

Why can't I just sign the form they sent?

# CONTRACT BASICS AND REVIEW PROCESS AT UMBC

# Contract Formation

## ⦿ Do we have a contract?

- The agreement is a contract if it has three elements:
  1. an offer to provide a good or service, or a promise to do something or to refrain from doing something,
  2. an acceptance of that offer, and
  3. "consideration" is given. Consideration is the exchange of something valuable (e.g., money, work, mutual obligations)

# But we never signed the form!

- An Oral Contract can create a legally binding contract.
- ALL University contracts must be in writing and signed by an authorized representative of UMBC.

# What Is A University Contract?

- ⦿ Contracts that obligate UMBC's funding, resources, or personnel in any way
- ⦿ Agreements are not University contracts if entered into on behalf of
  - The UM Foundation
  - UMBC owned affiliate organizations
  - Student organizations, or
  - Private individuals.

# Examples Of University Contracts

- ▶ Sponsored Research grants/contracts/subcontracts
- ▶ Co-op placements and internship agreements
- ▶ Agreements with hotels and conference centers
- ▶ License agreements for inventions
- ▶ Agreements with independent contractors
- ▶ Articulation agreements with Community Colleges
- ▶ Donor agreements specifying the terms of a gift

# Additional Examples of University Contracts

- Entertainment Event contracts
- Agreements for the rental of UMBC facilities or leases for real property
- Residential Life contracts (not a lease)
- Nondisclosure Agreements
- Material Transfer Agreements
- Memoranda of Understanding for faculty/student exchange programs
- Personal service and consulting agreements

# Who Is Authorized To Sign a University Contract?

- ▶ Only the President, Provost, and Vice Presidents have authority to contract for the University, unless he or she delegates this authority in writing.
  - Sponsored Programs Managers have delegated signature authority for sponsored projects agreements
- ▶ Anyone else who enters into a contract that purports to bind the University or a subunit is acting without authority and can be held **PERSONALLY** liable for the contract under **COMAR**.

# What Terms Cannot Be Included in a University Contract?

- ▶ Indemnification and hold harmless clauses
- ▶ Agreements requiring the UMBC to purchase General liability insurance
- ▶ Agreement to be bound by the laws of a jurisdiction other than Maryland, or to have the case heard in another location (venue)
- ▶ Binding arbitration agreements (mediation is OK)
- ▶ Clauses which give the other party an absolute right to injunctive relief
- ▶ Agreements to keep information confidential that would otherwise be a public record under the Maryland Public Information Act

# Terms That Must Be In University Contracts

- ▶ A clear identification of the parties (Departments/subunits are not to be a party)
- ▶ Beginning and ending dates
- ▶ Provisions for termination prior to the ending date
- ▶ A description of the responsibilities/obligations of each of the parties
- ▶ The amount of consideration to be paid and the date(s)of payments (if funds are involved)
- ▶ Signatures by authorized signatories
- ▶ Certain contracts may require many more terms (e.g., subcontracts under Federal prime awards, real estate leases)

# Legal Review

- ALL contracts must be reviewed by the Office of the General Counsel BEFORE SIGNING, except:
  - Purchase orders
  - Sponsored Projects (review by OSP)
  - Standard Form Agreements pre-approved by OGC
  - Agreements reviewed by the Asst. VP for Administrative Affairs

# Contact Information

- For additional information or questions, please contact the Office of the General Counsel at 5-2870/2709