

Updates Regarding Problematic Terms and Conditions

1) The Bezos Earth Fund - Grand Challenge

a) Background

The Bezos Earth Fund- Grand Challenge has several terms and conditions that are problematic and cannot be accepted by Harvard University, as well as many of our peers institutions. Bezos has indicated that these terms are non-negotiable. The key problematic terms and conditions are defined below:

i) Indemnity:

The indemnification provisions are too broad and require the university to take on liability for the actions or omissions of non-university employees or agents. Such clauses expose the university to a large amount of unforeseeable financial risk for behavior that is beyond the university's control.

ii) Intellectual property licenses and freedom to operate warranty:

The agreement terms require applicants to give to the Bezos Earth Fund a broad license to “*all or any part of all works and other materials, ideas, concepts, innovations, discoveries, designs, formulae, know-how or developments submitted or otherwise provided by any means, directly or indirectly, in connection with the Challenge, including but not limited to proposals, presentations, applications, submissions, submission abstracts and other submission or application content (collectively, the “Submission”).*” The agreement terms also require applicants to make warranties ensuring the Bezos Earth Fund the freedom to operate the licenses granted to the Submission.

These terms are unacceptable for several reasons. Allowing the Bezos Earth Fund such extensive rights to university intellectual property with no consideration in return is a gift of public/nonprofit resources to a private benefit. Additionally, we cannot guarantee that we will have complete ownership of every aspect of the Submission because, for example, our institution might have already licensed portions of background knowledge that are made part of the Submission. Furthermore, the Submission might incorporate another entity's intellectual property, for which our institution has a license but does not have the right to sublicense. Finally, as nonprofit institutions of higher learning, we do not, as a matter of practice, perform freedom to operate checks for research sponsors. Typically, freedom to operate searches are conducted by law firms for thousands of dollars, to search and identify every intellectual property right that might be indicated by this clause.

iii) Modification of terms:

The Bezos Earth Fund's reservation of the right to unilaterally modify grant terms is unworkable for the university. We must review all applicable grant terms to ensure they are both feasible and acceptable per applicable laws and university policies.

iv) Use of grant applicants' names:

University's name is the property of the university, and the use of the name is protected by university policy. We cannot issue blanket authority to an outside entity to use Harvard University's name because, in order to comply with applicable laws and policies, universities must evaluate each request to use their names on a case-by-case basis to ensure that the use is legal and appropriate. At minimum, particularly in agreements with for-profit or business-associated organizations such as the Bezos Earth Fund, we need assurance that Harvard's name will not be used to imply the university's endorsement, association with, or opposition to an organization, product, or service without specific permission of the university.

v) Payment of awards via stock transfer:

The Bezos Earth Fund requires that universities agree to accept stocks as part of the payment for the agreement. Accepting stock as payment for research projects would present significant programmatic and operational challenges because we would have no guarantee of the actual dollar amount received from liquidation of the stocks for the conducting the research until after we had already agreed to perform a particular project. This would, amongst other actions, require contingency funding to pay for work performed under a sponsored research agreement if the stock value does not cover full costs.

vi) Jurisdiction and binding arbitration:

Accepting jurisdiction outside of a university's home state, as well as accepting binding arbitration, is problematic.

b) Action

The Bezos Earth Fund has declared that these terms are non-negotiable, and to-date has not agreed to any changes, which has resulted in the universities, including Harvard, deciding not to submit applications for funding opportunities that have these terms embedded in the announcement or accept awards that have included these terms.

There are continuing efforts by universities to hold high level discussions with the fund's leadership in the hope that it will allow the institutions to partner with the Bezos Earth Fund on future projects. We will update our position, and notify you, if there are any developments in that front. In the interim,

- i)*** Harvard cannot submit proposals for which the funding notice includes any of the non-negotiable terms and conditions listed above.
- ii)*** For proposals for which the funding notice does not include any of the terms and conditions listed above, Harvard will submit the proposal and send the following message (Subject: Bezos Earth Fund Terms and Conditions Awareness Email) to the PI and appropriate administrators:

We are currently processing your proposal for funding by the Bezos Earth Fund. We wanted to inform you that for some programs, the Bezos Earth Fund has included terms and conditions that are unacceptable to Harvard and many of our peer universities across the country. While we do not believe this particular Bezos Earth Fund Program is subject to those terms, we wanted to inform you in advance about the potential for such terms in the final agreement.

Should the terms be included and the Fund refuses to negotiate, we will have no choice but to decline the award. This decision is based on feedback from several major research institutions, which were unable to negotiate with the Fund related to, among others:

- (1) Imposing broad liability on universities.*
- (2) Intellectual property licenses requiring extensive rights to university IP, as well as third party IP used while conducting the work, without adequate consideration.*
- (3) Binding arbitration and jurisdiction requirements that conflict with state laws and university policies.*

These terms conflict with university policies and state laws, exposing institutions to significant risks. Please do not hesitate to reach out and discuss further.

2) Department of Energy (DoE)

a) Background

Starting in 2021, the DoE, included in the terms and conditions of each grant or cooperative agreement, that permission must be obtained to support or collaborate with any non-U.S. Person, and that DoE reserved the right to exclude any individual from receiving funding, using the resources *or participating in grant activities*. Following broad consultation with our peers institution as well as the university and school leaderships, Harvard University issued a memo (copy version attached) outlining the conditions under which Harvard may accept such awards. The main condition was that if the “*DOE denies approval of any person to work on the project, Harvard University reserves the right to terminate the contract*”.

b) DoE’s Recent Position

Recently DoE has issued several awards in which they:

- i) Request information regarding non-U.S. Persons participating in the award*
- ii) Reserve the right to do deny any non-U.S. Participants, and*
- iii) Refuse to agree to Harvard’s right to terminate the contract, if any participants are denied.*

Unfortunately, this is unacceptable as it both violated our non-discrimination policies and potentially jeopardizes our fundamental research exemption. *As a result, Harvard cannot accept such awards.*

Individuals (PI, and relevant administrators) submitting proposals to DoE, will receive the following e-mail (Subject: Department of Energy Terms and Conditions Awareness Email):

“We are currently processing your proposal for funding from the Department of Energy (DoE). We wanted to inform you that some DOE awards include foreign national exclusion clauses, including a) the DoE’s right to refuse participation of any foreign national, and b) refusing Harvard the right to cancel the agreement if this were to occur (i.e., Harvard must continue to do the work without the denied individuals), which present challenges for Harvard University and

many of our peer universities across the country. While we are unsure whether this specific DoE Program is subject to these clauses, we wanted to inform you in advance about the potential for such terms, as they do not align with Harvard's Openness in Research and non-discrimination Policies and jeopardize the Fundamental Research Exclusion, which is essential to the open and collaborative nature of our research environment.

Should these clauses be included and the DoE refuses to negotiate, we may not be able to accept the award. This decision is consistent with feedback from several major research institutions, which were unable to successfully negotiate with the DoE regarding foreign national exclusion clauses.

We appreciate your understanding and remain hopeful that we can proceed without encountering these problematic conditions. Please do not hesitate to reach out to discuss this further”.