

# **CASE #9 - An Agreement Between Structural Engineer of Record and Testing Laboratory**

## **ABSTRACT**

The Structural Engineer of Record may be required to include testing services as a part of its agreement. If a testing laboratory must be subcontracted for this service, CASE # 9 may be used. It can also be altered for use between an Owner and a testing laboratory.

As of 2015, the document was legally reviewed and the following changes were made:

1. In 4.3.2 changed “five” days to “ten” days.
2. In 5.2.1:
  - a. Combined and rewrote Testing Laboratory/SE mutual indemnification.
  - b. Added sentence indicating that neither party has obligation to defend or pay for defense until one party has been found at fault and then only to the proportion found at fault.
3. Added paragraph 5.2.2 for indemnification from third party claims. This was added since the original indemnification only dealt with claims from one of the contracting parties.
4. In 5.3.1 Risk Allocation:
  - a. Added “or any third party”. This was done to get the client to limit the SE’s liability for a third party claim. This is an aggressive approach and has not been tested by case law.
  - b. Expanded language regarding attorney and expert fee costs.
  - c. Removed “or other amount agreed upon” to remove open-endedness.
5. Other minor grammatical modifications.