

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-3

Registration statement for specified transactions by certain issuers

Filing Date: **2013-01-11**  
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([HTML Version](#) on [secdatabase.com](#))

### FILER

#### **ATHERSYS, INC / NEW**

CIK: **1368148** | IRS No.: **204864095** | State of Incorpor.: **DE** | Fiscal Year End: **1231**  
Type: **S-3** | Act: **33** | File No.: **333-185991** | Film No.: **13525888**  
SIC: **2834** Pharmaceutical preparations

#### Mailing Address

*3201 CARNEGIE AVENUE  
CLEVELAND OH 44115-2634*

#### Business Address

*3201 CARNEGIE AVENUE  
CLEVELAND OH 44115-2634  
216-431-9900*

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**ATHERSYS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**20-4864095**  
(I.R.S. Employer  
Identification Number)

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**3201 Carnegie Avenue  
Cleveland, Ohio 44115-2634  
(216) 431-9900**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Dr. Gil Van Bokkelen  
Chief Executive Officer  
Athersys, Inc.  
3201 Carnegie Avenue  
Cleveland, Ohio 44115-2634  
(216) 431-9900**

(Address, including zip code, and telephone number, including area code, of agent for service)

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*Copies To:*

**Christopher M. Kelly  
Michael J. Solecki  
Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Phone: (216) 586-3939  
Fax: (216) 579-0212**

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**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, \$0.001 par value per share	20,000,000	\$1.17	\$23,400,000	\$3,191.76
Warrants to purchase Common Stock (3)		(4)	(4)	(4)

- (1) Pursuant to Rule 416 under the Securities Act, this Registration Statement also relates to an indeterminate number of additional shares of Common Stock that may become issuable by reason of any stock split, stock dividend, recapitalization, or similar transaction that is effected without the receipt of consideration and results in an increase in the number of shares of the Common Stock that are outstanding.
- (2) Estimated solely for calculating the amount of the registration fee, pursuant to Rule 457(c) promulgated under the Securities Act of 1933, on the basis of the average of the high and low sale prices of the Common Stock on the NASDAQ Capital Market on January 4, 2013, within five business days prior to filing.
- (3) An indeterminate number of warrants to purchase the shares of Common Stock are registered hereunder.
- (4) Pursuant to Rule 457(g), no separate registration fee is required.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this preliminary prospectus is not complete and may be changed. We may not sell securities under this registration statement until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell any securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion, Dated January 11, 2013**

**PROSPECTUS**

**20,000,000 Shares**



### **Common Stock Warrants**

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We may from time to time issue up to 20,000,000 shares of our common stock and/or warrants to purchase such common stock in one or more offerings.

We will provide the specific terms of the securities to be offered in one or more supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement describing the method and terms of the offering of those offered securities.

We may sell the securities directly or to or through underwriters or dealers, and also to other purchasers or through agents. The names of any underwriters or agents that are included in a sale of securities to you, and any applicable commissions or discounts, will be stated in an accompanying prospectus supplement. In addition, the underwriters, if any, may over-allot a portion of the securities.

**Investing in any of our securities involves risk. Please read carefully the section entitled “[Risk Factors](#)” beginning on page 3 of this prospectus.**

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Our common stock is listed on the NASDAQ Capital Market under the symbol “ATHX.” As of January 9, 2013, the aggregate market value of our outstanding common stock held by non-affiliates was approximately \$60 million. We have not offered any of our common stock pursuant to General Instruction I.B.6 of Form S-3 during the 12 calendar months prior to and including the date of this prospectus.

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

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**The date of this prospectus is \_\_\_\_\_, 2013**

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### **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the SEC using a “shelf” registration process. Under this shelf process, we may from time to time sell up to 20,000,000 shares of our common stock and/or warrants to purchase such common stock in one or more offerings.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information under the heading “Where You Can Find More Information” and “Information We Incorporate By Reference.”

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide you. We have not authorized anyone to provide you with different information. You should not assume that the information contained in this prospectus, any prospectus supplement, any document incorporated by reference or any free writing prospectus is accurate as of any date, other than the date mentioned on the cover page of these documents. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

References in this prospectus to the terms “we,” “us,” “Athersys” or “the Company” or other similar terms mean Athersys, Inc. and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise.

### **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational reporting requirements of the Securities Exchange Act of 1934. We file reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC’s website at <http://www.sec.gov>. You may read and copy any reports, statements and other information filed by us at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the Public Reference Room.

