



Free Agent Ecosystem™

Cultivating a Sustainable Commercial Ecosystem Among Professional Services Free Agents

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Introduction

This manifesto¹ offers a framework for creating a sustainable commercial "ecosystem" among collaborating professional services free agents, a Free Agent Ecosystem. Since this was first published in 2000, nearly ubiquitous connectivity and radical increases in personal computing power have enabled manifold advances in the ways individuals can collaborate for social impact and profit. The combination of narrowing corporate focus onto core competencies, while simultaneously demanding innovation breakthroughs from their networks, and transforming employees into subcontract labor, drive powerful trends favorable for the professional services free agent². It's almost trite to say so nearly twenty years on, but we're all free agents now.

What isn't trite is that cultivating coalitions of capable people to inspire, sell, administer, and deliver quality consulting services is still challenging. Free Agent Ecosystems still require deep levels of trust between members, and still demand real clarity and communication about how value is created and how cash flow is allocated from each transaction. Certainly, simple transactions for straight forward services used in business have been enabled by all manner of social media and internet-based tools that tally one's reputation and enable payments. But, the kinds of business relationships between consultants that are needed to get the heavy lifting done involve intangibles and principles that technology hasn't really improved upon in the last 20 years. Trust and transactional efficiency require more than LinkedIn and PayPal.

The three critical elements to cultivating an ecosystem of professional services free agents in a given industry are:

- 1) an understanding of the "value chain" of professional services transactions;
- 2) a way to deliberately cultivate the relationships and behavior of the ecosystem members, or, as they say in complexity science³ give the system "a few simple rules"; and
- 3) agreement templates to structure service delivery and intellectual property transactions.

In the case of business consulting services, there are many instances where client engagements require more time, skill, and knowledge than any one individual free agent

consultant can coordinate and/or deliver. This sets up the challenge of how to collaborate with other free agents to be able to serve more and larger clients; to create scalable capacity on the way to creating a firm, or in place of creating a firm. This is especially true in entrepreneurial and innovation hotbeds, where free agents are combining talents in novel configurations.

Here's an illustrative vignette I've heard over and over of how this challenge robs good professionals of prosperity. A highly competent consultant, we'll call her Mary, has a lead to a new client. While Mary is a pro at service delivery in her areas of expertise, taking care of this lead will require some skills that aren't in Mary's wheelhouse. She wants to collaborate with a fellow consultant she knows, John, so she can offer the prospect a robust package of services. However, Mary doesn't have a simple way to structure deals with other consultants, and is shy about negotiating complicated agreements. Since Mary feels awkward about attempting to put together a collaboration, even though she knows John would be awesome, she doesn't even try. Her inhibition is compounded by fears of losing control of her client relationship. We've all been there at one time or another.

Furthermore, Mary has heard an awful story about a colleague who had engaged a fellow consultant who subsequently took her colleague's custom intellectual property as their own, without license or payment for it. Mary heard another friend talk about the legal and tax responsibilities that come with engaging and deploying colleagues to deliver services as subcontractors. Combined, these issues intimidated Mary, and ultimately killed what could otherwise have been a profitable collaboration between Mary and John, two smart well-meaning professionals.

Our aim in fostering a Free Agent Ecosystem is to avert the complications and conflict that can arise in collaboration among professionals. We want to foster a context for mutually beneficial and satisfying deals between collaborators. Think of this manifesto as a prototype that can be refined as we learn from collaborating in service to our clients.

A value chain, a few simple rules, and some agreement templates are, as a past colleague once said are all parts of a "relationship infrastructure." They are like a trellis upon which we can cultivate successful careers. How we choose to cultivate our Free Agent Ecosystem and what we choose to harvest from it influences the world. Since we are increasingly all professional services free agents to one degree or another, we are possibly the most influential population on the planet, so how we transact matters.

When this Free Agent Ecosystem (FAE) Manifesto was originally rolled out at workshops with independent consultants, the world was reeling from the September 11, 2001 tragedies and the wars that followed. We observed then that a high-priority among our participants was cultivation of positive visions of the future; the professionals we trained in the FAE ethos and value chain method were committed to realizing progressive visions with business smarts. Today, in 2017, as professional services free agents, our best defense against a cultural return to intolerance, racism, xenophobia, win-lose deal-making and other regressive consciousness, is modeling the opposites. In the absence of light, darkness will prevail. Now more than ever, it's up to us to show the path toward the brightest future we can conceive. We challenge you to experiment with these models of collaboration, transparency, and plain dealing, and make your visions of abundance, health and peace a reality.

