

**ATHERSYS, INC.**  
**CODE OF BUSINESS CONDUCT AND ETHICS**

**Introduction**

This Code of Business Conduct and Ethics (the “Code”) of Athersys, Inc. (the “Company”) covers a wide range of business practices and procedures. It does not cover every issue that may arise, but it sets out basic principles to guide all employees, officers and directors of the Company. All of our employees, officers and directors must conduct themselves accordingly and seek to avoid even the appearance of improper behavior. The Code should also be provided to and followed by the Company’s agents and representatives, including consultants.

If a law conflicts with a policy in this Code, you must comply with the law. If you have any questions about these conflicts, you should ask your supervisor how to handle the situation. Regardless, you should always seek to act in accordance with the ethical standards described in this Code.

Those who violate the standards in this Code will be subject to disciplinary action, up to and including termination of employment. *If you are in a situation which you believe may violate or lead to a violation of this Code, follow the guidelines described in Section 15 of this Code.*

**1. Compliance with Laws, Rules and Regulations**

Obeying the law, both in letter and in spirit, is the foundation on which this Company’s ethical standards are built. All employees, officers and directors must respect and obey the laws of the cities, states and countries in which we operate. Although not all employees are expected to know the details of these laws, it is important to know enough to determine when to seek advice from supervisors, managers or other appropriate personnel.

If requested, the Company will hold information and training sessions to promote compliance with laws, rules and regulations, including insider-trading laws.

**2. Conflicts of Interest**

A “conflict of interest” exists when a person’s private interest interferes in any way with the interests of the Company. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her Company work objectively and effectively. Conflicts of interests may also arise when an employee, officer or director, or members of his or her family, receives improper personal benefits as a result of his or her position in the Company. Loans to, or guarantees of obligations of, employees and their family members may create conflicts of interest.

It is almost always a conflict of interest for a Company employee to work simultaneously for a competitor, customer or supplier. Unless approval is obtained from the Board of Directors, you are not allowed to work for a competitor as a consultant or board member. The best policy is to avoid any direct or indirect business connection with our customers, suppliers or competitors, except on our behalf. Conflicts of interest are prohibited as a matter of Company policy, except under guidelines approved by the Board of Directors. Conflicts of interest may not always be clear-cut, so if you have a question, you should consult with your supervisor or higher levels of management. Any employee, officer or director who becomes aware of a conflict or potential conflict should bring it to the attention of a supervisor, manager or other appropriate personnel or consult the procedures described in Section 15 of this Code.

Except as existing on the date hereof and as disclosed to the Chief Executive Officer of the Company, directors shall provide notice to the Chief Executive Officer of any conflicts of interest relating to their directorship.

### **3. Insider Trading**

Employees or directors who have access to confidential information are not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of our business. All non-public information about the Company should be considered confidential information. To use non-public information for personal financial benefit or to “tip” others who might make an investment decision on the basis of this information is not only unethical but also illegal. In order to assist with compliance with laws against insider trading, the Company has adopted a specific policy governing trading in securities of the Company. This policy has been distributed to every employee and director. If you have any questions, please consult your supervisor or higher levels of management.

### **4. Corporate Opportunities**

Employees, officers and directors are prohibited from taking for themselves personally opportunities that are discovered through the use of corporate property, information or position without the consent of the Board of Directors. No employee may use corporate property, information or position without the consent of the Board of Directors. No employee may use corporate property, information, or position for improper personal gain, and no employee may compete with the Company directly or indirectly. Employees, officers and directors owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

### **5. Competition and Fair Dealing**

We seek to outperform our competition fairly and honestly. Stealing proprietary information, possessing trade secret information that was obtained without the owner’s consent, or inducing such disclosures by past or present employees of other companies is prohibited. Each employee should endeavor to respect the rights of and deal fairly with the Company’s customers, suppliers, competitors and employees. No employee should take unfair advantage of

anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice.

The purpose of business entertainment and gifts in a commercial setting is to create good will and sound working relationships, not to gain unfair advantage. No gift or entertainment should ever be offered, given, provided or accepted by any Company employee, family member of an employee or agent unless it: (1) is not a cash gift, (2) is consistent with customary business practices, (3) is not excessive in value, (4) cannot be construed as a bribe or payoff and (5) does not violate any laws or regulations. Please discuss with your supervisor any gifts or proposed gifts which you are not certain are appropriate.

## **6. Discrimination and Harassment**

The diversity of the Company's employees is a tremendous asset. We are firmly committed to providing equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind. Examples include derogatory comments based on racial or ethnic characteristics and unwelcome sexual advances.