We make available, free of charge, on our website at <http://www.athersys.com>, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports and statements as soon as reasonably practicable after they are filed with the SEC. The contents of our website are not part of this prospectus, and the reference to our website does not constitute incorporation by reference into this prospectus of the information contained at that site, other than documents we file with the SEC that are incorporated by reference into this prospectus.

**INFORMATION WE INCORPORATE BY REFERENCE**

The SEC allows us to “incorporate by reference” into this prospectus the information in documents we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. Any statement contained in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in or omitted from this prospectus or any accompanying prospectus supplement, or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We incorporate by reference the documents listed below and any future documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (1) after the date of the initial filing of the registration statement of which this prospectus forms a part prior to the effectiveness of the registration statement and (2) after the date of this prospectus until the offering of the securities is terminated.

our annual report on Form 10-K for the year ended December 31, 2011;

our quarterly reports on Form 10-Q for the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012;

our current reports on Form 8-K filed on February 27, 2012, March 15, 2012, June 22, 2012, and January 8, 2013; and

the description of our common stock set forth in the registration statement on Form 8-A filed on December 6, 2007, and all amendments and reports filed for the purpose of updating that description.

We will not, however, incorporate by reference in this prospectus any documents or portions thereof that are not deemed “filed” with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our current reports on Form 8-K unless, and except to the extent, specified in such current reports.

We will provide you with a copy of any of these filings (other than an exhibit to these filings, unless the exhibit is specifically incorporated by reference into the filing requested) at no cost, if you submit a request to us by writing or telephoning us at the following address and telephone number:

Athersys, Inc.  
3201 Carnegie Avenue  
Cleveland, Ohio 44115-2634  
(216) 431-9900  
Attn: Secretary

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### **THE COMPANY**

We are an international biotechnology company that is focused primarily in the field of regenerative medicine. We are committed to the discovery and development of best-in-class therapies designed to extend and enhance the quality of human life. We have established a portfolio of therapeutic product development programs to address significant unmet medical needs in multiple disease areas. We are developing our lead platform product, MultiStem<sup>®</sup>, a patented and proprietary allogeneic stem cell product that has been evaluated in two completed Phase I clinical trials and is currently being evaluated in two ongoing Phase II clinical trials. Our current clinical development programs are focused on treating inflammatory & immune disorders, neurological conditions, cardiovascular disease, and other conditions. These represent major areas of clinical need, as well as substantial commercial opportunities.

#### **Corporate Information**

We are incorporated in Delaware and our headquarters are located at 3201 Carnegie Avenue, Cleveland, Ohio 44115. Our telephone number is (216) 431-9900. Our website is <http://www.athersys.com>. The information accessible through our website is not part of this prospectus, other than the documents that we file with the SEC that are incorporated by reference into this prospectus.

### **RISK FACTORS**

Investing in our securities involves risk. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading “Risk Factors” in our most recent annual report on Form 10-K and in our most recent quarterly reports on Form 10-Q, which are incorporated herein by reference and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations. If any of these risks actually occurs, our business, results of operations and financial condition could suffer. In that case, the trading price of our securities could decline, and you could lose all or a part of your investment.

### **CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated by reference, contains, and any prospectus supplement may contain, forward-looking statements that represent our beliefs, projections and predictions about future events or our future performance. You can identify forward-looking statements by terminology such as “may,” “will,” “would,” “could,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” “continue” or the negative of these terms or other similar expressions or phrases. These forward-looking statements are necessarily subjective and involve known and unknown risks, uncertainties and other important factors that could cause our actual results, level of activity, performance, achievement or industry results to differ materially from any future results, levels of activity, performance or achievements described in or implied by these forward-looking statements.

Factors that may cause actual results to differ materially from expected results described in forward-looking statements include, but are not limited to:

- uncertainty regarding market acceptance of our product candidates and our ability to generate revenues, including MultiStem for the treatment of inflammatory bowel disease, acute myocardial infarction, stroke and other disease indications, and the prevention of graft-versus-host disease;
- our ability to raise capital to fund our operations;
- final results from our MultiStem clinical trials;
- the possibility of delays in, adverse results of, and excessive costs of the development process;
- our ability to successfully initiate and complete clinical trials and obtain all necessary regulatory approvals to commercialize our product candidates;



changes in external market factors;  
changes in our industry' s overall performance;  
changes in our business strategy;

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our ability to protect our intellectual property portfolio;

our possible inability to realize commercially valuable discoveries in our collaborations with pharmaceutical and other biotechnology companies;

our ability to meet milestones under our collaboration agreements;

our collaborators' ability to continue to fulfill their obligations under the terms of our collaboration agreement;

our possible inability to execute our strategy due to changes in our industry or the economy generally;

changes in productivity and reliability of suppliers; and

the success of our competitors and the emergence of new competitors.