The History of this Idea

Why did we Joe Sterling, Karen Dietz, Rita Sterling, and Sharon Lieder, embark on this collaborative adventure in the first place? At the very least, it was to leverage our different talents in a more efficient and supportive way. We all had different areas of expertise that could be successfully brought into client engagements, and we all found ourselves at times scrambling to fulfill client needs while duplicating efforts in sales, marketing and client follow-up. We asked ourselves what the future would look like for each one of us as individuals, and then as a group, if we began to collaborate. Many questions and issues were raised about finances, safety, professionalism, recognition and rewards, along with the question of how do you work successfully together when all of us deeply value our independence. We wrestled with these issues, along with others over the course of a year.

The combination of ideas presented here (value chains, the simple rules of living systems, and agreement templates) were put in general proximity to one another during working sessions with Bryan Coffman and Jay Smethurst and others over a from 1999 through 2000. Early in 2001, we convened to explore more ways to collaborate including Axel Magnuson, Peter Durand and Diane Bleck, and Bill Kincaid. During the remainder of 2001, Joe Sterling and Karen Dietz took the first stabs at drafting this Manifesto with much dialogue and debate with Sharon Lieder and Rita Sterling.

Joe did the initial work on the Value Chain process, and then Karen and Joe met numerous times to validate the information. This required us to work through as many scenarios as we could. We mentally alternated our point of view between Client, Prime-contractor and Sub-contractor, to create a flow that was meaningful. Once we detailed the steps in the process, we added various financial scenarios to see if the model worked. From these discussions emerged the “Few Simple Rules” that were needed, generally speaking, for collaboration to work between independent contractors. These were inspired in large part by our exposure to complexity science applications to business from 1998-2000. Next, we began to work on the set of Agreements and supporting Templates (Work Order, etc.) that our nascent Ecosystem would need. Rita and Sharon spent hours going over the material to give us additional insight, add new content, and to make corrections.

Some of these discussions were hard to get through since we kept coming up against our inherent biases about working with clients and colleagues, and biases about being fiercely independent people. These were some of the most rewarding conversations, knowing that many others in the field would have the same reactions, concerns and difficulties. At the same time, we felt we were also breaking through these barriers and articulating newer ways to work together that would continually create win-win-win experiences (which include the client). In addition, we had opportunities to road test the Free Agent Ecosystem model during client engagements. It worked out beautifully.

In the nearly two decades since, we've trained scores of consultants, engaged in many collaborations, iterated the model, and supported free agents around the world to test this approach in a wide range of consulting contexts. It's a joy to be at a conference and be asked if we've ever heard of the Free Agent Ecosystem by people from other continents.

Elements of the FAE Collaboration Framework

A consulting engagement transaction can be thought of as a series of macro processes, i.e., a chain of value creating steps. Increasingly, within a single consulting engagement, these macro processes are being executed by different individuals, companies or groups working as Prime Contractors⁴ and Subcontractors⁵ to one another. To facilitate deal-making between the free agents and groups in a value chain, there needs to be a basis for negotiating compensation between Prime Contractors and Subcontractors for each of the macro processes. A description of the macro processes or links is offered below. This description lays out a simple flow of the macro processes that, in sequence, make up a well-formed consulting engagement Value Chain.

We have assigned each link in the Value Chain a percentage of the total engagement value, these are topics which a Prime and group of Subcontractors can negotiate. The percentages are suggested below can be thought of as the mid-points in the ranges for the value of each of the macro processes. They were derived from interviews with many consultants and have since been tested in many variations.

In 2017, after more than 15 years of assembling collaborations with fellow consultants, these ranges still hold up when the arrangement is between individuals for 1-off collaborations. When the entity in the role of “Sales and Administration of Contract” is an ongoing business, the ranges shift to account for the margins needed to maintain a healthy entity, but more about that later.

To facilitate all the intangible dynamics between Prime and Subcontractors, all the relationship issues that can't be put into a contract and don't have a natural arithmetic, we also offer "a few simple rules." These can be considered a Code of Conduct. Lastly, the Free Agent Ecosystem framework includes a set of agreement templates for subcontracting to one another, sharing intellectual property, and work-orders for specific projects. These are the tools for addressing all the challenges that were keeping our hypothetical consultant, Mary, from working with her friend and colleague, John.

Taken as a system, our hypothesis is that these components form a structure and invoke a set of processes that will support professional services free agents (perhaps a community of practice) to collaborate, resulting in a sustainable commercial Free Agent Ecosystem.

Consulting Engagement Value Chain of Four Phases

Again, these ranges are common when the arrangement is between individuals for 1-off collaborations. When the entity in the role of “Sales and Administration of Contract” is an ongoing business, the ranges shift to account for the margins needed to maintain a healthy entity. Additional line items are added for intellectual property, marketing, and company margin.