## **7. Health and Safety**

The Company strives to provide each employee with a safe and healthy work environment. Each employee has responsibility for maintaining a safe and healthy workplace for all employees by following safety and health rules and practices and reporting accidents, injuries and unsafe equipment, practices or conditions.

Violence and threatening behavior are not permitted. Employees should report to work in condition to perform their duties, free from the influence of illegal drugs or alcohol. The use of illegal drugs in the workplace will not be tolerated.

## **8. Record-Keeping**

The Company requires honest and accurate recording and reporting of information in order to make responsible business decisions. For example, only the true and actual number of hours worked should be reported.

Many employees regularly use business expense accounts, which must be documented and recorded accurately. If you are not sure whether a certain expense is legitimate, ask your supervisor or your controller.

All of the Company's books, records, accounts and financial statements must be maintained in reasonable detail, must appropriately reflect the Company's transactions and must conform both to applicable legal requirements and to the Company's system of internal controls. Unrecorded or "off the books" funds or assets should not be maintained unless permitted by applicable law or regulation.

Business records and communications often become public, and we should avoid exaggeration, derogatory remarks, guesswork, or inappropriate characterizations of people and companies that can be misunderstood. This applies equally to e-mail, internal memos, and

formal reports. Records should always be retained or destroyed according to the Company's record retention policies. In accordance with those policies, in the event of litigation or governmental investigation please consult your supervisor or higher levels of management.

## **9. Confidentiality**

Employees and directors must maintain the confidentiality of confidential information entrusted to them by the Company or its customers, except when disclosure is authorized by management or required by laws or regulations. Confidential information includes all non-public information that might be of use to competitors, or harmful to the Company or its customers, if disclosed. It also includes information that suppliers and customers have entrusted to us. The obligation to preserve confidential information continues even after employment ends. In connection with this obligation, every employee should have executed a confidentiality agreement when he or she began his or her employment with the Company.

## **10. Protection and Proper Use of Company Assets**

All employees and directors should endeavor to protect the Company's assets and ensure their efficient use. Theft, carelessness, and waste have a direct impact on the Company's profitability. Any suspected incident of fraud or theft should be immediately reported for investigation. Company equipment should not be used for non-Company business, though incidental personal use may be permitted.

The obligation of employees to protect the Company's assets includes its proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks and copyrights, as well as business, marketing and service plans, engineering and manufacturing ideals, designs, databases, records, salary information and any unpublished financial data and reports. Unauthorized use or distribution of this information would violate Company policy. It could also be illegal and result in civil or even criminal penalties.

## **11. Anti-Bribery/Anti-Corruption**

### *U.S. Foreign Corrupt Practices Act*

The U.S. Foreign Corrupt Practices Act ("FCPA") is a federal law that prohibits giving anything of value, directly or indirectly, to officials of foreign governments or foreign political candidates in order to obtain or retain business, and requires U.S. companies to maintain accurate books and records. It is strictly prohibited to make illegal payments, such as bribes, to government officials of any country. The Code prohibits violations of the FCPA, and the Company and all of its subsidiaries and affiliates, employees, officers, directors and all persons or entities that act as a representative or advisor to Company or any of its subsidiaries or affiliates shall fully comply with the FCPA.

**Anti-Bribery Provision. The FCPA prohibits corrupt offers and/or payments of money or other things of value to certain persons and entities in foreign countries.** Under the FCPA, Company and its employees, agents, suppliers, consultants, and other representatives (including Company distributors) may not pay,

offer to pay or give anything of value to any foreign government official (including officials or employees of entities owned or controlled by a foreign government) or any candidate for foreign political office (collectively “Prohibited Recipients”) in order to corruptly secure an improper advantage, or obtain or retain business or in directing business to any other person or entity.

**Books and Records Provision.** The FCPA **requires** U.S. companies to maintain accurate books and records. Under the FCPA, the Company is required to make and keep accurate books and records in reasonable detail and to devise and maintain a reasonable system of internal controls.

Company employees, officers, directors and representatives are prohibited from offering, promising, paying, or authorizing anything of value to a foreign government official or employee of a government-owned or government-controlled entity to secure an improper advantage or to corruptly obtain or retain business or direct business to another. “Anything of value” includes, but is not limited to cash, excessive entertainment, excessive meals, excessive or non-business related travel, gifts, business advantages, gratuities, or paying inflated prices to purchase a foreign official’s property or services.

Company employees, officers, directors and representatives are also prohibited from contributing Company funds or other Company assets for political purposes in the United States or in a foreign country without prior written approval from the Company’s President.