Any forward-looking statement you read in this prospectus, any prospectus supplement or any document incorporated by reference reflects our current views with respect to future events and is subject to these and other risks, uncertainties and assumptions relating to our operations, operating results, growth strategy and liquidity. You should not place undue reliance on these forward-looking statements because such statements speak only as to the date when made. We assume no obligation to publicly update or revise these forward-looking statements for any reason, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future, except as otherwise required by applicable law. You are advised, however, to consult any further disclosures we make on related subjects in our reports on Forms 10-Q, 8-K and 10-K furnished to the SEC. You should understand that it is not possible to predict or identify all risk factors. Consequently, you should not consider any such list to be a complete set of all potential risks or uncertainties.

Any document incorporated by reference or any prospectus supplement may also contain statistical data and estimates we obtained from industry publications and reports generated by third parties. Although we believe that the publications and reports are reliable, we have not independently verified their data.

### **USE OF PROCEEDS**

Unless we inform you otherwise in the applicable prospectus supplement, we expect to use the net proceeds from the sale of securities for general corporate purposes, including, but not limited to, research and development costs, payment obligations and capital expenditures. Pending any specific application, we may initially invest funds in debt instruments of the U.S. government and its agencies, corporate debt securities, floating-rate notes and A1+/P1 commercial paper.

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### SELECTED CONSOLIDATED FINANCIAL DATA

The selected consolidated financial data set forth below should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our annual report on Form 10-K for the year ended December 31, 2011 and our quarterly report on Form 10-Q for the quarterly period ended September 30, 2012, both of which are incorporated by reference into this prospectus, and the consolidated financial statements and the notes thereto incorporated by reference into this prospectus.

	Year Ended December 31,					Nine Months Ended September 30,	
	2011	2010	2009	2008	2007	2012	2011
(in thousands, except share and per share data)							
<b>Consolidated Statement of Operations Data:</b>							
Revenues:							
Contract revenue	\$9,015	\$6,685	\$1,079	\$1,880	\$1,433	\$5,356	\$6,712
Grant revenue	1,329	2,254	1,080	1,225	1,827	1,063	1,067
<b>Total revenues</b>	<b>10,344</b>	<b>8,939</b>	<b>2,159</b>	<b>3,105</b>	<b>3,260</b>	<b>6,419</b>	<b>7,779</b>
Costs and expenses:							
Research and development	18,930	14,779	11,920	16,500	15,817	14,701	13,360
General and administrative	4,916	5,387	5,621	5,479	7,975	3,500	3,721
Depreciation	278	284	233	218	283	236	202
Loss from operations	(13,780 )	(11,511 )	(15,615 )	(19,092 )	(20,815 )	(12,018 )	(9,504 )
Other (expense) income:							
Other (expense) income, net	(51 )	(69 )	(126 )	48	2,017	499	(68 )
Interest income	85	203	375	1,146	1,591	21	78
Interest expense	–	–	–	(94 )	(1,263 )	–	–
Accretion of premium on convertible debt	–	–	–	–	(456 )	–	–
<b>Net loss</b>	<b>\$(13,746 )</b>	<b>\$(11,377 )</b>	<b>\$(15,366 )</b>	<b>\$(17,992 )</b>	<b>\$(18,926 )</b>	<b>\$(11,498 )</b>	<b>\$(9,494 )</b>
Preferred stock dividends	–	–	–	–	(659 )	–	–
Deemed dividend resulting from induced conversion of convertible preferred stock	–	–	–	–	(4,800 )	–	–
<b>Net loss attributable to common stockholders</b>	<b>\$(13,746 )</b>	<b>\$(11,377 )</b>	<b>\$(15,366 )</b>	<b>\$(17,992 )</b>	<b>\$(24,385 )</b>	<b>\$(11,498 )</b>	<b>\$(9,494 )</b>
<b>Basic and diluted net loss per common share</b>							
<b>attributable to common stockholders</b>	<b>\$(0.59 )</b>	<b>\$(0.60 )</b>	<b>\$(0.81 )</b>	<b>\$(0.95 )</b>	<b>\$(2.26 )</b>	<b>\$(0.41 )</b>	<b>\$(0.41 )</b>
Weighted average shares outstanding, basic and diluted	23,239,019	18,929,749	18,928,379	18,927,988	10,811,119	28,256,873	22,966,047