The phases of executing a simple consulting value chain are:

Value Chain Phases in Sequence	Percentage value of total billable fees for each contracted engagement
a. Generation of Leads	5%
b. Sales and Administration of Contract	30%
c. Delivery of Services	60%
d. Post-event quality assurance Follow-up and Cross-selling	5%

Of all the billable fees generated in a consulting engagement (not including reimbursable travel and materials expenses), each of these four phases generates a percentage of the total. The specific percentages are negotiable on a case-by-case basis. They can be thought of as mid-points in a negotiable range for each of the steps in the value chain. Our goal with this paper is to present a general scheme that can be adjusted as needed. The specific agreement language needed to implement this scheme of fee sharing is contained in the FAE Subcontractor Agreement template, Exhibit B.

Most importantly, in a given engagement, any member of the Free Agent Ecosystem community may step up to perform any of the four phases. One member may generate a lead today, be a Prime Contractor tomorrow, Subcontract to someone else next week, or be hired to do the post-event quality assurance follow-up and cross-selling for an engagement next month. Therefore, the percentage of value attributed to each phase should feel equitable to all participating members, no matter what role each person may perform on any given project – since each person will likely be in the other roles on subsequent projects. This dynamic ensures that the playing field remains level for all members of a commercial Free Agent Ecosystem. When the Golden Rule is baked into the business, unpredictable and wonderful “magic” routinely shows up.

In general terms, this view of the Value Chain can encourage marketing and sales behavior among all members of a community who apply it. When such an arrangement is communicated to colleagues, and they realize that there is a reward for being ever vigilant for opportunities to contract and serve clients, new collaborative behaviors are supported to emerge.

There are two important vantage points to consider in applying this Value Chain view.

From the Prime Contractor's vantage point:

- This encourages someone wanting to be a Prime to generate leads. It also encourages them to motivate prospective marketers to do more lead generation as well.
- In the case of collaborations among multiple individuals or companies, this break down acknowledges the value of the sales, contract administration and coordination roles of the Prime Contractor. It can also be thought of as the compensation for the risk that is undertaken by the Prime Contractor to engage with a client (liability, errors, omissions, confidentiality, etc.); not to mention the time invested in marketing and selling to many prospects so that some of those will become paying clients.
- Where the Prime Contractor is developing cost estimates for proposals, this kind of formula is a key tool for accounting for the true costs of contracting and executing a project.
- It is a reminder to all that the "after-action review" or post-event quality assurance follow-up is crucial to cementing client satisfaction, performance management of Subcontractors, and double-loop learning⁶ for all involved. Further, it provides compensation for the activity of generating new leads by extending current relationships, broadening engagements to include new services, and soliciting referrals to new prospects.
- Lastly, with a percentage scheme of this nature, the Prime Contractor is completely free to establish rates as high as the market will bear. This improves the revenue prospects for the Prime Contractor and all others involved.

From the Subcontractor's vantage point:

- This breakdown gives him or her a way to reward others for generating fresh leads which is always a challenge for busy practitioners. As many professionals appreciate, technical consulting strength is often inversely proportional to lead generation and sales aptitude and time. The better one is at delivery, the worse one often is at marketing and sales.
- Subcontractors can communicate to those who would sell their services for them just how much they would discount their fees in exchange for not being burdened with the sales and contract administration. This is crucial for the Prime Contractor to be able to estimate costs when developing a proposal for a prospective client.
- Lastly, with a percentage scheme of this nature, just like the Prime contractor, the Subcontractor is also completely free to establish rates as high as the market will bear. The Subcontractor may advertise rates among his advocates for a fixed period, or may choose to let them float tied entirely to what a Prime Contractor can get on their behalf.

But how can I trust the other members of the Ecosystem?

Ubiquitous in the commercial world are requirements to trust others to represent us, manage relationships with clients or vendors, handle money, and gather accurate feedback. Our hypothesis is that the risks of collaborating are mitigated when collaborators agree explicitly to follow a Few Simple Rules, and that with experience, trust across an ecosystem will increase. Below are what we consider to be the key risks that would raise concerns and inhibit ecosystem members from collaborating. Clearly, more risks can be imagined, but these appear to be the most commonly cited, some we called out in our Introduction and our story about Mary. We've arranged them in order of the value chain elements described above.