The FCPA applies to payments to any foreign government official or foreign government employee, regardless of rank or position. This includes ANY officer or employee of a foreign government, any department or agency thereof or any person acting in an official capacity for such government or organization, as well as any employee at all levels of a government-owned or government-controlled commercial business including but not limited to financial institutions. For purposes of the FCPA, foreign government officials include all levels of federal, state, provincial, county, municipal and similar officials of any government outside the United States. Foreign government officials also include officials and employees of public international organizations including organizations such as the International Monetary Fund, the European Union, the World Bank and other similar organizations.

Company employees, officers and directors are prohibited from engaging in any act that would cause the Company’s books and records to be inaccurate with respect to any payment or thing of value provided to a foreign government official or employee that would violate the FCPA. The Company must make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of Company’s assets, and all financial entries must reflect the true nature, amount and purpose of money spent or received.

Individuals who violate the FCPA bribery provisions may be imprisoned for up to five years and are subjected to a fine of up to \$250,000. Company employees who violate the FCPA will be subject to appropriate discipline including having their employment terminated for cause. The Company faces civil and criminal fines of up to \$2,000,000 for each violation of the FCPA, as well as significant reputational harm. The Company can be suspended or disbarred

from U.S. government contracting, and can lose benefits under government programs, including export privileges.

### *U.K. Bribery Act*

The Company is also subject to the U.K. Bribery Act, which applies to actions both in the U.K. and throughout the world. Unlike the FCPA, which generally applies only to business conducted with government officials and government-owned or government-controlled entities, the U.K. Bribery Act also prohibits bribery in the private sector. The types of conduct prohibited by the U.K. Bribery Act are described below.

**Offering a Bribe.** It is a violation of the U.K. Bribery Act to offer, promise or give a financial or other advantage to another person, whether within the U.K. or in another part of the world, with the intention of inducing or rewarding improper conduct.

**Receiving a Bribe.** It is a violation of the U.K. Bribery Act to request, agree to receive or accept a financial or other advantage for or in relation to improper conduct.

**Bribing a Foreign Official.** It is a violation of the U.K. Bribery Act to offer, promise or give a financial or other advantage to a foreign official with the intention of either obtaining or retaining business or a business advantage. For this type of violation, it is irrelevant whether the briber intended that the foreign official act improperly; the fact the briber intended to influence the foreign official is sufficient.

**Failure of an Organization to Prevent Bribery.** It is a violation of the U.K. Bribery Act for a commercial organization to fail to prevent an employee or any other person associated with the business from paying a bribe either to obtain or retain business or a business advantage for the organization.

Other than the violation of failing to prevent bribery, which applies only to commercial organizations, both the commercial organization and the individual may be held liable for a violation of the U.K. Bribery Act. Individuals who violate the U.K. Bribery Act may be imprisoned for up to ten years and may be subjected to an unlimited fine. Commercial organizations who violate the U.K. Bribery Act are also subjected to an unlimited fine.

The Code prohibits violations of the U.K. Bribery Act, and the Company and all of its subsidiaries and affiliates, employees, officers, directors and all persons or entities that act as a representative or advisor to Company or any of its subsidiaries or affiliates shall fully comply with the U.K. Bribery Act. Due to the complexities of the U.K. Bribery Act, Company employees must consult with their supervisors or higher levels of management before engaging in any communication or other conduct with any person in any jurisdiction that could be construed in any manner as improper.

## **12. Public Reporting**

The Company is a public company and, as a result, files periodic reports and other documents with the Securities and Exchange Commission (the "SEC") and the national securities exchange on which the Company's securities are listed. The Company also issues press releases

and makes other public statements that include financial and other information about its business, financial condition and results of operations. The Company endeavors to make full, fair, accurate, timely and understandable disclosure in the reports and documents that it files with, or submits to, the SEC and in its press releases and public communications.

The Company requires cooperation and open communication with its internal and outside auditors. It is illegal to take any action to fraudulently influence, coerce, manipulate, or mislead any internal or external auditor engaged in the performance of an audit of the Company's financial statements.

The laws and regulations applicable to filings made with the SEC, including those applicable to accounting matters, are complex. While the ultimate responsibility for the information included in these reports rests with senior management, numerous other employees participate in the preparation of these reports or provide information included in these reports. The Company maintains disclosure controls and procedures to ensure that the information included in the reports that it files or submits to the SEC is collected and communicated to senior management in order to permit timely disclosure of the required information.