	December 31,					September 30,	
	2011	2010	2009	2008	2007	2012	2011
(in thousands)							
<b>Consolidated Balance Sheet Data:</b>							
Cash and cash equivalents	\$8,785	\$2,105	\$11,167	\$12,552	\$13,248	\$7,903	\$8,539
Available-for-sale securities, short-term	3,999	13,076	10,135	15,460	22,477	–	8,003
Working capital	6,986	9,106	16,291	26,789	32,849	4,397	10,333
Available-for-sale securities, long-term	–	–	5,080	3,601	13,850	–	–
Total assets	15,701	19,106	28,331	33,877	52,225	10,077	18,861
Warrant liabilities and note payable	983	–	–	–	–	3,813	1,100

Total stockholders' equity	7,298	9,005	18,957	31,563	47,631	1,950	10,579
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Effective January 1, 2012, we adopted the Financial Accounting Standards Board's, or FASB's, Accounting Standards Update, or ASU, No. 2011-05, Comprehensive Income (Topic 220): Presentation of Comprehensive Income, as amended by ASU 2011-12, Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05. These updates revise the manner in which entities present comprehensive income in their financial statements. The following selected financial information revises historical information to illustrate the new presentation required by this pronouncement for the periods presented.

### CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

	Year Ended		
	December 31, 2011	December 31, 2010	December 31, 2009
		(in thousands)	
Net loss	\$ (13,746 )	\$ (11,377 )	\$ (15,366 )
Items included in other comprehensive income (loss):			
Proportional share of comprehensive income of equity-method investment	28	–	–
Unrealized loss on available-for-sale securities	(26 )	(45 )	(49 )
Other comprehensive income (loss) items	2	(45 )	(49 )
<b>Comprehensive loss</b>	<u>\$ (13,744 )</u>	<u>\$ (11,422 )</u>	<u>\$ (15,415 )</u>

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### DESCRIPTION OF COMMON STOCK

We are authorized to issue 100,000,000 shares of common stock, par value \$0.001 per share, and 10,000,000 shares of preferred stock, par value \$0.001 per share.

#### **Common Stock**

This section describes the general terms and provisions of our common stock. For more detailed information, you should refer to our Certificate of Incorporation and Bylaws, copies of which have been filed with the SEC. These documents are also incorporated by reference into the registration statement of which this prospectus forms a part.

Holders of shares of common stock will be entitled to receive dividends if and when declared by the board of directors from funds legally available therefor, and, upon liquidation, dissolution or winding-up of our company, will be entitled to share ratably in all assets remaining after payment of liabilities. The holders of shares of common stock will not have any preemptive rights, but will be entitled to one vote for each share of common stock held of record. Stockholders will not have the right to cumulate their votes for the election of directors. The shares of common stock offered hereby, when issued, will be fully paid and nonassessable.

#### **Preferred Stock**

This section describes the general terms and provisions of our preferred stock. For more detailed information, you should refer to our Certificate of Incorporation and Bylaws, copies of which have been filed with the SEC. These documents are also incorporated by reference into the registration statement of which this prospectus forms a part.

Our board of directors is authorized, without action by our stockholders, to designate and issue up to 10,000,000 shares of preferred stock, par value \$0.001 per share, in one or more series. The board of directors can fix the rights, preferences and privileges of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The issuance of preferred stock, while providing flexibility in connection with possible future financings, acquisitions and other corporate purposes could, under certain circumstances, have the effect of delaying, deferring or preventing a change in control of us and could adversely affect the market price of our common stock. We do not have any shares of preferred stock outstanding, and we have no current plans to issue any preferred stock.

#### **Transfer Agent and Registrar**

We have appointed Computershare Investor Services as the transfer agent and registrar for our common stock.

#### **Listing**

Our common stock is listed on the NASDAQ Capital Market under the symbol "ATHX."