Value Chain Phase	Perceived Risks/Trust Issues
a. Generation of Leads	<ul style="list-style-type: none"> • Proper representation of services based on adequate knowledge of services/products, personnel, companies
b. Sales and Administration of Contracts	<ul style="list-style-type: none"> • Proper qualification/assessment of client and matching of client need with consulting personnel and processes • Selling only what can be delivered • Financial management and collections, relationship with Client buyers, consistency of consultant identity, and phone/letterhead/email • Timely payment from Prime contractors
c. Delivery of Services	<ul style="list-style-type: none"> • Preserve client relationship with Prime Contractor's brand/firm • Delivery of service is of high quality and done in a professional manner thus maintaining Prime Contractor's reputation in general
d. Post-event quality assurance Follow-up and Cross-selling	<ul style="list-style-type: none"> • Preserve client relationship, gather improvement feedback, and generate new work (with same Company and new Companies)

When the trust between prospective collaborators is weak, and the risks are perceived to be high, then the speed with which collaborations are formed slows way down or is prevented entirely. When trust is high, and the participants are competent in working deals together, then speed, agility, creativity in service to the client, transactional clarity, and fun are in abundance.

How is a Free Agent Ecosystem like a Bee Hive?

The success of a value-sharing program as described above is predicated on a number of factors. Not the least of which involves cultivating relationships where the trust issues just cited are managed. The literature of complexity science, and the study of biological systems that are self-sustaining, reveal that human social systems perform much like biological ones. This is only a surprising until one remembers that humans are biological too! A community of practice is in many ways a complex adaptive system. An easy to understand way of describing a complex adaptive system follows:

Many individual *agents* following a few *simple rules*⁷ which, when played out across the entire population, generates the *emergent behavior*⁸ of the whole (*colony or hive of insects, flock of birds, school of fish, etc.*). Frequently this *emergent behavior* is surprising and cannot be predicted by looking at the behavior of the individual agents.

Ready examples from nature include such phenomenon as the complex structures of an ant hill which couldn't be imagined by studying the ant. The dynamic of a devastating avalanche could not be predicted by looking at a shimmering snowflake.

In biological systems, the *simple rules* evolve over eons through survival of the genetic programming that matches a creature to its environment. In the commercial world that humans have created, the *simple rules* get worked out over months and years by matching entrepreneurs to their market and inhabited culture. If the behavior of the individual and the emergent behavior of the corporation do not match the requirements of the market and the surrounding culture, the enterprise will not be sustainable.

A Few Simple Rules for Professional Services Free Agents

The following is our hypothesis of what the Few Simple Rules (a Code of Conduct) might be that would cause the emergence of a sustainable commercial ecosystem among professional services free agents:

1. Reward sales behavior
2. Honor the Prime, the Sub and the Client
3. Honor your own identity (whether you are the Prime or the Sub)
4. Reveal the network to the client
5. Manage and share your knowledge (especially client and transactional info)
6. Show up and add value
7. Do the right thing - choose win-win-win outcomes

Our hypothesis is that when this suite of "Simple Rules" are played out, including the economic model of the Value Chain described above, synergies will emerge. We assert that this will lead to:

- A sustainable commercial ecosystem of free agents where both transaction costs and coordination costs are very low;
- Greater value to clients;
- Better working relationships;

- Healthier margins for professional service providers;
- Increased flexibility and speed in assembling service delivery capacity;
- A humanistic adult-to-adult (vs. parent-child) work culture where individual responsibility is supported; and
- The gradual migration, through self-selection, of individuals into roles in the commercial ecosystem for which they are best suited (temperament, talent, and training). Eventual self-organization of small work groups and guilds (analogous to multi-celled organisms) will emerge within a context of collaboration.

Simple Rules with Not-So-Simple Implications

Each of these "simple rules" has important nuances that we believe will generate healthy collaborative relationships and positive commercial behaviors. Below we will describe each point in more detail.

1. Reward Sales Behavior - For sustainable consulting commerce there must be a consistent evangelic focus on the discovery of client needs and articulation of solutions for them. There must be consistent presentation of service provider capabilities. The reward for finding a lead supports this behavior at all points along the way. This is perhaps the most straight forward of the "Simple Rules." Some consultants are hesitant to pay a referral or finders fee. It is as if they don't realize that the fee is only paid *after* a transaction is consummated. Further, most referrals are warm leads, where prospects have been somewhat qualified and prepared to meet the consultant. Those who refer a Free Agent to a prospect are automatically positioning the Free Agent in the most credible and positive light possible via the personal connection the referrer has with that prospect. No amount of money will buy this from any marketing consultant or ad agency over the long haul.