If you are requested to provide, review or certify information in connection with our disclosure controls and procedures, you must provide the requested information and otherwise respond in a full, accurate and timely manner. Moreover, even in the absence of a specific request, you should report any significant information that you believe should be considered for disclosure in the Company's reports to the SEC.

If you have any questions or are uncertain as to how our disclosure controls and procedures may apply in a specific circumstance, promptly contact your supervisor or higher levels of management. You should ask questions and seek advice. Additional information regarding how to report your questions or concerns is included below in Sections 13 and 15 of this Code.

### **13. Waivers and Accountability**

Any waiver of this Code for executive officers or directors may be made only by the Board of Directors or a committee thereof and must be promptly disclosed, along with the reasons for the waiver, to shareholders as required by law or applicable stock market listing requirements. Any waiver of this Code for any other employees may be made only by an appropriate Company officer, and then only under special circumstances.

The Board of Directors or a committee thereof is responsible for applying this Code to specific situations in which questions are presented to it and has the authority to interpret this Code in any particular situation. If you become aware of any existing or potential violation of this Code, you are required to promptly notify the appropriate individual or individuals identified in this Code. Failure to do so is itself a violation of this Code.

The Board of Directors or a committee thereof shall determine, or designate appropriate persons to determine, actions that it considers appropriate to investigate any alleged violations of this Code reported to it and to enforce this Code with respect to any violations. Such actions shall be reasonably designed to deter wrongdoing and to promote accountability for

adherence to the Code and shall include notice to the individual involved that the Board of Directors has determined that there has been a violation, censure by the board, demotion or re-assignment of the individual involved, suspension with or without pay or benefits (as determined by the Board) and termination of the individual's employment. In determining what action is appropriate in a particular case, the Board of Directors or committee thereof or such designee shall take into account all relevant information, including the nature and severity of the violation, whether the violation was a single occurrence or repeated occurrences, whether the violation appears to have been intentional or inadvertent, whether the individual in question had been advised prior to the violation as to the proper course of action and whether or not the individual in question had committed other violations in the past.

#### **14. Reporting any Illegal or Unethical Behavior**

Employees are encouraged to talk to supervisors, managers or other appropriate personnel about observed illegal or unethical behavior and when in doubt about the best course of action in a particular situation. It is the policy of the Company not to allow retaliation for reports of misconduct by others made in good faith by employees. Employees are expected to cooperate in internal investigations of misconduct.

Employees must read the procedures established by the Audit Committee of the Board of Directors for the Company's whistleblower policy and procedures, which describes the Company's procedures for (1) the receipt, retention, and treatment of complaints received by the Company regarding accounting, internal accounting controls, or auditing matters and (2) the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. Any employee may submit a good faith concern regarding questionable accounting or auditing matters without fear of dismissal or retaliation of any kind. Any employee may submit a good faith concern regarding questionable accounting or auditing matters without fear of dismissal or retaliation of any kind.

#### **15. Compliance Procedures**

We must all work to ensure prompt and consistent action against violations of this Code. However, in some situations it is difficult to know if a violation has occurred. Since we cannot anticipate every situation that will arise, it is important that we have a way to approach a new question or problem. These are the steps to keep in mind:

- Make sure you have all the facts. In order to reach the right solutions, we must be as fully informed as possible.
- Ask yourself: What specifically am I being asked to do? Does it seem unethical or improper? This will enable you to focus on the specific question you are faced with, and the alternatives you have. Use your judgment and common sense; if something seems unethical or improper, it probably is.
- Clarify your responsibility and role. In most situations, there is shared responsibility. Are your colleagues informed? It may help to get others involved and discuss the problem.

- Discuss the problem with your supervisor. This is the basic guidance for all situations. In many cases, your supervisor will be more knowledgeable about the question, and will appreciate being brought into the decision-making process. Remember that it is your supervisor's responsibility to help solve problems.
- Seek help from Company resources. In the rare case where it may not be appropriate to discuss an issue with your supervisor, or where you do not feel comfortable approaching your supervisor with your question, discuss it locally with your office manager or your Human Resources manager.
- You may report ethical violations in confidence and without fear of retaliation. If your situation requires that your identity be kept secret, your anonymity will be protected. The Company does not permit retaliation of any kind against employees for good faith reports of ethical violations.
- Always ask first, act later: If you are unsure of what to do in any situation, seek guidance before you act.

## **16. Annual Review**

To encourage compliance with the Code, the Company shall furnish the Code at least annually to its employees, officers and directors, all of whom shall be required to acknowledge in writing the receipt and review of the Code.