## DESCRIPTION OF WARRANTS

### General

We may issue warrants for the purchase of shares of common stock. The following description sets forth certain general terms and provisions of the warrants that we may offer pursuant to this prospectus. The particular terms of the warrants and the extent, if any, to which the general terms and provisions may apply to the warrants so offered will be described in the applicable prospectus supplement.

Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A copy of the forms of the warrant agreement and the warrant certificate relating to any particular issue of warrants will be filed with the SEC each time we issue warrants, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the warrant agreement and the related warrant certificate, see “Where You Can Find More Information.”

### Common Stock Warrants

The prospectus supplement relating to a particular issue of warrants to issue shares of common stock will describe the terms of the common stock warrants, including the following:

- the title of the warrants;
- the offering price for the warrants, if any;
- the aggregate number of the warrants;
- if applicable, the date from and after which the warrants and the common stock issued with the warrants will be separately transferable;
- the number of shares of common stock that may be purchased upon exercise of a warrant and the price at which the shares may be purchased upon exercise;
- the dates on which the right to exercise the warrants commence and expire;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material United States federal income tax considerations;
- anti-dilution provisions of the warrants, if any;
- redemption or call provisions, if any, applicable to the warrants;
- any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants; and
- any other information we think is important about the warrants.

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### **Exercise of Warrants**

Each warrant will entitle the holder of the warrant to purchase at the exercise price set forth in the applicable prospectus supplement the shares of common stock being offered. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants are void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered.

Until a holder exercises the warrants to purchase our shares of common stock, the holder will not have any rights as a holder of our common stock by virtue of ownership of warrants.



**PLAN OF DISTRIBUTION**

We may sell the offered securities in and outside the United States:

through underwriters or dealers;

directly to purchasers;

in a rights offering;

in “at the market” offerings, within the meaning of Rule 415(a)(4) of the Securities Act, to or through a market maker or into an existing trading market on an exchange or otherwise;

through agents; or

through a combination of any of these methods.

The prospectus supplement will include the following information:

the terms of the offering;

the names of any underwriters or agents;

the name or names of any managing underwriter or underwriters;

the purchase price or initial public offering price of the securities;

the net proceeds from the sale of the securities;

any delayed delivery arrangements;

any underwriting discounts, commissions and other items constituting underwriters’ compensation;

any discounts or concessions allowed or reallocated or paid to dealers; and

any commissions paid to agents.

**Sale through Underwriters or Dealers**

If underwriters are used in the sale, the underwriters will acquire the securities for their own account. The underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all the offered securities if they purchase any of them. The underwriters may change from time to time any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

During and after an offering through underwriters, the underwriters may purchase and sell the securities in the open market. These transactions may include overallotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. The underwriters may also impose a penalty bid, which means that selling concessions allowed to syndicate members or other broker-dealers for the offered securities sold for their account may be reclaimed by the syndicate if the offered securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the offered securities, which may be higher than the price that might otherwise prevail in the open market. If commenced, the underwriters may discontinue these activities at any time.

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If dealers are used in the sale of securities, we will sell the securities to them as principals. They may then resell those securities to the public at varying prices determined by the dealers at the time of resale. We will include in the prospectus supplement the names of the dealers and the terms of the transaction.

### **Direct Sales and Sales through Agents**

We may sell the securities directly. In this case, no underwriters or agents would be involved. We may also sell the securities through agents designated from time to time. In the prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any sales of these securities in the prospectus supplement.

### **Remarketing Arrangements**

Offered securities may also be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement.

### **Delayed Delivery Contracts**

If we so indicate in the prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the prospectus supplement. The prospectus supplement will describe the commission payable for solicitation of those contracts.

### **General Information**

We may have agreements with the agents, dealers, underwriters and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the agents, dealers, underwriters or remarketing firms may be required to make. Agents, dealers, underwriters and remarketing firms may be customers of, engage in transactions with or perform services for us in the ordinary course of their businesses.

**LEGAL MATTERS**

Jones Day will pass upon the validity of the securities being offered hereby.

**EXPERTS**

The consolidated financial statements of Athersys, Inc. appearing in Athersys, Inc.' s Annual Report (Form 10-K) for the year ended December 31, 2011, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following are the estimated expenses of the issuance and distribution of the securities being registered, all of which are payable by us. All of the items below, except for the registration fee, are estimates.