2. Honor the Prime Contractor, the Sub and the Client - A common problem among Prime and Subcontractors is that they seldom have clear agreements between them about roles during an engagement. Always directing the Client back to the Prime when opportunities emerge for new contracts is key to building trust. Prime contractors need assurance that their client relationships will be preserved and not undermined by Subcontractors. From a strictly business perspective, the cost to land an engagement is highest if the client is new. First engagements may have very slim margins for the Prime Contractor. Subsequent engagements, whether they be follow-on projects, repeats, or referrals to other groups within the same client organization require progressively less effort and expense as the Prime becomes a trusted "partner" of the client. Ensuring that the Prime has every opportunity to make up their desired profit over the life of the client relationship is key if Prime and Subcontractor relationships are to become really effective and efficient. If the Subcontractor is truly supporting the Prime to do the job of selling and contract administration with a given client then it would only follow that all inquiries, hints, and suggestions of more or new work would be directed to the Prime to handle. Likewise, if the Prime is truly supporting the Subcontractor in the delivery of service, client management, and in rewarding sales behavior, more work will result for both the Prime and the Subcontractor. It goes without saying that if either the Prime or the Subcontractor does not honor the client, both will be out of work.

One of the key negotiating points related to this simple rule is "How long does the Prime's relationship to a particular client need to be honored?" or more simply, "At what point can a Subcontractor sell directly to a client." There is a fairly wide range of perspectives on this point that run from 12 months to 24 months to never. The Prime and Subcontractor must be completely clear about this point before they engage with a client as there are typically pressures over time that shift the center of gravity away from the Prime. Fundamentally, the Prime must maintain their leadership role (contribution of value) in defining the engagement, closing sales, coordinating its planned delivery and any changes, handling the contract and financial details, and lastly, managing quality and client expectations. There are many different scenarios that we have explored in developing this concept, but suffice it to say that if the Prime gets complacent, both Subcontractor and client will feel the burden shift to them and naturally move to cut the Prime out of the equation.

3. Honor Your Identity Whether Prime or Sub - If one is a Subcontractor to numerous Primes, a number of dilemmas arise:

- Whose business card do I present today? I'm not really an employee of Prime Contractor X, but they want me to strengthen their brand and relationship with the client. Will presenting my own business card confuse the issue? Will that give the client the notion that the Prime and I are potential competitors?
- Will the client try to circumvent the Prime and deal with me directly?
- When the client needs to contact me directly, how do I answer the phone at my office?
- How do I know which client or which Prime is calling?

These issues can be crazy making if not handled proactively. In the world of collaborating free agents it's very difficult to switch identities from day to day, therefore we suggest that in most, if not all, circumstances one honors his or her identity. This means handing out your own business card with your own company name and contact information.

How, you may ask, do all the dilemmas mentioned above get resolved this way? If the Prime Contractor follows Rule #1: Reward Sales Behavior, the Subcontractor can be confident that in both the short and long run they will be rewarded for deferring client inquiries to the Prime who already has the client's ear and can most efficiently sell new and different services. This is amplified if a Subcontractor follows Rule #2: Honor the Prime, the Sub and the Client. The Prime can be all the more supportive of the Subcontractor's relationship building and prospecting.

4. Reveal the Network to the Client - The best way for the Prime to maintain strong and healthy relationships with both client and Subcontractors is to educate both. Disclosing to the client the source of labor assigned to their project and the basic relationship between the Prime and Subcontractor will head off any confusion the client may have. This simple rule may feel threatening to a Prime that is presenting itself as a large consulting firm with dedicated employees, when in fact they are nothing more than a marketing shell for Subcontractors. On the other hand, by informing the client of the general nature of this ecosystem of collaborating free agents and its benefits (lower transaction costs, lower coordination costs, increased ability to put the right talent on the right project, more flexibility, and lower overhead that the client would have to finance) this arrangement can be turned into a differentiator and competitive

advantage. Disclosure of this nature must be made first by the Prime then reinforced by the Subcontractor.

5. Manage Your Knowledge - For successful collaboration, it is critical that all nodes in the free agent network/ecosystem manage their transactional information and content. Transactional knowledge and information includes: a client or prospect's contact information, the source of the lead, the history of contacts with the lead/client, and transaction details and documents. The other kinds of knowledge and information that are critical to manage could be thought of as "content knowledge." These include: Knowledge Products produced and used before, during, and after an engagement. These may be workshop materials, reports, event designs, models, prototypes, and the like.

Managing transactional knowledge is encouraged by Rule #1: Reward Sales Behavior. The value of a lead is increased with every detail about the prospect's needs, decision makers, history, and so on. The more proposals, contracts and other document examples that are available to the Ecosystem, the more efficient the whole can become at making new deals. Templates will trend toward improvement with every use. Poor handling of transactional information causes lost opportunities and revenues for Prime and Subcontractors and makes it harder for all to serve the client.

