whether there are utilisation opportunities. If knowledge protection measures need to be taken, such as the submission of a patent application, STW may decide to suspend the publication for up to 9 months.

• **Commercial usage rights to results that accrue in part or in whole to STW and the research institute(s)**
  o **Contribution 0-10%**
    A user who contributes less than 10 percent to the costs of the research project by way of in-kind or in-cash resources will be the first party to receive information about the results of the research. Companies are at liberty to use the results generated by the research for internal, non-commercial purposes.
  o **Contribution between 10% and 30%: Right of option**
    A user who contributes more than 10 percent to the costs of the research project by way of in-kind or in-cash resources is also entitled to a right of option on a licence to, or the transfer of the results of the research when full or joint rights are held by STW and the research institute(s). If a user exercises this option, the transfer of an exclusive or non-exclusive licence will be effected against payment of a fair market price (see below). If multiple users are eligible for an option, an agreement will be made as to the scope of their usage. If this is not possible, the contributing users will be granted a joint option on a semi-exclusive licence.
  o **Contribution between 30% and 50%: Right of option on a commercial NERF right**
    A user who contributes more than 30 percent to the costs of the research project by way of in-kind or in-cash resources will also have the same rights as a user who contributes more than 10 percent. If the user exercises his right of option, that user is entitled to a non-exclusive, royalty-free (NERF) and non-transferable commercial right of use.
    If required, STW or the research institute(s) will oversee the administration of the patent application process for the first 30 months following the patent application. Before the end of that period, STW, the research institute and the user in question will make arrangements about the further handling of the patent application.
    If one or more users within the project are eligible for an option, an agreement will be made as to the scope of the option on an exclusive licence. If this is not possible, the contributing users will be granted a joint option on a semi-exclusive licence.
    The total value of co-funding of any STW project may not exceed 50 percent.
  o The percentage is calculated by comparing the entire contribution made by the private party (in-kind plus in-cash) against the contribution from STW plus all other in-kind and in-cash contributions.

• **Combining contributions from companies**
  Companies have the opportunity to combine their contributions within a single STW project so as to achieve a more favourable cumulative percentage. The companies are then, as a group,
eligible for the abovementioned rights (right of option and/or non-exclusive commercial right of use). To be eligible for such aggregation, it is a condition that the companies in question notify STW of this in writing. This letter must also appoint an official secretary/a representative who will be responsible for negotiating with STW on behalf of the parties concerned as to how the option will be exercised. The letter must be signed by all companies involved. It should, preferably, be submitted to STW together with the project proposal or, if not, within six (6) months of the approval of the project.

- **Patent costs**
  The following provisions apply if the user deems it desirable that a patent application be submitted:
  The patent application is submitted in the name of STW and the research institute(s) where the invention or discovery takes place.
  The user bears the costs of the patent. The patent costs are not offset in the calculation of a fair market price.
  If there are multiple licensees, the patent costs will be shared among them.

- **Licensing**
  The right to use or apply research results is acquired through a licence, transfer agreement or know how agreement.
  In all cases, a licence agreement or transfer agreement will contain provisions concerning:
  - exclusivity or non-exclusivity;
  - royalty-free research and education licence for STW and the research institute(s) concerned;
  - determination of a fair market price (with the exception of a NERF licence when contributions exceed 30%);
  - anti-freeze clause or best endeavours obligation concerning application or commercialisation
  - reporting obligations;
  - indemnification against liability on the part of STW and the knowledge institute(s);
  - market price + discount arrangements.
  The market price will be determined by negotiation between the parties; a record will be kept of these negotiations. In determining the fee to be paid, use can be made of the 'market-based approach' (i.e. market comparison), the 'income-based approach' (i.e. what income is expected), and the 'cost-based approach' (i.e. what has it cost to achieve the research results). The services of an impartial expert can also be called upon, or a combination of the above methods can be chosen. The user will be entitled to a discount on the fair market price fee which is related to the level of the contribution provided towards the costs of the research project.
  - Income received from transfer or licensing will be disbursed to the research institutes for further research.

STW should receive prior warning about any obstacles to the free use or exploitation of results. Should any obstacles to the implementation of STW's IP policy emerge, STW will impose additional conditions. If it emerges during the course of the project that the project leader has failed to notify STW about such relevant information, STW may suspend the project until the obstacles concerned have been removed. STW may request access to contracts and/or patents in this respect. Contracts must not be in conflict with STW's IP policy. If it emerges that STW cannot have free access to the results of the STW research, STW may decide not to award or to discontinue the project.