Securities and Exchange Commission registration fee	\$ 3,191.76
Transfer agent and registrar fees	*
Printing expenses	*
Accountant' s fees and expenses	*
Legal fees and expenses	*
Miscellaneous	*
Total	\$*

\* Estimated expenses are presently not known and cannot be estimated.

**Item 15. Indemnification of Directors and Officers.**

Delaware law provides that directors of a company will not be personally liable for monetary damages for breach of their fiduciary duty as directors, except for liabilities:

for any breach of their duty of loyalty to the company or its stockholders;

for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

for unlawful payment of dividend or unlawful stock repurchase or redemption, as provided under Section 174 of the General Corporation Law of the State of Delaware (the "DGCL"); or

for any transaction from which the director derived an improper personal benefit.

The provisions of Delaware law that relate to indemnification expressly state that the rights provided by the statute are not exclusive and are in addition to any rights provided in bylaws, by agreement, or otherwise. Our certificate of incorporation also provides that if Delaware law is amended to further eliminate or limit the liability of directors, then the liability of our directors shall be eliminated or limited, without further stockholder action, to the fullest extent permissible under Delaware law as so amended.

Our certificate of incorporation requires us to indemnify, to the fullest extent permitted by the DGCL, any and all persons we have the power to indemnify under the DGCL from and against any and all expenses, liabilities or other matters covered by the DGCL. Additionally, our certificate of incorporation requires us to indemnify each of our directors and officers in each and every situation where the DGCL permits or empowers us (but does not obligate us) to provide such indemnification, subject to the provisions of our bylaws. Our bylaws requires us to indemnify our directors to the fullest extent permitted by the DGCL, and permits us, to the extent authorized by the board of directors, to indemnify our officers and any other person we have the power to indemnify against liability, reasonable expense or other matters.

Under our certificate of incorporation, indemnification may be provided to directors and officers acting in their official capacity, as well as in other capacities. Indemnification will continue for persons who have ceased to be directors, officers, employees or agents, and will inure to the benefit of their heirs, executors and administrators. Additionally, under our certificate of incorporation, except under certain circumstances, our directors are not personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director. At present, there is no pending litigation or proceeding involving any of our directors, officers, or employees in which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

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Our bylaws also permit us to secure insurance on behalf of any officer, director, employee, or agent for any liability arising out of actions in his or her capacity as an officer, director, employee, or agent. We have obtained an insurance policy that insures our directors and officers against losses, above a deductible amount, from specified types of claims. Finally, we have entered into indemnification agreements with most of our directors and executive officers, which agreements, among other things, require us to indemnify them and advance expenses to them relating to indemnification suits to the fullest extent permitted by law.

### **Item 16. Exhibits.**

The following documents are exhibits to the registration statement:

<u>Exhibit Number</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
1.2*	Form of Agency Agreement.
4.1	Certificate of Incorporation of Athersys, Inc., as amended as of August 31, 2007 (incorporated herein by reference to Exhibit 3.1 to the registrant's Registration Statement on Form S-3/A (Registration No. 333-144433) filed with the Commission on October 10, 2007).
4.2	Bylaws of Athersys, Inc., as amended as of October 30, 2007 (incorporated herein by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K (Commission No. 000-52108) filed with the Commission on October 31, 2007).
4.3*	Form of Warrant Agreement.
4.4*	Form of Warrant Certificate.
5.1	Opinion of Jones Day.
23.1	Consent of Independent Registered Public Accounting Firm – Ernst & Young LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1 to this Registration Statement).
24.1	Power of Attorney.

\* To be filed either by amendment or as an exhibit to a report filed under the Securities Exchange Act of 1934, and incorporated herein by reference.

### **Item 17. Undertakings.**

The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which

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was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.

2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

4. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

- (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be a part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness and the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is a part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

5. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

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- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland, State of Ohio, on January 11, 2013.