Management of content knowledge in some respects is encouraged by Rule #3: Honor Your Own Identity in that through copyrights and intellectual property agreements the ecosystem of free agents can reward each other for generation of unique and specialized documents and products. A free agent's marketability is enhanced if they have authored or created some knowledge object (document, image, model, software, etc.) that the rest of the ecosystem finds useful. From a liability point of view, managing content knowledge that contains a client's proprietary or secret information is critical to protect all involved. From this point of view knowledge management becomes a facet of risk management for Prime, Subcontractor, and Client.

6. Show up and add value⁹ - Imagine how the world would change if this were the predominant modus operandi in business. Managers would have a very different role and there would be many fewer of them. Leadership would focus far more on developing visions of a bright future and less time on motivating people to do what needs to be done. In an ecosystem of free agents, where there is ambiguity everywhere and everyone is self-managed, direction and motivation are truly an inside job. The free agent must use their own senses and energy, not someone else's, to identify what is valued, ferret out what needs doing, and get in position to deliver that value. In a troubled world, sometimes just showing up, just *being* with people, is the value. Further, "add value" doesn't always mean adding more of anything. As the old Quaker saying goes "Don't speak if you can't improve on the silence." Living this simple rule deeply can, of course, be a life long discipline in and of itself.

7. Choose win-win-win outcomes - In an interdependent collaborative as we are describing here, it is not a sustainable path to merely satisfy only the Prime, or the Client, or the Subcontractor at the expense of the others. Since a free agent in this ecosystem could be a Prime today and a Subcontractor tomorrow great care must be taken to accrue goodwill points

with all members of the ecosystem. Needless to say, choosing outcomes that don't benefit the client will sooner or later cost Prime and Subcontractor alike. The ecosystem we're describing behaves like a market of buyers (Primes) and sellers (Subs). Further, it is a highly connected modern market where news travels at the speed of light and in the case of email and web sites it is persistent. A free agent's win-lose choices become a matter of written record very quickly as stories get passed back and forth about working relations and outcomes. On the other hand, those who model the FAE simple rule tend to be requested or referred for projects more often.

On the upside, choosing win-win-win gets spread around just as fast and strong positive reputations can be built quickly. Those who faithfully practice all the simple rules, especially managing knowledge *and sharing it*, can establish a culture and pace for others to emulate. The questions routinely asked in such cultures are: "Is the compensation fair in this transaction, no matter whether I am the lead generator, prime contractor, or subcontractor?" and "Am I following the simple rules?"

In summary, we believe that these simple rules, taken as a system, can cultivate a sustainable commercial ecosystem among professional services free agents. Without a doubt, there are other "simple rules" that could be articulated. We find that more than six or seven becomes hard to remember. Whereas our focus is on business consulting, there may be rules that are specific to other professional services. These rules result in both a solid foundation for conducting business and a safe, open environment for experimentation as greater opportunities arise.

Binding Agreements

Many free agents have shared with us stories of disappointment, upset, and frustration that have come from Prime or Subcontractor arrangements gone wrong. For want of a good written agreement, otherwise great collaborations have produced heartache and financial losses. For some Primes, poorly conceived and executed contracting ruined their reputation for years among potential collaborators. Tax liens are a reality if agreements are not well formed with respect to employment laws. Fundamentally, good agreements tend to make the involved parties more thoughtful about engaging with one another, surface innocently hidden assumptions, and increase specificity around money. It's been said that drama is a wonderful thing on the stage, but not when you're exchanging money. Most people we know want their financial transactions to be as predictable as gravity and just about as dramatic.

What kinds of binding agreements are necessary to clarify legal boundaries and performance expectations between Prime and Subcontractors? A Prime must manage legal and tax liabilities when engaging and deploying others. The Subcontractor needs to ensure he or she has defined the relationship to the Prime and client and that performance expectations, compensation, and payment terms are clear. To paraphrase Albert Einstein, we want to keep this agreement business "as simple as possible, but no simpler."

Transactional agreements to codify these variables come in four primary colors from which all manner of relationships and projects can be painted. They are:

1. Subcontractor or Independent Contractor Agreement
2. Mutual Non-Disclosure Agreement
3. Intellectual Property Compensation Agreements (royalties, use agreements, licensing)
4. Work Order (for each project including fees, logistics, etc.)

These agreements form specific boundaries for each transaction, define roles and responsibilities, set out timing for certain activities, create a safe context for sharing ideas and their derivative products, and make clear how money will be exchanged for services and products. When added to the value chain of professional services engagements and the Few Simple Rules, all the components are present to begin seeding the ecosystem. With a little more context around each agreement, the links and forces between them will become more apparent. Understanding these starts to bring to light the larger force field that, we believe, can be created by their use.