**ATHERSYS, INC.**

By /s/ Gil Van Bokkelen  
Gil Van Bokkelen  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement on Form S-3 has been signed below by the following persons in the capacities indicated as of January 11, 2013:

<u>Signatures</u>	<u>Title</u>
<u>/s/ Gil Van Bokkelen</u>	Chief Executive Officer and Chairman of the Board of Directors
<u>Gil Van Bokkelen Ph.D.</u>	(Principal Executive Officer)
<u>*</u>	Vice President of Finance
<u>Laura K. Campbell</u>	(Principal Financial Officer and Principal Accounting Officer)
<u>*</u>	Executive Vice President, Chief Scientific Officer and
<u>John Harrington Ph.D.</u>	Director
<u>*</u>	Director
<u>Lee E. Babiss</u>	
<u>*</u>	Director
<u>Kenneth Traub</u>	
<u>*</u>	Director
<u>Jack L. Wyszomierski</u>	
	Director
<u>Ismail Kola</u>	
<u>*</u>	Director
<u>Lorin J. Randall</u>	

\* The undersigned by signing his name hereto does sign and execute this registration statement on Form S-3 pursuant to the Powers of Attorney executed by the above-named directors and officers of the registrant, which are being filed herewith on behalf of such directors and officers.

By: /s/ Gil Van Bokkelen  
Gil Van Bokkelen, Attorney-in-Fact

January 11, 2013



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### INDEX TO EXHIBITS

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4.2	Bylaws of Athersys, Inc., as amended as of October 30, 2007 (incorporated herein by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K (Commission No. 000-52108) filed with the Commission on October 31, 2007).
4.3*	Form of Warrant Agreement.
4.4*	Form of Warrant Certificate.
5.1	Opinion of Jones Day.
23.1	Consent of Independent Registered Public Accounting Firm – Ernst & Young LLP.
23.2	Consent of Jones Day (included in Exhibit 5.1 to this Registration Statement).
24.1	Power of Attorney.

\* To be filed either by amendment or as an exhibit to a report filed under the Securities Exchange Act of 1934, and incorporated herein by reference.

## JONES DAY

NORTH POINT 901 LAKESIDE AVENUE CLEVELAND, OHIO 44114-1190

TELEPHONE: (216) 586-3939 FACSIMILE: (216) 579-0212

January 11, 2013

Athersys, Inc.  
 3201 Carnegie Avenue  
 Cleveland, Ohio 44115-2634

Re: Registration Statement on Form S-3 filed by Athersys, Inc.

Ladies and Gentlemen:

We have acted as counsel for Athersys, Inc., a Delaware corporation (the “*Company*”), in connection with the authorization of the possible issuance and sale from time to time, on a delayed basis, by the Company of up to 20,000,000 shares of common stock, \$0.001 par value per share, of the Company (the “*Common Stock*”) and warrants to purchase the Common Stock (the “*Warrants*”), as contemplated by the Registration Statement on Form S-3 to which this opinion has been filed as an exhibit (as the same may be amended from time to time, the “*Registration Statement*”). The Common Stock and the Warrants are together referred to herein as the “*Securities*.” The Securities may be offered and sold from time to time pursuant to Rule 415 under the Securities Act of 1933 (the “*Securities Act*”).

In connection with the opinions expressed herein, we have examined such documents, records and matters of law as we have deemed relevant or necessary for purposes of this opinion. Based on the foregoing, and subject to the further assumptions, qualifications and limitations set forth herein, we are of the opinion that:

1. The Common Stock, upon receipt by the Company of such lawful consideration therefor having a value not less than the par value therefor as the Company’s Board of Directors (or an authorized committee thereof) may determine, will be validly issued, fully paid and nonassessable.
2. The Warrants, upon receipt by the Company of such lawful consideration therefor as the Company’s Board of Directors (or an authorized committee thereof) may determine, will constitute valid and binding obligations of the Company.

In rendering the foregoing opinions, we have assumed that: (i) the Registration Statement, and any amendments thereto, will have become effective (and will remain effective at the time of issuance of any Securities thereunder); (ii) a prospectus supplement describing the Securities offered pursuant to the Registration Statement, to the extent required by applicable law and relevant rules and regulations of the Securities and Exchange Commission (the “*Commission*”), will be timely filed with the Commission; (iii) the definitive terms of the Warrants will have been established in accordance with the authorizing resolutions adopted by the Company’s Board of Directors (or an authorized committee thereof), the Company’s Certificate of Incorporation, as