Subcontractor or Independent Contractor Agreement - By formalizing the relationship between Prime and Subcontractor roles, individuals invoke a body of law with its implications for taxes, insurance, confidentiality, liability and dispute resolution. Additionally, they are setting a context for general performance expectations and for exchanging money. A list of clauses in robust Subcontractor agreements follows:

1. Statement of Work
2. Compensation
3. Progress Reporting and Payment
4. Term and Termination
5. Independent Contractor Status
6. Confidential Information
7. Intellectual Property
8. Warranties and Representations
9. Restrictive Covenant
10. Insurance
11. Trademark and Trade Name
12. Indemnification
13. General Provisions
14. Dispute Resolution Procedures

Mutual Non-Disclosure Agreement - Collaboration among professional services free agents almost by definition requires exchange and use of intellectual properties. Since ideas, processes, images, and conceptual inventions are the stock and trade in professional services, compensating those who generate these is critical. In order to understand, evaluate, and make decisions about intellectual properties the creators/purveyors need to present them to buyers. In so doing, however, the idea is revealed. Paradoxically, you can't sell some intellectual properties until *after* you give them away. To protect the copyrights and other protections afforded creators, a mutual non-disclosure agreement (MDA) is very useful. In essence, it causes each party to promise that they won't use or give away to others the creator's ideas

without first executing a separate agreement for compensation. This makes it possible to share ideas without fear of losing credit for or ownership of them.

Clients certainly have many of the same concerns when hiring consultants. They understandably want to be sure that consultants don't misuse trade secrets and proprietary knowledge they may get exposed to in the natural course of an engagement. Likewise, it may be important to create a specific agreement with the client about future use of the consultant's trade secrets and proprietary knowledge that the client may be exposed to during an engagement. It is not bad policy to open an engagement with an MDA to raise everyone's awareness about the risks and negotiable points in the engagement having to do with intellectual property.

This is unmistakably quicksand. If there is no code of ethics in play to augment the MDA's clarity and legal leverage, it's easy to get mired down or stuck. In our few simple rules, #5: Manage Your Knowledge and #7: Choose win-win-win outcomes guide us to document our ideas and take the long view so that all parties benefit. With good knowledge management and a win-win-win culture the pace and quality of learning, recombination of ideas leading to true innovation increase dramatically.

Intellectual Property Compensation Agreements (royalties, use agreements, licensing) - The transactional aspects of using intellectual properties involves a combination of honoring copyright laws and establishing equitable compensation schemes. Compensation for using intellectual properties can take many forms. The three most common types of compensation are Royalty Agreements, Use Agreements, and Licensing Agreements.

Briefly, a Royalty Agreement determines the division of proceeds (%) from the sale of an intellectual property, say a book, poster, or video between a distributor and the item's creator. In the context of our Free Agent Ecosystem, a Prime Contractor (person A) may duplicate and sell products at the back of a seminar room to participants while the seminar may be conducted by a Subcontractor (person B). After the seminar, the creator (person C) gets a cut of the proceeds. There are many applications of the royalty theme. The creator retains ownership of the intellectual property and all associated rights. It is common for the distributor to also publish or duplicate the product. The percentage the creator gets may be variable depending on sale price the distributor actually achieves.

The "Use Agreement", is somewhat different in that the intellectual property in question may be used in the course of delivering professional services versus sold as in the case of a book. The use may be limited to a specific amount of time or number of uses. An example would be when a personality assessment created (by person C) is used during a specific consulting engagement sold by a Prime (person A) and delivered by a Subcontractor (person B). Neither Prime, Subcontractor, nor client own the intellectual property rights. They are instead retained by the creator.

Licensing Agreements - License agreements can take a number of forms. In one instance, the creator supplies materials to the Prime who negotiates to buy at a low price, and does its best to sell at a high price. Payment to the creator is a fixed price regardless of sales made by the Prime. The license to a Prime will likely have a specific duration after which it will

have to be renewed. Another form we're all familiar with involves software or multi-media products wherein we agree with the creators that we will use the intellectual property in certain ways and not in others. These don't have specific time limitations but clearly remind us that we don't own the intellectual property, we just use it.

Which agreement to use depends on the intellectual property, its intended application, and the players involved. Templates for each can be found in a number of places. The Graphic Artists Guild Handbook of Pricing and Ethics, has a number of easily adapted agreement forms that work well. Additionally, Nolo Press (www.nolo.com), a venerable source of do it yourself legal forms, has templates.