ALKHOBAR ATLANTA BEIJING BOSTON BRUSSELS CHICAGO CLEVELAND COLUMBUS DALLAS DUBAI  
 FRANKFURT HONG KONG HOUSTON IRVINE JEDDAH LONDON LOS ANGELES MADRID MEXICO CITY  
 MILAN MOSCOW MUNICH NEW DELHI NEW YORK PARIS PITTSBURGH RIYADH SAN DIEGO  
 SAN FRANCISCO SÃO PAULO SHANGHAI SILICON VALLEY SINGAPORE SYDNEY TAIPEI TOKYO WASHINGTON

amended, the Company's Bylaws, as amended, and applicable law; (iv) the Company will issue and deliver the Securities in the manner contemplated by the Registration Statement and the Common Stock issuable upon exercise of the Warrants will have been authorized and reserved for issuance, within the limits of the then remaining authorized but unreserved and unissued amount of Common Stock; (v) the resolutions authorizing the Company to issue, offer and sell the Securities will have been adopted by the Company's Board of Directors (or an authorized committee thereof) and will be in full force and effect at all times at which the Securities are offered or sold by the Company; (vi) all Securities will be issued in compliance with applicable federal and state securities laws and (vii) any Warrant Agreement (as defined below) will be governed by and construed in accordance with the laws of the State of New York and will constitute a valid and binding obligation of each party thereto other than the Company.

With respect to the Warrants, we have further assumed that: (i) the warrant agreement, approved by us, relating to the Warrants (the "**Warrant Agreement**") to be entered into between the Company and an entity selected by the Company to act as the warrant agent (the "**Warrant Agent**") will have been authorized, executed and delivered by the Company and the Warrant Agent and (ii) the Warrants will be duly authorized, executed and delivered by the Company and the Warrant Agent in accordance with the provisions of the Warrant Agreement.

The opinions expressed herein are limited by bankruptcy, insolvency, reorganization, fraudulent transfer and fraudulent conveyance, voidable preference, moratorium or other similar laws and related regulations and judicial doctrines from time to time in effect relating to or affecting creditors' rights generally, and by general equitable principles and public policy considerations, whether such principles and considerations are considered in a proceeding at law or at equity.

As to facts material to the opinions and assumptions expressed herein, we have relied upon oral or written statements and representations of officers and other representatives of the Company and others. The opinions expressed herein are limited to the laws of the State of New York and the General Corporation Law of the State of Delaware, in each case as currently in effect, and we express no opinion as to the effect of the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and to the reference to Jones Day under the caption "Legal Matters" in the prospectus constituting a part of such Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Jones Day

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the reference to our firm under the caption "Experts" in this Registration Statement (Form S-3) and related Prospectus of Athersys, Inc. for the registration of common stock and warrants and to the incorporation by reference therein of our report dated March 27, 2012, with respect to the consolidated financial statements of Athersys, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2011, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Cleveland, Ohio  
January 11, 2013

**ATHERSYS, INC.**  
**REGISTRATION STATEMENT**  
**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each of the undersigned officers and directors of Athersys, Inc., a Delaware corporation (the "Registrant"), hereby constitutes and appoints Gil Van Bokkelen, William Lehmann, Jr. and Laura K. Campbell, and each of them, his true and lawful attorney or attorneys-in-fact, with full power of substitution and resubstitution, for each of the undersigned and in the name, place and stead of each of the undersigned, to sign and file with the Securities and Exchange Commission under the Securities Act of 1933 (the "Securities Act") one or more Registration Statements on Form S-3 relating to the registration of certain equity securities of the Registrant, with any and all amendments, supplements and exhibits thereto, including pre-effective and post-effective amendments or supplements and Registration Statements filed pursuant to Rule 462(b) of the Securities Act, with full power and authority to do and perform any and all acts and things whatsoever required, necessary or desirable to be done in the premises, hereby ratifying and approving the act of said attorneys and any of them and any such substitute.

This Power of Attorney may be executed in multiple counterparts, each of which shall be deemed an original with respect to the person executing it.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the 7 day of January, 2013.

/s/ Gil Van Bokkelen

Gil Van Bokkelen  
 Chief Executive Officer and Chairman of the Board of Directors

/s/ Lee E. Babiss

Lee E. Babiss  
 Director

/s/ Laura K. Campbell

Laura K. Campbell  
 Vice President, Finance

/s/ Kenneth Traub

Kenneth Traub  
 Director

/s/ John J. Harrington

John J. Harrington  
 Executive Vice President, Chief Scientific Officer and Director

/s/ Jack L. Wyszomierski

Jack L. Wyszomierski  
 Director

/s/ Lorin J. Randall

Lorin J. Randall  
 Director

\_\_\_\_\_  
 Ismail Kola  
 Director