Work Order - The Subcontractor or Independent Contractor Agreements are typically an umbrella agreement that sets the context for Primes and Subcontractors to work under for a year after which it is modified and renewed. It does not require that a Subcontractor fix their fee schedule for the year, but does put in place the basic way the Prime-Subcontractor relationship will work. For each project that a Prime generates, there are a number of details that must be specified for the delivery and transaction to go well. The critical information that a Prime should be sure to cover in the Work Order includes but is not limited to:

- Specific statement of work including desired outcomes and timeline of the work.
- Compensation, including the Prime's policy for reimbursable expenses, timing of payments, and whether payment is contingent on first receiving funds from a client.
- Client contact information (names, titles, phone #s, emails, websites, mailing addresses) including short descriptions or notes on key engagement sponsors
- Contact information and roles regarding other Subcontractors involved in the engagement. On larger projects, early resolution of roles and responsibilities between the Subcontractors can accelerate a project and keep clients focused on the work at hand (not the Prime's organization).
- Logistics including location of event or consulting venues and client offices, travel arrangements, catering arrangements, and necessary equipment and furnishings.
- Sources for various intellectual property/materials (workbooks, event designs, articles, software, assessments, etc.), especially when they are being sourced from a third party not involved in the delivery of the engagement.
- Any specific performance expectations (length of work day, dress code, requirements for message response cycle time, etc.)

Wrapping up

It bears repeating that as professional services free agents, we have tremendous influence over commercial, governmental, social, and military organizations. If actions speak louder than words, then our collaborative behavior may be some of the highest leverage communication we can make to our clients. Our Free Agent Ecosystem can influence the world. Now more than ever we need to demonstrate visions of a prosperous and healthy future and take steps to manifest them every day. It's up to us to model the brightest future we can conceive. I challenge you to experiment with these models. Let's see how far we can get together.

Notes:

1. Manifesto - *n.* "a public declaration of intentions, motives or views"
2. Free Agents: From Free Agent Nation, Daniel Pink [p.14,] "If the term is vague, I can think of no other way to describe the people I am talking about. They are *free from the bonds* of a large institution, and agents of their own fortunes. They are the new archetypes of work in America. Today, in the shadow of another economic boom, America's new economic emblem is the footloose, independent, worker, tech-savvy, self-reliant, path-charting micropreneur." It is arguable whether the free agent is actually free. In most cases he or she may have left the employment of a company where there was a boss to whom the footloose had to answer. It is safe to say that for most folks who go independent they trade in one boss for many - their new, ever changing, and just as demanding clients.
3. Complexity Science - This has become a catch all phrase for a growing body of knowledge that includes insights from physics, mathematics, music, biology, computer modeling, and cosmology. All of these disciplines focus to some measure on natural phenomenon that are seldom in static states of order or in complete chaos. Natural phenomenon that seem to take place on the unstable elusive boundary between the order and chaos have proven to be very valuable teachers as the number of variables in modern day challenges increase and pace of change accelerates.
4. Prime Contractors - this term can be used interchangeably with General Contractor.
5. Subcontractors - We use this term here in the same legal sense as the word Independent Contractor. It is easier to grasp the relationship with the Prime by using Subcontractor.
6. Double-Loop Learning - According to Norton and Kaplan's 1996 book, *Balanced Scorecard*, "Double-loop learning occurs when managers question their underlying assumptions and reflect on whether the theory under which they were operating remains consistent with current evidence, observations, and experience. Of course, managers need feedback about whether their planned strategy is being executed to plan - the single-loop learning process. But even more important, they need feedback about whether the planned strategy remains a viable and successful strategy - the double-loop learning process." Double-loop learning among consultants is key to improving effectiveness and efficiency, i.e., value to the client.
7. "...a few simple rules" - An article in the Harvard Business Review (July 2001) called *Swarm Intelligence: A Whole New Way to Think About Business* by Eric Bonabeau and Christopher Meyer presents some nice cases on this topic. In particular, Capital One's application of a few simple rules to create a highly innovative culture is interesting.
8. Emergent Behavior - the above-mentioned Harvard Business Review article introduces this notion well. For more detail explore At Home in the Universe by Stuart Kauffman.

9. My friend of 15 years and brilliant designer of collaborative experiences, Michael Kaufman, always says "Show up and add value."

Resources and References

Free Agent Nation, 2001, Daniel Pink
Intellect Industry, 1998, Mark Scott
Out of Control, 1994, Kevin Kelly
Co-opetition, 1996, Adam Brandendberger & Barry Nalebuff
Balance Scorecard, 1996, David Norton & Robert Kaplan
Graphic Artists Guild Handbook of Pricing and Ethical Guidelines, 9th edition, 1997
Mastering the Art of Collaboration, 1998, Robert Hargrove
Embracing Complexity Conferences, 1995 through 2000, Cap Gemini Ernst & Young

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